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4/18/97

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF MONTE DIEGO

(DEED RESTRICTIONS)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MONTE DIEGO is made this 23 day of April, 1997, by Derick R. Woolverton and Mark S. Woolverton ("Developer").

W I T N E S S E T H :

WHEREAS, Developer is the owner of that certain real property located in St. Johns County, Florida, known as Monte Diego, as is more particularly described on Exhibit A, attached hereto, and made a part hereof, hereinafter referred to as "Monte Diego". Developer wishes to record this "Declaration of Covenants, Conditions and Restrictions", hereinafter referred to as the "Declaration", for the purpose of providing a common plan, or scheme of development of Monte Diego and for the purpose of aiding in the establishment and maintenance of an exclusive residential area of the highest quality for the maximum benefit and enjoyment of its residents.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, Developer declares as follows:

ARTICLE I

The Developer intends that all of the lands located in Monte Diego, as described on Exhibit A, be held, sold and conveyed subject to the conditions, covenants, restrictions and other provisions contained in this Declaration, which it acknowledges are for the purposes of protecting the value and desirability of, and which shall run with Monte Diego and be binding upon all parties having any right, title or interest therein or any portion thereof, their respective heirs, successors and assigns, and which shall enure to the benefit of each Owner as such term is defined in this Declaration.

ARTICLE II

DEFINITIONS

2.1 "Developer" means Derick R. Woolverton and Mark S. Woolverton, Owners of Monte Diego, and such of their successors and assignees as may be designated by them as a developer by an instrument recorded in the public records of St. Johns County, Florida.

2.2 "Monte Diego" or "Property" shall mean the property fronting State Road 203 in St. Johns County, Florida, as described on Exhibit A hereof. "Lot" means one of the four (4) lots, which together with the remaining three (3) lots constitute Monte Diego.

2.3 "Owner" means the record owner, whether one or more persons, of the fee simple title to one or more of the lots in Monte Diego, including contract sellers, but excluding any other person holding such fee simple title merely as security for the performance of an obligation.

2.4 "Person" means any natural person or artificial legal entity, unless the context expressly requires otherwise.

2.5 "Dwelling Unit" means and refers to any single family residence built upon a lot in Monte Diego, including attached or detached residences.

2.6 "Access Road" means the access easement from Ponte Vedra Boulevard (a/k/a County Road 203) to the property providing ingress and egress to the Monte Diego lots, more particularly described in

*Prepared by and returned to Derick Woolverton  
P.O. Box 391  
Ponte Vedra, FL 32004*

Recorded in Public Records St. Johns County, FL  
Class# 97013824 O.R. 1235 PG 232 : 03:10PM 04/23/1997  
Recording \$45.00 Surchage \$6.00

**O.R. 1235 PG 0233**

the Easement, which is recorded in the Official Records Book 1208, Page 484 of the public records of St. Johns County, Florida.

**ARTICLE III****MAINTENANCE AND USE RESTRICTIONS**

3.1 Only one private dwelling including its accessory structures, shall be erected, constructed, placed or maintained on a lot in Monte Diego.

3.2 No Dwelling Unit erected on a Monte Diego Lot shall exceed thirty-five (35) feet above grade in height. The First (1st) living floor of the main structure of any Dwelling Unit on a Monte Diego Lot shall be not less than twelve hundred (1,200) square feet, exclusive of porches, garages and pool areas.

3.3 Other than a single family dwelling as described in Section 3.2 above, no building except a garage or accessory structures may be erected on a Monte Diego Lot and no structure of a temporary nature or character shall be used as a residence. If a detached garage or accessory structure is built, either simultaneously with or subsequent to the erection of the Dwelling Unit, the same shall be of the same kind of materials as the construction of the dwelling and shall be substantial and shall conform architecturally with the Dwelling Unit.

3.4 No commercial trade or activity shall be carried on upon a Monte Diego Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

3.5 No building or structure shall be moved onto a Monte Diego Lot or property parcel in the area covered by this Declaration, it being the intent of this Declaration that any and all buildings or structures on a Monte Diego Lot shall be constructed thereon.

3.6 No animals, livestock or poultry of any kind shall be raised, bred or kept on a Monte Diego Lot, except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Pets shall be kept in fenced areas or on leashes when out of doors.

3.7 No sign of any kind shall be displayed to the public view on a Monte Diego Lot except that there may be one (1) sign of not more than one square foot, advertising the Monte Diego Lot for sale or rent, or a sign used by a builder to advertise the Lot during the construction and sales period. The sign shall be removed as soon as the Monte Diego Lot is sold. Any time the Monte Diego Lot is offered for sale, the Owner shall have the right to use a sign as described in this subparagraph to advertise the sale.

3.8 All of the rights of the Developer, in connection with the enforcement of any portion of this Declaration shall extend to their successors and assigns.

3.9 Street mailboxes shall be of a type consistent with the character of Monte Diego Lot and shall be placed and maintained to complement the houses in the neighborhood. At such time as door postal service is available, Owners shall be required to have mailboxes attached to the main dwelling Unit, and street mailboxes shall be removed within ten (10) days of commencement of such door postal service. All mailboxes shall be subject to the written approval of the Developer before installation.

3.10 Stationary outside clotheslines and clothes hanging devices such as lines, poles or frames are not permitted on a Monte Diego Lot unless completely shielded from the view of persons on any adjacent lot.

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## 3.11

(a) Fences, boundary walls and hedges shall not exceed four (4) feet in height if located from the front property line to the back building line of the main structure, and shall not exceed four (4) feet in height if located from the back building line to the rear property line.

(b) Fences and walls are not permitted in the front yards of Lots 1, 2 and 3 of Monte Diego. Fences and walls are not permitted in the front yard of Lot 1 or in the side yard that is adjacent to Ponte Vedra Boulevard (State Road 203). Fences and walls not to exceed four feet (4') in height may be installed along the property lines of Lots 1, 2 and 3, except as provided in this Paragraph 3.11. Fences and walls not to exceed six feet (6') may be installed as to Lots 1, 2, 3 and 4 along the southerly most property line of the Lot.

(c) No fence may be located within one hundred twenty feet (120') of the eastern most property line or within seventy feet (70') south of the northern boundary or within sixty feet (60') from the northeast corner of Lot 4.

(d) Green or black vinyl factory coated chain link fencing may be used on Monte Diego Lots. Other fencing material may be used only with the written consent of the Developer. No inserts or coverages may be installed on a Monte Diego Lot other than live plant material.

(e) Walls may be constructed or installed on a Monte Diego Lot with the written consent of the Developer.

3.12 No commercial vehicles of any type shall be permitted to remain overnight on the property of a private dwelling within Monte Diego unless garaged or completely enclosed in a fenced, walled or hedged row so that no other neighbor can view such vehicle and so that it cannot be viewed from Ponte Vedra Boulevard or from the marsh, except that vehicles as may be used in the development and building on a Monte Diego Lot are excluded from this subparagraph.

3.13 No unlicensed or uninsured motor vehicles of any kind shall be permitted to remain overnight on the property of a private dwelling, unless garaged. No house trailer shall be permitted to stay on a Monte Diego Lot or public right-of-way, unless completely garaged.

3.14 No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on a Monte Diego Lot except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction to completion of the improvement in which same is to be used.

3.15 No exterior television, radio, microwave, or other antenna shall be installed unless fully enclosed or shielded from public view and the view of all neighboring Lots, streets and common areas adjacent to Monte Diego Lot.

3.16 No above ground fuel tanks or storage tanks, and no above ground swimming pools of any kind, shall be installed, placed or maintained on any Lot in Monte Diego.

3.17 All residential driveway culverts shall be constructed of twelve inch by eighteen inch (12" x 18") reinforced concrete with reinforced concrete headwalls.

3.18 No T-1-11 siding or any other plywood product may be used for exterior finish on Dwelling Units or on any other building

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erected on a Monte Diego Lot, except on soffits. The only Stucco finishes that may be used for exterior finish are flat finish in gray or white color, or finish using coquina, oyster or scallop shells with final color being gray, pink or white. No aluminum siding may be used.

3.19 All finished roof angles are to be twenty-eight degrees (28°) or greater.

3.20 The following setbacks shall govern the Monte Diego Lots:

(a) Lot 1

(i) Setback line from Ponte Vedra Boulevard (State Road 203) - twenty feet (20')

(ii) WEST setback line shall be ten feet (10') and the rear yard setback - forty feet (40')

(iii) FRONT YARD SETBACK - SEVENTY FEET (70')

(b) Lots 2, 3 and 4

(i) Side yard setback - ten feet (10')

(ii) Rear yard setback - forty feet (40')

(iii) Front yard setback - seventy feet (70')

These setbacks include: Dwelling Unit, garage, screened or unscreened porches, outbuildings, sheds, boats, campers, vehicles, jet skis, trailers, motorhomes, screened pool enclosures, or any manmade object or material which exceeds four feet (4') in height.

3.21 No house or other building may be moved onto a Monte Diego Lot.

3.22 No alteration of ponds, lake or marsh on a Monte Diego Lot shall be permitted without the written consent of Developer, or their authorized agents.

3.23 Tennis courts may be constructed on the property of any Monte Diego Lot at any time, provided there is a twenty foot (20') setback as to the tennis court's location from any lake or marsh. The perimeter of the tennis court must be landscaped to provide fifty percent (50%) screening, within three (3) years after the commencement of construction of the tennis court, for all adjacent, existing or future homes on Ponte Vedra Boulevard and for all Access Driveways and roads. An Owner who constructs a tennis court shall use evergreen container plant materials with at least seven (7) gallon container size and may incorporate existing vegetation, provided it is evergreen. The plant material to be used for landscaping the tennis court shall have a minimum height of four feet (4') along the sides of the tennis court, which shall have four foot (4') fencing. Wherever the tennis court has four foot (4') fencing, the landscape plant material shall have a minimum height on the ends of the tennis court of five feet (5') or greater and along the portion of the fence which exceeds four feet (4'). Lights for the tennis court shall not be kept on after 9:00 P.M. any day of the week. All fencing used shall have green vinyl factory coating.

3.24 All legal fees, court costs or other costs which are necessary to enforce deed restrictions and covenants shall be paid by the violator, and the venue for any such action is St. Johns County, Florida.

3.25 No tree over five inch (5") in diameter, measured twenty-four inches (24") up from the base of the tree may be cut, poisoned, excavated or tampered with in any way, which could or may

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cause damage or death, except within six feet (6') of the footprint of the house, garage or inside edge of the tennis courts, decks or pool. Any tree which is destroyed or is caused to lose more than forty percent (40%) of the size of its original canopy must be replaced at the expense of the Owner with a sixty (60) gallon tree or an eight inch (8") diameter or larger tree of like species. The Owner is responsible for the survival of any replacement tree.

3.26 Trees may be removed for the installation of a driveway, provided that no tree (except a palm tree) with a ten inch (10") diameter trunk measured from twenty-four inches (24") up from its base is destroyed. If the installation of a driveway will cause the destruction of a tree, as described herein, the driveway shall be and must be rerouted around the tree with a minimum of thirty-six inches (36") from the base of the tree to the edge of the driveway. During construction all trees (except palm trees) with an eight inch (8") diameter measured twenty-four inches (24") from the base of the tree, which is located within fifty feet (50') of the outside edge of the Dwelling Unit and garage footprint or within twelve feet (12') of the driveway must be protected with guard rails. Guard rails are to be located at the drip line of the tree or at a minimum of twelve feet (12') from the trunk, whichever is greater, from the base of the tree. Trees located within ten feet (10') of the Dwelling Unit, garage, swimming pool or any other building on a Monte Diego Lot may have guard rails four feet (4') out from the base. No building material may be stored inside the guard rails. No dumping of cement, concrete, mortar or any other material which can change the PH of the soil, or alter the soil in any way, will be permitted on a Monte Diego Lot.

3.27 Guard rails are to be constructed in the following manner: Posts are to be a minimum of three and one-half inches by three and one-half inches by three feet long (3 1/2" x 3 1/2" x 3') pine or equivalent material and must be buried three feet (3') in the ground every ten feet (10'). Rails must be a minimum of three and one-half inches by one and one-half inches (3 1/2" x 1 1/2") in size, three feet above existing grade with minimum height of four and one-half feet (4 1/2") from existing grade. All guard rails must be installed one (1) week prior to ground breaking for foundation work, pool or driveways.

3.28 No recreational vehicle or vehicles shall be parked on a Monte Diego Lot so as to be visible from any adjacent property or roadway.

3.29 On Monte Diego Lot 4, no canoes or any other object that floats on water may be located, stored, or attached in any way to the bank of the pond located on the Monte Diego Lot. Watercraft or floating or submerged objects shall not be left in any pond or lake within twenty feet (20') of the bank of the pond or lake or in sight.

3.30 The pond or body of water on and adjacent to Monte Diego Lot 4 shall not be used for any purpose including but not limited to swimming or fishing for aquatic grass fish. The right to fish for other than aquatic grass fish in the pond or body of water on or adjacent to Monte Diego Lot 4 is limited to the Owner and the Owner's immediate family.

3.31 All aerators, pumps, water storage tanks and plumbing in connection with the water supply for the Dwelling Units on the Monte Diego Lots for the Dwelling Units' drinking water, irrigation or air conditioning shall be located next to (within eight feet (8')) or inside the main Dwelling Unit structure, which shall include the garage. Only wells and shut-off valves may be located wherever necessary in order to meet the Human Rehabilitative Service requirements.

3.32 As to each Monte Diego Lot, a minimum of fifteen percent (15%) ("15% Limitation") of the existing vegetation shall remain

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undisturbed and unaltered at all time, except that dead vegetation and materials may be cleaned out and mulch may be used for esthetics and weed control. This fifteen percent (15%) obligation to have fifteen percent (15%) of existing vegetation undisturbed and unaltered applies to native ferns, palmetto, yaupon holy, cedar, bay bushes and trees, magnolias, live oak, laurel oak, maple, pine and other native species of plants and trees.

Specifically as to Lot 1, this 15% Limitation applies as follows: Seven and one-half percent (7 1/2%) of the 15% Limitation shall apply along the Access Driveway, and the remaining seven and one-half percent (7 1/2%) along Ponte Vedra Boulevard. It being the intent of this provision that the existing vegetation in the total amount of fifteen percent (15%) must remain in place on the designated portions of Lot 1. On Lots 2 and 3, the 15% Limitation shall apply so as to insure that eight percent (8%) of the existing vegetation shall remain undisturbed and unaltered along the Access Driveway, and seven percent (7%) wherever the Owner may determine. On Lot 4, the 15% Limitation shall apply so as to insure that eight percent (8%) of the existing vegetation shall remain undisturbed and unaltered along the eastern one hundred feet (100') of Lot 4, and the other seven percent (7%) of the 15% Limitation in whatever portion of the Lot as may be determined by the Owner.

3.33 The topography of each Monte Diego Lot shall not be changed, modified or altered in any way so as to create excess water, soil erosion or water on the Access Driveway or upon the landscape furnished by the Developer. In addition, the topography may not be changed, modified or altered in any way so as to adversely affect the draining system, the retention pond or adjoining Lots. The topography of each Lot shall not be changed, modified or altered in any way so as to create or permit water to collect along the edge of the Access Driveway in any manner so as to adversely affect the Access Driveway.

3.34 Each Lot Owner shall be responsible and liable at all times for any damage to the Access Driveway, landscaping or signage during the period in which the Owner is preparing, modifying or landscaping a Monte Diego Lot or constructing or remodeling a Dwelling Unit or related structures.

#### ARTICLE IV

#### USE RESTRICTIONS AND EASEMENTS

4.1 Use. All Monte Diego Lots shall be used exclusively for single family residential purposes. Monte Diego Lots shall not be subdivided so as to reduce its size without approval of the Developer. No commercial activity shall be performed on a Monte Diego Lot with the exception of the Developer's or its designees, sales, model homes, marketing and construction activities. There shall be no change to the natural condition of a Monte Diego Lot without the approval of the Developer, provided that the Owner or his designee may clear, excavate or fill the footprint of the dwelling unit, including up to an additional five feet (5') beyond the footprint of the dwelling unit.

4.2 Minerals. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon a Monte Diego Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on a Monte Diego Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on a Monte Diego Lot.

4.3 Personal Property. Exterior clothes lines must be temporary and screened from view at all times and shall be removed when not in use. Above ground water softener units, pool equipment and other above ground equipment shall require adequate screening to meet Developer approval; all other tanks shall be placed

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underground in strict accordance with the rules and regulations of any government authority.

4.4 **Hazardous Materials.** No hazardous materials or toxic materials or pollutants shall be discharged, maintained, stored, released or disposed of on the Property except in strict compliance with applicable rules and regulations. Flammable, combustible or explosive fluids, materials of substances for ordinary household use may be stored or used on the Property subject to strict safety codes and shall be stored in containers specifically designed for that purpose.

4.5 **Nuisances.** Nothing shall be done or maintained on a Monte Diego Lot or in any Dwelling Unit, which may be or becomes an annoyance or nuisance to the adjacent Owners of the Property. Any activity on a Monte Diego Lot or in a Dwelling Unit which interferes with television, cable or radio reception of another Lot or Dwelling Unit shall be deemed a nuisance and a prohibited activity. In the event of a dispute or questions as to what may be or become a nuisance, such dispute or questions shall be submitted to the Developer and the written decision of the Developer shall be dispositive of such a dispute or question.

4.6 The Owner of the Monte Diego Lot agrees to pay annually, or to pay at such other period from time to time as Developer may determine, fees and expenses to include electricity charges for water control with respect to flooding and filling related to Monte Diego property.

#### ARTICLE V

#### LIABILITY - GENERALLY

5.1 **General Provisions.** Notwithstanding anything contained in this Declaration, the rules and regulations of the Developer or any other document governing or binding the Developer ("Property Documents"), the Developer will not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Property, including without limitation, residents, their families, guests, invitees, agents, servants, contractors or subcontractors nor for any property of such persons.

5.2 **Specific Provisions.** Without limiting the generality of the foregoing:

(a) It is the express intent of this Declaration and the Property Documents that the various provisions of the Declaration and the Property Documents which are enforceable by the Developer and which govern or regulate the use of Property have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof.

(b) The Developer is not empowered to enforce or insure compliance with the laws of the United States, the State of Florida or the County of St. Johns or any other jurisdiction or to prevent tortious activities by Owners or third parties.

(c) The provisions of this Declaration setting forth the uses of Developer which relate to health, safety or welfare will be interpreted and applied only as limitations on the uses of such Property and not as creating a duty of the Developer to protect or further the safety or welfare of the Owner or third parties.

5.3 **Owner Covenant.** Each Owner, his heirs, successors and assigns (by virtue of his acceptance of title and each other person or entity having an interest or lien upon or making the use of, any portion of the Property) by virtue of accepting such interest or lien or by making use thereof, will be bound by this Section and

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will be deemed to have automatically waived any and all rights, claims, demands or causes of action against the Developer arising from or connected with any manner for which the liability of the Developer has been disclaimed in this Paragraph.

## ARTICLE VI

## SEVERABILITY

6.1 Invalidation of any particular provision of this Declaration by judgment or court order shall not affect any other provision, all of which shall remain in full force and effect.

## ARTICLE VII

## 7.1 Access Road.

(a) Each Owner, his heirs, successors and assigns, by virtue of his acceptance of title, and each other person or entity having an interest or lien upon or making use of any portion of the Access Driveway, hereby agrees that:

- (i) The maintenance cost and charges for the Access Driveway, including but not limited to mowing of grass, weeding of beds, removal of trash and debris, and repairs and replacement of the Access Driveway, shall be paid for with each Owner paying twenty-five percent (25%) of such cost. Each Owner consents and agrees that the Developer may do whatever is necessary, in the sole discretion of the Developer, to maintain the Access Driveway for a period of at least one (1) years after the Developer has sold the last Lot in Monte Diego. Each Owner hereby agrees that as to any cost or charges incurred by Developer, each Owner shall pay prorata twenty-five percent (25%) of all such expenses or charges.
- (ii) There are four (4) Monte Diego Lots contiguous to the Access Driveway. The Developer reserves the right, at the sole discretion of the Developer, to pave the Access Driveway. After the Developer ceases being responsible to arrange for the maintenance and improvement of the Access Driveway, the cost of all future expenses and maintenance costs for the Access Driveway shall be the responsibility of and shall be paid by the Owners of the four (4) Monte Diego Lots contiguous to the Access Driveway.
- (iii) The Developer does grant to each Owner of a Monte Diego Lot, and that Owner's heirs, successors and assigns, a perpetual non-exclusive easement for ingress and egress and for public utilities over and across the Access Driveway with the understanding and knowledge that each Lot Owner, by virtue of his acceptance of ownership interest in the portion of the Access Driveway contiguous to each Monte Diego Lot, shall be bound by this grant of easement and shall be deemed to have joined in and

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conveyed an easement for ingress and egress and for public utilities over the Access Driveway as set forth herein.

#### ARTICLE VIII

##### 8.1 Utility Easements.

(a) Developer reserves for themselves, their successors and assigns, a right-of-way and easement to erect, maintain and use utilities, electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas and water lines or other public conveniences or utilities, on, in and over each Monte Diego Lot. The foregoing reserved easement for utilities shall lie ten feet (10') along the South property line of each Monte Diego Lot. In addition, an easement for utilities shall lie on, in and over the Access Road as defined in Paragraph 2.6 above. Owners may be permitted to encroach upon such easements with landscaping, driveways, fences, sidewalks, paths and other improvements so long as, in the sole judgment of the Developer, such improvements shall not interfere with the provision operation, repair and replacement of the utilities, if any, contained within the reserved easements.

(b) Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any Lots owned by Developer. In addition, Developer hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Property so long as Developer shall own any portion of the Property. The easements granted by Developer shall not structurally weaken any improvements or unreasonably interfere with enjoyment of the Common Property.

(c) Developer reserves for themselves, their successors and assigns, an exclusive easement for the installation and maintenance of radio and television cables within the rights-of-way and easement areas referred to herein.

#### ARTICLE IX

##### ENFORCEMENT RIGHTS

9.1 Enforcement. If any person or entity shall violate or attempt to violate any of these Covenants, Conditions and Restrictions, it shall be lawful for the Developer, any Owner, or group of Owners, to (1) institute proceedings at law for the recovery of damages, or (2) maintain a proceeding in equity for the purpose of preventing, or for the enjoining of, all or any such violations or attempted violations. Failure by the Developer, any Owner, or group of Owners, to enforce any Covenant, Condition or Restriction herein contained shall not at any time be deemed a waiver or estoppel of the right to enforce the same thereafter. Any person or persons, including without limitation, Developer, or any Owner or group of Owners, having rights hereunder who shall prevail in bringing an action to enforce these Covenants, Conditions and Restrictions shall, in addition to injunctive relief and damages for the breach or violation of any provision hereunder, be entitled to recover reasonable attorneys' fees and all costs incurred in the investigation preliminary to the institution of proceedings, as well as the cost of institution and prosecution of such proceeding through a judgment, and all appellate levels, and in all administrative or agency proceedings. The rights to enforce the Covenants, Conditions and Restrictions, as enumerated in this Declaration, shall be cumulative and in addition to and not in lieu of all other provisions and rights to enforce these Covenants, Conditions and Restrictions as contained in other sections of this Declaration.

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IN WITNESS WHEREOF, the Developer has caused these presents to be executed as required by the law on this, the day and year first above written.

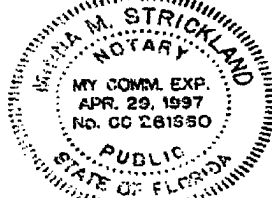
Witnesses: 700 TPC Blvd Ponte Vedra Bch, Fl. 32082  
~~Barbara Hoffay / Barbara Hoffay~~  
~~Joanne S. Rukab / Joanne S. Rukab~~

DEVELOPER  
Derick R. Woolverton  
Derick R. Woolverton

700 TPC Blvd Ponte Vedra Bch, Fl. 32082  
~~Barbara Hoffay / Barbara Hoffay~~  
~~Joanne S. Rukab / Joanne S. Rukab~~

DEVELOPER  
Mark S. Woolverton  
Mark S. Woolverton

STATE OF FLORIDA )  
COUNTY OF St Johns ) :SS



The foregoing instrument was acknowledged before me this 23 day of ~~February~~, 1997, by Derick R. Woolverton.

APRIL personally known

Minna M Strickland  
Notary Public  
Minna M Strickland

STATE OF FLORIDA )  
COUNTY OF St. Johns ) :SS

The foregoing instrument was acknowledged before me this 23 day of April, 1997, by Mark S. Woolverton.

personally known



Minna M Strickland  
Notary Public  
Minna M Strickland

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EXHIBIT "A"

A parcel of land lying in Government Lots 1, 2, 3, and 4, Section 11, Township 4 South, Range 29 East, St. Johns County, Florida, said Parcel being more particularly described as follows:

For a point of reference commence at a point where the Northerly boundary of Section 11 aforementioned is intersected by the Easterly boundary of the Right of Way of St. Johns County Road #203 (formerly known as Florida State Road #140 and as Florida State Road #78) and run thence South thirteen degrees five minutes East (S. 13° 05' E.) along the Easterly boundary of said County Road Right of Way keeping parallel to and thirty-three (33) feet Northeasterly from the center of the pavement when measured at right angles thereto, a distance of one thousand five hundred sixty-three and five-tenths (1563.5) feet; run thence South seventy-six degrees fifty-five minutes West (S. 76° 55' W.) and at right angles to the center line of said County Road, a distance of sixty-six (66) feet to the West side of the Right of Way of St. Johns County Road #203 for a point of beginning.

From the point of beginning thus described run South thirteen degrees five minutes East (S. 13° 05' E.) along the West boundary of the Right of Way of said County Road keeping parallel to and thirty-three (33) feet Southwesterly from the center line of said road when measured at right angles thereto, a distance of two hundred (200.0) feet; run thence South seventy-six degrees fifty-five minutes West (S. 76° 55' W.) and at right angles to said County Road, a distance of eight hundred twenty (820.0) feet more or less to the Easterly edge of the Guano River Marsh or Swamp; run thence in a Northerly direction following the Easterly edge of said marsh or swamp a distance of two hundred (200.0) feet more or less until a point is reached which bears South seventy-six degrees fifty-five minutes West (S. 76° 55' W.) from the point of beginning; run thence North seventy-six degrees fifty-five minutes East (N. 76° 55' E.) to the point of beginning.

*J. D. O'neal*  
*(1)*

*3-251*

4/29/97

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF MONTE DIEGO**

**(DEED RESTRICTIONS)**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MONTE DIEGO is made this 30th day of April, 1997, by Derick R. Woolverton and Mark S. Woolverton ("Developer").

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

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DEFINITIONS**

2.1 "Developer" means Derick R. Woolverton and Mark S. Woolverton, Owners of Monte Diego, and such of their successors and assignees as may be designated by them as a developer by an instrument recorded in the public records of St. Johns County, Florida.

2.2 "Monte Diego" or "Property" shall mean the property fronting State Road 203 in St. Johns County, Florida, as described on Exhibit A hereof. "Lot" means any one of the four (4) lots, which together with the remaining three (3) lots constitute Monte Diego.

2.3 "Owner" means the record owner, whether one or more persons, of the fee simple title to one or more of the lots in Monte Diego, including contract sellers, but excluding any other person holding such fee simple title merely as security for the performance of an obligation.

2.4 "Person" means any natural person or artificial legal entity, unless the context expressly requires otherwise.

2.5 "Dwelling Unit" means and refers to any single family residence built upon a lot in Monte Diego, including attached or detached residences.

2.6 "Access Driveway" means the access easement from Ponte Vedra Boulevard (a/k/a County Road 203) to the property providing

PREPARED BY AND RETURN TO:  
JOHN H. WILBUR  
112 W. ADAMS ST. # 1700  
JACKSONVILLE, FLORIDA 32202

Recorded in Public Records St. Johns County, FL  
Clerk# 97015645 O.R. 1238 PG 111 11:27AM 05/07/1997  
Recording \$45.00 Surcharge \$6.00

**O.R. 1238 PG 0112**

ingress and egress to the Monte Diego lots, more particularly described in the Easement, which is recorded in the Official Records Book 1208, Page 484 of the public records of St. Johns County, Florida.

**ARTICLE III****MAINTENANCE AND USE RESTRICTIONS**

3.1 Only one Dwelling Unit including its accessory structures, shall be erected, constructed, placed or maintained on a Lot.

3.2 No Dwelling Unit erected on a Lot shall exceed thirty-five (35) feet above grade in height. The first (1st) living floor of the main structure of any Dwelling Unit on a Lot shall be not less than twelve hundred (1,200) square feet, exclusive of porches, garages and pool areas.

3.3 Other than a Dwelling Unit as described in Section 3.2 above, no building except a garage or accessory structures may be erected on a Lot and no structure of a temporary nature or character shall be used as a residence. If a detached garage or accessory structure is built, either simultaneously with or subsequent to the erection of the Dwelling Unit, the same shall be of the same kind of materials as the construction of the dwelling and shall be substantial and shall conform architecturally with the Dwelling Unit.

3.4 No commercial trade or activity shall be carried on upon a Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

3.5 No other building or structure shall be moved onto a Lot or property subject to this Declaration, it being the intent of this Declaration that any and all buildings or structures on a Lot shall be constructed thereon.

3.6 No animals, livestock or poultry of any kind shall be raised, bred or kept on a Monte Diego Lot, except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Pets shall be kept in fenced areas or on leashes when out of doors.

3.7 No sign of any kind shall be displayed to the public view on a Lot except that there may be one (1) sign of not more than one square foot, advertising the Lot for sale or rent, or a sign used by a builder to advertise the Lot during the construction and sales period. The sign shall be removed as soon as the Lot is sold. Any time the Lot is offered for sale, the Owner shall have the right to use a sign as described in this section to advertise the sale.

3.8 All of the rights of the Developer, in connection with the enforcement of any portion of this Declaration shall extend to their successors and assigns.

3.9 Street mailboxes shall be of a type consistent with the character of Lot and shall be placed and maintained to complement the houses in the neighborhood. At such time as door postal service is available, Owners shall be required to have mailboxes attached to the main dwelling Unit, and street mailboxes shall be removed within ten (10) days of commencement of such door postal service. All mailboxes shall be subject to the written approval of the Developer before installation.

3.10 Stationary outside clotheslines and clothes hanging devices such as lines, poles or frames are not permitted on a Lot unless completely shielded from the view of persons on any adjacent lot.

**O.R. 1238 PG 0113**

3.11 (a) Fences, boundary walls and hedges shall not exceed four (4) feet in height if located from the front property line to the back building line of the main structure, and shall not exceed four (4) feet in height if located from the back building line to the rear property line.

(b) Fences and walls are not permitted in the front yards of Lots 1, 2 and 3 of Monte Diego. Fences and walls are not permitted in the front yard of Lot 1 or in the side yard that is adjacent to Ponte Vedra Boulevard (County Road 203). Fences and walls not to exceed four feet (4') in height may be installed along the property lines of Lots 1, 2 and 3, except as provided in this Paragraph 3.11. Fences and walls not to exceed six feet (6') may be installed as to Lots 1, 2, 3 and 4 along the southerly most property line of the Lot.

(c) No fence may be located within one hundred twenty feet (120') of the eastern most property line or within seventy feet (70') south of the northern boundary or within sixty feet (60') from the northeast corner of Lot 4.

(d) Green or black vinyl factory coated chain link fencing may be used on Lots. Other fencing material may be used only with the written consent of the Developer. No inserts or coverages may be installed on a Lot other than live plant material.

(e) Walls may be constructed or installed on a Lot with the written consent of the Developer.

3.12 No commercial vehicles of any type shall be permitted to remain overnight on the property of a private dwelling within Monte Diego unless garaged or completely enclosed in a fenced, walled or hedged row so that no other Owner can view such vehicle from the Access Driveway or any adjacent Lot and so that it cannot be viewed from Ponte Vedra Boulevard or from the marsh, except that vehicles as may be used in the development and building on a Lot are excluded from this subparagraph.

3.13 No unlicensed or uninsured motor vehicles of any kind shall be permitted to remain overnight on a Lot, unless garaged. No house trailer shall be permitted to stay on a Lot or public right-of-way, unless completely garaged.

3.14 No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on a Lot except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction to completion of the improvement in which same is to be used.

3.15 No exterior television, radio, microwave, or other antenna shall be installed unless fully enclosed or shielded from public view and the view of all neighboring Lots, streets and common areas adjacent to said Lot.

3.16 No above ground fuel tanks or storage tanks, and no above ground swimming pools of any kind, shall be installed, placed or maintained on any Lot in Monte Diego.

3.17 All residential driveway culverts shall be constructed of twelve inch by eighteen inch (12" x 18") reinforced concrete with reinforced concrete headwalls.

3.18 No T-1-11 siding or any other plywood product may be used for exterior finish on Dwelling Units or on any other building erected on a Lot, except on soffits. The only Stucco finishes that may be used for exterior finish are flat finish in gray or white color, or finish using coquina, oyster or scallop shells with final color being gray, pale or light pink or white. No aluminum siding

may be used.

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3.19 All finished roof angles are to be twenty-eight degrees (28°) or greater.

3.20 The following setbacks shall govern the Monte Diego Lots:

- (a) Lot 1
  - (i) Setback line from Ponte Vedra Boulevard (State Road 203) - twenty feet (20')
  - (ii) West setback line shall be ten feet (10') and the rear yard setback - forty feet (40')
  - (iii) The front setback line from the North Property Line - seventy feet (70').
- (b) Lots 2, 3 and 4
  - (i) Side yard setback - ten feet (10')
  - (ii) Rear yard setback - forty feet (40')
  - (iii) Front yard setback - seventy feet (70')

These setbacks include: Dwelling Unit, garage, screened or unscreened porches, outbuildings, sheds, boats, campers, vehicles, jet skis, trailers, motorhomes, screened pool enclosures, or any manmade object or material which exceeds four feet (4') in height.

3.21 No house or other building may be moved onto a Lot.

3.22 No alteration of ponds, lake or marsh on a Lot shall be permitted without the written consent of Developer, or their authorized agents.

3.23 Tennis courts may be constructed on the property of any Lot at any time, provided there is a twenty foot (20') setback as to the tennis court's location from any lake or marsh. The perimeter of the tennis court must be landscaped to provide fifty percent (50%) screening, within three (3) years after the commencement of construction of the tennis court, for all adjacent, existing or future homes on Ponte Vedra Boulevard and for all Access Driveways and roads. An Owner who constructs a tennis court shall use evergreen container plant materials with at least seven (7) gallon container size and may incorporate existing vegetation, provided it is evergreen. The plant material to be used for landscaping the tennis court shall have a minimum height of four feet (4') along the sides of the tennis court, which shall have four foot (4') fencing. Wherever the tennis court has five foot (5') fencing, the landscape plant material shall have a minimum height on the ends of the tennis court of five feet (5') or greater and along any portion of the fence which exceeds four feet (4'). Lights for the tennis court shall not be kept on after 9:00 P.M. any day of the week. All fencing used shall have green vinyl factory coating.

3.24 All legal fees, court costs or other costs which are necessary to enforce deed restrictions and covenants shall be paid by the violator, and the venue for any such action is St. Johns County, Florida.

3.25 No tree over five inch (5") in diameter, measured twenty-four inches (24") up from the base of the tree may be cut, poisoned, excavated or tampered with in any way, which could or may cause damage or death, except within six feet (6') of the footprint of the house, garage or inside edge of the tennis courts, decks or

**O.R. 1238 PG 0115**

pool. Any tree which is destroyed or is caused to lose more than forty percent (40%) of the size of its original canopy must be replaced at the expense of the Owner with a sixty (60) gallon tree or an eight inch (8") diameter or larger tree of like species. The Owner is responsible for the survival of any replacement tree.

3.26 Trees may be removed for the installation of a driveway, provided that no tree (except a palm tree) with a ten inch (10") diameter trunk measured from twenty-four inches (24") up from its base is destroyed. If the installation of a driveway will cause the destruction of a tree, as described herein, the driveway shall be and must be rerouted around the tree with a minimum of thirty-six inches (36") from the base of the tree to the edge of the driveway. During construction all trees (except palm trees) with an eight inch (8") diameter measured twenty-four inches (24") from the base of the tree, which are located within fifty feet (50') of the outside edge of the Dwelling Unit and garage footprint or within twelve feet (12') of the driveway must be protected with guard rails. Guard rails are to be located at the drip line of the tree or at a minimum of twelve feet (12') from the trunk, whichever is greater, from the base of the tree. Trees located within ten feet (10') of the Dwelling Unit, garage, swimming pool or any other building on a Lot may have guard rails four feet (4') out from the base. No building material may be stored inside the guard rails. No dumping of cement, concrete, mortar or any other material which can change the PH of the soil, or alter the soil in any way, will be permitted on a Lot.

3.27 Guard rails are to be constructed in the following manner: Posts are to be a minimum of three and one-half inches by three and one-half inches by three feet long (3 1/2" x 3 1/2" x 3') pine or equivalent material and must be buried three feet (3') in the ground every ten feet (10'). Rails must be a minimum of three and one-half inches by one and one-half inches (3 1/2" x 1 1/2") in size, three feet above existing grade with minimum height of four and one-half feet (4 1/2") from existing grade. All guard rails must be installed one (1) week prior to ground breaking for foundation work, pool or driveways.

3.28 No recreational vehicle or vehicles shall be parked on a Lot so as to be visible from any adjacent property or roadway.

3.29 On Monte Diego Lot 4, no canoes or any other object that floats on water may be located, stored, or attached in any way to the bank of the pond located on the Lot. Watercraft or floating or submerged objects shall not be left in any pond or lake within twenty feet (20') of the bank of the pond or lake or in sight.

3.30 The pond or body of water on and adjacent to Monte Diego Lot 4 shall not be used for any purpose including but not limited to swimming or fishing for aquatic grass fish. The right to fish for other than aquatic grass fish in the pond or body of water on or adjacent to Monte Diego Lot 4 is limited to the Owner and the Owner's immediate family.

3.31 All aerators, pumps, water storage tanks and plumbing in connection with the water supply for the Dwelling Units on the Monte Diego Lots for the Dwelling Units' drinking water, irrigation or air conditioning, water softener units, and pool equipment, as well as the above ground equipment (collectively "Above Ground Equipment"), shall be located next to (within eight feet (8')) or inside the main Dwelling Unit structure, which shall include the garage. Only wells and shut-off valves may be located wherever necessary in order to meet the Human Rehabilitative Service requirements. All Above Ground Equipment, as identified above, shall be screened in such a manner that the Above Ground Equipment shall not be visible from any other Lot.

3.32 As to each Monte Diego Lot, a minimum of fifteen percent (15%) ("15% Limitation") of the existing vegetation shall remain

**O.R. 1238 PG 0116**

undisturbed and unaltered at all time, except that dead vegetation and materials may be cleaned out and mulch may be used for esthetics and weed control. This fifteen percent (15%) obligation to have fifteen percent (15%) of existing vegetation undisturbed and unaltered applies to native ferns, palmetto, yaupon holy, cedar, bay bushes and trees, magnolias, live oak, laurel oak, maple, pine and other native species of plants and trees.

Specifically as to Lot 1, this 15% Limitation applies as follows: Seven and one-half percent (7 1/2%) of the 15% Limitation shall apply along the Access Driveway, and the remaining seven and one-half percent (7 1/2%) along Ponte Vedra Boulevard, it being the intent of this provision that the existing vegetation in the total amount of fifteen percent (15%) must remain in place on the designated portions of Lot 1. On Lots 2 and 3, the 15% Limitation shall apply so as to insure that eight percent (8%) of the existing vegetation shall remain undisturbed and unaltered along the Access Driveway, and seven percent (7%) wherever the Owner may determine. On Lot 4, the 15% Limitation shall apply so as to insure that eight percent (8%) of the existing vegetation shall remain undisturbed and unaltered along the eastern one hundred feet (100') of Lot 4, and the other seven percent (7%) of the 15% Limitation in whatever portion of the Lot as may be determined by the Owner.

3.33 The topography of each Lot shall not be changed, modified or altered in any way so as to create excess water, soil erosion or water on the Access Driveway or upon the landscape furnished by the Developer. In addition, the topography may not be changed, modified or altered in any way so as to adversely affect the draining system, the retention pond or adjoining Lots. The topography of each Lot shall not be changed, modified or altered in any way so as to create or permit water to collect along the edge of the Access Driveway in any manner so as to adversely affect the Access Driveway.

3.34 Each Lot Owner shall be responsible and liable at all times for any damage to the Access Driveway, landscaping or signage during the period in which the Owner is preparing, modifying or landscaping a Lot or constructing or remodeling a Dwelling Unit or related structures.

**ARTICLE IV****USE RESTRICTIONS AND EASEMENTS**

4.1 Use. All Lots shall be used exclusively for single family residential purposes. Lots shall not be subdivided so as to reduce their size without approval of the Developer. No commercial activity shall be performed on a Lot with the exception of the Developer's or its designees, sales, model homes, marketing and construction activities. There shall be no change to the natural condition of a Lot without the approval of the Developer, provided that the Owner or his designee may clear, excavate or fill the footprint of the Dwelling Unit, including up to an additional five feet (5') beyond the footprint of the Dwelling Unit.

4.2 Minerals. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon a Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on a Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on a Lot.

4.3 Hazardous Materials. No hazardous materials or toxic materials or pollutants shall be discharged, maintained, stored, released or disposed of on any Lot except in strict compliance with applicable rules and regulations. Flammable, combustible or explosive fluids, materials of substances for ordinary household use may be stored or used on any Lot subject to strict safety codes and shall be stored in containers specifically designed for that

O.R. 1238 PG 0117

purpose.

4.4 Nuisances. Nothing shall be done or maintained on a Lot or in any Dwelling Unit, which may be or becomes an annoyance or nuisance to the adjacent Owners of a Lot. Any activity on a Lot or in a Dwelling Unit which interferes with television, cable or radio reception of another Lot or Dwelling Unit shall be deemed a nuisance and a prohibited activity. In the event of a dispute or questions as to what may be or become a nuisance, such dispute or questions shall be submitted to the Developer and the written decision of the Developer shall be dispositive of such a dispute or question.

4.5 The Owner of a Lot agrees to pay annually, or to pay at such other period from time to time as Developer may determine, fees and expenses to include electricity charges for water control with respect to flooding and filling related to the Monte Diego property.

## ARTICLE V

## LIABILITY - GENERALLY

5.1 General Provisions. Notwithstanding anything contained in this Declaration, the rules and regulations of the Developer or any other document governing or binding the Developer ("Property Documents"), the Developer will not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Property, including without limitation, residents, their families, guests, invitees, agents, servants, contractors or subcontractors nor for any property owned by such persons.

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

(a) It is the express intent of this Declaration and the Property Documents that the various provisions of the Declaration and the Property Documents which are enforceable by the Developer and which govern or regulate the use of the Lots in Monte Diego have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Monte Diego Property and the value thereof.

(b) The Developer is not empowered to enforce or insure compliance with the laws of the United States, the State of Florida or the County of St. Johns or any other jurisdiction or to prevent tortious activities by Owners or third parties.

(c) The provisions of this Declaration setting forth the uses of Developer which relate to health, safety or welfare will be interpreted and applied only as limitations on the uses of the Lots and not as creating a duty of the Developer to protect or further the safety or welfare of the Owner or third parties.

5.3 Owner Covenant. Each Owner, his heirs, successors and assigns (by virtue of his acceptance of title and each other person or entity having an interest or lien upon or making the use of, any portion of Monte Diego) by virtue of accepting such interest or lien or by making use thereof, will be bound by this Section and will be deemed to have automatically waived any and all rights, claims, demands or causes of action against the Developer arising from or connected with any manner for which the liability of the Developer has been disclaimed in this Paragraph.

## ARTICLE VI

## SEVERABILITY

6.1 Invalidation of any particular provision of this

D.R. 1238 PG 0118

Declaration by judgment or court order shall not affect any other provision, all of which shall remain in full force and effect.

## ARTICLE VII

## 7.1 Access Driveway.

(a) Each Owner, his heirs, successors and assigns, by virtue of his acceptance of title, and each other person or entity having an interest or lien upon or making use of any portion of the Access Driveway, hereby agrees that:

- (i) The maintenance cost and charges for the Access Driveway, including but not limited to mowing of grass, weeding of beds, removal of trash and debris, and repairs and replacement of the Access Driveway, shall be paid for with each Owner paying twenty-five percent (25%) of such cost. Each Owner consents and agrees that the Developer shall do whatever is necessary, in the sole discretion of the Developer, to maintain the Access Driveway for a period of at least one (1) year after the Developer has sold the last Lot in Monte Diego, provided that the Developer shall not be responsible for maintenance of the Access Driveway, which is required as a result of actions by or damages caused by the Owners, their guests or other third parties. Thereafter, each Owner hereby agrees that as to any cost or charges incurred by Developer, each Owner shall pay prorata twenty-five percent (25%) of all such expenses or charges.
- (ii) There are four (4) Monte Diego Lots contiguous to the Access Driveway. The Developer reserves the right, at the sole discretion of the Developer, to pave the Access Driveway. After the Developer ceases being responsible to arrange for the maintenance and improvement of the Access Driveway, the cost of all future expenses and maintenance costs for the Access Driveway shall be the responsibility of and shall be paid by the Owners of the four (4) Lots contiguous to the Access Driveway, provided that no Owner shall be responsible for any charges for maintenance, repair or replacement of the Access Driveway unless at least three (3) of the four (4) Owners who own Lots adjacent to the Access Driveway have agreed in writing to pay such charges prior to the time such charges are incurred.
- (iii) The Developer does grant to each Owner of a Lot, and that Owner's heirs, successors and assigns, a perpetual non-exclusive easement for ingress and egress and for public utilities over and across the Access Driveway with the understanding and knowledge that each Lot Owner, by virtue of his acceptance of ownership interest in the portion of the Access Driveway contiguous to each Monte Diego Lot, shall be bound by this grant of easement and shall be deemed to have joined in and conveyed an easement for ingress and egress and for public utilities over the Access Driveway as set forth herein.

## ARTICLE VIII

O.R. 1238 PG 0119

## 8.1 Easements.

(a) Developer reserves for themselves, their successors and assigns, a right-of-way and easement to erect, maintain and use utilities, electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas and water lines or other public conveniences or utilities, on, in and over the ten feet (10') along the South property line of each Lot. In addition, an easement for utilities shall lie on, in and over the Access Road as defined in Paragraph 2.6 above. Owners may be permitted to encroach upon such easements with landscaping, driveways, fences, sidewalks, paths and other improvements so long as, in the sole judgment of the Developer, for such improvements shall not interfere with the provision operation, repair and replacement of the utilities, if any, contained within the reserved easements.

(b) In addition, Developer hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Property so long as Developer shall own any portion of Monte Diego. The easements granted by Developer shall not structurally weaken any improvements or unreasonably interfere with enjoyment of the Common Property.

(c) Developer reserves for themselves, their successors and assigns, an exclusive easement for the installation and maintenance of radio and television cables within the rights-of-way and easement areas referred to herein.

(d) Developer reserves for themselves, their successors and assigns, a free and perpetual easement over the Access Driveway, which is described in Official Records Book 1208, Page 484, of the Public Records of St. Johns County, Florida, for ingress and egress over, across, upon, and through said easement for the benefit of the Owners, their successors, assigns, servants, employees, visitors, and licensees, and for erecting, maintaining, and using utilities, electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas and water lines, or other public conveniences or utilities on, in, or over the thirty feet (30') wide Access Driveway extending from County Road 203 West along the North property line of each Lot.

## ARTICLE IX

## ENFORCEMENT RIGHTS

9.1 Enforcement. If any person or entity shall violate or attempt to violate any of these Covenants, Conditions and Restrictions, it shall be lawful for the Developer, any Owner, or group of Owners, to (1) institute proceedings at law for the recovery of damages, or (2) maintain a proceeding in equity for the purpose of preventing, or for the enjoining of, all or any such violations or attempted violations. Failure by the Developer, any Owner, or group of Owners, to enforce any Covenant, Condition or Restriction herein contained shall not at any time be deemed a waiver or estoppel of the right to enforce the same thereafter. Any person or persons, including without limitation, Developer, or any Owner or group of Owners, having rights hereunder who shall prevail in bringing an action to enforce these Covenants, Conditions and Restrictions shall, in addition to injunctive relief and damages for the breach or violation of any provision hereunder, be entitled to recover reasonable attorneys' fees and all costs incurred in the investigation preliminary to the institution of proceedings, as well as the cost of institution and prosecution of such proceeding through a judgment, and all appellate levels, and in all administrative or agency proceedings. The rights to enforce the Covenants, Conditions and Restrictions, as enumerated in this

O.R. 1238 PG 0120

Declaration, shall be cumulative and in addition to and not in lieu of all other provisions and rights to enforce these Covenants, Conditions and Restrictions as contained in other sections of this Declaration.

IN WITNESS WHEREOF, the Developer has caused these presents to be executed as required by the law on this, the day and year first above written.

Witnesses: PO 711, Ponte Vedra, FL  
Phillips (G. Phillips) 32004  
Charles W. Lawrence Charles W. Lawrence  
9748 N. MacArthur Ct.  
Jax., Fl. 32246

DEVELOPER

Derick R. Woolverton

DEVELOPER

Phillips (G. Phillips)  
Charles W. Lawrence Charles W. Lawrence  
9748 N. MacArthur Ct.  
Jax., Fl. 32246

Mark S. Woolverton

STATE OF FLORIDA )  
COUNTY OF St. Johns ) :ss

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of April, 1997, by Derick R. Woolverton.

John H. Wilbur  
Notary Public, State of Florida  
Commission No. CC 618982  
My Commission Exp. 4/6/2001  
Banded Through Fla. Notary Service & Bonding Co.  
STATE OF FLORIDA

John H. Wilbur  
Notary Public

COUNTY OF St. Johns ) :ss

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of April, 1997, by Mark S. Woolverton.

John H. Wilbur  
Notary Public, State of Florida  
Commission No. CC 618982  
My Commission Exp. 4/6/2001  
Banded Through Fla. Notary Service & Bonding Co.

John H. Wilbur  
Notary Public

FILE: 24392

O.R. 1238 PG 0121

## EXHIBIT "A"

A PARCEL OF LAND LYING IN SECTION 11, TOWNSHIP 4 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT A POINT WHERE THE NORTHERLY BOUNDARY OF SECTION 11 AFOREMENTIONED IS INTERSECTED BY THE EASTERLY BOUNDARY OF THE RIGHT OF WAY OF ST. JOHNS COUNTY ROAD #203 (FORMERLY KNOWN AS FLORIDA STATE ROAD #140 AND AS FLORIDA STATE ROAD #78) AND RUN THENCE SOUTH THIRTEEN DEGREES FIVE MINUTES EAST (S. 13° 05'E.) ALONG THE EASTERLY BOUNDARY OF SAID COUNTY ROAD RIGHT OF WAY KEEPING PARALLEL TO AND THIRTY-THREE (33) FEET NORTHEASTERLY FROM THE CENTER OF THE PAVEMENT WHEN MEASURED AT RIGHT ANGLES THERETO, A DISTANCE OF ONE THOUSAND FIVE HUNDRED SIXTY-THREE AND FIVE-TENTHS (1563.5) FEET; RUN THENCE SOUTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES WEST (S. 76° 55'W.) AND AT RIGHT ANGLES TO THE CENTER LINE OF SAID COUNTY ROAD, A DISTANCE OF SIXTY-SIX (66.0) FEET TO THE WEST SIDE OF THE RIGHT OF WAY OF ST. JOHNS COUNTY ROAD #203 FOR A POINT; THENCE CONTINUE SOUTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES WEST (S. 76° 55'W.) A DISTANCE OF TWO HUNDRED THIRTY-TWO (232.0) FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN SOUTH THIRTEEN DEGREES FIVE MINUTES EAST (S. 13° 05'E.) A DISTANCE OF TWO HUNDRED (200.0) FEET TO A POINT; THENCE SOUTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES WEST (S. 76° 55'W.) A DISTANCE OF ONE HUNDRED SEVENTY-FIVE (175.0) FEET TO A POINT; THENCE NORTH THIRTEEN DEGREES FIVE MINUTES WEST (N. 13° 05'W.) A DISTANCE OF ONE HUNDRED THIRTY (130.0) FEET TO A POINT; THENCE NORTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES EAST (N. 76° 55'E.), A DISTANCE OF SEVENTY-FIVE (75.0) FEET TO A POINT; THENCE NORTH THIRTEEN DEGREES FIVE MINUTES WEST (N. 13° 05'W.), A DISTANCE OF SEVENTY (70.0) FEET TO A POINT; THENCE NORTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES EAST (N. 76° 55'E.), A DISTANCE OF ONE HUNDRED (100.0) FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO THAT CERTAIN EASEMENT AS RECORDED IN OFFICIAL RECORDS VOLUME 1208, PAGE 484 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

## SUBJECT TO THE FOLLOWING ELECTRICAL EASEMENT

A PARCEL OF LAND LYING IN SECTION 11, TOWNSHIP 4 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT A POINT WHERE THE NORTHERLY BOUNDARY OF SECTION 11 AFOREMENTIONED IS INTERSECTED BY THE EASTERLY BOUNDARY OF THE RIGHT OF WAY OF ST. JOHNS COUNTY ROAD #203 (FORMERLY KNOWN AS FLORIDA STATE ROAD #140 AND AS FLORIDA STATE ROAD #78) AND RUN THENCE SOUTH THIRTEEN DEGREES FIVE MINUTES EAST (S. 13° 05'E.) ALONG THE EASTERLY BOUNDARY OF SAID COUNTY ROAD RIGHT OF WAY KEEPING PARALLEL TO AND THIRTY-THREE (33) FEET NORTHEASTERLY FROM THE CENTER OF THE PAVEMENT WHEN MEASURED AT RIGHT ANGLES THERETO, A DISTANCE OF ONE THOUSAND FIVE HUNDRED SIXTY-THREE AND FIVE-TENTHS (1563.5) FEET; RUN THENCE SOUTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES WEST (S. 76° 55'W.) AND AT RIGHT ANGLES TO THE CENTER LINE OF SAID COUNTY ROAD, A DISTANCE OF SIXTY-SIX (66.0) FEET TO THE WEST SIDE OF THE RIGHT OF WAY OF ST. JOHNS COUNTY ROAD #203 FOR A POINT; THENCE CONTINUE SOUTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES WEST (S. 76° 55'W.) A DISTANCE OF TWO HUNDRED THIRTY-TWO (232.0) FEET TO A POINT; THENCE SOUTH THIRTEEN DEGREES FIVE MINUTES EAST (S. 13° 05'E.), A DISTANCE OF THIRTY (30.0) FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN SOUTH THIRTEEN DEGREES FIVE MINUTES EAST (S. 13° 05'E.) A DISTANCE OF FIVE (5.0) FEET TO A POINT; THENCE SOUTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES WEST (S. 76° 55'W.) A DISTANCE OF FIVE (5.0) FEET TO A POINT; THENCE NORTH THIRTEEN DEGREES FIVE MINUTES WEST (N. 13° 05'W.), A DISTANCE OF FIVE (5.0) FEET TO A POINT, THENCE NORTH SEVENTY-SIX DEGREES FIFTY-FIVE MINUTES EAST (N. 76° 55'E.), A DISTANCE OF FIVE (5.0) FEET TO THE POINT OF BEGINNING.

*DK*  
*Derick Woolverton*  
*P.O. Box 391*  
*1/19/99*  
*32004*

Public Records of  
St. Johns County, FL  
Clerk# 99008841  
O.R. 1388 PG 1725  
02:44PM 02/25/1999  
REC \$53.00 SUR \$7.00

AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF MONTE DIEGO

(DEED RESTRICTIONS)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MONTE DIEGO is made this 20<sup>th</sup> day of January, 1999, by Derick R. Woolverton and Mark S. Woolverton ("Developer") and John P. Bernard and Charlotte K. Bernard ("Owner")

W I T N E S S E T H :

WHEREAS, Developer and Owner are the owners of that certain real property located in St. Johns County, Florida, known as Monte Diego, as is more particularly described on Exhibit A, attached hereto, and made a part hereof, hereinafter referred to as "Monte Diego". Developer wishes to record this "Declaration of Covenants, Conditions and Restrictions", hereinafter referred to as the "Declaration", for the purpose of providing a common plan, or scheme of development of Monte Diego and for the purpose of aiding in the establishment and maintenance of an exclusive residential area of the highest quality for the maximum benefit and enjoyment of its residents.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, Developer and Owner declare as follows:

ARTICLE I

The Developer and Owner intend that all of the lands located in Monte Diego, as described on Exhibit A, be held, sold and conveyed subject to the conditions, covenants, restrictions and other provisions contained in this Declaration, which it acknowledges are for the purposes of protecting the value and desirability of, and which shall run with Monte Diego and be binding upon all parties having any right, title or interest therein or any portion thereof, their respective heirs, successors and assigns, and which shall enure to the benefit of each Owner as such term is defined in this Declaration.

ARTICLE II

DEFINITIONS

2.1 "Developer" means Derick R. Woolverton and Mark S. Woolverton, Owners of Monte Diego, and such of their successors and assignees as may be designated by them as a developer by an instrument recorded in the public records of St. Johns County, Florida.

2.2 "Monte Diego" or "Property" shall mean the property fronting State Road 203 in St. Johns County, Florida, as described on Exhibit A hereof. "Lot" means any one of the four (4) lots, which together with the remaining three (3) lots constitute Monte Diego.

2.3 "Owner" means the record owner, whether one or more persons, of the fee simple title to one or more of the lots in Monte Diego, including contract sellers, but excluding any other person holding such fee simple title merely as security for the performance of an obligation.

2.4 "Person" means any natural person or artificial legal entity, unless the context expressly requires otherwise.

2.5 "Dwelling Unit" means and refers to any single family residence built upon a lot in Monte Diego, including attached or detached residences.

*\*60.00*

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2.6 "Access Driveway" means the access easement from Ponte Vedra Boulevard (a/k/a County Road 203) to the property providing ingress and egress to the Monte Diego lots, more particularly described in the Easement, which is recorded in the Official Records Book 1208, Page 484 of the public records of St. Johns County, Florida.

### ARTICLE III

#### MAINTENANCE AND USE RESTRICTIONS

3.1 Only one Dwelling Unit including its accessory structures, shall be erected, constructed, placed or maintained on a Lot.

3.2 No Dwelling Unit erected on a Lot shall exceed thirty-five (35) feet above grade in height. The first (1st) living floor of the main structure of any Dwelling Unit on a Lot shall be not less than twelve hundred (1,200) square feet, exclusive of porches, garages and pool areas.

3.3 Other than a Dwelling Unit as described in Section 3.2 above, no building except a garage or accessory structures may be erected on a Lot and no structure of a temporary nature or character shall be used as a residence. If a detached garage or accessory structure is built, either simultaneously with or subsequent to the erection of the Dwelling Unit, the same shall be of the same kind of materials as the construction of the dwelling and shall be substantial and shall conform architecturally with the Dwelling Unit.

3.4 No commercial trade or activity shall be carried on upon a Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

3.5 No other building or structure shall be moved onto a Lot or property subject to this Declaration, it being the intent of this Declaration that any and all buildings or structures on a Lot shall be constructed thereon.

3.6 No animals, livestock or poultry of any kind shall be raised, bred or kept on a Monte Diego Lot, except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Pets shall be kept in fenced areas or on leashes when out of doors.

3.7 No sign of any kind shall be displayed to the public view on a Lot except that there may be one (1) sign of not more than one square foot, advertising the Lot for sale or rent, or a sign used by a builder to advertise the Lot during the construction and sales period. The sign shall be removed as soon as the Lot is sold. Any time the Lot is offered for sale, the Owner shall have the right to use a sign as described in this section to advertise the sale.

3.8 All of the rights of the Developer, in connection with the enforcement of any portion of this Declaration shall extend to their successors and assigns.

3.9 Street mailboxes shall be of a type consistent with the character of Lot and shall be placed and maintained to complement the houses in the neighborhood. At such time as door postal service is available, Owners shall be required to have mailboxes attached to the main dwelling Unit, and street mailboxes shall be removed within ten (10) days of commencement of such door postal service. All mailboxes shall be subject to the written approval of the Developer before installation.

3.10 Stationary outside clotheslines and clothes hanging devices such as lines, poles or frames are not permitted on a Lot

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unless completely shielded from the view of persons on any adjacent lot.

3.11 (a) Fences, boundary walls and hedges shall not exceed four (4) feet in height if located from the front property line to the back building line of the main structure, and shall not exceed four (4) feet in height if located from the back building line to the rear property line.

(b) Fences and walls are not permitted in the front yards of Lots 1, 2 and 3 of Monte Diego. Fences and walls are not permitted in the front yard of Lot 1 or in the side yard that is adjacent to Ponte Vedra Boulevard (County Road 203). Fences and walls not to exceed four feet (4') in height may be installed along the property lines of Lots 1, 2 and 3, except as provided in this Paragraph 3.11. Fences and walls not to exceed six feet (6') may be installed as to Lots 1, 2, 3 and 4 along the southerly most property line of the Lot.

(c) No fence may be located within one hundred twenty feet (120') of the eastern most property line or within seventy feet (70') south of the northern boundary or within sixty feet (60') from the northeast corner of Lot 4.

(d) Green or black vinyl factory coated chain link fencing may be used on Lots. Other fencing material may be used only with the written consent of the Developer. No inserts or coverages may be installed on a Lot other than live plant material.

(e) Walls may be constructed or installed on a Lot with the written consent of the Developer.

3.12 No commercial vehicles of any type shall be permitted to remain overnight on the property of a private dwelling within Monte Diego unless garaged or completely enclosed in a fenced, walled or hedged row so that no other Owner can view such vehicle from the Access Driveway or any adjacent Lot and so that it cannot be viewed from Ponte Vedra Boulevard or from the marsh, except that vehicles as may be used in the development and building on a Lot are excluded from this subparagraph.

3.13 No unlicensed or uninsured motor vehicles of any kind shall be permitted to remain overnight on a Lot, unless garaged. No house trailer shall be permitted to stay on a Lot or public right-of-way, unless completely garaged.

3.14 No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on a Lot except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction to completion of the improvement in which same is to be used.

3.15 No exterior television, radio, microwave, or other antenna shall be installed unless fully enclosed or shielded from public view and the view of all neighboring Lots, streets and common areas adjacent to said Lot.

3.16 No above ground fuel tanks or storage tanks, and no above ground swimming pools of any kind, shall be installed, placed or maintained on any Lot in Monte Diego.

3.17 All residential driveway culverts shall be constructed of twelve inch by eighteen inch (12" x 18") reinforced concrete with reinforced concrete headwalls.

3.18 No T-1-11 siding or any other plywood product may be used for exterior finish on Dwelling Units or on any other building erected on a Lot, except on soffits. The only Stucco finishes that

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may be used for exterior finish are flat finish in gray or white color, or finish using coquina, oyster or scallop shells with final color being gray, pale or light pink or white. No aluminum siding may be used.

3.19 All finished roof angles are to be twenty-eight degrees (28°) or greater.

3.20 The following setbacks shall govern the Monte Diego Lots:

- (a) Lot 1
  - (i) Setback line from Ponte Vedra Boulevard (State Road 203) - twenty feet (20')
  - (ii) West setback line shall be ten feet (10') and the rear yard setback - forty feet (40')
  - (iii) The front setback line from the North Property Line - seventy feet (70').
- (b) Lots 2, 3 and 4
  - (i) Side yard setback - ten feet (10')
  - (ii) Rear yard setback - forty feet (40')
  - (iii) Front yard setback - seventy feet (70')

These setbacks include: Dwelling Unit, garage, screened or unscreened porches, outbuildings, sheds, boats, campers, vehicles, jet skis, trailers, motorhomes, screened pool enclosures, or any manmade object or material which exceeds four feet (4') in height.

3.21 No house or other building may be moved onto a Lot.

3.22 No alteration of ponds, lake or marsh on a Lot shall be permitted without the written consent of Developer, or their authorized agents.

3.23 Tennis courts may be constructed on the property of any Lot at any time, provided there is a twenty foot (20') setback as to the tennis court's location from any lake or marsh. The perimeter of the tennis court must be landscaped to provide fifty percent (50%) screening, within three (3) years after the commencement of construction of the tennis court, for all adjacent, existing or future homes on Ponte Vedra Boulevard and for all Access Driveways and roads. An Owner who constructs a tennis court shall use evergreen container plant materials with at least seven (7) gallon container size and may incorporate existing vegetation, provided it is evergreen. The plant material to be used for landscaping the tennis court shall have a minimum height of four feet (4') along the sides of the tennis court, which shall have four foot (4') fencing. Wherever the tennis court has five foot (5') fencing, the landscape plant material shall have a minimum height on the ends of the tennis court of five feet (5') or greater and along any portion of the fence which exceeds four feet (4'). Lights for the tennis court shall not be kept on after 9:00 P.M. any day of the week. All fencing used shall have green vinyl factory coating.

3.24 All legal fees, court costs or other costs which are necessary to enforce deed restrictions and covenants shall be paid by the violator, and the venue for any such action is St. Johns County, Florida.

3.25 No tree over five inch (5") in diameter, measured twenty-four inches (24") up from the base of the tree may be cut,

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poisoned, excavated or tampered with in any way, which could or may cause damage or death, except within six feet (6') of the footprint of the house, garage or inside edge of the tennis courts, decks or pool. Any tree which is destroyed or is caused to lose more than forty percent (40%) of the size of its original canopy must be replaced at the expense of the Owner with a sixty (60) gallon tree or an eight inch (8") diameter or larger tree of like species. The Owner is responsible for the survival of any replacement tree.

3.26 Trees may be removed for the installation of a driveway, provided that no tree (except a palm tree) with a ten inch (10") diameter trunk measured from twenty-four inches (24") up from its base is destroyed. If the installation of a driveway will cause the destruction of a tree, as described herein, the driveway shall be and must be rerouted around the tree with a minimum of thirty-six inches (36") from the base of the tree to the edge of the driveway. During construction all trees (except palm trees) with an eight inch (8") diameter measured twenty-four inches (24") from the base of the tree, which are located within fifty feet (50') of the outside edge of the Dwelling Unit and garage footprint or within twelve feet (12') of the driveway must be protected with guard rails. Guard rails are to be located at the drip line of the tree or at a minimum of twelve feet (12') from the trunk, whichever is greater, from the base of the tree. Trees located within ten feet (10') of the Dwelling Unit, garage, swimming pool or any other building on a Lot may have guard rails four feet (4') out from the base. No building material may be stored inside the guard rails. No dumping of cement, concrete, mortar or any other material which can change the PH of the soil, or alter the soil in any way, will be permitted on a Lot.

3.27 Guard rails are to be constructed in the following manner: Posts are to be a minimum of three and one-half inches by three and one-half inches by three feet long (3 1/2" x 3 1/2" x 3') pine or equivalent material and must be buried three feet (3') in the ground every ten feet (10'). Rails must be a minimum of three and one-half inches by one and one-half inches (3 1/2" x 1 1/2") in size, three feet above existing grade with minimum height of four and one-half feet (4 1/2") from existing grade. All guard rails must be installed one (1) week prior to ground breaking for foundation work, pool or driveways.

3.28 No recreational vehicle or vehicles shall be parked on a Lot so as to be visible from any adjacent property or roadway.

3.29 On Monte Diego Lot 4, no canoes or any other object that floats on water may be located, stored, or attached in any way to the bank of the pond located on the Lot. Watercraft or floating or submerged objects shall not be left in any pond or lake within twenty feet (20') of the bank of the pond or lake or in sight.

3.30 The pond or body of water on and adjacent to Monte Diego Lot 4 shall not be used for any purpose including but not limited to swimming or fishing for aquatic grass fish. The right to fish for other than aquatic grass fish in the pond or body of water on or adjacent to Monte Diego Lot 4 is limited to the Owner and the Owner's immediate family.

3.31 All aerators, pumps, water storage tanks and plumbing in connection with the water supply for the Dwelling Units on the Monte Diego Lots for the Dwelling Units' drinking water, irrigation or air conditioning, water softener units, and pool equipment, as well as the above ground equipment (collectively "Above Ground Equipment"), shall be located next to (within eight feet (8')) or inside the main Dwelling Unit structure, which shall include the garage. Only wells and shut-off valves may be located wherever necessary in order to meet the Florida Department of Health and Rehabilitative Services requirements. All Above Ground Equipment, as identified above, shall be screened in such a manner that the Above Ground Equipment shall not be visible from any other Lot.

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3.32 As to each Monte Diego Lot, a minimum of fifteen percent (15%) ("15% Limitation") of the existing vegetation shall remain undisturbed and unaltered at all time, except that dead vegetation and materials may be cleaned out and mulch may be used for esthetics and weed control. This fifteen percent (15%) obligation to have fifteen percent (15%) of existing vegetation undisturbed and unaltered applies to native ferns, palmetto, yaupon holy, cedar, bay bushes and trees, magnolias, live oak, laurel oak, maple, pine and other native species of plants and trees.

Specifically as to Lot 1, this 15% Limitation applies as follows: Seven and one-half percent (7 1/2%) of the 15% Limitation shall apply along the Access Driveway, and the remaining seven and one-half percent (7 1/2%) along Ponte Vedra Boulevard, it being the intent of this provision that the existing vegetation in the total amount of fifteen percent (15%) must remain in place on the designated portions of Lot 1. On Lots 2 and 3, the 15% Limitation shall apply so as to insure that eight percent (8%) of the existing vegetation shall remain undisturbed and unaltered along the Access Driveway, and seven percent (7%) wherever the Owner may determine. On Lot 4, the 15% Limitation shall apply so as to insure that eight percent (8%) of the existing vegetation shall remain undisturbed and unaltered along the eastern one hundred feet (100') of Lot 4, and the other seven percent (7%) of the 15% Limitation in whatever portion of the Lot as may be determined by the Owner.

3.33 The topography of each Lot shall not be changed, modified or altered in any way so as to create excess water, soil erosion or water on the Access Driveway or upon the landscape furnished by the Developer. In addition, the topography may not be changed, modified or altered in any way so as to adversely affect the draining system, the retention pond or adjoining Lots. The topography of each Lot shall not be changed, modified or altered in any way so as to create or permit water to collect along the edge of the Access Driveway in any manner so as to adversely affect the Access Driveway.

3.34 Each Lot Owner shall be responsible and liable at all times for any damage to the Access Driveway, landscaping or signage during the period in which the Owner is preparing, modifying or landscaping a Lot or constructing or remodeling a Dwelling Unit or related structures.

#### ARTICLE IV

##### USE RESTRICTIONS AND EASEMENTS

4.1 Use. All Lots shall be used exclusively for single family residential purposes. Lots shall not be subdivided so as to reduce their size without approval of the Developer. No commercial activity shall be performed on a Lot with the exception of the Developer's or its designees, sales, model homes, marketing and construction activities. There shall be no change to the natural condition of a Lot without the approval of the Developer, provided that the Owner or his designee may clear, excavate or fill the footprint of the Dwelling Unit, including up to an additional five feet (5') beyond the footprint of the Dwelling Unit.

4.2 Minerals. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon a Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on a Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on a Lot.

4.3 Hazardous Materials. No hazardous materials or toxic materials or pollutants shall be discharged, maintained, stored, released or disposed of on any Lot except in strict compliance with applicable rules and regulations. Flammable, combustible or explosive fluids, materials of substances for ordinary household

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use may be stored or used on any Lot subject to strict safety codes and shall be stored in containers specifically designed for that purpose.

4.4 Nuisances. Nothing shall be done or maintained on a Lot or in any Dwelling Unit, which may be or becomes an annoyance or nuisance to the adjacent Owners of a Lot. Any activity on a Lot or in a Dwelling Unit which interferes with television, cable or radio reception of another Lot or Dwelling Unit shall be deemed a nuisance and a prohibited activity. In the event of a dispute or questions as to what may be or become a nuisance, such dispute or questions shall be submitted to the Developer and the written decision of the Developer shall be dispositive of such a dispute or question.

4.5 The Owner of a Lot agrees to pay annually, or to pay at such other period from time to time as Developer may determine, fees and expenses to include electricity charges for water control with respect to flooding and filling and for the regular maintenance as well as repair to the surface water or storm water management system related to the Monte Diego property.

#### ARTICLE V

##### LIABILITY - GENERALLY

5.1 General Provisions. Notwithstanding anything contained in this Declaration, the rules and regulations of the Developer or any other document governing or binding the Developer ("Property Documents"), the Developer will not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Property, including without limitation, residents, their families, guests, invitees, agents, servants, contractors or subcontractors nor for any property owned by such persons.

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

(a) It is the express intent of this Declaration and the Property Documents that the various provisions of the Declaration and the Property Documents which are enforceable by the Developer and which govern or regulate the use of the Lots in Monte Diego have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Monte Diego Property and the value thereof.

(b) The Developer is not empowered to enforce or insure compliance with the laws of the United States, the State of Florida or the County of St. Johns or any other jurisdiction or to prevent tortious activities by Owners or third parties.

(c) The provisions of this Declaration setting forth the uses of Developer which relate to health, safety or welfare will be interpreted and applied only as limitations on the uses of the Lots and not as creating a duty of the Developer to protect or further the safety or welfare of the Owner or third parties.

5.3 Owner Covenant. Each Owner, his heirs, successors and assigns (by virtue of his acceptance of title and each other person or entity having an interest or lien upon or making the use of, any portion of Monte Diego) by virtue of accepting such interest or lien or by making use thereof, will be bound by this Section and will be deemed to have automatically waived any and all rights, claims, demands or causes of action against the Developer arising from or connected with any manner for which the liability of the Developer has been disclaimed in this Paragraph.

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## ARTICLE VI

## SEVERABILITY

6.1 Invalidation of any particular provision of this Declaration by judgment or court order shall not affect any other provision, all of which shall remain in full force and effect.

## ARTICLE VII

## 7.1 Access Driveway.

(a) Each Owner, his heirs, successors and assigns, by virtue of his acceptance of title, and each other person or entity having an interest or lien upon or making use of any portion of the Access Driveway, hereby agrees that:

- (i) The maintenance cost and charges for the Access Driveway, including but not limited to mowing of grass, weeding of beds, removal of trash and debris, and repairs and replacement of the Access Driveway, shall be paid for with each Owner paying twenty-five percent (25%) of such cost. Each Owner consents and agrees that the Developer shall do whatever is necessary, in the sole discretion of the Developer, to maintain the Access Driveway for a period of at least one (1) year after the Developer has sold three out of four Lots in Monte Diego, provided that the Developer shall not be responsible for maintenance of the Access Driveway, which is required as a result of actions by or damages caused by the Owners, their guests or other third parties. Thereafter, each Owner hereby agrees that as to any cost or charges incurred by Developer, each Owner shall pay prorata twenty-five percent (25%) of all such expenses or charges.
- (ii) There are four (4) Monte Diego Lots contiguous to the Access Driveway. The Developer reserves the right, at the sole discretion of the Developer, to pave the Access Driveway. After the Developer ceases being responsible to arrange for the maintenance and improvement of the Access Driveway, the cost of all future expenses and maintenance costs for the Access Driveway shall be the responsibility of and shall be paid by the Owners of the four (4) Lots contiguous to the Access Driveway, provided that no Owner shall be responsible for any charges for maintenance, repair or replacement of the Access Driveway unless at least three (3) of the four (4) Owners who own Lots adjacent to the Access Driveway have agreed in writing to pay such charges prior to the time such charges are incurred.
- (iii) The Developer does grant to each Owner of a Lot, and that Owner's heirs, successors and assigns, a perpetual non-exclusive easement for ingress and egress and for public utilities over and across the Access Driveway with the understanding and knowledge that each Lot Owner, by virtue of his acceptance of ownership interest in the portion of the Access Driveway contiguous to each Monte Diego Lot, shall be bound by this grant of easement and shall be deemed to have joined in and conveyed an easement for ingress and egress

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and for public utilities over the Access Driveway as set forth herein.

#### ARTICLE VIII

##### 8.1 Easements.

(a) Developer reserves for themselves, their successors and assigns, a right-of-way and easement to erect, maintain and use utilities, electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas and water lines or other public conveniences or utilities, on, in and over the ten feet (10') along the South property line of each Lot. In addition, an easement for utilities shall lie on, in and over the Access Road as defined in Paragraph 2.6 above. Owners may be permitted to encroach upon such easements with landscaping, driveways, fences, sidewalks, paths and other improvements so long as, in the sole judgment of the Developer, for such improvements shall not interfere with the provision operation, repair and replacement of the utilities, if any, contained within the reserved easements.

(b) In addition, Developer hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Property so long as Developer shall own any portion of Monte Diego. The easements granted by Developer shall not structurally weaken any improvements or unreasonably interfere with enjoyment of the Common Property.

(c) Developer reserves for themselves, their successors and assigns, an exclusive easement for the installation and maintenance of radio and television cables within the rights-of-way and easement areas referred to herein.

(d) Developer reserves for themselves, their successors and assigns, a free and perpetual easement over the Access Driveway, which is described in Official Records Book 1208, Page 484, of the Public Records of St. Johns County, Florida, for ingress and egress over, across, upon, and through said easement for the benefit of the Owners, their successors, assigns, servants, employees, visitors, and licensees, and for erecting, maintaining, and using utilities, electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas and water lines, or other public conveniences or utilities on, in, or over the thirty feet (30') wide Access Driveway extending from County Road 203 West along the North property line of each Lot.

#### ARTICLE IX

##### DEFINITIONS

"Surface Water or 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.

##### USE OF PROPERTY

##### Surface Water or Stormwater Management System

Each Lot Owner of Monte Diego shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water

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storage, conveyance, or other surface water or stormwater management capabilities as permitted by the St. Johns River Management District. The Lot Owner shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

**AMENDMENT**

Any amendment to the Covenants and Restrictions, which alter the surface water or 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.

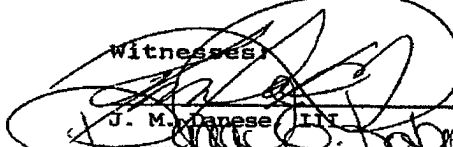

**ENFORCEMENT**

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 surface water or stormwater management system.

**ARTICLE X  
ENFORCEMENT RIGHTS**

10.1 **Enforcement.** If any person or entity shall violate or attempt to violate any of these Covenants, Conditions and Restrictions, it shall be lawful for the Developer, any Owner, or group of Owners, to (1) institute proceedings at law for the recovery of damages, or (2) maintain a proceeding in equity for the purpose of preventing, or for the enjoining of, all or any such violations or attempted violations. Failure by the Developer, any Owner, or group of Owners, to enforce any Covenant, Condition or Restriction herein contained shall not at any time be deemed a waiver or estoppel of the right to enforce the same thereafter. Any person or persons, including without limitation, Developer, or any Owner or group of Owners, having rights hereunder who shall prevail in bringing an action to enforce these Covenants, Conditions and Restrictions shall, in addition to injunctive relief and damages for the breach or violation of any provision hereunder, be entitled to recover reasonable attorneys' fees and all costs incurred in the investigation preliminary to the institution of proceedings, as well as the cost of institution and prosecution of such proceeding through a judgment, and all appellate levels, and in all administrative or agency proceedings. The rights to enforce the Covenants, Conditions and Restrictions, as enumerated in this Declaration, shall be cumulative and in addition to and not in lieu of all other provisions and rights to enforce these Covenants, Conditions and Restrictions as contained in other sections of this Declaration.

IN WITNESS WHEREOF, the Developer and Owner have caused these presents to be executed as required by the law on this, the day and year first above written.

Witnesses  
  
J. M. Danese, III  
  
Dana E. Robinson

DEVELOPER

  
Derick R. Wooliverton

OR1388PG1735

[Signature]  
J. M. Danese, III  
Dana E. Robinson

DEVELOPER

[Signature]  
Mark S. Woolverton

OWNER

[Signature]  
John P. Bernard

OWNER

[Signature]  
Charlotte K. Bernard

[Signature]  
Elizabeth G. Cant

[Signature]  
GAIL REAVES

STATE OF FLORIDA )  
COUNTY OF Duval ) :ss

The foregoing instrument was acknowledged before me this 20th day of January, ~~1998~~ 1999, by Derick R. Woolverton, who is personally known to me.



J. M. DANESE, III  
Notary Public, State of Florida  
My comm. expires Aug. 11, 2001  
Comm. No. CC 870931

[Signature]  
Notary Public

STATE OF FLORIDA )  
COUNTY OF Duval ) :ss

The foregoing instrument was acknowledged before me this 20th day of January, ~~1998~~ 1999, by Mark S. Woolverton, who has produced Drivers License as ID.



J. M. DANESE, III  
Notary Public, State of Florida  
My comm. expires Aug. 11, 2001  
Comm. No. CC 870931

[Signature]  
Notary Public

STATE OF FLORIDA North Carolina )  
COUNTY OF Guilford ) :ss

The foregoing instrument was acknowledged before me this 10th day of ~~January~~ February, 1999, by John P. Bernard, who produced Drivers License as Identification.



My Commission Expires September 17, 2001

[Signature]  
Notary Public

0R1388PG1736

STATE OF ~~FLORIDA~~ *North Carolina* )  
COUNTY OF *Cumford* ) :SS

The foregoing instrument was acknowledged before me this *10<sup>th</sup>*  
day of ~~January, 1998~~, by Charlotte K. Bernard, *who produced drivers*  
*license*  
*February, 1999*

*Russ A. Scott*  
Notary Public

**My Commission Expires September 17, 2001**

COPY

OR1388PG1737

EXHIBIT "A"

A parcel of land lying in Government Lots 1, 2, 3, and 4, Section 11, Township 4 South, Range 29 East, St. Johns County, Florida, said Parcel being more particularly described as follows:

For a point of reference commence at a point where the Northerly boundary of Section 11 aforementioned is intersected by the Easterly boundary of the Right of Way of St. Johns County Road #203 (formerly known as Florida State Road #140 and as Florida State Road #78) and run thence South thirteen degrees five minutes East (S. 13° 05' E.) along the Easterly boundary of said County Road Right of Way keeping parallel to and thirty-three (33) feet Northeasterly from the center of the pavement when measured at right angles thereto, a distance of one thousand five hundred sixty-three and five-tenths (1563.5) feet; run thence South seventy-six degrees fifty-five minutes West (S. 76° 55' W.) and at right angles to the center line of said County Road, a distance of sixty-six (66) feet to the West side of the Right of Way of St. Johns County Road #203 for a point of beginning.

From the point of beginning thus described run South thirteen degrees five minutes East (S. 13° 05' E.) along the West boundary of the Right of Way of said County Road keeping parallel to and thirty-three (33) feet Southwesterly from the center line of said road when measured at right angles thereto, a distance of two hundred (200.0) feet; run thence South seventy-six degrees fifty-five minutes West (S. 76° 55' W.) and at right angles to said County Road, a distance of eight hundred twenty (820.0) feet more or less to the Easterly Edge of the Guano River Marsh or Swamp; run thence in a Northerly direction following the Easterly edge of said marsh or swamp a distance of two hundred (200.0) feet more or less until a point is reached which bears South seventy-six degrees fifty-five minutes West (S. 76° 55' W.) from the point of beginning; run thence North seventy-six degrees fifty-five minutes East (N. 76° 55' E.) to the point of beginning.