**PREPARED BY AND RETURN TO:**
J. D Collins
3840 Crown Point Road, Suite A
Jacksonville, FL 32257

Doc # 2008135587, OR BK 14513 Page 400,
Number Pages: 22
Filed & Recorded 05/27/2008 at 01:31 PM,
JIM FULLER CLERK CIRCUIT COURT DUVAL COUNTY
RECORDING $188.50

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
## Benton Lakes

**THIS DECLARATION**, made this 20th day of May, 2008, by **Benton Lakes, L.L.C.**, a Florida limited liability company, whose address is 3840 Crown Point Road, Suite A, Jacksonville, FL 32257, (hereinafter called "Developer");

**W I T N E S S E T H:**

**WHEREAS**, Developer is the Owner of certain real property more fully described as **Benton Lakes**, according to the plat thereof as recorded in Plat Book 64, pages 115 through 120, of the current public records of DUVAL County, Florida; and

**WHEREAS**, Developer is now or may become the owner of certain other real property adjacent or contiguous to the Property (hereinafter referred to as the "Future Development Property") and Developer desires to reserve the right to develop all or a portion of the Future Development Property in a manner consistent with this Declaration of Covenants, Conditions and Restrictions of **Benton Lakes** (hereinafter referred to as the "Declaration") and to annex all or a portion of the Future Development Property to the terms of this Declaration and require that the owners of lots in such Future Development Property be members of the Association created herein; and

**WHEREAS**, Developer desires to provide for the preservation of the values and amenities, if any, of the Property and for the care and maintenance of certain "Common Areas" and/or "Maintenance Areas" (as such terms are hereinafter defined) and to this end, desires to subject the Property, together with such additions thereto as may hereafter be made, to the Declaration which is hereby declared to be for the benefit of the Property and each and every owner of any and all parts thereof, their respective heirs, successors and assigns, and shall be deemed to run with title to the Property.

**NOW, THEREFORE**, Developer declares that the real Property described in the plat of **Benton Lakes**, according to plat thereof, recorded in Plat Book 64, pages 115 through 120, of the current public records of Duval County, Florida (referred to hereinafter as "Property") and such other properties as are or may be subsequently annexed to this Declaration as hereinafter set forth, are and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens, contained herein (sometimes hereinafter referred to as "Covenants and Restrictions"), all of which are for the purpose of protecting the value and desirability of the Property and which shall run with the title to the Property, or any part thereof, and shall be binding upon any owners thereof, their heirs, successors, assigns and mortgagees.

## ARTICLE I. DEFINITIONS

1.1 **Annexation**. "Annexation" shall mean and refer to the addition of the Future Development Property and/or any other lands contiguous to the property or contiguous to the Future Development property, at the option of Developer, to the Property and the

subjection of such property to the terms and conditions set forth in this Declaration. Annexation shall be accomplished by Developer recording an amendment to this Declaration in the current public records of Duval County, Florida, describing the property to be annexed and stating that such property is subject to all the terms, covenants, conditions and restrictions of this Declaration.

1.2 **Articles**. "Articles" shall mean and refer to the Articles of Incorporation of the Association.

1.3 **Assessment**. The term "Assessment" as used herein shall mean and refer to the share of Association Expenses assessed from time to time against a Lot and the Owner(s) thereof.

1.4 **Assessment Period**. "Assessment Period" shall be the same period as a calendar year, from January 1 to December 31 of any given year.

1.5 **Association**. "Association" shall mean and refer to Benton Lakes Homeowners Association, Inc., a corporation not-for-profit, organized or to be organized pursuant to Chapter 617, Florida Statutes, and its successors and assigns.

1.6 **Association Expenses**. "Association Expenses" shall mean and refer to the expenses and charges described in this Declaration, incurred or to be incurred by the Association and assessed or to be assessed against the Lots and the Owners thereof through annual or special Assessments.

1.7 **Board of Directors**. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

1.8 **Common Area**. "Common Area" shall mean and refer to that portion of the Property which is owned by the Association and which is intended for the common use and enjoyment of the Owners, including, but not limited to, the stormwater systems to be constructed in accordance with the requirements of the St. Johns River Water Management District, the Department of Environmental Protection and/or the U.S. Army Corps of Engineers, and the areas shown on the recorded plat as "Stormwater Retention Ponds" or "Easements" which connect the Stormwater Retention Ponds with other drainage facilities. The Common Area shall include only those areas conveyed by the Developer to the Association pursuant to the provisions of this Declaration. In addition, Developer shall have the right, but not the obligation to construct recreation areas within certain Lots or lands in Benton Lakes or other common areas as the Developer may designate from time to time within the Future Development Property and to include those facilities in the Common Area.

1.9 **Developed Lot**. "Developed Lot" shall mean and refer to any Lot owned by anyone other than Developer.

1.10 **Developer**. "Developer" shall mean and refer to Benton Lakes, L.L.C., a Florida limited liability company, its successors and assigns.

1.11 **Future Development Property**. "Future Development Property" shall mean and refer to that certain property adjacent or contiguous to the Property as Developer may determine from time to time.

1.12 **Lot**. "Lot" shall mean and refer to any of the Lots shown upon the recorded subdivision plat of the Property and the Future Development Property, if such property is annexed as herein set forth. Unless set forth to the contrary, the term "Lot" shall include both Developed Lots and Undeveloped Lots.

1.13 **Maintenance Area**. "Maintenance Area" shall mean and refer to those portions of the Property or improvements thereto which are not owned by the Association but are maintained by the Association from time to time, including without limitation, all of the stormwater systems to be constructed in accordance with the requirements of the St. Johns River Water Management District, the Department of Environmental Protection and/or the U.S. Army Corps of Engineers and the surface waters of any areas designated as "Stormwater Retention Ponds" or "Easements" or "Maintenance Area" on the recorded plats, medians or rights-of-way abutting public streets, the entrance way(s) to the subdivision including landscaping, fencing and signage, and decorative or border fencing or walls, if any, constructed by the Developer upon the boundaries of the Property.

1.14 **Member**. "Member" shall mean and refer to all Owners of Lots, who by virtue of such ownership become Members of the Association as provided in Section 2.1.

1.15 **Owner**. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property or the Future Development Property, if such property is developed and annexed as herein set forth, including contract sellers. The term "Owner" shall not mean or refer to any mortgagee, grantee or beneficiary under a mortgage, deed of trust or security deed unless and until such mortgagee, grantee or beneficiary has acquired title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

1.16 **Property**. "Property" shall mean and refer to all the land described in the plat of Benton Lakes, and, to the extent it is annexed, it shall also include the land contained within the Future Development Property.

1.17 **Stormwater Management System**. "Stormwater Management System" means a system which is designed and 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 otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

1.18 **Undeveloped Lot Owned By Developer**. "Undeveloped Lot Owned By Developer" shall mean and refer to any Lot which is owned by Developer.

## ARTICLE II. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

2.1 **Membership**. Every Owner of a Lot shall be a Member of the Association. Such membership shall be coincident with the ownership of the Lot, and shall not be separately transferable. Membership shall cease upon the transfer or termination of ownership. Provided, however, in the event that an Owner leases the improvements on his Lot to a tenant, such tenant shall be entitled to the use of the Common Area but the Owner shall

remaining liable for all Assessments, for compliance with the terms and conditions with the Articles, Bylaws and this Declaration and, unless specifically transferred, shall retain all voting rights.

2.2 **Voting Rights**. The Association shall have two classes of voting membership:

**Class A** - Class A Members shall be all Owners who have taken title to one or more Lots, excluding the Developer. A Class A Member shall be entitled to one vote for each Lot owned by such Member. When a Lot is owned by more than one person, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B** - The Class B Member shall be Developer, which shall be initially entitled to a number of votes equal to the number of Lots in the Property, plus one. The total number of votes of the Class B Member shall be increased at the time of annexation of Future Development Property to a number equal to the number of Lots included on the plat of the Property and the Future Development Property, plus one. The total number of votes of the Class B Member shall increase as herein set forth each time a portion of the Future Development Property is annexed as provided in this Declaration. Class B Membership shall terminate upon the happening of one of the following events, whichever first occurs: (i) when Developer has conveyed one hundred percent (100%) of the Lots located on the Property and the Future Development Property, if annexed as herein provided, or (ii) at such earlier date as Developer, in his sole discretion, may determine.

2.3 **Membership and Voting Procedure**. The Articles and Bylaws of the Association shall more specifically define and describe the procedural requirements for the Association and voting procedures, but shall not substantially alter or amend any of the rights or obligations of the Developer as set forth herein.

## ARTICLE III. PROPERTY RIGHTS IN THE COMMON AREA AND MAINTENANCE AREAS

3.1 **Members' Easement of Enjoyment**. Subject to the provisions of Section 3.3 of this Article III, every Member shall have and is hereby granted a right and easement for ingress, egress and of enjoyment in and to the Common Area as shown on any plat of the Property or the Future Development Property and an easement for drainage over and into the Maintenance Areas. Such easements shall be appurtenant to and shall pass with the title to each Lot whether or not the same shall be referred to in any deed conveying title to any Lot.

3.2 **Title**. Developer shall convey to the Association the fee simple title to the Common Area, if any, by special warranty deed subject to covenants, easements, conditions and restrictions of record, at such time as the improvements thereon, if any, are complete, and if unimproved, at such time as it so determines, provided that the Common Area shall be conveyed no later than the termination of the Class B Membership. The title to the Maintenance Areas shall not be conveyed to the Association, but the obligation for maintenance and repair as set forth herein, shall be the Association's.

3.3 **Extent of Members' Easements**. The easements created hereby shall be subject to the following:

(a) The right of the Developer, and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof, to mortgage the Common Area. In the event of a default upon such mortgage, the lender's rights thereunder shall be limited by the rights of the Members as described therein; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(c) The right of the Association to suspend the enjoyment of the Common Area by, and voting rights of, any Member for a period during which any assessment remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility. Prior to the termination of the Class B Membership, such dedication or transfer may be effected by the Developer without further consent from the Owners or its mortgagees. Subsequent to the termination of the Class B Membership, no such dedication or transfer shall be effective until agreed to by a vote of two-thirds (2/3) of the votes of the Owners of all Lots and unless an instrument has been recorded, signed and sworn to by the Secretary of the Association stating that such a vote was duly held and that two-thirds (2/3) of the votes representing all Lots favored such dedication or transfer. Provided, however, the granting of an easement, license or permit over the Common Area by the Association shall not be deemed to be a dedication or transfer of the Common Area requiring approval as provided herein but may be granted by the Association without further consent of the Owners or its mortgagees; and

(e) The right of tenants of Members to use the facilities on the Common Area; and

(f) The right of the Developer and/or the Association to make certain rules and regulations concerning the use of the Common or Maintenance Areas.

## ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENT

4.1 **Creation of the Lien and Personal Obligation of Assessments**. The Developer, for each Lot owned by it within the Property, hereby covenants, and each owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual Assessment or charges, and (2) special Assessments to be established and collected as hereinafter provided. The annual and special Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall constitute a lien upon the Lot against which each such Assessment is made, which lien shall attach upon the recording in the public records of Duval County, Florida, a claim of lien, specifying the amount of the lien then due, together with reasonable attorney's fees, costs and interest thereon, which claim of lien shall be signed by an officer of the Association. Each such Assessment, together with

interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The delinquent Assessment shall remain a lien against the Lot until paid, except as provided in Section 4.9.

4.2 **Purpose of Assessments**. The Assessments levied by the Association shall be used to promote the health, safety, and welfare of the residents of the Property, for the expenses of performing the duties or rights of the Association as set forth in this Declaration, Articles and Bylaws, and for the improvements and maintenance of the Common and Maintenance Areas including payment of taxes, if any, thereupon and the cost of insurance as may be deemed necessary or prudent by the Board of Directors.

Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements.

4.3 There shall be two classes of Assessment:

Class A **"Developed Lots"**: The initial Assessment for Developed Lots shall be an amount not to exceed the maximum annual assessment, as the same can be modified as set forth in Section 4.4 below.

Class B **"Undeveloped Lots Owned By Developer"**: The initial annual Assessment for Undeveloped Lots Owned By Developer shall be $-0-.

4.4 **Maximum Annual Assessment**. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment for Class A shall be $500.00 per Lot, which will include the costs and expenses of performance of all the duties and obligations of the Association set forth herein, **provided**, **however**, in the event that the Developer elects, in its sole discretion, to construct a recreational facility upon the Common Area, the Assessment may be increased above the maximum annual assessment to include the cost of maintenance of the improved Common Area; which increased Assessment amount shall become the new maximum annual assessment for that year.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment shall be increased each year by the Board of Directors of the Association not more than ten percent (10%) above the Maximum Annual Assessment for the previous year without a vote of the Membership, **provided**, **however**, if recreational facilities are added, at Developer's option, the Assessment may be increased by more than ten percent (10%) of the Maximum Annual Assessment for the previous year by the Developer without the consent of any Lot Owner or his or her mortgagee in an amount sufficient to pay the cost of maintenance and repair of said recreational facilities.

(b) From and after January 1 of the year immediately following conveyance of the first Lot to an Owner, the Maximum Annual Assessment may be increased by the Developer by more than ten percent (10%) above the Maximum Annual Assessment for the previous year in the event the Developer has added recreational facilities, by an amount sufficient to pay the cost of maintenance and repair of such recreational facility or, for other purpose, by

a vote of two-thirds (2/3) of Class B Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual Assessment for Developed Lots at an amount not in excess of the Maximum Annual Assessment (as the same may be modified upon the addition of recreational facilities as described above). The Undeveloped Lot assessments and the applicable increases thereof as provided above, shall be established in the proportions as set forth in Section 4.3.

4.5 **Special Assessment**. Special Assessments shall be levied and paid in the same manner as heretofore provided for regular Assessments. Special Assessments can be of two kinds: (a) those chargeable to all Members in the same proportions as regular Assessments to meet shortages or emergencies, to construct, reconstruct, repair or replace all or any part of the Common or Maintenance Areas and for such other purposes as shall be approved by a majority of all votes of the classes of Members; or (b) those assessed against one Owner alone to cover repairs or maintenance for which such Owner is responsible and which he has failed to make, which Special Assessment may be approved by the Board.

4.6 **Date of Commencement of Annual Assessments; Due Dates**. The annual Assessments provided for herein shall commence as to all Lots on the first day following the conveyance of the first Developed Lot. The annual Assessment as a Developed Lot shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto; provided, however, failure to send such notice shall not affect the liability or lien for the Assessment. Unless determined to the contrary by the Board of Directors, the annual Assessment shall be due and payable on the first day of April of each year.

4.7 **Association Certificate of Payments**. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association as of the date of its issuance.

4.8 **Effect of Nonpayment of Assessments; Remedies of the Association**. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate permitted by law. The Association may bring an action at law against the Owner or foreclose the lien against the Lot of the Owner. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his Lot.

4.9 **Subordination of the Lien of Mortgages**. The lien of the Assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer; provided, however, the personal obligation to pay the Assessment shall not be extinguished. No sale or transfer shall relieve such Lot or the

Owner thereof from liability from any Assessments thereafter becoming due or from the lien thereof.

4.10 **Capital Contribution Assessment**. Upon the first conveyance of a Lot to any person(s) or entity other than to an entity affiliated with the Developer, there will be due upon the closing of the sale of the lot a Capital Contribution Assessment of $400.00. Each Lot will be subject to the Capital Contribution Assessment only once, all future conveyances of any such Lot being exempt.

## ARTICLE V. COVENANTS AND RESTRICTIONS

5.1 **Approval of Improvement**. Except as originally constructed by the Developer, no building, fence, wall, or other structure or landscaping shall be commenced, erected or maintained upon any Lot nor shall any exterior addition to or change or alteration therein be made, including without limitation, exterior painting, until the plans and specifications showing the nature, kind, shape, height, materials, exterior color (including paint color), and location of the structure with respect to topography and finished grade elevations, shall have been submitted to and approved in writing as to quality of workmanship and materials, conformity and harmony of external design and location in relation to surrounding structures and topography and finished grade elevations, by the Developer, or by an Architectural Review Committee composed of one (1) or more representatives appointed by the Developer or a representative designated by a majority of the members of said committee. Requests for approval shall be in writing delivered to Developer or Architectural Review Committee by certified return/receipt mail. In the event the Developer, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after the plans and specifications have been submitted to it at the corporate office, such plans and specifications shall be deemed approved and the requirements of this Section 5.1 shall be satisfied. However the inaction of the Developer or Architectural Review Committee shall **not entitle any lot owner to violate any of the requirements of this Declaration of Covenants and Restrictions.** The right of approval set forth herein shall pass to the Board of Directors of the Association upon termination of the Class B Membership as provided in Article II of this Declaration.

An Owner whose plans and specifications are approved or an Owner who undertakes the making of improvements without such approval agrees, and shall be deemed to have agreed, for such Owner, his heirs, personal representatives, successors, and assigns, as appropriate, to hold the Developer, the Association or any Architectural Review Committee harmless from any liability or damage to the Lot or the Property and from expenses arising therefrom and shall be solely responsible for the maintenance, repair and insurance thereof.

Neither the Developer, members of the Architectural Review Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of such committee and its designated representative shall remain in Developer unless and until assigned to another party.

5.2 **Use Restrictions**. No structures of any kind, including any type of playground equipment, shall be erected, altered, placed or permitted to remain on any Lot other than: (A) (i) one single-family dwelling, not to exceed two and one-half stories in height; (ii) one private garage to accommodate up to two (2) cars or three (3) cars with approval of Developer; and (iii) one-story building for storage located to the rear of the back building line of the dwelling, and having not more than one hundred forty-four (144) square feet of floor space, to be located in fenced area; or (B) recreational facilities in the event the Developer elects, in its sole discretion, to construct such recreational facilities upon one or more Lots or tracts, and in which event the restrictions contained in this Article V shall not apply. In addition, nothing herein contained shall be construed to prevent Developer from using any Lot for a right-of-way for road purposes or easements, in which event none of the restrictions herein shall apply.

5.3 **Fences**. **(WARNING: DO NOT INSTALL ANY FENCE WITHOUT PRIOR WRITTEN APPROVAL.)** No fence or wall shall be erected, placed or altered on any Lot nearer to the street than the minimum building set back line, nor shall any fence be erected on the remainder of the Lot which exceeds six (6) feet in height without the approval as required by Section 5.1. All fences constructed on the Lots shall be six (6) feet in height and shall be six (6) inch board shadow box design, board on board, or white PVC/vinyl design. There shall be no stockade type fencing whatsover. **However, no fencing shall be commenced without prior approval by the Architectural Review Committee.** Fencing shall be installed with the finish side of fence material facing the outside.

As to Lots which include Stormwater Retention Ponds (as hereinafter defined), no fence shall be erected closer to the Stormwater Retention Ponds than the "top of bank" as designated on the recorded plat of the Property. Any such fence shall be four feet (4') in height along said "top of bank" boundary. All lake boundary fencing shall be constructed of shadow box design or alternatively the lake boundary fencing may be constructed of PVC white, or metal, painted black in color, with spacing between pickets not more than four inches (4").' In the event metal fencing is to be used to enclose a swimming pool on a stormwater retention pond lot, Lot owner is responsible to verify local code requirements for swimming pool fencing.

As to Lots which back up to "Conservation Easement Area (SJRWMD)" as designated on the recorded plat of the Property, no fence shall be erected along the "Conservation Easement Area (SJRWMD)" line higher than six feet (6') in height, or may be four feet (4') in height and shall be six inch (6") shadow box design or PVC white, or may be constructed of metal, painted black in color, with spacing between pickets not more than four inches (4").

Notwithstanding the foregoing, prior to construction of any fence on any Lot, approval as required by Section 5.1 shall be obtained. This restriction does not apply to any perimeter fencing, trees or landscaping which have been or may be created in the future by the Developer or its successor, and any perimeter or boundary fence constructed by or at the instruction of the Developer shall be deemed in compliance with these covenants.

The Association shall be responsible to maintain the perimeter fencing as installed by the Developer along Ilah Road Lots 1, 2, 3, Lots 49 through 69 and Lot 88 and specified in Section 5.27 of this Declaration.

Developer hereby reserves to itself the right to alter, amend or modify the fencing and maintenance criteria herein above recited.

5.4 **Set Back Lines**. No structure of any kind shall be located on any Lot nearer than (i) twenty feet (20') to the front lot line, (ii) ten feet (10') to any side street line, (iii) ten feet (10') to the rear lot line, or (iv) five feet (5') to any side lot line. An outbuilding for storage may be located not closer than five feet (5') to any side lot line.

In any event, no structure of any kind shall be located on any Lot nearer to the front lot line, nor nearer to any side street line, nor nearer to any side lot line than that which is permitted by applicable zoning from time to time, as the same may be modified by variance, exception, or other modification. If any one dwelling is erected on more than one Lot, or on a building plot composed of parts of more than one Lot, the side line restrictions set forth above shall apply only to the extreme sidelines of the building plot occupied by such dwelling. Nothing herein contained shall be construed to prevent Developer from reducing the building restriction lines with the prior written approval of the governmental agencies having jurisdiction.

No structure or other improvement or change in the topography of the land shall be erected or made: (A) within areas designated "Conservation Easement Area (SJRWMD)" on the subdivision plat recorded in the records of Duval County, or (B) which interferes in any respect with the drainage or utility easements shown on the subdivision plat or with any easements of any kind referenced in this Declaration.

5.5 **Lot Size**. No dwelling shall be erected or placed on any Lot having a width of less than seventy feet (70') at the front building set back line except cul-de-sac Lots in the turning radius shall have a minimum width of thirty-five feet (35') at the front Lot line, nor shall any dwelling be erected or placed on any Lot having an area of less than seven thousand (7,000) square feet; provided, however, that each Lot shown on the existing subdivision plat shall be deemed to comply with this Section 5.5. The use of two or more fractional Lots shall be permitted if the square foot area and width comply with this provision.

5.6 **Minimum Square Footage**. No residence shall be constructed or permitted to remain on any Lot unless the square footage of heated living area thereof, exclusive of garages, porches and storage room, shall be equal to or exceed one thousand (1,000) square feet.

5.7 **Landscaping**. The mass indiscriminate cutting down of trees is expressly prohibited without the written consent of the Developer or the Architectural Review Committee described in Section 5.1 herein except in those areas where building and other improvements shall be located; i.e., homes, patios, driveways, gardens, parking and recreational areas, etc. Also, selective cutting and thinning for lawns and other general improvements shall be permitted. All disturbed areas on any Lot must be seeded or

covered with sod or mulch and maintained to present a pleasing appearance, to prevent the growth of weeds and to prevent erosion. It is the responsibility of each Owner to maintain the area between the front property line of his Lot and the street, as well as the side property line and the street in the case of corner lots. In addition, if the Lot Owner fails to maintain his or her lawn and landscaping, the Developer (for so long as there is a Class B Membership and thereafter the Association) shall have the right, but not the obligation, to enter upon any such Lot to perform such maintenance work which may be reasonably required, all at the sole expense of the Lot Owner, which expense shall be payable by the Lot Owner to the Developer or the Association upon demand. All related costs incurred by the Developer incident to the correction of the terms and conditions of this paragraph shall be recoverable by the Developer, said cost to include a reasonable attorney's fees for the collection of same, in a court of competent jurisdiction. Should the Declarant elect rather than file suit in a court of competent jurisdiction for the collection of aforementioned enumerated costs and expenses, the Declarant shall have the right to file a lien against the subject property where said correction of any violation has occurred and shall have all the rights enumerated in these Covenants and Restrictions as the Association concerning the collection of said cost and expenses in the enforcement of such lien.

5.8 **Developer's Right to Re-Subdivide**. The Developer may re-subdivide or replat the Property in any way it sees fit for any purpose whatsoever consistent with the development of the Property provided that no dwelling shall be erected upon or allowed to occupy any Lot within such replatted or re-subdivided land which has an area less than allowed by the Jacksonville Planning and Development Department. The restrictions herein contained, in case of any such replatting or re-subdividing, shall apply to each Lot as replatted or re-subdivided. In addition, the Developer may re-subdivide one or more Lots to provide for roadway purposes and easements.

5.9 **Prohibited Activities**. No trade, business, noxious or offensive activity, in the sole opinion of the Developer (until the termination of the Class B Membership and thereafter the Association), shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No immoral, improper, offensive or unlawful use shall be made of the Lots or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacements, modification or repair of the Lots shall be the same as is elsewhere herein specified. No garage shall at any time be used as a residence or enclosed and incorporated into a residence, except that the Developer and/or a builder buying Lots from Developer, with Developer's prior approval, shall be permitted to enclose the garage of model homes, and if the garage is so enclosed, the house cannot be sold or occupied by a tenant without the enclosed garage being converted to a garage with an approved garage door. No commercial activity shall be carried out in the residence or garage, temporarily or permanently, except for the use of said garage as a sales office by the Developer or builder, with Developer's prior approval, nor shall any structure of a temporary character be used as a residence.

5.10 **Pets and Animals**. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that no more than two (2) dogs, two (2) cats, and two (2) of other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes. In any event, there shall not be more than a total of three (3) animals or pets of any type kept on any one Lot.

5.11 **Clotheslines**. No clotheslines shall be permitted.

5.12 **Parking of Wheeled Vehicles, Boats, Etc**. No recreational vehicles, boats, travel trailers, motorized homes, campers, mopeds, trucks (other than pickup trucks), commercial vehicles, trailers of any kind, including, without limitation, vehicles in disrepair, may be kept or parked between the paved road and the residential structures or within the front or side yard or within the right-of-way without approval of Developer, until the termination of the Class B Membership, and thereafter of the Association. They may be so kept, if maintained completely inside a garage attached to the main residence or within the rear or side yard provided the rear or side yard is fenced so as to conceal such object from view of other Lots or roadways within the Property. Private automobiles or vehicles of the Owners bearing no commercial signs, unless in connection with their employment, may be parked in the driveway upon the Lot from the commencement of use thereof in the morning to the cessation of use thereof in the evening. Private automobiles of guests of Owners may be parked in such driveways only during the times necessary for pickup and delivery service and solely for the purpose of said service. No trailers or mobile homes may be maintained or kept on any Lot except sales and construction trailers which must have the written consent of the Developer.

5.13 (A) No recreational vehicles, boats, boat trailers, horse trailers or any other trailer may be parked or stored in a required front yard.

5.14 **Signs**. No sign of any kind shall be displayed to the public view on any Lot except "For Rent" or "For Sale" signs, which signs may refer only to the particular Lot on which displayed, and shall be of materials, size, height and design approved by the Developer. The Developer may enter upon any Lot and summarily remove any signs which do not meet the provisions of this paragraph. Nothing contained in this Declaration shall prevent the Developer, or any person designated by the Developer, from erecting or maintaining such signs or other entrance features.

5.15 **Aerials, Antennas and Satellite Receptor Dishes**. No radio or television aerial or antenna nor other exterior electronic or electrical equipment or devices of any kind shall be installed or maintained on the exterior of any structure located on a Lot or on any portion of any Lot. However, Satellite dishes, if mounted on a pole or pedestal which has a combined total height of less than five (5) feet, must be placed in a side or rear yard and fenced or otherwise screened from view so that it is not visible from outside of the lot, including front and side streets, roads, common areas, neighboring lots or vacant land. Satellite dishes cannot exceed 18" in diameter. Additionally, a satellite dish which is 18" or less in diameter may be mounted on the roof, provided it's location on the roof is within five feet of the rear roof eve unless otherwise approved by the Architectural Review Committee.

5.16 **Intersection Sight Lines**. No fence, wall, hedge or shrub planting which obstructs a sight line at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines. Nothing contained in this Declaration shall prevent the Developer, or any person designated by the Developer, from erecting or maintaining such fence, wall, hedge or shrub planting.

5.17 **Encroachments**. Where a structure has been erected, or the construction thereof substantially advanced, and is situated on any Lot or Lots as now platted or on any subdivided or replatted Lot in such manner that the same constitutes a violation or violations of the Covenants and Restrictions contained in this Declaration, Developer shall have the right any time to waive such violation; provided, however, that the Developer shall waive only those violations which the Developer, in its sole discretion, determines to be minor.

5.18 **Utility Easements**. A perpetual, nonexclusive alienable and releasable easement is hereby reserved to the Developer, Benton Lakes, L.L.C., and its successors and assigns, over, under and above a ten foot (10') strip at the rear of each Lot and over, under and above a five foot (5') strip at the side lot lines described herein and also over, under and above those easements shown on the recorded plat of the Property for the construction, installation and maintenance of drainage ditches and facilities, power, telephone, lighting, heating, gas, water, electric, sanitary and storm sewer facilities and other public or private utility installations of every kind. However, said lot line easements shall not extend into the conservation easement areas on lots which are adjacent and contiguous to a conservation easement. Said rear utility easement shall be located adjacent to and landward of the conservation easement area. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Owner of any Lot or Lots subject to such easements shall acquire no right, title or interest in or to any pipes, wires, poles, equipment or other appliances placed on, over or under said easement areas. No purchaser of a Lot or anyone claiming by, through or under any such purchaser, shall have the right to interfere at any time with any such construction, installation or maintenance operations. The Owner of any Lot or Lots subject to such easements shall remove any structures, planting, trees or shrubbery in said easement areas upon demand of Developer, Benton Lakes, L.L.C., and its successors and assigns, where such structures, planting, trees or shrubbery interfere with the use of the said easement for the purposes for which the same have been reserved. The easements and rights hereinabove granted and reserved to Developer, Benton Lakes, L.L.C., and its successors and assigns, shall not pass from Developer, Benton Lakes, L.L.C., and its successors and assigns, by deed conveying any of said Lots but shall exist and continue in Developer, Benton Lakes, L.L.C., and its successors and assigns, only or in those persons or corporations to whom Developer, Benton Lakes, L.L.C., and its successors and assigns, shall have expressly

conveyed said easements and rights. The Developer shall have the right to grant subordinate easements to utility companies, governmental bodies and others within such easement area for the purpose of carrying out or facilitating such construction, installation and maintenance.

5.19 **Water and Sewer Rights, Well Limitation**. The City of Jacksonville, or its successors, has the sole and exclusive right to provide all water and sewer facilities and service to the Property. No well of any kind shall be dug or drilled on any of the Lots or tracts except as may be drilled for irrigation of common and/or maintenance areas. Said well(s) shall require the Developer's approval in writing. No potable water shall be used within said structures except potable water which is obtained from the City of Jacksonville or its successors and assigns. Additionally, any irrigation system which causes the discoloration of the sidewalks, curbs, streets or other improvements shall not be allowed to continue and the owner shall be required to clean and remove the discoloration upon being advised to do so by the Architectural Review Committee. If, within thirty (30) days of said notice, the owner fails to clean and remove the discoloration stain, etc., the Association shall have the right, but not the obligation, to have the discoloration/stain, etc. removed/cleaned and the costs of the same shall become a lien on the owner's real property. The Association shall have all the legal remedies and actions available to it to collect the lien and costs including interst and legal fees. All sewage from any buildings on any of said Lots must be disposed of through the sewerage lines and disposal plant owned by City of Jacksonville, or its successors or assigns. The City of Jacksonville is hereby granted and has a non-exclusive, perpetual and unobstructed easement and right in and to, over and under the Property as shown on the plat thereof for the purpose of ingress, egress, installation and/or repair of water facilities. Developer reserves the right to convey to the City of Jacksonville all easements required to provide water and sewer facilities and service to the Property. These restrictions shall cease at such time as the City of Jacksonville, or its successors or assigns, shall permanently cease to provide water to or take and dispose of sewage from said Lots.

5.20 **Drilling and Excavation**. 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.

5.21 **Window Air Conditioning**. No window air conditioning unit shall be installed on any side of a building on a Lot.

5.22 **Temporary Structures**. No structures of temporary character, trailer, basement, tent, shack, garage, barn or other out building, shall be used on any Lot at any time as a residence either temporarily or permanently. Nothing contained in this Declaration shall prevent the Developer or any person designated by the Developer from erecting or maintaining dwellings, model houses, or other temporary structures as the Developer may deed advisable for development, construction, storage and sales or rental purposes.

5.23 **Garbage and Refuse Disposal**. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Rubbish, trash, garbage or other waste shall be kept in closed sanitary containers constructed of metal or rigid plastic, except that during the course of construction upon lots, the debris created by the builders shall not be required to be kept in closed containers. All equipment for the storage or disposal of such material shall be kept in clean and sanitary condition and shall not be visible from the street except on scheduled garbage pick-up days, except debris created during the course of construction as aforesaid, which shall be removed by the builder upon completion of construction.

5.24 **Sewage Disposal**. Each owner of a Lot shall pay when due the periodic charges or rates for the furnishing of sewage collection and disposal service. No septic tank or sewage disposal unit shall be installed or maintained on any Lot.

5.25 **(A). Stormwater Management System**. The Association shall be responsible for the maintenance, operation and repair of the stormwater management system. Maintenance of the stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District. The Association shall and does hereby agree to accept assignment of any and all permits related to the stormwater management system and/or any other environmental permit required by any governmental or quasi-governmental agency having jurisdiction from time to time and shall be bound to abide by all of the conditions imposed in such permit(s).

**(B). Easement for Access and Drainage**. The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

5.26 Jurisdictional Areas.

(a) The plat of the Property may depict certain wetland jurisdictional lines and/or environmental buffer zones, and/or conservation easements as established by the St. Johns River Water Management District, Army Corps of Engineers or the Department of Environmental Protection. No Owner shall make any vegetative or topographic alterations to the land lying waterward of such jurisdictional lines and/or within environmental buffer zones and/or lands lying within any conservation easement without

obtaining a permit from the applicable agency. Any Owner violating this provision shall indemnify and hold Developer, Builder and Association harmless from all fines, penalties, costs or damages arising out of such violation.

(b) Pursuant to the provisions of Section 704.06(1)(A-H)(1) Florida Statutes, restrictions are hereby placed on the Property that all construction, including clearing, dredging, or filling, except that which is specifically authorized by the St. Johns River Water Management District ("SJRWMD"), and/or or U.S. Army Corps of Engineers (USCOE), or which may be authorized by a future SJRWMD/USCOE Permit, which is waterward of the jurisdictional wetland line and/or within environmental buffer zones of the Department of Environmental Regulation, SJRWMD, and the U. S. Army Corps of Engineers, as flagged by Byron Peacock of Peacock Consulting Group, Inc. and as may be depicted on the plat(s) of the property or future development property recorded in the public records of Duval County, Florida, is prohibited. In addition to those aforementioned lands above, certain lands lying outside the plat of Benton Lakes as described on Exhibit "A" to the "Conservation Easement" were required as mitigation for wetland impacts in Benton Lakes. Those lands described in Exhibit "A" of the "Conservation Easement" shall be maintained by the Association pursuant to the permits described in 5.26(d). The foregoing restrictions may be enforced by the SJRWMD/USCOE. Notwithstanding any other provision, the restriction set forth in this subsection (b) may not be amended without the approval of the SJRWMD and/or U.S. Army Corps of Engineers.

(c) In addition, in the event that the governmental agencies having jurisdiction over the Property require the granting of a conservation easement over the Property or any part thereof, the Owners of any land subject to the conservation easement shall abide by all restrictions contained therein.

**(d) Environmental Permits: This Declaration is subject to the rights of the State of Florida and the United States over any portion of the Property which may be considered wetlands, marshes, sovereignty, or jurisdictional lands and the Developer has obtained certain permits to allow the development of the Property. The U. S. Army Corps of Engineers, the SJRWMD, and the Florida Department of Environmental Protection may have issued permits for the development of Benton Lakes. The permit numbers are as follows: U. S. Army Corps of Engineers SAJ-2006-1675 JKM and SAJ-2006-1675 AEK, St. Johns River Water Management District Permit(s) # 4-031-106560-1 and 4-031-106560-2, the "permits". The construction period for works authorized by the aforementioned permits is finite, the permit(s) themselves, with their limitations and prohibitions do not expire. Every lot owner hereby accepts the obligation, responsibility and liability to comply with the requirements and terms of the portion of each permit which relates to the lot owned. The liabilities associated with compliance with their terms and conditions are the lot owner(s) responsibility and obligation. Every owner shall obtain any permit necessary prior to undertaking any dredging, filling, improving, landscaping, or removal of plant life or any other activity whatsoever within any jurisdictional lands and/or lands which are subject to a Conservation Easement existing on his lot.**

**(e) The Permits are issued in the name of the Association, and the Association has the obligation to assure that all terms and conditions thereof are enforced. The Association shall have the right to bring an action, at law or in equity, against an Owner violating such Permits.**

**Provided, however, any Owner owning a lot which contains or is adjacent to jurisdictional wetlands or conservation areas as established by the ACOE or SJRWMD, shall, by acceptance of title to the lot, be deemed to have assumed the obligation to comply with the requirements of the foregoing Permits as such relates to its lot.**

**Except as required or permitted by the aforementioned Permits issued by the ACOE and SJRWMD, no Owner shall alter, fill, dredge, place sod or excavate, or perform similar activities on any portion of their respective lots, unless and until such activity is authorized by or exempt from the requirements of ACOE and SJRWMD.**

**In the event that an Owner violates the terms and conditions of such Permits and for any reason the Permittee, the Developer or the Association is cited therefore, the Owner agrees to indemnify and hold the Permittee, Developer and the Association harmless from all costs arising in connection therewith, including without limitation, all costs and attorneys' fees, as well as costs of curing such violation.**

**Notwithstanding any other provisions contained elsewhere in this Declaration, the ACOE and SJRWMD shall have the rights and powers enumerated in this paragraph. The ACOE and SJRWMD 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 and/or jurisdictional lands subject to the regulation of the ACOE or SJRWMD. Any repair or reconstruction of the stormwater management system shall be as permitted, or if modified, as approved by the SJRWMD. 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 SJRWMD. Any amendment to this Declaration which amends the responsibilities or obligations of the parties with respect to the ACOE Permit, must have prior written approval of the ACOE. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the stormwater management system and the Permits must be assigned to and accepted by an entity approved by the ACOE and SJRWMD.**

5.27 **Common and Maintenance Areas**. The Association shall maintain all of the Common and Maintenance Areas in an attractive condition and in a manner that is harmonious with the Property and in accordance with any applicable governmental or agency permitting requirements. If the Association fails to maintain the Common and Maintenance Areas in accordance with the foregoing, the Developer shall have the right, but no obligation, to enter upon any such Common or Maintenance Area to perform such maintenance or work which may be reasonably required, all at the expense of the Association, which expense shall be payable by the Association to the Developer on demand. The Common Area cannot be mortgaged or conveyed without the consent of the developer.

The Landscape and Non-Access Easement area on the rear of Lots 1,2, 3, Lots 49 through 69 and Lot 88 as shown on the recorded plat, shall be maintained by the Association including the fencing as installed by the Developer and any landscape material on the Ilah Road side of the fencing shall be maintained as a Common Area by the Association.

## ARTICLE VI. STORMWATER RETENTION PONDS

6.1 **Use of Stormwater Retention Ponds**. Certain Lots are hereby made subject to a non-exclusive drainage and stormwater

management easement over and across all stormwater retention pond areas within any such Lot ("Stormwater Retention Ponds" hereinafter referred to as "S.R.P.s"). With respect to the S.R.P.s now existing, or which may be hereafter created within the Property, no Owner shall:

(a) pump or otherwise remove any water from such S.R.P.s for the purpose of irrigation or other use;

(b) place rocks, stones, trash, garbage, untreated sewage, rubbish, debris, ashes, or other refuse in such S.R.P.s or in any other portion of the land owned by Developer lying adjacent to or near the Property;

(c) construct, place or maintain therein or thereon any docks, piers, bulkhead or other similar facilities, without the prior approval of any governmental or quasi-governmental agency having jurisdiction and the Developer so long as there is a Class B Membership or thereafter subject to the prior approval of the Association;

(d) fish with the use of nets or with any other trap or spear;

(e) operate or maintain thereon any gas or diesel driven vehicles; provided, however, boats used for the maintenance of the S.R.P.s shall be permitted.

6.2 **Maintenance of Stormwater Retention Ponds.**

(a) Developer, for so long as there is a Class B Membership, shall have the sole and absolute right, but no obligation, to control the surface water level of such S.R.P.s.

(b) The Association shall be responsible for the maintenance of the S.R.P.s including, without limitation, the control of the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in and on such S.R.P.s.

(c) The Lot Owner shall be required to maintain such grass, plantings or other lateral support to prevent erosion of the embankment adjacent to the S.R.P.s above the water line of the S.R.P.s and the height, grade and contour of the embankment shall not be changed without the prior consent of the Developer, for so long as there is a Class B Membership, provided, however, that no plants may be allowed to extend into or grow into the S.R.P.s. If the Lot Owner fails to maintain said embankment in accordance with the foregoing, the Developer (for so long as there is a Class B Membership and thereafter, the Association) shall have the right, but not the obligation, to enter upon any such Lot to perform such maintenance work which may be reasonably required, all at the expense of the Lot Owner, which expense shall be payable by the Lot Owner to the Developer or Association, on demand.

6.3 **Assignment of Maintenance Obligations.** This Declaration cannot be terminated to extinguish the Association's obligation to maintain the S.R.P.s unless adequate provision for transferring this obligation to the then Owners of the Lots subject to the easement on a pro rata basis is made and said transfer of obligation is permitted under the then existing requirements of the

St. Johns River Water Management District or its successors and the City of Jacksonville or any other governmental body that may have authority over such transfer of obligation.

6.4 **Indemnification**. In connection with the platting and development of the Property, the Developer assumed certain obligations in connection with the maintenance of the water in the S.R.P.s. The Developer hereby assigns to the Association and the Association hereby agrees to assume all the obligations and responsibilities for maintenance of the S.R.P.s by the Developer under the plat. The Association further agrees that subsequent to the termination of the Class B Membership it shall indemnify and hold Developer harmless from suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage or any other damage arising from or out of occurrence in, upon, at or from the maintenance of the S.R.P.s, occasioned wholly or in part by any act or omission of the Association or its agent, contractors, employees, servants or licensees.

## ARTICLE VII. MISCELLANEOUS

7.1 **Assignment of Developer's Rights**. The Developer shall have the sole and exclusive right at any time and from time to time to transfer and assign to, and to withdraw from such person, firm, corporation, trust or other entity as it shall select, any or all rights, powers, easements, privileges, authorities and reservations given to or reserved by the Developer in this Declaration. Upon the termination of the Class B Member, the rights of the Developer hereunder shall vest automatically in the Association which shall assume all obligations thereof.

7.2 **Amendments**. The Developer (for so long as it is a Class B Member) reserves and shall have the right:

(a) to amend this Declaration, but all such amendments shall conform to the general purposes and standards of the covenants and restrictions herein contained;

(b) to amend this Declaration for the purpose of curing any scrivener's error, and any ambiguity in or any inconsistency between the provisions contained herein;

(c) to include in any contract or deed or other instrument hereafter made any additional covenants, restrictions and easements applicable to the Property which do not lower the standards of the covenants and restrictions herein contained;

(d) to release any Lot from any part of the covenants and restrictions which have been violated if the Developer, in its sole judgment, determines such violation to be a minor or non-adverse violation; and

(e) to amend this Declaration pursuant to the requirements of the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, its successors and assigns, St. Johns River Water management District, Department of Environmental Protection, U.S. Army C.O.E., or such similar institutions or associations, without further consent of any of the Owners and all Owners acknowledge that such amendments shall be binding upon and shall constitute covenants running with the land irrespective of the date of amendment.

7.3 **Amendment by Owners**. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, conditions, restrictions, easements, and charges of this Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of an instrument executed by Owners of not less than two-thirds of the Lots shown on the recorded plat of the Lots, except that no amendment or change shall be allowed by others, without the consent of the Developer, as long as the Developer owns at least one Lot in the development.

7.4 **Approval of Developer**. Wherever in this Declaration the consent or approval of the Developer is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request in writing seeking the same has been submitted to and approved in writing by the Developer. Such request shall be sent to Developer by Certified Mail with return receipt requested. In the event that the Developer fails to act on any such written request within sixty (60) days after the same has been submitted to the Developer as required above, the consent or approval of the Developer to the particular action sought in such written request shall be presumed; however, no action shall be taken by or on behalf of the person or persons submitting such written request which violates any of the covenants and restrictions herein contained.

7.5 **Amendment of Stormwater Management System**. Any amendment to the Covenants and Restrictions which alter the stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

7.6 **Consent for Additional Covenants**. No Lot Owner, without the prior written approval of the Developer, may impose any additional covenants or restrictions on any part of the Property.

7.7 **Duration**. These covenants and restrictions, as amended and added to, from time to time, as provided herein, shall, subject to the provisions hereof and unless released as herein provided, shall remain in full force and effect for a period of thirty (30) years from the date this Declaration is recorded, and thereafter the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months prior to the end of the thirty (30) year period from the date this Declaration is recorded, or within six (6) months prior to the end of any such ten (10) year period, as the case may be, a written instrument executed by the then Owners of a majority of the Lots shown on the plat of the Property terminating this Declaration shall be placed on record in the office of the appropriate agency of Duval County, Florida. Upon termination, the requirements of Section 6.3 must be complied with. If required under Florida law, the Developer or the Association shall have the right to cause these covenants and restrictions to be re-recorded at such intervals as necessary to continue its enforceability.

7.8 **Enforcement of Covenants**. If any person, firm, corporation, trust or other entity shall violate or attempt to violate any covenants or restrictions contained herein, it shall be lawful for the Developer, Association, or any Owner of any Lot: (a) to prosecute proceedings for the recovery of damages against those 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 any such violation or attempted violation. The remedies contained in this Section shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Developer, Association, Owner or its respective successors or assigns to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued shall in no event 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 thereof occurring prior or subsequent thereto. The St. Johns River Water Management 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.

7.9 **Annexation**. Additional land located within the boundaries of the Future Development Property, or which is contiguous to the property or contiguous to Future Development Property, may be annexed by the Developer without the consent of Members within twenty (20) years of the date of this instrument. Developer shall record an amendment to the declaration subjecting the land described thereon to the covenants and restrictions contained herein. Developer may include in such amendment additional covenants and restrictions provided such covenants and restrictions are not inconsistent herewith.

7.10 **Interpretation**. In all cases the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development of the Property. The provisions hereof shall be liberally interpreted and if necessary, they shall be so extended and enlarged by implication as to make them fully effective.

7.11 **Captions**. The captions of the paragraphs hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraph to which they refer.

7.12 **Gender and Grammar**. The singular wherever used herein shall be construed to mean the plural when applicable and the use of the masculine pronoun shall include the neuter and feminine, wherever applicable.

7.13 **Provisions Severable**. The invalidation of any provision or provisions of this Declaration by judgment or court order shall not affect or modify any of the other provisions of this Declaration which shall remain in full force and effect.

7.14 **Attorney's Fees**. In connection with any action for the enforcement of any of the rights and obligations contained herein, the prevailing party shall be entitled to be reimbursed for all costs including, without limitation, attorney's fees at trial or on appeal.

**IN WITNESS WHEREOF**, the Developer has caused this instrument to be executed and set its seal all as of the day and year first above written.

**Signed, sealed and delivered in the presence of:**

Witness
Print Name: Beverly J. Holland

Witness
Print Name: Dawn Armstrong

**Benton Lakes, L.L.C.**
a Limited Liability Company

By: _____
J. Daniel Collins
President
The Collins Group, Inc. As
Manager of
Benton Lakes, L.L.C.

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing was acknowledged before me this 24th day of May, 2008, by J. Daniel Collins, the President of The Collins Group, Inc. As Manager of Benton Lakes, L.L.C., a Florida limited liability company, on behalf of the corporation. He is personally known to me.

Notary Public
My Commission Expires:

Beverly J. Holland
Commission # DD417994
Expires April 16, 2009
Bonded Troy Fain - Insurance, Inc. 800-365-7019

Doc # 2008173745, OR BK 14561 Page 1776,
Number Pages: 17
Recorded 07/03/2008 at 11:05 AM,
JIM FULLER CLERK CIRCUIT COURT DUVAL
COUNTY
RECORDING $146.00

Return Recorded Original To:
Office of General Counsel
St. Johns River Water Management District
4049 Reid Street
Palatka, FL 32177-2529

**DECLARATION OF CONSERVATION EASEMENT**

THIS DECLARATION made this 2nd day of July, 2008, by Benton Lakes, L.L.C., and Normandy West, L.L.C., both Florida Limited Liability Corporations ("Grantors"), whose mailing address is 3840 Crown Point Road, Suite A, Jacksonville, Florida 32257 and the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ("Grantee") whose mailing address is 4049 Reid Street, Palatka, FL 32177-2529;

W I T N E S S E T H

WHEREAS, Benton Lakes, L.L.C. is the owner of all of the real property shown and described on the plat of Benton Lakes, recorded in Plat Book 64, Pages 115 through 120, inclusive of the current public records of Duval County, Florida; and Normandy West, L.L.C. is the owner of all of the real property shown and described on the plat of Adams Lake, Unit Four, recorded in Plat Book 64, Pages 121 through 125, inclusive of the current public records of Duval County, Florida together with all of the real property shown and described by the legal description and survey attached as Exhibit "A" attached hereto and made a part hereof (the Property); and

WHEREAS, Grantee is an agency qualified to receive dedication of the interest granted herein pursuant to Section 704.06, Florida Statutes, and has required execution of this Conservation Easement as a condition of that certain St. Johns River Water Management District Permit(s) **# 4-031-106560-1 and #4-031-106560-2,** and that certain U.S. Army Corps of Engineers permit #**SAJ-2006-1675-JKM and #SAJ-2006-1675-AEK,** as such permit may be amended from time to time.

WHEREAS, Grantors, for themselves and their successors in title, desire to protect and preserve portions of the Property and prevent construction from occurring on portions of the Property so as to provide for the continued presence of wetland vegetative species and wildlife habitat in perpetuity. Grantors fully warrant title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

NOW THEREFORE, in consideration of the covenants contained hereinbelow, in accordance with Section 704.06, Florida Statutes, Grantors for themselves and their successors in title, do hereby create and establish a perpetual Conservation Easement on, over under and across the portions of the Property which lies within the wetland conservation areas and within the upland buffers, the upland preservation areas, and wetland creation areas as delineated on the above-referenced plat(s) of the Property and attached Exhibit "A" ("Conservation Easement Area (SJRWMD)") to constitute a servitude upon the conservation easement property for the purpose of accomplishing the above-stated intent of Grantor and it is agreed that:

1. The above representations are true and correct.

2. By this Declaration of Conservation Easement, Grantors hereby covenant, for themselves, their successors in title and assigns, that the Easement Property shall be retained in its natural, scenic, open or wooded conditions and, subject to the rights reserved herein by Grantors, hereby prohibits or limits the following activity in, or about the Easement Property:

a. Construction or placing of buildings, roads, billboards, utilities, or other structures on or above the ground.

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials.

c. Removal or destruction of live trees, shrubs, or other vegetation, except for the removal of noxious or exotic invasive plant species specifically authorized by the permit or with the prior written approval of the Grantee.

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.

e. Surface use except for purposes that permit the land or water area to remain predominately in its natural condition.

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or wildlife habitat preservation.

g. Acts or uses detrimental to such retention of land or water areas.

h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archeological, or cultural significance.

3. Grantors hereby reserve and excepts unto themselves and their personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Easement Property including the right to engage in or permit or invite others to engage in all uses of the Easement Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement.

4. To accomplish the purposes stated herein, Grantors convey the following rights to Grantee:

a. To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantors or their successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

b. To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.

5. This Easement may be enforced by the Grantee or its successor agency and Army Corps of Engineers by injunctive relief and other appropriate available remedies. Any costs incurred by the Grantee or its successor agency in enforcing this Easement, including reasonable attorney's fees and costs of restoration necessitated by a violation, shall be borne by the then record owner of the portion of the Easement Property involved in the enforcement. Any forbearance on behalf of the Grantee and Army Corps of Engineers to exercise its rights in the event of a violation shall not be deemed or construed to be a waiver of the Grantee's and Army Corps of Engineer's rights hereunder in the

event of any subsequent violation. Grantee's and Army Corps of Engineer's staff may enter the Easement Property in a reasonable manner and at reasonable times to ensure compliance with this Easement. Prior to entering any fenced areas, Grantee's staff will notify Grantors.

6. This Declaration of Conservation Easement shall run with the Easement Property and shall be binding upon and inure to the benefit of Grantors, Grantee, and their respective successors and assigns, and may not be amended without prior approval of the Grantee and Army Corps of Engineers.

7. This Declaration of Conservation Easement shall become effective upon the date it is recorded in the public records of Duval County, Florida.

IN WITNESS WHEREOF, the Grantors have caused this instrument to be executed all as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Benton Lakes, L.L.C.

Witness
Print Name: Beverly J. Holland

By: _____
J. Daniel Collins
President of
The Collins Group, Inc.
As Manager

Witness
Print Name: Sarah C. Miller

STATE OF FLORIDA
COUNTY OF Duval

I HEREBY CERTIFY that on this 2nd day of July, 2008, before me personally appeared J. Daniel Collins, the President of The Collins Group, Inc., as manager of Benton Lakes, L.L.C., a Florida Limited Liability Corporation, to me known to be the person described in and who executed the foregoing instrument on behalf of the corporation.

WITNESS my hand and official seal in the County and State last aforesaid, the day and year last aforesaid.

Notary Public, State of Florida
At Large
My Commission Expires: 4-16-09

Beverly J. Holland
Commission # DD417994
Expires April 16, 2009
Bonded Troy Fain - Insurance, Inc. 800-385-7019

Signed, sealed and delivered in the presence of:

Normandy West, L.L.C.

Witness
Print Name: Beverly J. Holland

By: J. Daniel Collins
President of
The Collins Group, Inc.
As Manager

Witness
Print Name: Sarah C. Miller

STATE OF FLORIDA
COUNTY OF Duval

I HEREBY CERTIFY that on this 2nd day of July, 2008, before me personally appeared J. Daniel Collins, the President of The Collins Group, Inc., as Manager of Normandy West, L.L.C., a Florida Limited Liability Corporation, to me known to be the person described in and who executed the foregoing instrument on behalf of the corporation.

WITNESS my hand and official seal in the County and State last aforesaid, the day and year last aforesaid.

Notary Public, State of Florida
At Large
My Commission Expires: 4-16-09

Beverly J. Holland
Commission # DD417994
Expires April 16, 2009
Bonded Troy Fain - Insurance, Inc. 800-385-7019

**Exhibit "A"**

The Conservation Easement includes the following mitigation areas:

A. All of the wetland conservation areas, upland buffers, upland preservation areas and wetland creation areas as delineated on the plat of Benton Lakes, as recorded in Plat book 64, Pages 115 through 120, Duval County.

B. 0.44 acres of wetland preservation at Adams Lake (Unit Five future development), legal description and survey sketch provided.

C. 1.97 acres of upland preservation at Adams Lake, Unit Four as delineated on the plat of Adams Lake, Unit Four, as recorded in Plat Book 64, Pages 121 through 125, Duval County.

Note:
Additional Conservation Easement property previously recorded as mitigation for Permit #4-031-106560- but not included in this Exhibit "A":

A. 1.23 acres of wetland preservation at Hood Road as previously recorded in that certain Conservation Easement from Hood Road Options, L.L.C., Grantor, as a condition of Permit No. 4-031-96653-1 for Blackwood Forest, recorded 2/15/2006 in OR Book 13073, Page 1215, Duval County. It is represented that the 1.23 acres was excess mitigation and was allocated for Benton Lakes.

B. 5.00 acres of wetland preservation at the Hagan Tract, as previously recorded under that certain Conservation Easement from Garrison Construction, Inc. as recorded in OR Book 2849, Pages 15-20, St. Johns County.

C. 1.28 acres of wetland preservation at Adams Way, Unit One as delineated on the plat of Adams Way, Unit One as recorded in Plat book 63, Pages 187 through 190, Duval County as previously recorded in that certain Conservation Easement from Blackwater, L.L.C., Grantor, as a condition of Permit No. 4-031-95197-3, recorded May 27, 2008 in OR Book 13073, Page 1215, Duval County. It is represented that the 1.28 acres was excess mitigation and was allocated for Benton Lakes.

Doc # 2006054363, OR BK 13073 Page 1215,
Number Pages: 4
Filed & Recorded 02/15/2006 at 02:37 PM,
JIM FULLER CLERK CIRCUIT COURT DUVAL COUNTY
RECORDING $35.50
DEED DOC ST $0.70

Prepared By and Return To:
J. D. Collins
3840 Crown Point Road, Suite A
Jacksonville, FL 32257

# DECLARATION OF CONSERVATION EASEMENT

THIS DECLARATION made this 14th day of February, 2006, by Hood Road Options, L.L.C., a Florida Limited Liability Corporation ("Grantor"), and the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ("Grantee");

W I T N E S S E T H

WHEREAS, Grantor is the owner of all of the real property shown and described on the plat of Blackwood Forest, recorded in Plat Book 60, Pages 138 through 142, inclusive of the current public records of Duval County, Florida together with the attached Exhibit "A" (the "Property"); and

WHEREAS, Grantee is an agency qualified to receive dedication of the interest granted herein pursuant to Section 704.06, Florida Statutes, and has required execution of this Conservation Easement as a condition of that certain St. Johns River Water Management District Permit(s) #4-031-96653-1 and that certain U.S. Army Corps of Engineers permit #SAJ-2004-3067-BAL as such permit may be amended from time to time.

WHEREAS, Grantor, for itself and its successors in title, desires to protect and preserve portions of the Property and prevent construction from occurring on portions of the Property so as to provide for the continued presence of wetland vegetative species and wildlife habitat in perpetuity.

NOW THEREFORE, in consideration of the covenants contained hereinbelow, in accordance with Section 704.06, Florida Statutes, Grantor for itself and its successors in title, does hereby create and establish a perpetual Conservation Easement on, over under and across the portions of the Property which lies within the wetland conservation areas and within the upland buffers, the upland preservation areas, and wetland creation areas as delineated on the above-referenced plat of the Property and attached Exhibit "A" ("Conservation Easement Area (SJRWMD)") to constitute a servitude upon the conservation easement property for the purpose of accomplishing the above-stated intent of Grantor and it is agreed that:

1. The above representations are true and correct.

2. By this Declaration of Conservation Easement, Grantor hereby covenants, for itself, its successors in title and assigns, that the Easement Property shall be retained in its natural, scenic, open or wooded conditions and, subject to the rights reserved herein by Grantor, hereby prohibits or limits the following activity in, or about the Easement Property:

a. Construction or placing of buildings, roads, billboards, utilities, or other structures on or above the ground other than those structures authorized by the permit.

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials.

c. Removal or destruction of live trees, shrubs, or other vegetation, except for the removal of noxious or exotic invasive plant species specifically authorized by the permit or

4

with the prior written approval of the Grantee.

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.

e. Surface use except for purposes that permit the land or water area to remain predominately in its natural condition.

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or wildlife habitat preservation.

g. Acts or uses detrimental to such retention of land or water areas.

h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archeological, or cultural significance.

3. Grantor hereby reserves the right to perform any work on the Property specifically authorized by the Permit or which may be authorized by any future Grantee or Army Corps of Engineers permit.

4. Grantor hereby reserves and excepts unto itself and its personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Easement Property including the right to engage in or permit or invite others to engage in all uses of the Easement Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement.

5. This Declaration of Conservation Easement shall constitute a "conservation easement" as defined in Section 704.06, Florida Statutes (2001), except that reserved rights shall be permitted as described herein.

6. This Easement may be enforced by the Grantee or its successor agency and Army Corps of Engineers by injunctive relief and other appropriate available remedies. Any costs incurred by the Grantee or its successor agency in enforcing this Easement, including reasonable attorney's fees and costs of restoration necessitated by a violation, shall be borne by the then record owner of the portion of the Easement Property involved in the enforcement. Any forbearance on behalf of the Grantee and Army Corps of Engineers to exercise its rights in the event of a violation shall not be deemed or construed to be a waiver of the Grantee's and Army Corps of Engineer's rights hereunder in the event of any subsequent violation. Grantee's and Army Corps of Engineer's staff may enter the Easement Property in a reasonable manner and at reasonable times to ensure compliance with this Easement. Prior to entering any fenced areas, Grantee's staff will notify Grantor.

7. This Declaration of Conservation Easement shall run with the Easement Property and shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, and may not be amended without prior approval of the Grantee and Army Corps of Engineers.

8. This Declaration of Conservation Easement shall become effective upon the date it is recorded in the public records of Duval County, Florida.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed all as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Hood Road Options, L.L.C.

Witness
Print Name: Beverly J. Holland

By: J. Daniel Collins
President of
The Collins Group, Inc.
As Manager

Witness
Print Name: Sarah C. Miller

STATE OF FLORIDA
COUNTY OF Duval

I HEREBY CERTIFY that on this 14th day of February, 2006, before me personally appeared J. Daniel Collins, the President of The Collins Group, Inc., Manager of Hood Road Options, L.L.C., a Florida Limited Liability Corporation, to me known to be the person described in and who executed the foregoing instrument on behalf of the corporation.

WITNESS my hand and official seal in the County and State last aforesaid, the day and year last aforesaid.

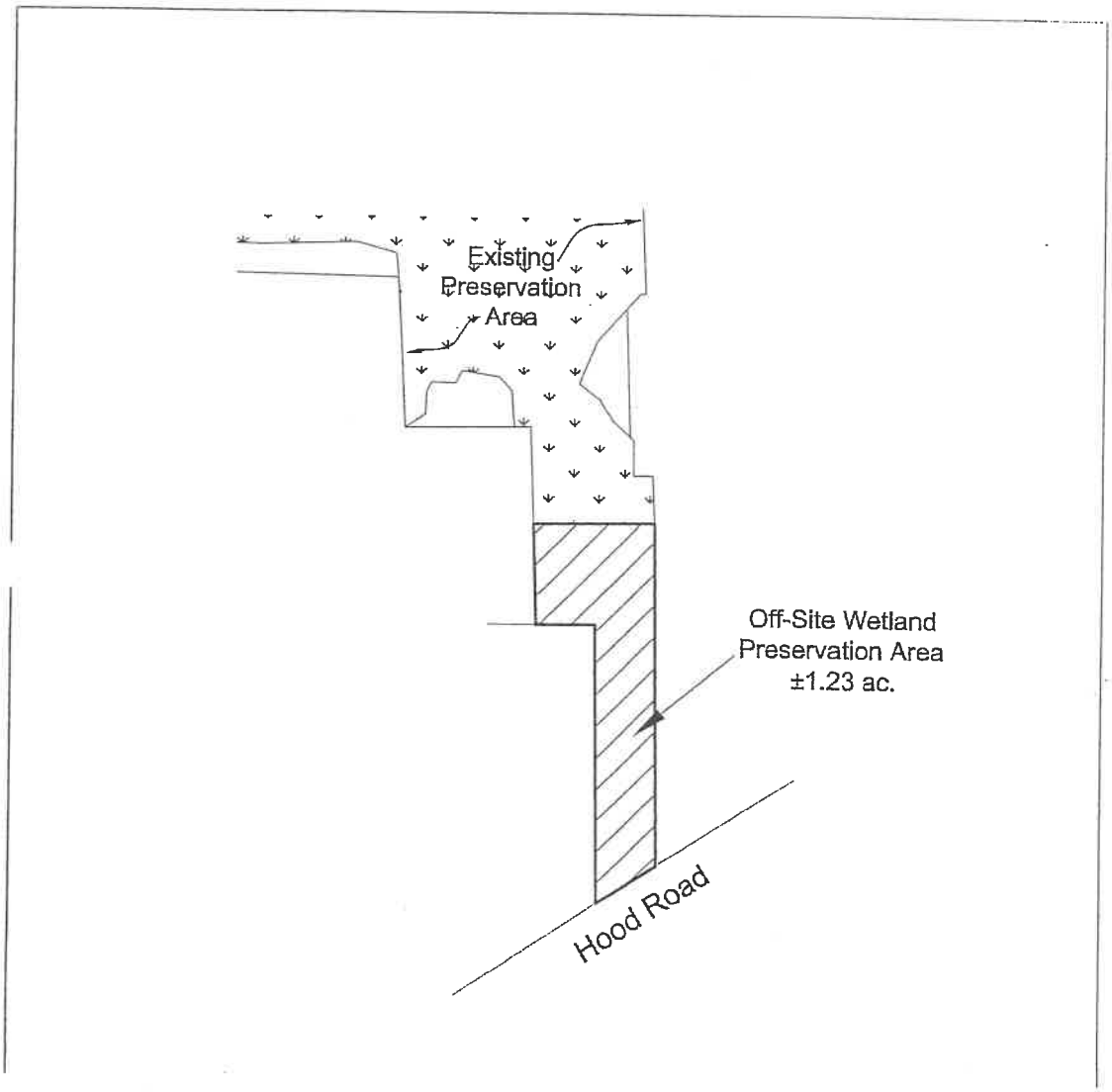
Notary Public, State of Florida
At Large
My Commission Expires: 4-16-09

Beverly J. Holland
Commission # DD417994
Expires April 16, 2009
Bonded Troy Fain - Insurance, Inc. 800-385-7019

A PORTION OF SECTION 34, TOWNSHIP 3 SOUTH, AND SECTION 3, TOWNSHIP 4 SOUTH, ALL OF RANGE 27 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECRET HARBOR AS RECORDED IN PLAT BOOK 46, PAGE 87, 87A THROUGH 87C INCLUSIVE OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE SOUTH 02°57'35" EAST, ALONG THE EASTERLY BOUNDARY LINE OF SAID SECRET HARBOR, 208.03 FEET TO THE NORTHERLY BOUNDARY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 11103, PAGE 2284, CURRENT RECORDS OF SAID COUNTY; THENCE NORTH 89°11'17" EAST, ALONG LAST SAID LINE, 173.22 FEET TO THE EASTERLY BOUNDARY LINE OF SAID LANDS; THENCE SOUTH 02°01'10" EAST, ALONG LAST SAID LINE, 135.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 02°01'10" EAST, 139.85 FEET TO THE NORTHERLY BOUNDARY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 10842, PAGE 81, CURRENT RECORDS OF SAID COUNTY; THENCE NORTH 89°11'17" EAST, ALONG LAST SAID LINE, 81.52 FEET TO THE EASTERLY BOUNDARY LINE OF LAST SAID LANDS; THENCE SOUTH 00°48'43" EAST, ALONG LAST SAID LINE, 388.18 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF HOOD ROAD (A 60.00 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED); THENCE NORTH 57°06'30" EAST, ALONG LAST SAID LINE, 98.81 FEET; THENCE NORTH 00°48'43" WEST, 475.52 FEET; THENCE SOUTH 89°11'17" WEST, 168.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.23 ACRES, MORE OR LESS.



Prepared by:

**Return recorded original to:**
**Office of General Counsel**
**St. Johns River Water Management District**
**4049 Reid Street**
**Palatka, FL 32177-2529**

**Public Records of**
**St. Johns County, FL**
**Clerk # 2007002260,**
**O.R. 2849 PG 15-20**
**01/10/2007 at 03:12 PM,**
**REC. $25.00 SUR. $27.50**

## CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 10th day of January, 2007 by **Garrison Construction, Inc.** having an address at 1400 Marsh Landing Parkway, Suite 108, Jacksonville Beach, Florida 32250 ("Grantor"), in favor of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, a public body existing under Chapter 373, Florida Statutes, having a mailing address at 4049 Reid Street, Palatka, Florida 32177 ("Grantee").

WITNESSETH:

WHEREAS, Grantor solely owns in fee simple certain real property in St. Johns County, Florida, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property");

WHEREAS, Grantor grants this conservation easement as a condition of permit #4-031-106560-1 issued by Grantee, solely to off-set adverse impacts to natural resources, fish and wildlife, and wetland functions; and

WHEREAS, Grantor desires to preserve the Property in its natural condition in perpetuity;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of

section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement"). Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

1. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property.

2. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.

(c) Removing or destroying trees, shrubs, or other vegetation.

(d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.

(e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

(f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(g) Acts or uses detrimental to such retention of land or water areas.

(h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement.

4. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

(a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

(b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.

5. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation

Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

6. Grantee's Liability. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantors, nor any person or entity claiming by or through Grantors, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property.

7. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.

8. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of St. Johns County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

9. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

Signature: Beverly J. Holland

Printed Name: Beverly J. Holland

Signature: Sarah C. Miller

Printed Name: Sarah C. Miller

GRANTOR:
**GARRISON CONSTRUCTION, INC.**

Signature:

Printed Name: GARY M. GARRISON

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this 10th day of January, 2007, by Gary M. Garrison, who did not take an oath.

Beverly J. Holland
Commission # DD417994
Expires April 16, 2009
Bonded Troy Fain - Insurance, Inc. 800-385-7019

Notary Public, State of Florida
at Large.

My Commission Expires:
4-16-09

Serial No. DD 417994

Personally known _____ OR produced identification ✓. Identification produced FDL # G625-293-55-221-0.

EXHIBIT "A"

**Benton Lakes Preservation**

A portion of Section 12, Township 5 South, Range 28 East, St. Johns County, Florida, also being a portion of those lands described and recorded in Official Records Book 2507, page 431, of the Public Records of said County, and being more particularly described as follows:

For a Point of Reference, commence at the Southeast corner of the Southwest ¼ of said Section 12; thence South 88°21'33" West, along the Southerly line of said Section 12, a distance of 476.32 feet to a point lying on the Southeasterly right of way line of Sixth Street, a 40 foot right of way as shown on plat of Subdivision of Hilden, as recorded in Map Book 3, page 59, said Public Records; thence North 49°10'26" East, departing said Southerly line, and along said Southeasterly right of way line, a distance of 135.03 feet; thence North 39°49'54" West, along the Northeasterly right of way line of Eighth Avenue, a 40 foot right of way per said plat, a distance of 540.00 feet; thence North 49°10'26" East, along the Southeasterly right of way line of Seventh Street, a 40 foot right of way per said plat, a distance of 240.00 feet; thence North 39°49'54" West, along the Northeasterly right of way line of Ninth Avenue, a 40 foot right of way per said plat, a distance of 540.00 feet; thence North 49°10'26" East, along the Southeasterly right of way line of Eighth Street, a 40 foot right of way per said plat, a distance of 399.34 feet to the Point of Beginning.

From said Point of Beginning, thence continue North 49°10'26" East, along said Southeasterly right of way line of Eighth Street, a distance of 320.66 feet; thence North 39°49'54" West, along the Northeasterly right of way line of Twelfth Avenue, a 40 foot right of way per said plat, a distance of 168.45 feet; thence North 49°10'26" East, departing said Northeasterly right of way line, a distance of 555.11 feet to a point lying on the Easterly line of said Southwest ¼ of Section 12; thence South 00°46'06" East, along said Easterly line, a distance of 701.98 feet; thence Due West, departing said Easterly line, a distance of 564.21 feet to the Point of Beginning.

Containing 5.00 acres, more or less.

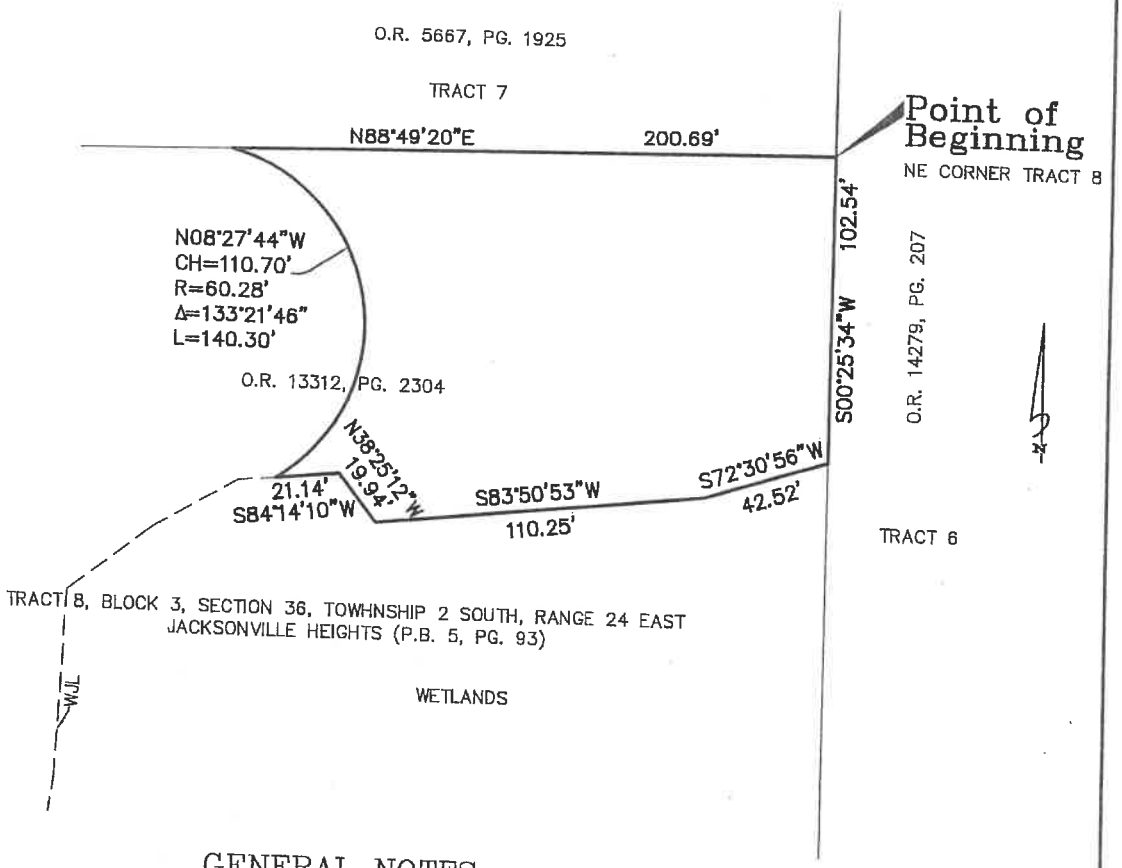
# MAP SHOWING

A PORTION OF TRACT 8, BLOCK 3, SECTION 36, TOWNSHIP 2 SOUTH, RANGE 24 EAST, AS SHOWN ON THE PLAT OF JACKSONVILLE HEIGHTS, AS RECORDED IN PLAT BOOK 5, PAGE 93 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID TRACT 8; THENCE SOUTH 00°25'34" WEST, ALONG THE EASTERLY LINE OF SAID TACT 8, A DISTANCE OF 102.54 FEET; THENCE SOUTH 72°30'56" WEST, 42.52 FEET; THENCE SOUTH 83°50'53" WEST, 110.25 FEET; THENCE NORTH 38°25'12" WEST, 19.94 FEET; THENCE SOUTH 84°14'10" WEST, 21.14 FEET TO THE ARC OF A CURVE LEADING NORTHERLY; THENCE NORTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 60.28 FEET, AN ARC DISTANCE OF 140.30 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 08°27'44" WEST, 110.70 FEET TO THE NORTHERLY LINE OF SAID TRACT 8; THENCE NORTH 88°49'20" EAST, ALONG LAST SAID LINE, 200.69 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.44 ACRES, MORE OR LESS.

FOR: PEACOCK CONSULTING GROUP, LLC




## GENERAL NOTES

1. BEARINGS SHOWN HEREON ARE BASED ON THE NORTHERLY LINE OF TRACT 8, BLOCK 3, SECTION 36, T2S, R24E, AS N88°49'20"E.
2. THIS MAP DOES NOT REPRESENT A BOUNDARY SURVEY.
3. THIS MAP WAS MADE WITHOUT THE BENEFIT OF AN ABSTRACT TITLE, THEREFORE, THERE COULD BE ADDITIONAL EASEMENTS, COVENANTS AND RESTRICTIONS OR OTHER MATTERS OF PUBLIC RECORD THAT MAY OR MAY NOT AFFECT THIS PARCEL.
4. THIS DRAWING MAY HAVE BEEN ENLARGED OR REDUCED FROM THE ORIGINAL. UTILIZE THE GRAPHIC SCALE AS SHOWN.
5. X-REFERENCE: SURVEY BY CLARY & ASSOC. FILE NO. R7-13B, SA-2614.

GRAPHIC SCALE
0 25 50
(IN FEET)
1" = 50'

UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.

DRAFTER: MMS
JOB No. 2008-426

UNLESS OTHERWISE SHOWN AND STATED HEREON, THIS MAP OR SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS & MAPPERS, IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND DOES NOT NECESSARILY MEET ANY OTHER NATIONAL OR REGIONAL STANDARDS.

DATE MAY 1, 2008
SCALE 1" =50'
CHECKED BY: MJB

Clary & Associates, Inc.
PROFESSIONAL SURVEYORS & MAPPERS
3830 CROWN POINT ROAD
JACKSONVILLE, FLORIDA 32257
904-268-2703 | WWW.CLARYASSOC.COM
LB NO. 3731

GREGORY B. CLARY, P.L.S. CERT. NO. 3377

CLARY

LEGEND
WJL = WETLAND JURISDICTIONAL LINE
OR = OFFICIAL RECORDS
PB = PLAT BOOK
PG(S) = PAGE(S)
L = ARC LENGTH
R = RADIUS
CH = CHORD
Δ = DELTA

## CONSENT AND JOINDER OF MORTGAGEE

The undersigned, Fidelity National Bank (mortgagee), the mortgagee under that certain Mortgage and Security Agreement dated September 12, 2005 and recorded September 29, 2005 at Official Records Book 12783, page 2390; Note and Mortgage Modification and Spreading Agreement recorded in Official Records Book 12833, page 1136; Official Records Book 12823, page 70; Official Records Book 12870, page 761 and Official Records Book 12905, page 244; Official Records Book 12910, page 2088; Official Records Book 13002, page 1936, Official Records Book 13209, page 1997, all of the public records of Duval County, Florida, hereby consents and joins in the foregoing Deed of Conservation Easement, and subordinates its mortgage lien encumbering all or any part of the Property (as described in the foregoing Deed of Conservation Easement) to the Deed of Conservation Easement.

IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this 24th day of June, 2008.

Witnesses:

Name: DEBORAH D. BARBER

Name: Pamela Dois Greenlee

Mortgagee
Fidelity Bank

By: Tammy Simmons
Tammy Simmons
Its Vice President
Construction Lending

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 24th day of June, 2008 by Tammy Simmons, Vice President, Construction Lending of Fidelity Bank, who did not take an oath.

DEBORAH D. BARBER
MY COMMISSION # DD 722577
EXPIRES: February 5, 2012
Bonded Thru Notary Public Underwriters

Notary Public, State of Florida at Large

My Commission Expires: 2-5-2012

Serial No. DD 722577

Personally known ✓ or produced identification _____. Identification produced _____.