

**FIELDSTONE RANCH**

JEFFREY K BARTON, CLERK OF COURT

**DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS,  
RIGHTS, LIMITATIONS, AND RESTRICTIONS  
FOR  
FIELDSTONE RANCH SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RIGHTS, LIMITATIONS, AND RESTRICTIONS** (hereinafter referred to as either the "Covenants" or as the "Declaration") is made and executed this 30 day of January, 2009, by **WOODSIDE FIELDSTONE RANCH, LLC, a Florida limited liability company, its successors and/or assigns.** (hereinafter referred to as either the "Developer" or as the "Declarant") pursuant to a duly noticed and conducted meeting.

**WITNESSETH:**

**WHEREAS,** Declarant is the owner of certain property situated in the County of Indian River, State of Florida, being more particularly described as follows, to wit: Lots 1 through 4, 32 through 73, 104 through 121 and 129, **THE FIELDSTONE RANCH PHASE 1 SUBDIVISION**, according to the Plat thereof as recorded in Plat Book 24, Page 56 of the Public Records of Indian River County, Florida (hereinafter collectively referred to as either the "Property" or as the "Properties"); and

**WHEREAS,** Declarant desires to develop the Property as part of a planned development to be known as The Fieldstone Ranch Subdivision (hereinafter collectively referred to as either the "Subdivision" or as the "Development") which may include additional similarly situated property to be developed by Developer in subsequent phases in Developer's sole and absolute discretion; and

**WHEREAS,** Declarant desires to provide for the preservation of the values and amenities in the Development and for ownership and maintenance of recreation areas and amenities, open space and green belt areas, landscaping, conservation easements, drainage retention and detention areas and facilities, and other common areas and facilities as may be specifically designated herein, on the Plat of the Property, and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each subsequent owner of all or part thereof; and

**WHEREAS,** Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Development, to create a homeowners' association to which shall be delegated and assigned the powers of owning, maintaining, and administering certain designated common properties and facilities within the Development, including, without limitation, the Common Area hereinafter defined; and enforcing this Declaration; and collecting and disbursing the assessment and charges hereinafter created; and

**WHEREAS,** Declarant has incorporated or will incorporate under the laws of the State of Florida, a non-profit corporation called The Fieldstone Ranch Homeowners' Association, Inc. (hereinafter referred to as the "Association"), for the purpose of exercising the functions aforesaid.

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**NOW THEREFORE**, for valuable consideration, Declarant hereby declares that the Properties shall be held, sold, and conveyed subject to the following easements, restrictions, rights, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the Properties and be binding on all parties having any right, title, or interest in the Properties or any part thereof, said parties' respective heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

### ARTICLE I

#### DEFINITIONS

**Section 1:** "Association" shall mean and refer to THE FIELDSTONE RANCH HOMEOWNERS' ASSOCIATION, INC., a Florida not for profit corporation, its successors and assigns.

**Section 2:** "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

**Section 3:** "Plat" shall mean and refer to the recorded subdivision plat of the **Fieldstone Ranch Phase 1 Subdivision**, as recorded in Plat Book 24, Page 55 of the Public Records of Indian River County, Florida, as hereinbefore described and future phases as platted and recorded.

**Section 4:** "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 5:** "Common Area" or "Common Areas" shall mean and refer to the roads and to those drainage retention areas depicted on the Plat of the Properties, the lake and drainage easement depicted on the Plat, Tracts A through I as shown on the Plat, all of which are required by the Plat to be maintained by the Association for the benefit of the Owners. The term "Common Area" shall also include any intangible personal property acquired by the Association, if such property is designated as such by the Association, and may also include, but not be limited to, recreation facilities, fences, walls, and landscape buffers around the interior or perimeter of the Development, buffer areas, entry features, signage, landscaping, irrigation systems and any other real or personal property owned or acquired by the Association and/or identified by tract as "Common Area" or otherwise designated as an area or easement required to be maintained by the Association on the recorded plat or any phase of the Development, and any landscaping and irrigation facilities located within any Dedicated Area, as hereinafter defined, which are installed for the purpose of enhancing the beauty and aesthetic character of the Property.

**Section 6:** "Lot" shall mean and refer to those residential lots depicted on the Plat and / or future plats.

**Section 7:** "Declarant" or "Developer" shall mean and refer to Woodside Fieldstone Ranch, LLC., a Florida limited liability company.

**Section 8:** "Member" shall mean and refer to any Owner, who by virtue of being an Owner shall be a Member of the Association.

**Section 9:** "Water Management District Permit" shall mean and refer to St. Johns River Water Management District Surface Water Management Permit No 40-061-96348-1 dated October 4, 2005, which is applicable to the Development.

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**Section 10:** "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.

**Section 11:** "Stormwater Tract A" shall mean and refer to the lake and/or stormwater tract referenced on the Plat and may be referred to as "Tract A."

**Section 12:** "Lake" shall mean and refer to Stormwater Tract A as identified on the Plat and which may also be referred to as "B Lake" in the rules by the Association governing the Subdivision.

**Section 13:** "Upland Preservation Tracts" shall mean and refer to the four tracts referenced on the Plat as Upland Preservation Tracts B, D, F and G and may also be referred to as "Tracts B, D, F & G."

**Section 14:** "Landscape Buffer" shall mean and refer to the tract referenced on the Plat as a Landscape Buffer and may also be referred to as "Tract E."

**Section 15:** "Wetland/Upland Preservation Tract" shall mean and refer to the tract referenced on the Plat as Wetland/Upland Preservation Tract H and may also be referred to as "Tract H."

**Section 16:** "Recreation/Landscaping Tract" shall mean and refer to the tract referenced on the Plat as Recreation/Landscaping Tract I and may also be referred to as "Tract I."

**Section 17:** "Wetland/Upland Preservation Tract" shall mean and refer to the tract referenced on the Plat as Wetland/Upland Preservation Tract H and may also be referred to as "Tract H."

**Section 19:** "Tract C" shall mean and refer to that certain Right of Way dedication as shown on the Plat and marked as Tract C.

**Section 20:** "Easements" shall mean that portion of the Property including Lots or portions thereof, which have heretofore or which may hereafter be set aside by the Developer for the limited or common use of the Developer, Owners, their invitees, guests, successors or assigns for ingress, egress, utilities, water sewer, lighting, drainage, or otherwise and for all purposes related to the Development or as may be indicated on any Plat filed among the Public Records of Indian River County, Florida.

**Section 21:** "Structure" shall mean any thing or object (other than trees, shrubbery and other landscaping) the placement of which upon any Lot may affect the appearance of such lot including but not limited to any building or part thereof, garage, porch, balcony, shed, greenhouse, bathhouse, barbecue pit, patio, swimming pool, television or radio antenna, clotheslines, fence, curbing, paving, wall, recreational facilities, lawn decorative objects including but not limited to statues and tables, living quarters of any nature or any other temporary or permanent improvements to such Lot and any excavation, fill, ditch, dune or other thing or device which affects or alters the natural flow of surface water from or across any lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot.

**Section 22:** "Residence" shall mean a single family dwelling as approved by the Architectural Control Committee and as constructed upon any single Lot in the Development.

**Section 23:** "Subdivision" shall mean The Fieldstone Ranch Subdivision, as depicted on the Plat of Phase 1 and future Plats as platted and recorded.

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**Section 24:** "Development" shall mean the Subdivision which shall include any land incorporated by the Developer as a latter Phase or addition.

### ARTICLE II

#### PROPERTY RIGHTS

**Development and Use of Restrictions.** The development, ownership, and use of all Lots shall conform to the following requirements:

- (1) **Provisions in Addition to the Indian River County Regulations.** Conformity with any and all applicable land use regulations of the County or any other regulatory agency having jurisdiction over the Property shall be required, in addition to the requirements of these Covenants. In case of any conflict, the more stringent or restrictive requirements shall govern.
- (2) **Authorized Use.** Only single family residential use shall be permitted. No more than one "family" shall occupy a residence on a Lot. No business or commercial buildings may be erected on any Lot, and no business, including garage sales, may be conducted on any part thereof. The above notwithstanding Owners may have no more than two (2) garage sales per year, with a maximum of two (2) days allowed for each sale.
- (3) **Prohibited Uses.** No commercial, industrial, or other non-single family residential use shall be permitted, except all uses for which a Home Occupation License is issued by Indian River County shall be permitted. No time sharing, interval ownership, or other similar division of the fee simple ownership of any Lot or any single family dwelling erected thereon shall be permitted. However, this provision shall not prevent the leasing of any single family dwelling to a tenant for ordinary single family residential purposes. No oil drilling, oil development operation, oil refining, quarrying, or mining operation of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.
- (4) **Authorized Structures:** No model homes or sales centers are to be constructed without the prior written consent of the Developer or the Association. Model homes or sales centers are defined as homes that are open during regular business hours and manned by sales personnel. No homes which are constructed for speculation (e.g. 'spec' homes and/or homes built by someone other than the ultimate resident and owner of same) may be manned or otherwise staffed with sales personnel. Open houses may only be conducted with the written permission of the Association.
- (5) **Garages:** Carports shall not be permitted. No garage may be enclosed or converted to any other use. All garages must have doors that are to be maintained in a useful condition. Gazebos and pavilions may be constructed for recreational purposes in the rear yard area of a Lot only if approved by the Association. No building or other structure shall be constructed, placed, or maintained on any Lot, except one single family residence and a garage which shall be required to accommodate a minimum of two (2) vehicles.
- (6) **Construction:** All house plans and landscape plans must be submitted and approved, in writing, before any construction takes place. All construction shall be governed and controlled by the Architectural Control Committee, as described in Article V hereof. All construction by the Developer is hereby deemed approved by the Architectural Control Committee notwithstanding that the control of the Committee may not be by the Developer.

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All construction by any party other than the Developer shall be completed within one year from the commencement date of construction. All roofs shall be constructed of tile, metal or architectural shingles (or as may be specified by Developer).

- (7) Height Limitations, Setbacks, Floor Area Requirements: No structure shall be greater than two stories in height. All structures shall be set back 1) a minimum of twenty-five (25) feet from the front Lot line (the line abutting the Street right-of-way, 2) a minimum of fifteen (15) feet from the side Lot line, and 3) a minimum of twenty-five (25) feet from the rear Lot line. However, in any event, the standards set forth in the Indian River County Code shall govern and control any contrary or conflicting provision or standard set forth herein if more stringent than that provided herein. Pools using County setback restrictions are permitted.
- (8) Fences: All fences shall be of an attractive and decorative character. Chain link or like style and type of fences are prohibited. Fences may be located in the rear of a Lot and along the side Lot lines, but shall not extend into the front yard setback area or beyond the front of the Residence. All fences must be approved by the Architectural Control Committee. Any such construction by the Developer shall be deemed approved notwithstanding that the Developer may not be in control of the Committee.
- (9) Utilities: Electrical, telephone and any other utility lines serving the Development, shall be installed underground, unless the utility provider requires them to be above ground. Connections to any utility line, including cable TV, from any Structure shall be completed at the Lot Owner's expense, and shall be installed underground. Satellite dishes/discs not exceeding an eighteen (18) inch diameter, masts or similar equipment are permitted, provided that they are screened from view, to the extent reasonably possible, from the Street or other Lots. Television and radio antenna are prohibited without Developer approval.
- (10) Prohibited Items and Structures: No trailer home (trailer), mobile home, camper, boat, recreational vehicle (RV), or any other vehicle or item of a mobile nature, shall be used within the Property as a place of residence or habitation, either temporarily or permanently or parked on the Street providing access to the Lots. No garage or outbuilding or any other similar Structure within the Property shall be used as a place of residence or habitation, either temporarily or permanently. The above notwithstanding, trailers attached to trucks that are customarily employed by contractors for and during the construction of improvements on a Lot, shall be permitted, but only while active and continuous construction is taking place on the Lot. Construction trailers are not permitted except for use by the Developer and its designees. The term "trailer home" or "mobile home" as used herein shall mean any building or structure with wheels and/or axles and any vehicle, used at any time, or constructed so as to permit its being used for the transport thereof upon the public streets or highways and constructed in a manner as to permit occupancy thereof as a dwelling or sleeping place for one or more persons, and shall also mean any such building, structure, or vehicle, whether or not wheels and/or axles of a permanent or temporary nature have been removed, after such building, structure, or vehicle has been placed either temporarily or permanently upon a foundation.

All of the above notwithstanding, during the development of the Property by the Declarant, outside storage areas, storage garages, millwork shops, construction trailers or sales offices being used by the Declarant may remain on the Property until all improvements for the Development and all construction within the Development has been completed.

- (11) Maintenance: Each Lot and all improvements thereon shall be maintained in a clean, safe,

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orderly, and pristine condition. Boats, vehicles (other than automobiles), recreational vehicles (RV), campers (whether or not on a truck), tent trailers and gardens, yard, and maintenance equipment shall be kept at all times, except when in actual use, completely screened from view from the Street or other Lots. No junk or inoperative cars or trucks shall be parked or stored on any Lot. Refuse, garbage, and trash shall be kept at all times in complete conformity with sanitary regulations, in a covered container, and any such container shall be kept within an enclosed Structure or appropriately screened so as not to be visible from the Street or adjoining Lots, except when placed on the Street for collection; however, refuse, garbage and trash shall not be placed on the Street for collection any earlier than the evening before the regularly scheduled collection time. No lumber, grass, shrub, or tree clippings, plant waste, metals, bulk materials, or scraps, refuse, or trash shall be kept stored or allowed to accumulate on any Lot. Outside burning of leaves, trash, or debris is prohibited.

- (12) Animals: No domestic animals or fowl shall be maintained on any Lot other than not more than two (2) dogs, two (2) cats and pet birds, provided, however, that such animals shall at all times be restrained or leashed. The Developer, on a case by case basis, may allow more pets. Dog and cat Owners walking/exercising their pets must carry pooper-scoopers and closeable containers to immediately clean up after their pets if they defecate within the Subdivision on any Property other than the Owner's Lot. The animals permitted shall not be kept for any commercial use or purpose. Barnyard and *ferae naturae* (wild) animals of any type shall not be permitted to be kept or maintained. Upon any violation of these provisions or other nuisance occurring which involves an Owner, lessee or guest's animals, any one Lot Owner shall have the right to demand immediate removal of the animal(s) from the Property. Any dog that barks continuously from time to time shall be considered a nuisance and may be removed from the Property through any action deemed appropriate.
- (13) Signs: No signs or placards or advertising devices shall be erected, displayed or maintained on any Lot. This provision shall not prohibit "For Sale" signs on Lots improved or unimproved provided the size of the sign does not exceed a maximum size of one (1) square foot.
- (14) Noxious or Offensive Activities, Lighting, Noise: No noxious or offensive activity (Nuisance) shall be permitted on any Lot. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare for any other Lot owner.
- (15) Solar Collectors: Solar collectors shall be located on the Owner's Lot so as not to be seen from the Street and so as not to unreasonably or unnecessarily restrict or interfere with the use of other Lots within the Property.
- (16) Parking: No vehicles shall be parked on the Street or in the road right-of-way for more than three (3) days.
- (17) Landscape: No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot. All landscaping shall be properly watered, manicured, and cared for to ensure a healthy yard. Owners of Lots fronting on the main lake must sod and maintain sod and landscaping in the maintenance easement area as well as to the water line on their respective lot lake frontages. All landscaping plans must be submitted, in writing, to and approved by the Architectural Control Committee prior to construction. No trees larger than six inches (6") in diameter shall be removed without the written permission of the Architectural Review Committee. The Committee may require surveys and/or drawings in addition to other documentation of the plant life existing on the

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property.

- (18) Nuisance: Nothing shall be done or maintained on any Lot which may be or become an annoyance or Nuisance to the neighborhood.
- (19) Boarding Up: There shall be no "boarding up" of any Residence in excess of one hundred twenty (120) days. There shall be allowed storm protection only in the event of and during the period of time a storm is likely to cause damage to a Residence.
- (20) Air Conditioning Units: No window or wall air conditioning units shall be permitted. All exterior pumps, motors, compressors, tanks, or similar mechanical devices shall be reasonably screened from view by landscaping to reduce it's visibility from any Street serving the Property.
- (21) Motorcycles: Motorcycles, mopeds, go carts, or other two or three wheel motorized vehicles shall be permitted on the Property, but only for going to or from the Lot and only if they are stored in a garage and out of view from the Street and other Lots while not in use.
- (22) Easements: Easements for the installation and maintenance of public utilities, including cable TV and drainage facilities are reserved on the Plat for the Property. Within these easement areas, no structure, planting, or other material shall be placed or permitted to remain which may damage, impair, or interfere with the installation and maintenance of the utilities and/or drainage facilities. The easement area of a Lot shall be maintained continuously by the Lot Owner, so that it will serve its intended purpose, except for those improvements within the easement area for which a public authority or utility company is responsible.
- (23) Phase Development and Additions: The Developer reserves and is hereby granted the exclusive right to add and/or remove real property from this Development in its sole and absolute discretion. The Development may therefore include such additions to the real property that may be added hereafter from the time that the additional properties are declared a part of this Development by the Developer. The additional properties may be described as proposed Phases. The real property currently submitted herein may be referred to as "Phase I" and subsequent additions being referred to as subsequently numbered phases. At the time of the recording of this Declaration of Covenants, Developer is not obligated to construct any improvements on or add to the Development any proposed, subsequent phases. Developer has not obligated itself to construct precisely the improvements that would be permitted to be proposed in any subsequent phases, nor, if any one or all are constructed, has the Developer obligated itself to a precise sequence of construction; neither has Developer obligated itself, whether or not it improves the properties constituting the proposed Phases, to make such proposed phases or any of them a part of this Development. If any or all of the proposed Phases are constructed and made part of this Development, the size and mix of the Lots may be similar to the size and mix of Lots contained in Phase 1, which includes the proposed configuration, size, and dimensions of the various lots. However, Developer reserves the right to modify the configuration of the proposed lots in any subsequent Phases and to modify the mix and types of the Lots in each proposed phase in Developer's discretion.

The rights reserved to the Developer in completing subsequent Phases also includes the rights to modify the plat and building types to accommodate the changes permitted above. These changes include varying the mixes, uses and sizes of units within each phase. These changes may be made by the developer to accommodate what the developer determines in the exercise of its absolute discretion to be a more aesthetic or more appropriate use and building system for that phase. The developer also reserves the right and authority to make nonmaterial changes in the

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legal description of each phase to the maximum degree permitted by law. The effects of the addition of each phase will include the distribution of common expense, common elements, and common surplus among the various owners including, but not limited to, the owners of Lots in previously completed Phases and may impact the number of individuals utilizing the common areas (e.g. green spaces, roadways, etc.,) in the Development.

- (24) Building Contractors: Damage caused by any Contractor (other than Developer or its designees) during any construction will be the responsibility of the Owner.
- (25) Maintenance of Yard: Owners shall be responsible for keeping any area of their yard in a condition typical and consistent with yards within the subdivision and, specifically, as regarding the cutting and trimming of all landscaping, the sufficient watering and fertilization of same and the proper application of insecticide(s).
- (26) Driveways: All driveways shall be constructed of concrete pavers approved by Developer (and subsequently in advance by the Architectural Control Committee upon its receipt of the house plans. A sample of such paver denoting color and style must accompany the submittal of the house plans to the Architectural Control Committee).

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

**Section 1:** Membership: Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2:** Voting Rights: The Association shall have two (2) classes of voting membership. The voting interests of the Members of the Association shall be determined as follows:

Class A: Class A members shall be all Owners, with the exception of the Declarant, 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 determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: The Class B member(s) shall be the Declarant and shall be entitled to fifteen (15) votes for each Lot platted and owned by the Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, (ii) three months after 90 percent of the Lots in all phases of the Development that will ultimately be operated by the Association have been conveyed to Owners or (iii) when the Declarant so elects.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed a Class A Member entitled to one (1) vote for each Lot in which it holds the interest required for Membership under



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Article III, Section 1. The Developer is entitled to elect at least one member of the board of directors of the Association as long as the Declarant holds for sale in the ordinary course of business at least 5 percent of the parcels in all phases of the Development. After the developer relinquishes control of the Association, the Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the board of directors.

### **ARTICLE IV**

#### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1: Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be and be deemed the personal obligation of the person or persons or entity who was the Owner of the Lot at the time when assessment fell due or who is the Owner during any period that any assessment, together with interest, costs, and reasonable attorneys' fees, remains unpaid.

**Section 2: Purpose of Assessments:** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners and residents in the Properties and for the improvement, preservation, and maintenance of the Common Area.

Without limitation on the generality of the foregoing, and in addition to the other purposes for which assessments shall be used, the Association shall be responsible for and the assessments levied by the Association shall be used for the maintenance, operation, and repair of the Surface Water Management System, including Tract A, and Tracts B through J, all ditches, culverts, drains, pipes, conduits, ponds, and other facilities located on or benefitting the Property for the purpose of conveying, transmitting, draining, retaining, and storing stormwater runoff from the property, including with limitation, any and all of such items used or useful in connection with the operation and maintenance of the Appurtenant Easements. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, if modified, as approved by the St. Johns River Water Management District. Such maintenance, operation, and repair shall include the exercise of practices which allow the Surface Water Management System to collect, convey, channel, hold, inhibit, or divert the movement of stormwater as permitted by the St. Johns River Water Management District. The Association shall maintain, operate and repair the Surface Water Management System in accordance with the provisions of all applicable governmental requirements, including, without limitation, the terms and conditions set forth in the Development Order and in the Water Management District Permit, which provides for a maintenance and monitoring program which shall be performed by the Association. The Association and its agents, employees, and independent contractors shall have the right of ingress and egress to and from the Surface Water Management System for the purpose of complying with the terms and conditions of the Water Management District Permit and all applicable governmental regulations and requirements governing the use, maintenance, operation and repair of the Surface Water Management System. Annual assessments may include, but are not necessarily limited to, and the Association may, but is

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not necessarily obligated to, acquire and pay for out of the funds derived from the annual assessments, the following:

- (1) Maintenance and repair of the Common Area, including but not limited to, the internal roads, entrance signs and walls, gate, landscaping, architectural fountains, and easements.
- (2) Deleted.
- (3) Water, sewer, garbage, electrical, lighting, telephone, gas, and other necessary utility service for the Common Area.
- (4) Acquisition of equipment for the Common Area as may be determined by the Association, including without limitation all equipment and personnel necessary for proper maintenance of all drainage areas.
- (5) Liability insurance insuring the Association against any and all liability to the public, to any owner, or to the invitees or tenants of any owner arising out of their occupation and/or use of the common area. The policy limits shall be set by the association, and shall be reviewed at least annually and increased or decreased at the discretion of the Association.
- (6) Workers' Compensation Insurance to the extent necessary to comply with Florida Statutes, and any other insurance deemed necessary by the Board of Directors of the Association.
- (7) A standard fidelity bond covering all members of the Board of Directors of the Association and all other employees of the Association in an amount to be determined by the Board of Directors, if so required by the Board of Directors.
- (8) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board of Director of the Association for the operation of the Common Areas for the benefit of Lot Owners or for the enforcement of these restrictions.

**Section 3:** Maximum Annual Assessments. Except as set forth below in Section 10, the maximum annual assessment for the date of commencement of quarterly assessments as provided in Section 7 of this Article IV, shall be Two Thousand Four Hundred Dollars and No/100 (\$2,400.00) per Lot, plus any special assessment which may be levied by the Association. Said guarantee period shall commence upon the sale of the first Lot by the Developer and shall continue for a period of 3 years. The Developer reserves the option to extend the guarantee for one or more additional stated periods.

- (a) From and after the date of commencement of annual assessments, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after the date of commencement of annual assessments, the maximum annual assessment may be increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.
- (d) The Developer hereby obligates itself to pay any operating expenses incurred that exceed

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the assessments receivable from other members and other income of the association.

**Section 4: Special Assessment for Capital Improvements.** In addition to the one time special assessment and the annual assessment authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the then Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5: Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast a majority of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6: Uniform Rate of Assessment.** Both annual and special assessment must be fixed at uniform rates for all lots, except as provided in Section 2 above, and may be collected on a monthly, quarterly, semi-annual, or annual basis.

**Section 7: Date of Commencement of Annual Assessments – Due Dates.** The commencement date of the annual assessment for all Lots located in individual phases provided for herein shall be set at the discretion of the Declarant at any time after the sale of the first Lot by Declarant. Declarant covenants and agrees to maintain the grounds and landscaping located within the Common Area at its sole costs and expense prior to the commencement of the annual assessment, after which the Association shall assume maintenance responsibility therefor as provided in this Declaration (except for such maintenance of the easement areas as is required to be performed by Owners or occupants of Lots pursuant to subparagraph 3b of Article II of this Declaration). The Board of Director shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. An invoice from the Association shall constitute satisfactory written notice. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed Certificate of the Association as to the status of assessments of a Lot is binding upon the Association as of the date of its issuance.

**Section 8: Effect of Non-Payment of Assessments: Remedies of the Association.** Any assessment not paid within fifteen (15) days after the due date shall bear interest from the due date at the rate of eighteen (18%) percent per annum. The Association may record a Claim of Lien to evidence in the public records and to secure the unpaid assessments in the event assessments are not paid and are in default. The Association may bring an action at law and/or in equity against the Owner or Owners, past or present, personally obligated to pay the same and/or foreclose the Claim of Lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

**Section 9: Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, except as to first mortgages recorded after the recording of a Claim of Lien by the Association. Sale or transfer of any Lot shall not affect the assessment

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lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10: Initiation Fees and Fees on Sales of Lots.** A fee of \$850.00 shall be paid to the Association by the purchaser of a Lot in the Subdivision, whether such Lot is unimproved or improved, at the time of the closing on the sale and purchase. This payment shall be applied with \$500.00 being used for current cost of operations and expenses and the balance toward reserves for the Association.

**Section 11: Reimbursement to Developer.** The Association shall repay the Developer for the costs of certain improvements to the Common Areas and/or Lots not otherwise for the completion of the Development. This includes, but is not limited to, irrigations systems, playground equipment, recreational amenities as the Developer may elect, but not be required to, install.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

**Section 1: Architectural Control.** The Architectural Control Committee (the "Committee") shall set all square footage, construction and design standards for new construction and landscaping completed by parties other than the Declarant. The Committee shall control the use and maintenance of the Lake Maintenance Easement and Tract A through Tract I. The Committee shall prepare and promulgate design and development guidelines. The Committee shall make the guidelines available to owners, their agents, and builders who seek to engage in construction upon all or any portion of the Property, and all such owners and builders shall conduct their operations strictly in accordance with the guidelines. The guidelines shall be those of the Association, and the Committee shall have sole and full authority to prepare and to amend them from time to time. No building, fence, wall, pool, or other structure or improvement shall be commenced, erected or constructed upon any Lot, nor shall any exterior addition to or change or alteration of any existing structure be made unless it is in compliance with the zoning code of Indian River County, Florida, and other applicable regulations affecting the Property and unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to compliance with the guidelines, quality of workmanship and materials, harmony of external design with existing structures, and location in relation to surrounding structures and topography.

The Architectural Review Committee shall be entitled to grant exceptions to any provisions contained in this amended Declaration to the extent that the provisions herein are more restrictive than the terms of the original Declaration. Said exception shall only be available for any property owner who is the owner of a lot in the subdivision as of the date of this Declaration's recording and that said restriction imposes a hardship on said owner. This exception shall not inure to any subsequent owner of a lot nor shall an exception be available to a lot once a home is constructed on said lot. Discretion to grant an exception rests solely with the Committee and granting one party an exception shall not constitute a precedent for another individual.

**Section 2: Committee Composition.** The Architectural Control Committee shall consist of three (3) persons who shall initially be appointed by the Declarant. The members appointed to the Architectural Control Committee do not need to be Owners. So long as the Declarant owns any Lot or Additional Property which is subject to the terms and provisions of this Declaration and which is offered for sale in the ordinary course of business, the Declarant shall be entitled to appoint all members of the Committee any successor members; provided, however, that the Declarant shall at any time have the right to waive its right to appoint the members of the Committee. The members of the Committee shall be appointed for staggered three (3) year terms, provided, however, the initial members of the Committee appointed by the Declarant shall serve

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so long as Declarant has the right to appoint all members of the Committee. In the event of death, resignation, inability to serve, or other vacancy in office of any members of the Committee, the Declarant shall promptly appoint a successor member of the Committee who shall serve at the pleasure of the Declarant. After the end of the term during which the Declarant may appoint all the members of the Committee, the Board of Directors of the Association shall have the right to appoint the members of the Committee in the manner provided herein and in the By-laws of the Association. The first Committee appointed by the Board of Directors of the Association shall have three (3) members, one with a term of one (1) year, one with a term of two (2) years, and one with a term of three (3) years. Each year thereafter the Board of Directors of the Association shall appoint a new Committee member upon expiration of the term of a then existing Committee member.

**Section 3: Committee Procedure.** The Architectural Control Committee shall have thirty (30) days following its receipt of full and complete plans and specifications, and any changes or amendments thereto, within which to approve or disapprove the same in writing. The Committee may request additional information reasonably required before the plans and specification shall be deemed full and complete. In the event the same are not approved or disapproved within said thirty (30) day period after the plans and specifications are deemed full and complete, and no suit to enjoin construction pursuant to such plans and specifications has been filed prior to the completion of such construction, then such approval will not be required and will be deemed to have been waived by the Association.

## **ARTICLE VI**

### **INSURANCE**

#### **Section 1: Liability Insurance.**

The Association shall procure and keep in force public liability insurance in the name of the Association, for the benefit of Declarant and the Owners, against any liability for personal injury or property damage resulting from any occurrence in or about the Common Area, in an amount not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) in indemnity against the claim of one or more persons in one (1) accident or event and not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for damage to property in one (1) accident or event.

#### **Section 2: Miscellaneous.**

Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection of any Owner at any reasonable time. All such insurance policies shall 1) provide that they shall not be cancelable by the insurer without first giving at least ten (10) days prior notice in writing to the Association, and 2) contain a waiver of subrogation by the insurer(s) against the Association, the Board of Directors of the Association, and the Owners. Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Veterans Administration ("VA"), the Federal Housing Administration ("FHA"), or Federal National Mortgage Association ("FNMA") so long as VA, FHA, or FNMA holds or guarantees a mortgage on or owns any Lot.

## **ARTICLE VII**

### **RESTRICTIVE COVENANTS**

In addition to the restrictions set out in Article II of this Declaration, each Lot within the Property is

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hereby declared to be subject to and burdened and encumbered by the following restrictive covenants, which shall run with the title to and bind all parties having any right, title or interest therein, successors and assigns, and shall inure to the benefit of all Owners, the Association and the Declarant:

- (1) No Lot shall be used except for residential purposes. Unless expressly approved by the Architectural Control Committee, no building or other Structure shall be erected, altered, placed nor permitted to remain on any Lot other than 1) one detached single family dwelling not to exceed three (3) stories in height, together with private garage, or 2) such appurtenant structures, such as a gazebo, as are incidental to a residential use and as may be approved by the Architectural Control Committee. No previously used structure shall be erected, altered, placed nor permitted to remain on any Lot. The Declarant may use a pre-fabricated sales office for marketing purposes.
- (2) No dwelling shall be permitted to be constructed or maintained on any Lot in which the living area of the main structure, exclusive of open porches and garages, shall be less than the minimum square footage permitted by applicable law, including without limitation, the zoning and building code(s) applicable thereto.
- (3) The minimum plot width and dwelling setback distances from plot boundaries shall all be as required by applicable law.
- (4) No Structure of a temporary or mobile character shall be used on any Lot at any time as a residence either temporarily or permanently; provided, however, that temporary or mobile structures may be used by the Declarant as a sales office or by builders and/or the Declarant for storage during the construction and sales period. The Developer shall have the right to construct a single family home(s) and use it (them) for a sales model/sales office for as long as it owns a Lot within the Subdivision.
- (5) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
- (6) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot; except dogs, cats, and other generally recognized household pets, as previously set forth herein, may be kept, provided they are maintained and supervised, and provided further that they are not maintained or bred for any commercial purpose and that proper restraint and control are used in their keeping.
- (7) No sign of any kind shall be displayed to the public view on any Lot with the exception of 1) one sign of not more than one (1) square foot advertising the Lot or home for sale or rent, and 2) signs utilized by the Declarant and/or its agents. Signs by parties other than the contractor completing the home (e.g. subcontractors, pool builders, etc.) are prohibited. Signs must be approved as required herein. No flags or other attention getting devices are permitted on the property.
- (8) All Lots shall be maintained in a clean and sanitary condition. Lot Owners must keep vacant Lots mowed if said Lots are cleared of the natural vegetation. Each Lot shall at all times be maintained in an aesthetically attractive appearance and there shall be removed therefrom all debris, dead growth, and fallen vegetation. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other wastes shall not be kept except in sanitary containers. No burning of refuse shall be allowed on any Lot. No Owner or occupant of any Lot shall utilize the premises for the open storage of any abandoned motor vehicle, ice box, refrigerator, stove, glass, building materials, building rubbish, or similar items. It shall be the duty and responsibility of each such owner or occupant of any Lot to

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keep such Lot clean and to remove from such Lot all such abandoned items listed above, including but not limited to trash, garbage, and debris. For the purposes of this section, an abandoned motor vehicle is one that is currently unlicensed or in a state of disrepair or incapable of being moved under its own power.

- (9) All fences, walls, and landscape improvements which have been erected or installed on any Lot of Declarant or the Association in order to comply with local governmental requirements or the provisions of this Declaration shall not be altered by the Owner or occupant thereof. In the event of damage or destruction of the same arising out of the intentional or negligent acts or omissions of any Owner or occupant, it shall be the responsibility of the Owner or occupant to promptly repair, replace or restore the wall, fence, or landscape improvements to the original condition thereof.
- (10) The overnight parking or storage of recreational vehicles, motor homes, campers, boats, trailers of any type of trucks of any nature larger than one (1) ton capacity shall not be allowed to park on any right-of-way or Lot unless enclosed in a garage. No commercial trucks (pick-up or otherwise) including, but not limited to, those that have been altered to be utilized for commercial purposes (e.g. adding racks, signs, storage areas, ladders, etc. shall be allowed to park on any right-of-way or Lot unless enclosed in a garage. The Developer shall be entitled to grant waivers of this provision, on a case by case basis, for periods of time up to and including 6 months in duration which may be renewed.
- (11) Fences, including as restricted as previously set forth herein, shall be subject to the following limitations:
  - a. No fence or wall shall be erected, placed, or altered on any Lot, except as detailed and set forth in Article II(g).
  - b. Fences located in side lot drainage easements shall be undercut to allow for drainage flow.
- (12) Easements for installation and maintenance of utilities and drainage facilities are dedicated as shown on the Plat. No structure, planting, or other material shall be placed nor permitted to remain within such easements which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in such easements, or which may obstruct or retard the flow of water through drainage channels in such easements. The Owner or occupant of each Lot shall continuously maintain the grass and landscaping in any easement area contained in such Owner's Lot, as well as all improvements located therein except for those improvements for which the Declarant, the Association, or a public authority or utility company is responsible.
- (13) Satellite Dishes shall be of a eighteen (18) inches diameter or less and completely screened from view.
- (14) Mail boxes shall have a common design and shall be specified by the Architectural Control Committee.
- (15) No Caribbean Fruit Fly host plants shall be permitted to be planted or to remain.
- (16) The following restrictions shall apply to Tract A and all ancillary Drainage and/or Maintenance Easements as shown on the Plat or as later dedicated (for the purposes of this section shall be referred to collectively as 'The Lake Area'):

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- i. No boats.
- ii. No docks, decks, or any type of construction shall be permitted within the Lake Area.
- iii. No motorized boats or any type, including jet skis or similar watercrafts, shall be permitted on the Lake Area.
- iv. No vegetation, including trees, limbs, bushes, shrubs, grass, shall be removed or cleared from the Lake Area without the prior approval of the Architectural Control Committee.
- v. The Lake Maintenance Easement and the boundaries of the Lake shall be maintained in full sod and/or natural vegetation to the water's edge and shall be kept neatly maintained. No sand beaches above the water line shall be permitted.
- vi. No fences, hedges, dog houses, sheds, structures of any kind, vehicles, or boats, shall be placed or maintained within the Lake. Any pre-existing structures shall be removed by the adjacent property owner.
- vii. No wildlife or waterfowl shall be imported into the Lake without approval of the Association.
- viii. No fish shall be introduced into the Lake unless approved by the Architectural Control Committee and on an approved list by St. Johns River Water Management District of Florida Game and Fresh Water Fish Commission.
- ix. No vegetation shall be introduced into the Lake unless approved by the Architectural Control Committee and on the approval list of the St. Johns River Water Management District.
- x. No owners and/or their guests shall be permitted upon or within the Lake.
- xi. The Architectural Control Committee shall have the responsibility of maintaining a health ecosystem and an aesthetically attractive environment and shall determine when and where new trees and vegetation shall be placed in the Lake Maintenance Easement.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

**Section 1: Enforcement.** The Association, the Declarant, and any Owner shall each have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association, the Declarant, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the Declarant or the Association shall seek to enforce the provisions of this Declaration, then the Declarant or the Association shall be entitled to collect its fees and costs, including reasonable attorney's fees, whether incurred before trial, at trial, or upon appeal. 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.



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**Section 2: Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions hereof, which shall remain in full force and effect.

**Section 3: Amendment.** The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of twenty (20) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years without the recording of any additional instrument. This Declaration may be amended by the Association upon the affirmative vote of at least sixty-six (66%) percent of the total voting interests (voting interests being calculated as set forth in Article III, Section 2, hereof). The amendment shall be evidenced by a Certificate of Amendment executed by the President and Secretary, respectively, of the Association. The Certificate of Amendment must be recorded among the Public Records of Indian River County, Florida. Any amendment to the Declaration which alters any provision relating to 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.

## ARTICLE IX

### PROPERTY RIGHTS

The Property, which is owned by Developer and shall henceforth be held, transferred, sold, conveyed, and occupied subject to this Declaration, is located in Indian River County, Florida, and is legally described on page 1 hereof.

**Section 1: Owner's Easement of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to:

- (1) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional property to be added to the Common Area, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any loan a mortgage pledging and encumbering all or any portion of the Common Area; provided, however, that the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges herein reserved or established for the benefit of Developer or any Owner, or the holder of any mortgage, irrespective of when executed, given by Developer or any Owner encumbering any lot located within the Development.
- (2) The Articles of Incorporation and By-Laws of the Association and any Rules and Regulations adopted by the Association, as the same may be altered or amended from time to time; and the requirements of Indian River County, Florida.
- (3) Each Owner of a Lot shall have a nonexclusive right of ingress and egress over and upon the streets for access to and from said Owner's lot.

**Section 2: Delegation of Use.** Any Owner may delegate in accordance with the By-Laws of the Association said Owner's right of enjoyment to the Common Area and facilities to the members of said Owner's family, tenants, other social invitees and contract purchasers who reside on the Property.

**Section 3: Owner's Right of Ingress, Egress, and Support.** Each Owner in addition to the other rights specified herein shall have the right of ingress and egress over, upon and across the Common Area necessary for access to said Owner's Lot and shall have the right to lateral support for said Owner's lot and such rights shall be appurtenant to and pass with the title to each Lot.

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### ARTICLE X

#### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**Section 1: The Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and maintenance of the Common Area and all improvements thereon, and shall keep the same in good clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

**Section 2: Services.** The Association may obtain and pay for the services of any person or entity to manage the Association's affairs or any part thereof, to the extent the Association deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. If the Association enters into a management agreement, it shall be by written contract cancelable upon ninety (90) days written notice. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association may but shall not be required to arrange as an Association expense with others to furnish water, trash collection, sewer service and other common services to each lot. The Association shall be permitted but shall not be required to contract with the Developer for the provision of all such services which the Association is required or permitted by this Declaration to perform. It is anticipated that such contracts will be entered into when economically feasible and acceptable to both parties.

**Section 3: Personal Property and Real Property for Common Use.** The Association through action of its Board of Directors may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise.

**Section 4: Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of any lot and of the Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Enforcement may include the imposition of reasonable fines which if not paid when due shall constitute a lien as provided in this Declaration.

**Section 5: Implied Rights.** The Association may exercise any other right or privilege given to the Association expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association herein or reasonably necessary to effectuate any such right or privilege.

### ARTICLE XI

#### USE RESTRICTIONS AND RULE MAKING

**Section 1: Authority and Enforcement.** The Association shall be used only for those uses and purposes set out in the Declaration. As previously provided, the Board of Directors shall have the authority to make and to enforce reasonable rules and regulations governing the conduct, use and enjoyment of the lots and the Common Area, provided that copies of all such rules and regulations be furnished to all Owners. If any Owner violates this Declaration, the By-Laws or any rules and regulations duly adopted hereunder, the Board of Directors of the Association shall have the right and power to impose reasonable fines which shall constitute a lien upon the lot owned by such Owner. Such Board of Directors shall be authorized and empowered to begin any action in any court on behalf of the Association and all Owners to abate any nuisance or otherwise enforce this Declaration.

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**Section 2: Procedure.** The Board of Directors of the Association shall not impose a fine or seek to enforce this Declaration for violations of rules unless and until the following procedure is followed:

- (1) **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:
  - (i) The alleged violation;
  - (ii) The action required to abate the violation; and
  - (iii) A time period, not less than (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of sanction after notice and hearing if the violation is not continuing.
  
- (2) **Notice.** Within two (2) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in session. The notice shall contain:
  - (i) The nature of the alleged violation;
  - (ii) The time and place of the hearing, which time shall not be less than (10) days from the giving of the notice;
  - (iii) An invitation to attend the hearing and produce any statement, evidence, and/or witnesses on said Owner's behalf; and
  
- (3) **Hearing.** The hearing shall be held in executive session pursuant to this notice affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

The Association is hereby granted and shall have the full right, power, and authority to institute any and all necessary legal proceedings at law and/or in equity to enforce any and all provisions of this Declaration or of the Articles of Incorporation, By-Laws, or rules and regulations.

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 1: Governing Law and Venue.** This Declaration and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Florida. Venue hereunder shall lie in Palm Beach County, Florida only until such time as the Developer relinquishes control of the Association pursuant to the terms of this Declaration or the applicable Florida Statute. Developer may waive this provision in which case venue shall be proper in the County of its choosing. After Developer relinquishes control of the Association to the Owners, venue shall only be proper in Indian River County, Florida.

**Section 2: Number and Gender.** Whenever the singular number is used in this Declaration and when required by the context, the same shall include the plural; and the masculine, feminine, and neuter genders shall each include the others.

## FIELDSTONE RANCH

**Section 3: Non-Waiver.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

**Section 4: Reading in Concert.** All words, terms, and conditions contained herein are to be read in concert, each with the other; and a provision contained under one paragraph may be considered to be equally applicable under another in the interpretation of this Declaration.

**Section 5: Terminology.** The words *herein* and *hereof* and words of similar import, without reference to any particular section or subdivision of this Declaration, refer to this Declaration as a whole rather than to any particular section or subdivision hereof.

**Section 6: Surface Water Management System.**

**Additional Definitions.** When used in this Declaration in this Section the following terms will have the following meanings:

- (1) "SJWMD" means the St. Johns River Water Management District, or its successor entity.
- (2) "Surface Water Management System" means the Surface Water Management System for the Property constructed pursuant to the SJWMD permit which Surface Water Management System constitutes a part of the Common Areas.
- (3) Surface Water Management System Easements. The Developer hereby reserves unto Developer and grants to the Association, subject to the terms and conditions of this Declaration, a non-exclusive easement burdening the areas of the Property designated on the Site Plan (and associated control structures), said areas being for the purpose of the Association effectively maintaining and operating the Surface Water Management System in accordance with the SJWMD Permit. Developer reserves, both for Developer, and for the Owners collectively, and for the Association, the right to grant additional non-exclusive easements over, under, across and through the Common Area, provided that such additional easement grants do not interfere with the effective maintenance and operation of the Surface Water Management System. The Association shall have a non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water of stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.
- (4) Operation and Maintenance of Surface Water Management System. The Association shall effectively operate and maintain the Surface Water Management System in accordance with the SJWMD Permit. This shall include the filing of monitoring reports on a quarterly basis during the first year, and semi-annually thereafter, for a period of three (3) years and until success criteria are met for two (2) consecutive monitoring intervals.
- (5) Activities within Wetlands. No Owner may construct or maintain any building, dwelling, or

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structure, or undertake or perform any activity in the created, enhanced or preserved wetland described in the Permit and shown on the Plat as Conservation Areas, unless prior approval is obtained from SJWMD.

- (6) Amendment of Declaration. Notwithstanding Article VIII, Section 3, of this Declaration, or any other amendment provision, any amendment (including a termination) of this Declaration that would directly and adversely affect the operation and maintenance of the Surface Water Management System in a material respect must have the prior approval of the SJWMD.
- (7) Disposition. The Association shall not dissolve or dispose of any Common Area or common open space or improvements therein except to an organization concerned with and designed for the continued maintenance in accordance with the requirements of the original development approval.

**Section 7:** The Declarant shall be permitted to enter into a bulk cable agreement for the provision of cable television service to the Development. Upon the expiration of same, the Association shall be permitted to renew or amend same.

**Section 8:** The Declarant shall be permitted to attend in person, via phone or by sending an authorized agent, all open membership meetings, committee meetings and all board of director meetings for a period of 3 years following the turn over date to the residents. The declarant shall receive minimum 36 hours notice of any such meeting, except in the case of an emergency meeting in which case the declarant shall be permitted to attend via phone.

**Section 9:** The Declarant provides notice of the possibility and has the unconditional and sole right to modify the planned Spyglass community (also known as Tuscany Lakes Estates) located just West of Fieldstone Ranch, to be used for any legal purpose including having the property re-zoned, or otherwise re-designed.

**Section 10:** The Conservation Easement recorded in Plat Book 2244, Page 1608-1416 of the Public Records of Indian River County, Florida, shall be subject to the restrictions of the Laws of the State of Florida and Indian River County, Florida. The Association is charged with the responsibility to seek the compliance with said laws and governing regulations. Violations of the terms of the Conservation Easement or any applicable law and/or regulation shall be deemed a violation of the covenants contained herein subject to the enforcement provisions provided herein in addition to any other enforcement by Indian River County, Florida or the State of Florida. No construction or improvements shall be permitted with the Conservation Easement without the authorization of Indian River County, Florida and/or the State of Florida. The Association shall be responsible for the maintenance of the Conservation Easement including, but not limited to, Tracts G and H and the northern, southern and eastern perimeter of the stormwater management lake as shown adjacent to Lots 7 through 16, as well as said stormwater management lake, in compliance with the terms of same and the further requirements of Indian River County, Florida and the State of Florida.

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**FIELDSTONE RANCH**

**IN WITNESS WHEREOF**, Declarant has caused these presents to be executed in manner and form sufficient to bind it and encumber the Property as of the day and year first above written.

Signed, sealed and delivered  
In the presence of:

**Woodside Fieldstone Ranch, LLC,  
a Florida limited liability company**

Sue Baker  
(Name: Sue Baker)

By:

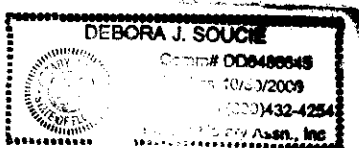
[Signature]  
**By: William N Handler**  
**Its Managing Member**

[Signature]  
(Name: Debra J. Soucie)

**STATE OF FLORIDA** )  
  )  
**COUNTY OF INDIAN RIVER** )

**I HEREBY CERTIFY** that before me, a Notary Public, personally appeared William N Handler, as Managing Member of Woodside Fieldstone Ranch, LLC., who did acknowledge and swear before me that said person executed the foregoing instrument for the uses and purposes therein set forth on behalf of said limited partnership. I further state that I am familiar with the identity of the aforesaid person and have confirmed said person's identity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal at the County and State aforesaid this 30 day of January, 2009.



[Signature]  
**NOTARY PUBLIC**  
(Affix Seal)

*Expires 10/30/2009*