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JAMES C. WATKINS, CLERK OF COURT  
LAKE COUNTY  
RECORDING FEES 281.00  
TRUST FUND 35.50

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Instrument Prepared By  
And After Recording Return  
To:

Gregg R. Lehrer, Esq.  
Gray, Harris & Robinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, Florida 32801

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made this 6~~th~~ day of May, 2003 by **EAGLE DUNES, LLC**, a Florida limited liability company ("Declarant") whose address is 86 Spring Vista Drive, Suite 200, DeBary, FL 32713.

**RECITALS:**

A. Declarant intends to encumber those lands described in **Exhibit "A"**, attached hereto and by this reference made a part hereof (the "Property") with this Declaration.

B. Declarant intends to develop the Property as a residential community known as "Eagle Dunes".

C. Declarant desires to preserve and enhance the values and quality of life in the Property and to provide for the maintenance of certain areas and improvements for the benefit of the Property.

E. Declarant intends to form a non-profit entity to own, maintain or administer certain property, to administer and enforce this Declaration, and to collect and disburse assessment funds.

**DECLARATIONS:**

NOW, THEREFORE, Declarant declares that the Property is and shall be owned, improved, transferred, held and occupied subject to this Declaration.

**ARTICLE I**

**DEFINITIONS**

When used in this Declaration, the following words shall have the following meanings:

(a) "Area of Common Responsibility" shall mean and refer to any land or improvement located in or near the Property which is not intended to be owned by the Association but which is intended to be improved, maintained or operated by the Association in the manner and to the extent determined from time to time by the Board. Areas of Common Responsibility may be designated by this Declaration, an amendment to this Declaration, a contract entered into by the Association, or by a decision of the Board. The foregoing duties and prerogatives of the Association are subject to the terms of Article IV, Section 6, regarding potential implementation of one or more municipal service taxing units,

municipal service benefit units, or similar mechanisms to assume responsibility for and collect the funds necessary to pay the costs of any of the foregoing or other services.

(b) "Articles" shall mean and refer to the Articles of Incorporation of the Association.

(c) "Association" shall mean and refer to the Eagle Dunes Homeowners Association, Inc., a Florida corporation not for profit, and its successors and assigns.

(d) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(e) "Builder" shall mean a party who is in the business of purchasing Lots from Declarant for the purpose of constructing a Dwelling thereon for immediate resale, including but not limited to TOUSA Homes, Inc. and D.R. Horton, Inc.

(f) "Bylaws" shall mean and refer to the Bylaws of the Association.

(g) "Common Expense" shall mean and refer to the expense of operating the Association and meeting the costs incurred by the Association in performing its duties and in exercising its prerogatives, including without limitation costs incurred for operation, maintenance, insurance and improvement of the Common Property and Areas of Common Responsibility.

(h) "Common Property" shall mean and refer to the real and personal property from time to time intended to be owned, operated and maintained by the Association, and devoted to the use and enjoyment of all Members of the Association, all at Common Expense. The landscaping, irrigation and walls, signage and signage lighting within the medians and other portions of Sorrento Hills Drive shall be Common Property if assigned by Declarant to the Association.

(i) "Declarant" shall mean and refer to Eagle Dunes, LLC, its successors and assigns. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment.

(j) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as amended or supplemented.

(k) "District" shall mean and refer to the Water Management District, an agency created pursuant to Chapter 373, Florida Statutes.

(l) "Dwelling" shall mean and refer to a single family residence located on a Lot.

(m) "Eagle Dunes Health and Racquet Club" shall mean and refer to the recreational facility located on the Property and owned by the Association for the use and benefit of the Members. Each Owner shall be a member of the Eagle Dunes Health and Racquet Club and agrees that membership dues shall be included in the Assessments charged to each Member.

(n) "Lot" shall mean and refer to each residential building site created by any recorded plat of the Property, or any portion thereof, including any Dwelling located thereon.

(o) "Master Surface Water Management System" means the overall system designed, constructed and implemented to control discharges caused by rainfall events, which system is intended to collect, convey, store, absorb, inhibit, treat, use or reuse surface water in order to prevent or reduce flooding, over drainage, environmental degradation, and water pollution, and to control the quality and quantity of discharges from the system, all as permitted by the District pursuant to Chapter 40C-4, 40C-40, 40C-42, Florida Administrative Code.

(p) "Member" shall mean and refer to each Member of the Association as provided in Article III, Section 2.

(q) "Owner" shall mean and refer to the record holder, whether one or more persons or entities, of fee simple title to each Lot with the Property. Notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title to a Lot pursuant to foreclosure proceeding or a conveyance in lieu of foreclosure. All owners of a single Lot shall be treated for all purposes as a single Owner, irrespective of whether such ownership is joint, in common, or tenancy by the entirety.

(r) "Permitted Users" shall mean and refer to (i) each person residing in a Dwelling with an Owner, (ii) an Owner's tenants, agents, guests and invitees, (iii) the agents, guests and invitees of each tenant of an Owner and the persons residing in a Dwelling with such tenant, and (iv) a contract purchaser of a Lot residing in a Dwelling located on such Lot.

(s) "Property" shall mean and refer to the lands described on Exhibit "A" to this Declaration.

(t) "Tract" shall mean and refer to each tract created by any recorded plat of the Property or any portion thereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Subject to This Declaration. The Property shall be improved, held, transferred, encumbered and occupied subject to this Declaration.

## ARTICLE III

### THE ASSOCIATION

Section 1. The Association. The Association shall be a nonprofit corporation. The Association shall have the power to do all lawful things which may be authorized, assigned, required or permitted to be done by this Declaration, the Articles, or the Bylaws, and to do

and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of the Property, the Common Property and Areas of Common Responsibility. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (1) a Member of the Association, or (2) an agent of Declarant. The Board, and such officers as the Board may appoint, shall conduct the affairs of the Association.

Section 2. Membership. Each Owner (including Declarant) shall be a Member of the Association. The Association membership of each Owner shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of title to a Lot shall operate automatically to transfer to the new Owner the membership in the Association appurtenant to that Lot.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A: Class "A" Members shall be all Owners with the exception of the Declarant and Builders and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine.

(b) Class B: Class "B" Member(s) shall be the Declarant and Builders and they shall be entitled to three (3) votes for each Lot owned by them in the Property. The Class "B" membership shall cease and be converted to Class "A" membership ("Turnover") on the happening of any of the following events, whichever occurs earlier:

- (i) When 75 percent of the Lots have been conveyed to an Owner; or
- (ii) January 1, 2010.

Upon the happening of any one of these events, Declarant shall call a special meeting of the Members to advise of the termination of Class "B" membership. From and after the happening of these events, whichever occurs earlier, the Class B members shall be deemed Class A members entitled to one (1) vote for each Lot in which they hold the interest required for membership.

Declarant shall be entitled to elect at least one member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the total Lots within the Property. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned voting interests in the same

manner as any other Owner, except for the purposes of reacquiring control of the Association or selecting the majority of the members of the board of directors.

Section 4. Multiple Owners. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. If joint or multiple Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote on behalf of a particular Lot, it shall thereafter be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot. If more than the appropriate number of votes are cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 5. Assignment of Declarant's Rights and Obligations. Any and all rights, powers and reservations of the Declarant may be assigned to any person, corporation or association which will assume the duties of the Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties the assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant herein. Further, the Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

#### ARTICLE IV

#### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Easements. The Association, each Owner (including Declarant) and each Owner's Permitted Users shall have a non-exclusive right and easement of use and enjoyment in and to the Common Property. Said right and easement shall be appurtenant to and pass with the title to each Lot, and shall include, without limitation, the following:

(a) Right-of-way for ingress and egress by vehicles and on foot through and across any streets, roads or walks in the Common Property for all lawful purposes; and

(b) Rights and easements to drain across the surface water drainage detention, retention and conveyance structures and areas in accordance with the Master Surface Water Management System and applicable District rules and permits, and to connect with, maintain and make use of utilities lines and facilities from time to time located within the Common Property; and

(c) Rights and easement to use and enjoy the Common Property for any purpose not inconsistent with this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, other easement interests in the Common Property, or law.

Section 2. Easement Restrictions. The rights and easements referenced in Section 1 above shall be subject to the following provisions:

(a) The right of the Association to suspend for up to sixty (60) days the right of an Owner or his Permitted Users or both to use the Common Property for violation of a published rule and regulation; provided, however, that any such suspension shall be in accordance with the procedures set forth in the Bylaws and as may be required by law. The foregoing shall not be construed to authorize the suspension of the right of an Owner or Permitted User to use the Private Roads for the purpose of ingress and egress to and from the Lot of such Owner.

(b) The right of Association to adopt at any time, and from time to time enforce, rules and regulations governing the use of the Common Property, and all related facilities at any time situated thereon.

(c) The right to the use and enjoyment of the Common Property and facilities thereon shall extend to all Permitted Users, subject to adopted rules and regulations of the Association.

(d) The right of the Declarant to permit such persons as Declarant shall designate to use the Common Property and all recreational facilities located thereon, if any.

Section 3. Delegation of Use of Common Property. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Property, to a Permitted User.

Section 4. Title to Common Property. Subject to Article XV below, Declarant shall convey to the Association fee simple title in and to the Common Property free and clear of all encumbrances except taxes for the current year, easements and restrictions of record, matters shown on the subdivision plat and this Declaration. Once conveyed to the Association, the Common Property may not be mortgaged or further conveyed without the consent of at least two-thirds (2/3) of the Owners (excluding Declarant); provided, however, if required by the City of Eustis, Florida incidental to the establishment of an MSTU/MSBU as described in Article III, Section 6, the Association shall dedicate to the City of Eustis, Florida for the uses and purposes set forth in this Declaration or in the subdivision plat so much of the Common Property then owned by the Association as shall be required by the City of Eustis, Florida, and, except as provided in Article XI or by law, no such dedication shall require the consent of any Owner, the Association, any mortgagee or other lien holder, or of anyone else.

Section 5. Extent of Easements. The rights and easements created in this Article III shall be governed by the following:

(a) Subject to any conflicting rights of Declarant and/or the Owners set forth in this Declaration, the Association shall be responsible for the exclusive management, control and maintenance of the Common Property.

(b) Declarant, until conveyance of title to the Association, and the Association thereafter, may reserve to itself or to grant or dedicate (subject to the terms of Article XI) to Declarant, any Owner, any governmental agencies and/or to any utility companies, easements and rights-of-way, over, under or through the Common Property for installation, use, maintenance and inspection of lines and appurtenances for public or private utilities, surface water drainage improvements and areas, or completion of the development. No improvement or material may be placed upon any such easement which may damage or interfere with the installation or maintenance of utilities or the easement area, alter or impede the direction or flow of drainage, or interfere with the Master Surface Water Management System.

(c) Declarant's rights reserved in this Declaration.

(d) Matters shown on any plat of the Property.

Section 6. Reservations.

(a) Declarant hereby reserves the following rights and easements over, under and through the Common Property: (i) rights-of-way and easements to install, maintain and use lighting, telecommunications, cable television, sewer, drainage and utility poles, wires, cables, conduits, pipes, lines, meters and other equipment and improvements necessary or convenient for the completion, marketing, use and enjoyment of the Property or any other portion of the Property annexed hereunder; (ii) the right to cut trees, bushes or shrubbery, make any gradings of the soil, and take any similar action reasonably necessary to provide economical and safe utility and drainage installation or to maintain reasonable standards of health, convenience, safety and appearance, (iii) the right to locate thereon wells, pumping stations and irrigation systems and lines, (iv) easement of ingress and egress for purposes of development, construction and marketing, and (v) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development and sale of the Property or any other portion of the Property annexed hereunder; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such easement, utility, equipment or service. Declarant also reserves the right to connect with and make use of the utility lines, gas lines and drainage improvements which may from time to time be in or along the streets and roads, or within the Common Property or platted easements. The easements and rights-of-way herein reserved shall continue in existence in favor of Declarant after conveyance of the Common Property to the Association or dedication to the City of Eustis, Florida until such time as Declarant has sold all Lots in the Property.

(b) Declarant also reserves a perpetual right and easement to irrigate the Common Property with treated effluent from a wastewater treatment facility. The benefit of this reservation shall inure to Declarant and its specifically designated successors and assigns, but not in favor of any other Owner and shall remain in effect whether or not Declarant owns any Lots in or lands adjacent to the Property.

Section 7. Delegation. Any Owner (including Declarant) may grant the benefit of any easement, right or privilege to Owner's Permitted Users for the duration of their tenancies or visits, but same shall not be construed to create any rights in the general public.

Section 8. MSTU/MSBU. Declarant or the City of Eustis, Florida may establish a municipal service taxing unit, municipal service benefit unit, or similar mechanism (sometimes referred to in this Declaration as "MSTU/MSBU"), to provide for operation, maintenance, construction or improvement of recreation, street lighting, drainage, sidewalk, wall, landscaping, open space, conservation, or other areas, improvements or facilities, or any other service or benefit to or for the Property authorized under the terms of this Declaration or the MSTU/MSBU, or by the applicable governmental authority. It is anticipated that the costs incurred by the MSTU/MSBU will be billed directly to the Owners or to the Association for subsequent assessment to the Owners and Lots.

## ARTICLE V

### INSURANCE

The Board may obtain fidelity bond coverage in its discretion. In addition, the Board may obtain insurance for insurable improvements on the Common Property, any Area of Common Responsibility, or on any easement benefiting the Owners or the Association, public liability policies covering the Association and Members for damage or injury caused by the negligence of the Association or any of its Members, guests or agents, directors' and officers' liability insurance, and any other types of insurance coverage as the Board may deem appropriate, with such insured, deductibles, provisions and coverage types and amounts as shall be determined by the Board. Premiums for insurance so obtained shall be Common Expense. The Association may self-insure against any risk.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Lien and Personal Obligation; Nonpayment.

(a) Declarant, for each Lot owned by it within the Property, and each Owner other than Declarant by acceptance of title to any Lot, whether or not it shall be so expressed in any deed or other conveyance, covenants and agrees to pay to the Association: (1) annual assessments or charges, (2) special assessments, and (3) individual assessments. Said assessments shall be fixed, established and assessed as herein provided. Assessments, together with such interest and late charges as shall be imposed by the Board at its discretion, and the cost of collection thereof, including without limitation court costs and reasonable attorneys' and paralegals' fees before trial, at trial and on appeal, shall be a charge and a continuing lien upon the Lot against which such assessment is made, and upon any Dwelling located on said Lot, from and after the date on which such assessment is due. Each assessment, together with said

interest, late charges, costs and fees, shall also be the personal obligation of each person who was an Owner of the Lot at the time the assessment fell due.

(b) If any assessment or installment thereon is not paid when due, then such assessment shall be delinquent and the delinquent assessment, together with interest, late charges, and collection costs, shall be secured by a continuing lien on the Lot as to which the assessment accrued, and upon any Dwelling located thereon. Such lien shall be prior to all other liens hereinafter created except taxes or assessments levied by governmental authority, and except as to the lien of any mortgage. The lien shall be prior to and superior in dignity to homestead status. The lien shall bind the Lot and any Dwelling located thereon in the hands of the then Owner and of each subsequent Owner. The personal obligation of the Owner to pay such delinquent assessment shall remain that Owner's personal obligation for the statutory limitations period and personal liability shall not pass to successors in title unless expressly assumed by them.

(c) If the delinquent assessment or installment thereon is not paid within thirty (30) days after the due date, same shall bear interest from the date due at the highest lawful rate in Florida, or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action for collection against the Owner personally obligated to pay the same and to foreclose the lien against the Lot and any Dwelling located thereon by judicial foreclosure in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment the aforesaid interest, late charges, collection costs and attorneys' and paralegals' fees, and fees and collection costs shall be recoverable whether or not suit be brought. The Owner shall also be required to pay the Association any assessments against the Lot which become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale and to own sell, lease, encumber, use and otherwise deal with the Lot and any Dwelling thereon as owner thereof.

Section 2. Exempt Property. The following property shall be exempt from the assessments, charges and liens created herein: (1) Common Property; (2) lands dedicated to the City of Eustis, Florida or other governmental authority, any utility company or the public; (3) Lots owned by Declarant and Builders during the period of time that Declarant and Builders subsidizes the Association's operating expenses pursuant to Section 8 of this Article; and (4) Tracts owned by Declarant. No other land or improvements in the Property shall be exempt from these assessments, charges or liens. No Owner may avoid assessment obligations by virtue of non-use or abandonment of the Common Property.

Section 3. Purpose. The assessments levied by the Association may be used to promote the recreation, health, safety and welfare of the Owners, to perform the Association's duties and to exercise the powers conferred on it, to improve, operate, insure and maintain the Common Property and the Areas of Common Responsibility, and to pursue any other purpose deemed desirable or appropriate by the Board, including without limitation any one or more of the following: (a) payment of Association operating expenses; (b) lighting (including, but not

limited to, street lighting charges), irrigation, maintenance, improvement and beautification of streets and easement areas, and acquisition, maintenance, repair and replacement of community identification signs and traffic control devices, and control and regulation of traffic within the Property; (c) payment, contest or compromise of real and personal property taxes and assessments separately levied upon or assessed against the Association or the Common Property; (d) operation, maintenance, repair and improvement of the Common Property, Areas of Common Responsibility, and easement areas benefiting the Association; (e) repayment of any deficits previously incurred by the Association; (f) funding of reserves for future Common Expense; (g) procurement and maintenance of insurance; (h) payment for cable television service charges pursuant to the terms of any bulk service cable television agreements entered into by Declarant; (i) payment of membership dues in the Eagle Dunes Health and Racquet Club; (j) employment of accountants, attorneys and other professionals to represent or advise the Association; (k) operation, maintenance and repair of the Master Surface Water Management System in accordance with the terms of this Declaration and the requirements of the District; (l) monitoring of protected wetlands as required by the District; (m) maintenance of the Conservation Tracts as defined in Section 26, respectively, of Article IX; and (n) doing anything necessary or desirable in the judgment of the Board to keep the Property neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Owners.

Section 4. Determination of Annual Assessments.

(a) Operating Budget. At least forty five (45) days prior to the end of the Association's fiscal year, the Board shall approve a budget of the estimated costs of operating the Association during the coming year, funding any deficits from prior years, and providing for reserves for future expenses, including the annual capital contribution approved by the Board under Subsection (b), below.

(b) Capital Budget. Each year, the Board shall approve a capital budget taking into account the number, type, useful life and expected replacement cost of replaceable assets. The Board shall then set the required annual capital contribution in an amount sufficient to meet the projected capital needs of the Association on a timely basis. The annual capital contribution fixed by the Board shall then be included in the annual operating budget and annual assessments described in Subsection (a), above.

(c) Adoption of Operating Budget. The Association shall mail to each Member a copy of the capital budget, operating budget and projected annual assessments approved by the Board to be levied for the next fiscal year at least thirty (30) days prior to the end of the Association's current fiscal year. The operating budget and annual assessments shall become effective unless disapproved at a special meeting of the Members held not later than sixty (60) days after the proposed budget and assessments are mailed to the Members. To be effective, the disapproval must be by a vote of two-thirds (2/3) of the membership of the Association, without regard to class. If the membership so disapproves the operating budget for the succeeding year,

or if the Board fails to propose a budget, then the budget and annual assessments for the preceding year shall continue in effect until a new budget is determined.

(d) Allocation of Annual Assessments Among Lots. The operating budget of the Association shall be assessed against all Owners and Lots within the Property in an equal amount per Lot.

Section 5. Special Assessments.

(a) Special Assessments. In addition to annual assessments, the Board may levy at any time a special assessment for the purpose of defraying the cost of any construction, repair or replacement on the Common Property or Areas of Common Responsibility, or on any easement benefiting the Association, for the purpose of covering any budget deficits of the Association, or for any other purpose deemed desirable or appropriate by the Board; provided, however, that any such special assessment shall have the approval of a majority of the votes of the Members of each class who are in attendance and voting in person or by proxy at a meeting duly called for said purpose.

In addition, all Owners of Town House Lots, as set forth in Exhibit "C", attached hereto and incorporated herein, shall be assessed a special assessment for common facilities for the maintenance and repair of the town house, including, but not limited to, common roofs and common walls. The amount of the special assessment shall be set each year in the Operating Budget.

(b) Individual Assessment. The Board may levy an individual assessment against any Owner and that Owner's Lot and any Dwelling located thereon in order to cover costs incurred by the Association due to that Owner's failure to maintain its Lot or Dwelling pursuant to the standards set forth in this Declaration, or to reimburse the Association for loss or damage to the Association or to any Common Property, Area of Common Responsibility or easement area, including but not limited to the Conservation Tracts as defined in Section 26 of Article IX, caused by that Owner or his lessee, agent, contractor or guest, and not covered by insurance, or for any other purpose expressly permitted by this Declaration.

Section 6. Commencement Date; Initial Annual Assessment; Due Dates. Annual assessments on the Lots shall commence on the date this Declaration is recorded in the public records of Lake County, Florida. The annual assessment for the Property for the balance of calendar year 2003 shall not exceed Four Hundred Fifty and No/100 Dollars (\$450.00) per Lot. At the closing of the sale of each Lot by Declarant to the first purchaser from Declarant, the purchaser shall pay to the Association the entire annual assessment for the calendar year of closing, prorated on a per diem basis from the date of closing through the end of that calendar year. Thereafter, annual assessments shall be due, in advance, on or before the commencement of the Association fiscal year for which imposed; but the Board may elect to collect annual assessments in monthly, quarterly or semi-annual installments. In the event of such deferred payments, the Board may but shall not be required to charge a uniform, lawful

rate of interest on the unpaid balance. The Board may accelerate the balance of any annual assessment upon default in the payment of any installment thereon. Annual assessments which commence to accrue as to any Lot other than on the first day of the year shall be prorated for the balance of that year.

Section 7. Working Capital Contribution. In addition to annual assessments and special assessments, the first Owner acquiring title from Declarant to a Lot shall pay to the Association a contribution to a working capital fund of the Association in an amount of ONE HUNDRED FIFTY AND NO/100 DOLLARS (\$150.00), which sum shall be in addition to the Owner's responsibility for annual assessments and special assessments. The working capital fund shall be used by the Association for start-up expenses or otherwise as the Association shall determine from time to time and need not be restricted or accumulated. The foregoing shall not apply on the sale of a Lot by Declarant to Builder, as Builder shall collect and pay to the Association the Working Capital Contribution from the first Owner acquiring title from Builder.

Section 8. Funding by Declarant and Builders. Notwithstanding any provision that may be contained to the contrary in this Declaration, for as long as Declarant and Builders (or any of their affiliates) are the Owners of any Lot, the Declarant and Builders shall each have the option, in their sole discretion, to (i) pay full annual assessments on the Lots owned by them, or (ii) not pay any annual assessments on any Lots and in lieu thereof fund any resulting deficit in the Association's operating expenses (exclusive of any reserves or management fees) not produced by working capital contributions or by annual individual and special assessments receivable from Owners other than Declarant and Builders. The deficit to be paid under Option (ii) above shall be the difference between (a) actual operating expenses of the Association (exclusive of capital improvement costs, reserves and management fees) and (b) the sum of all monies receivable by the Association (including, without limitation, assessments, working capital contributions, interest, late charges, fines and incidental income) and any surplus carried forward from the preceding year(s). The Declarant and the Builders shall be bound to fund the deficit in the Association's operating expenses pursuant to Option (ii) above until such time as the Declarant gives written notice to the Association that Option (i) above will be the method of fixing assessments against the Declarant and Builder. So long as Option (ii) above applies, the payments, if any, to be made by the Declarant and Builders to the Association, shall be paid by them on a prorata basis based on the total number of Lots within the Property owned by them as of the date of any invoice from the Association requiring such payment. When all Lots within the Property are sold and conveyed to end buyers and no Lots are owned by the Declarant then the Declarant shall not have any further liability of any kind to the Association for the payment of assessments, deficits or contributions.

Section 9. Certificate. Upon request, the Association shall furnish to any Owner a certificate setting forth whether required assessments have been paid. Such certificate shall be conclusive evidence in favor of third parties relying thereon of the payment of any assessment therein stated to have been paid.

Section 10. Subordination. Assessment liens shall be subordinate to the lien of any mortgage. Any mortgagee which obtains title to a Lot by foreclosure of a mortgage, or by voluntary conveyance in lieu of such foreclosure, shall not be liable for the uncollected assessments or interest, late charges or collection costs pertaining to such Lot or chargeable to the former Owner thereof which became due prior to the acquisition of title by said mortgagee. Such unpaid amounts shall be deemed a Common Expense collectible from all Owners, including the acquiring mortgagee, on a pro-rata basis. Any such transfer to or by a mortgagee shall not relieve the transferee of responsibility nor the Lot from the lien for assessments thereafter falling due.

## ARTICLE VII

### ARCHITECTURAL CONTROL

#### Section 1. Architectural Control; ARB.

(a) All Lots and Dwellings within the Property are subject to architectural review in accordance with this Article and the Planning, Construction and Development Criteria ("the Planning Criteria") adopted and revised from time to time by the Architectural Review Board (the "ARB"). The Planning Criteria shall be written and made available to all Builders within the Property and to all Owners or prospective Owners. The Planning Criteria may include any matters considered appropriate by the ARB not inconsistent with this Declaration.

(b) No site work, landscaping, utility extension, drainage improvement, paving, driveway, swimming pool, pool enclosure, building, fence, wall, or any other physical or structural improvement, or change or alteration to the exterior of any existing structure or improvement, or to any existing landscaping, shall be commenced, erected or maintained until the plans showing such details as the size, design, shape, finished grade elevation, height, materials and color of the same, together with a landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes, have been approved in writing by the ARB.

(c) So long as Declarant owns any Lot subject to this Declaration, Declarant shall be entitled to appoint all members of the ARB. Thereafter, the membership of the ARB shall be determined by the Board. The ARB shall not have the power or authority to revoke any approvals previously granted by the Declarant pursuant to this Article. The ARB shall consist of no less than three (3) members, none of whom shall be required to be Owners or occupants within the Property. Nothing herein shall limit the right of an Owner to finish or alter the interior of that Owner's Dwelling as that Owner desires. Decisions of the ARB shall be by majority action. No member of the ARB shall be entitled to compensation for services performed, but the ARB may employ professional advisors and pay reasonable compensation to such advisors at Common Expense.

(d) It shall be the responsibility of each Owner at the time of construction of the Dwelling on that Owner's Lot to comply with the approved construction plans for the Master Surface Water Management System on file with the District pursuant to Chapter 40C-4, F.A.C.

Section 2. Approvals. Unless waived by the ARB, all plans shall be prepared by an architect or engineer, said person to be employed by and at the expense of the Owner. If for any reason, including purely aesthetic reasons, the ARB should determine that a proposed improvement or alteration is not consistent with the Planning Criteria or Declarant's development plan, or in the best interest of the Property, such improvement or alteration shall not be made. Approval of plans may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by virtue of the dissatisfaction of the ARB with the location of the structure on the Lot, the elevation, color scheme, finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of its reasonable dissatisfaction with any other matter or thing which, in the judgment of the ARB, will render the proposed improvement or alteration inharmonious with the general development plan or the Planning Criteria. Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. Submittals and resubmittals of plans shall be approved or disapproved within thirty (30) days after receipt by the ARB. Failure of the ARB to respond in writing to a submittal or resubmittal of plans within such period shall be deemed to be approval of the plans as submitted or resubmitted. The ARB approval or disapproval shall be written and shall be accompanied by one (1) copy of the plans, etc., to be returned to the Owner. Whenever the ARB disapproves plans, the ARB shall specify the reason or reasons for such disapproval.

Section 3. Builder Approvals. The terms of this Article VII notwithstanding, the Builders shall not be required to submit to the ARB for approval to construct a Dwelling on the Lots. The Builders will however obtain Declarant's approval of the proposed improvements to be constructed within a Tract, said approval not to be unreasonably withheld.

Section 4. Violations. The work must be performed strictly in accordance with the plans as approved. If after plans have been approved, the improvements are altered, erected, or maintained upon the Lot other than as approved, same shall be deemed to have been undertaken without ARB approval. After one (1) year from completion of any improvement, addition or alteration, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to comply with the provisions hereof unless a notice of such noncompliance executed by any member of the ARB shall appear in the Lake County public records, or legal proceedings shall have been instituted to enjoin the noncompliance or to enforce compliance with these provisions.

Section 5. Variances. The ARB may grant variances from compliance with the architectural provisions of this Declaration or the Planning Criteria, including without limitation restrictions upon height, size or placement of structures, or similar restrictions,

when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may reasonably require. The granting of any variance shall not operate to waive any of the terms and provisions of this Declaration or the Planning Criteria for any purpose except as to the particular Lot and the particular provision covered by the variance, nor shall it affect the Owner's obligation to comply with governmental requirements.

Section 6. Waiver of Liability. None of Declarant, the ARB or the Association, or any agent or employee thereof, shall be liable to anyone submitting plans for approval or to any Owner, occupant or guest of the Property by reason of or in connection with approval or disapproval of any plans, or for any defect in any plans submitted, revised or approved in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans. Approval of plans, or any other approvals, variances or consents, are given solely to protect the aesthetics of the Property in the judgment of the ARB and shall not be deemed a warranty, representation or covenant that any action taken in reliance thereon complies with applicable laws, codes, rules or regulations, nor shall ARB approval be deemed approval of any plan or design from the standpoint of structural safety or conformity with building or other codes. Every person who submits plans for approval agrees, by submission of such plans, and every Owner or occupant of any Lot agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages.

Section 7. Enforcement. Declarant and the Association shall have standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the Planning Criteria and the decisions of the ARB. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorneys' fees and costs incurred, whether or not judicial proceedings are involved, including the attorneys' fees and costs incurred on appeal from judicial proceedings, shall be collectible from the violating Owner. Should any Owner fail to comply with the requirements hereof after thirty (30) days' written notice, Declarant and the Association shall have the right but not the obligation to enter upon the Owner's property, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof or the Planning Criteria, and charge the cost thereof to the Owner as an individual assessment. Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Lot for any trespass or damages or injury to property or person for any action taken hereunder unless caused by gross negligence or intentional wrongdoing.

## ARTICLE VIII

### EXTERIOR MAINTENANCE

#### Section 1. Owner's Responsibility.

(a) Each Owner shall keep and maintain the building improvements and landscaping located on that Owner's Lot in good and presentable condition and repair consistent with the approved plans therefore, and shall otherwise keep such Lot and all improvements located thereon in neat and attractive condition. To the extent not included in the areas required to be maintained by the Association pursuant to Section 4 of this Article, each Owner shall, at that Owner's expense, grass over, mow and keep free of trash and debris, on a routine basis, those portions of the Master Surface Water Management System located on that Owner's Lot (whether or not included in a platted drainage easement). When required, major repairs to, and major maintenance and reconstruction of, components of the Master Surface Water Management System will be performed by the Association, at Common Expense. Each Owner shall grass over, mow and keep free of trash and debris, on a routine basis, the unpaved portion of any platted street(s) abutting the Owner's Lot.

(b) Landscape maintenance shall include without limitation irrigation, fertilization, weeding, mowing, trimming, spraying for insects and disease, and periodic replacement of damaged or diseased plantings.

(c) The Association shall have the right but not the obligation to provide exterior repair and maintenance on any Lot or any improvement thereon in the event of default by any Owner in the duties hereby imposed. Prior to performing repair or maintenance on any Lot, the Board shall determine that there is need of repair or maintenance and such need detracts from the overall appearance of the Property. Except in emergency situations, prior to commencement of any work, the Board must furnish written notice to the Owner to the effect that, unless specified repairs or maintenance are commenced within fifteen (15) days after the mailing of the notice, and thereafter diligently pursued to completion, the Association may procure said repairs. Upon the Owner's failure to commence timely and to diligently pursue the repairs or maintenance, the Association and its agents or employees shall have the right to enter in or upon the Lot and the exterior of any improvement thereon to perform the repairs or maintenance specified in the notice. In this regard, the Association shall have the right to do such things as, but limited to, paint, repair, replace and care for pools, pool enclosures, roofs, gutters, down spouts and exterior building surfaces, clean or resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements, as well as to provide general cleanup, shoreline maintenance, and removal of debris which in the opinion of the Board detracts from the overall beauty and setting of the Property. Declarant, the Association, and their respective agents and employees, shall have no liability to the Owner or any occupant or guest for trespass, or damage or

injury to property or person as the result of actions taken hereunder unless caused by gross negligence or intentional wrongdoing.

(d) Notwithstanding anything contained herein to the contrary, Builder agrees to maintain the Lots and any homes constructed thereon, which are owned by Builder, in a clean and neat condition, free of debris, trash, weeds and excessive grass growth. If Builder fails to do so, either Declarant or the Association may do so, at Builder's expense, provided, however, that Builder shall receive at least ten (10) days notice and opportunity to cure prior to the Declarant or Association undertaking such activity.

Section 2. Assessment of Cost. The cost of any work performed by or at the request of the Association pursuant to Section 1 above shall be assessed as an individual assessment against the Owner of the Lot upon which such work is done.

Section 3. Access. In order to perform the repairs or maintenance authorized by this Article, the agents or employees of the Association may enter upon any Lot and the exterior of any improvement thereon during reasonable hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board, entry may be made at any time.

Section 4. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property and the Areas of Common Responsibility and the wall, landscaping, lighting, irrigation, sign, drainage and other improvements from time to time located thereon. Unless and until dedicated or conveyed to the City of Eustis, the Association shall maintain, repair and replace as needed, and pay the electrical usage charges for, the lift station and related lines and equipment located within Tract "R" as shown on the plat of the Property. It is the responsibility of the Association, at Common Expense, to operate, maintain and repair the Master Surface Water Management System and to enforce, or to take such appropriate action as may be necessary to cure violations of, the routine maintenance and non-interference covenants of the Owners under this Declaration, and, when appropriate, to levy special assessments or individual assessments therefore. Maintenance of the Master Surface Water Management System shall include the exercise of practices which allow the system to provide drainage, water storage, conveyance and other surface water management capabilities as permitted by the District. Any repair or reconstruction of the Master Surface Water Management System shall be as originally permitted or, if modified, as approved by the District.

## ARTICLE IX

### RESTRICTIVE COVENANTS

The Property shall be subject to the following covenants and restrictions which shall bind each Owner and Lot:

Section 1. Wells. Except for a water well for use only for irrigation purposes, no individual water supply system shall be permitted on any Lot without the approval of the ARB.

Section 2. Obnoxious or Offensive Activity. No activity or use shall be allowed upon the Property which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Lot, Dwelling or the Common Property, and all laws and regulations of applicable governmental bodies shall be observed. The Property shall be used, enjoyed and occupied in such manner as not to cause or produce any of the following effects discernible outside any Dwelling: noise or sound that is objectionable because of its volume, duration, beat, frequency or shrillness; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; vibration; or interference with normal television, radio or other telecommunication reception by other Owners.

Section 3. Rules and Regulations. Reasonable rules and regulations may be promulgated by the Board, after notice and hearing, as to the use and enjoyment of the Property and shall be observed by the Owners and occupants thereof. Such rules and regulations may involve such matters as air conditioning units, signs, mailboxes, temporary structures, noisy mufflers or other nuisances, garbage and trash disposal, parking, traffic, state of repair of vehicles, tree removal, pets, game and play structures and devices, swimming pools, television and telecommunications devices and antennae, driveways, walkways, sight distances at intersections, garages, and fences. These matters are set out by way of illustration only and shall not be construed to limit the authority of the Board to promulgate and enforce reasonable rules and regulations. Such rules and regulations may augment or clarify the terms of this Declaration or any term, covenant or restriction herein contained.

Section 4. Animals. Birds, fish, dogs, cats, reptiles, insects and all other non-human organisms (collectively, "Animals") may be kept as pets only, and shall not be held or offered for sale or maintained or bred for any commercial use. Animals shall be sheltered inside Dwellings. No separate or exterior shelter for Animals shall be permitted. All Animals must be kept in a fully fenced area or leashed when outside and shall not be permitted to run loose. No Animals shall be permitted to remain on the Property if it or they disturb the tranquility of the Property or the Owners or tenants thereof, if it or they are unlawful, dangerous, annoying, or a nuisance to or destructive of wildlife, or if it or they are specifically excluded from the Property by the Board after notice and hearing.

Section 5. Garbage and Trash. No trash, garbage or other waste material or refuse shall be placed or stored on any part of the Property except in covered or sealed sanitary containers. All such sanitary containers must be stored within each Dwelling, buried underground, or placed within an enclosure or concealed by means of a screening wall approved by the ARB.

Section 6. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and same may be installed only within an approved accessory building,

within a screened area, or buried underground, and shall otherwise comply with standards established from time to time by the ARB and applicable law.

Section 7. Vehicles. No vehicle may be parked on the Property except within garages or on paved streets and paved driveways. No inoperative vehicles shall be allowed to remain on the Property in excess of forty-eight (48) hours unless kept in an enclosure and not visible from the street or any other Lot. No commercial vehicles, except those present on business, shall be parked on any part of the Property. No trailers, boats, campers, trucks, mobile homes, motorized recreational vehicles or motorcycles may be parked on the Property unless parked inside a garage or on the side of (opposite any side street) or behind the Dwelling.

Section 8. Temporary Structures. Lots shall be used only for residential purposes. No building or structure of a temporary or portable character such as trailers, tents or shacks shall be permitted on the Property, except as approved by the ARB, and except for temporary improvements used solely in connection with the construction of approved permanent improvements and removed immediately upon completion of such construction. Notwithstanding the foregoing, neither Declarant nor any Builder shall be prohibited from erecting or maintaining temporary dwellings, model homes and other structures for development and marketing purposes to be open for public inspection seven (7) days per week during such hours as are deemed desirable by Declarant or Builder, provided such are in compliance with the appropriate governmental requirements, and further provided that any Builder first obtains Declarant's written approval of such temporary dwelling, home or structure prior to installing or constructing same, such approval to be granted or denied by Declarant in Declarant's sole discretion.

Section 9. Signs. No signs, advertisements, billboards, solicitation or advertising structures or materials of any kind shall be displayed or placed upon any Lot without the prior written approval of the ARB; provided, however, street numbers and name signs on Lots and one sign containing not more than eight (8) square feet of surface area per side (2 sides maximum) and used solely in connection with the marketing of the affected Lot for sale or lease shall be permitted without prior approval. Declarant or the Association may enter upon any Lot and remove and destroy any sign which violates this section. This section shall not apply to Declarant or to any Builder provided that such Builder first obtains Declarant's written approval of any such structures or materials prior to installing same, such approval to be granted or denied by Declarant in Declarant's sole discretion.

Section 10. Air Conditioning Equipment. No air conditioning equipment other than compressor units may be visible on the exterior of any Dwelling unless previously approved by the ARB, which approval may be based on the adequacy of screening of such equipment. The ARB may prohibit window or wall air conditioning units altogether.

Section 11. Drainage Structures. Unless first approved by the ARB and the District, no Owner other than the Declarant may obstruct, alter or in any way modify the method and/or structures of drainage utilized or installed by Declarant or the Association from, on or