

4094 ①

Recorded in Public Records St. Johns County, FL
Clerk# 95039393 O.R. 1145 PG 744 03:01PM 12/18/95
Recording \$85.00 Surcharge \$11.00

This Instrument Prepared By:
John D. Bailey, Jr.
Upchurch, Bailey and Upchurch, P.A.
Post Office Drawer 3007
St. Augustine, Florida 32085-3007
FN. 6-94-369

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR EAGLE CREEK OF ST. AUGUSTINE**

THIS DECLARATION ("Declaration") made as of the date hereinafter set forth, by EAGLE CREEK ASSOCIATES, INC., a Florida corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the following described real property, situated, lying and being, in St. Johns County, Florida; and

WHEREAS, the following described real property is not subject to any covenants or restrictions of record; and

WHEREAS, Declarant desires to place covenants and restrictions of record as to the real property hereinafter set forth, and to limit the use of same as set forth hereinafter; and

WHEREAS, Declarant deems it desirable to create a not for profit association to manage the property. The association shall own, maintain and administer all the Common Property as hereinafter defined and shall administer and enforce the easements, covenants, conditions, restrictions and limitations set forth herein and collect and disburse the assessments hereinafter created.

NOW, THEREFORE, Declarant hereby declares that the following described real property, situate, lying and being, in St. Johns County, Florida, to wit:

All the land described and contained in the Plat of Eagle Creek of St. Augustine, according to plat thereof recorded in Map Book 28 , Pages 110 through 116, public records of St. Johns County, Florida (hereinafter the "Property").

and any additional property made subject to this Declaration shall be held, sold and conveyed, subject to the following easements, covenants, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of, and which, shall be covenants and restrictions to run with the Property and binding on all parties having any right, title or interest in the real Property described above or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Unless the context expressly requires otherwise, the words defined below, whenever used in this Declaration shall have the following meanings:

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

1.2 "Association" shall mean and refer to Eagle Creek of St. Augustine Homeowners' Association, Inc., its successors and assigns.

1.3 "Board of Directors" shall mean and refer to the board of directors of the Association.

1.4 "By-Laws" shall mean and refer to the By-laws of the Association as amended from time to time.

1.5 "Common Expenses" shall mean and refer to those items of expense for which the Association is or may be responsible under this Declaration and those additional items of expense approved by the Owners in the manner set forth in the Declaration,

the Articles or the By-laws.

1.6 "Common Property" shall mean and refer to those tracts of land dedicated or conveyed to the Association for the common use and enjoyment of the owners and their guests and invitees and all improvements constructed thereon. All Common Property is intended for the common use and enjoyment of the Owners and their guests, lessees or invitees and the visiting general public to the extent permitted by the Board of Directors of the Association subject to any rules and regulations adopted by the Association and subject to all use rights reserved by Declarant herein or prior to conveying any land to the Association.

1.7 "Declarant" shall mean and refer to Eagle Creek Associates, Inc., a Florida corporation, its successors and assigns, provided such successors or assigns acquire more than one (1) undeveloped lot from Declarant for the purpose of development.

1.8 "Lot" shall mean and refer to any plot of land together with the improvements thereon, shown on the recorded Subdivision Plat referred to herein and any subsequently recorded Subdivision Plat of any additional contiguous land made subject to this Declaration.

1.9 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot shown on the Subdivision Plat referred to herein and any Subdivision Plat of additional contiguous land made subject to this Declaration, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

1.10 "Property" shall mean and refer to that certain real Property described on page 1 hereof, together with improvements thereon and any additional contiguous Property made subject to this Declaration.

1.11 "Surface Water or Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit,

treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

ARTICLE II

PROPERTY RIGHTS

2.1 Owners' Common Property Easements. Subject to the provisions of the Declaration, the rules and regulations of the Association, and any prior use rights granted in the Common Property, every Owner, their successors and assigns and their families and every guest, tenant, and invitee of such Owner is hereby granted a right and easement of ingress and egress and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use and security of any recreational facility situated upon the Common Property.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities located on the Common Property by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period, not to exceed sixty (60) days, for any infraction of its published rules and regulations. In no event may the Association deny an Owner the use of the entrance areas or public or private roads or cul-de-sacs, if any, so as to prohibit ingress and egress to his Lot.

(c) The right of the Board of Directors, without further consent from Owners or their Mortgagees, to dedicate, transfer or grant an easement over all or any part of the Common Property to any public agency, authority or utility company for the purpose of providing utility or cable television service to the Property and the right of the Board to acquire, extend, terminate or abandon such easement.

(d) The right of the Association to sell, convey or transfer the Common Property or any portion thereof to any third party other than those described in Subsection (c) for such purposes and subject to such conditions as may be approved by a majority vote of the Association.

(e) The right of the Board of Directors to adopt reasonable rules and regulations pertaining to the use of the Common Property.

(f) The right of the Declarant or the Association to authorize other persons to enter upon or use the Common Property for uses not inconsistent with the Owners' rights therein.

(g) The right of the Board to mortgage any or all of the Common Property for the purpose of improvement or repair of the Common Property with the approval of a majority vote of the Association.

2.2 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Property to the members of his family, his tenants, or contract purchasers who occupy the Lot within the Property.

2.3 Conveyance of Common Property. The Declarant shall dedicate or convey the Common Property to the Association at such time as all the planned improvements, if any, are complete and in the event the Common Property is unimproved, at such time as the Declarant determines, but in all events prior to the termination of the Class B membership. Such conveyance shall be subject to easements and restrictions of record, including all those shown on the plat of the Property, and free and clear of all liens and financial encumbrances other than taxes for the year of conveyance. The Declarant may reserve certain rights to itself for use of the Common Property which are not adverse to the Owners.

2.4 Title to the Utility Tract. Title to the utility tract shall remain in the Declarant, subject to the Declarant's right to dedicate it to a public or private utility or to convey it to the Association as Common Property.

ARTICLE III

ARCHITECTURAL CONTROL

3.1 No buildings or structures, including docks and bulkheads, dune walkovers, fences, mailboxes, walls, landscaping or exterior lighting plan or other improvements other than those erected by Declarant, shall be commenced, erected or maintained upon the Property, nor shall any grading, excavating, or tree removal be commenced, exterior addition to or change be made until all construction, grading and landscape plans and specifications showing the nature, kind, shape, height, color, materials and location of the same have been submitted to and approved in writing by the Architectural Control Committee (the "Committee") composed of the Declarant, or such agent or agents as may be appointed by the Declarant, in its sole discretion, as to quality of workmanship and materials, harmony of external design with existing buildings or structures, location of said building or structure with respect to topography and finish grade elevation and as to compliance with the provisions of this Declaration. Said plans shall be either approved or disapproved by the Committee within thirty (30) days following submittal to same. Construction of approved improvements shall be completed within a period of six (6) months from date construction is begun or such longer period of time as may be approved by the Committee in its sole discretion.

At such time as the Declarant ceases to be a Class B member of the Association, the members of the Committee shall be appointed by the Board of Directors of the Association.

3.2 The Committee shall have the following powers and duties:

(1) To draft and adapt, from time to time, architectural planning criteria, standards and guidelines relative to architectural styles or details and rules and regulations regarding the form and content of plans and specifications to be submitted for approval all as it may consider necessary or appropriate.

(2) To require submission to the Committee of two (2) complete sets of preliminary and final plans and specifications as

hereinafter defined for any buildings or structures of any kind, including, without limitation, any dwelling, fence, wall, sign, site paving, grading, parking and building additions, alterations, screen enclosure, sewer, drain, disposal system, decorative building, landscaping, landscape device or object, exterior lighting scheme, docks or bulkheads ("Proposed Improvement") the construction or placement of which is proposed upon any Lot or the Property, together with a copy of any building permits which may be required. The Committee may also require submission of samples of building materials and colors proposed for use on any Lot or the Property, and may require such additional information as reasonably may be necessary for the Committee to completely evaluate the proposed structure or improvement in accordance with the Declaration and the Architectural Planning Criteria adopted by the Committee.

(3) To approve or disapprove any Proposed Improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot or the Property and to approve or disapprove any exterior additions, changes, modifications or alterations including the color thereof, therein or thereon. Subsequent to the transfer of control of the Committee by the Declarant, any party aggrieved by a decision of the Committee shall have the right to make a written request to the Board of Directors of the Association within thirty (30) days of such decision, for a review thereof. The determination of the Board upon reviewing any such decision shall in all events be dispositive. Provided, however, during the time the Declarant is a Class B Member determination by the Committee shall be final.

(4) To evaluate each application for the total effect, including the manner in which the homesite is developed. This evaluation relates to matters of judgment and taste which can not be reduced to a simple list of measurable criteria. It is possible, therefore, that a Proposed Improvement might meet individual criteria delineated in this Article and the Architectural Planning Criteria and still not receive approval, if

in the sole judgment of the Committee, its overall aesthetic impact is unacceptable. The approval of an application for one Proposed Improvement shall not be construed as creating any obligation on the part of the Committee to approve applications involving similar designs for Proposed Improvements pertaining to different Lots.

(5) If any Proposed Improvement as aforesaid shall be changed, modified or altered without prior approval of the Committee of such change, modification or alteration, and the plans and specifications therefor, if any, then the Owner shall, upon demand, cause the Proposed Improvement to be restored to comply with the original plans and specifications, or the plans and specifications originally approved by the Committee, and shall bear all costs and expenses of such restoration, including costs and reasonable attorneys' fees of the Committee.

(6) In addition, any Owner making or causing to be made any Proposed Improvement or additions to the Property or a Lot agrees and shall be deemed to have agreed, for such Owner and his heirs, personal representatives, successors and assigns to hold the Committee, Association, Declarant and all other Owners harmless from any liability, damage to the Property and from expenses arising from any Proposed Improvement and such Owner shall be solely responsible for the maintenance, repair and insurance of any Proposed Improvement and for assuring that the Proposed Improvement meets with all applicable governmental approvals, rules and regulations.

(7) The Committee is hereby authorized to make such charges as it deems necessary to cover the cost of review of the plans and specifications.

ARTICLE IV

USE RESTRICTIONS

4.1 No Lot shall be used for any purpose except residential. No building other than one (1) single-family dwelling, not to exceed thirty-five feet (35') in height may be constructed on any one Lot. All garages, utility rooms, porches

and screened-in areas shall be designed in harmony with the dwelling. No residence shall be constructed or placed on any Lot containing less than 1,000 square feet of heated and cooled living area, for a one (1) story dwelling, nor less than eight hundred (800) square feet of ground floor area for a dwelling of more than one (1) story, with a minimum of one (1) enclosed attached garage. All garages, utility rooms, porches and screened-in areas shall be in addition to the minimum 1,000 square feet of living area and not considered a part thereof. All front yards shall be sodded and landscaped from the edge of the paved roadway to the foundation of the residence. No business, commercial buildings or equipment may be erected, kept or maintained on any Lot.

4.2 No residence shall be erected less than twelve feet (12') and no garage less than twenty feet (20') from the front lot line, ten feet (10') feet from the rear lot line and five feet (5') from any side lot line. All setbacks shall be measured from the exterior wall of the structure to the applicable lot line. Eaves and cornices of any structure may project beyond the setback limits herein established. Accessory uses, including but not limited to, pools, spas, patios and screen enclosures shall be setback a minimum of three (3') feet from all lot lines. A dwelling may be located upon a single-family lot or on a combination of lots and, in such event, the setback lines shall apply to the most exterior lot lines.

4.3 No wall, fence or hedge shall be permitted upon any Lot which is over six feet (6') in height. All walls or fences must have prior approval from the Committee as to type, location, size or construction thereof. No walls or fences may be installed from the front of a residence to the front lot line.

4.4 No wheeled vehicles of any kind, including trailers, boats or campers may be kept or parked on any Lot or driveway unless same are completely inside a garage. Provided, however, private automobiles of the occupants and guests bearing no commercial signs may be parked in the driveway of a Lot. Other vehicles may be parked in driveways or parking areas during

necessary times solely for pick-up and delivery purposes.

4.5 No livestock, poultry or animals of any kind or size shall be raised, bred or kept on any Lot. Provided, however, that dogs, cats or other domesticated household pets may be raised and kept provided such pets shall not exceed two (2) in number. No such pets shall be allowed on the Property other than on the Lot of the Owner of such pets, unless confined to a leash.

4.6 Persistently barking dogs, or dogs running at large, or in packs, shall constitute a nuisance, per se, and a violation of Restriction 4.9 hereof.

4.7 No portion of a Lot shall be used as a drying or hanging area for laundry of any kind, unless screened from the view of neighboring Owners and the street.

4.8 Subject to the provisions of 4.2 hereof, no Lot or Lots shall be resubdivided.

4.9 No immoral, unlawful, noxious or offensive activity shall be carried on upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance.

4.10 No structure of a temporary character, tent, shack, garage, barn, trailer or other outbuilding shall be used on a Lot as a residence either temporarily or permanently.

4.11 No Lot shall be used or maintained as a dumping ground for rubbish and trash. Garbage or other waste shall only be kept in sanitary containers. No mining or excavating operations of any kind shall be permitted upon or in any Lot. All lawns, grounds and landscaping shall be mowed and maintained by the Lot Owner in a neat and orderly fashion free of all rubbish, trash, garbage and all unsightly weeds and underbrush.

4.12 In the event any Owner fails to mow and maintain his Lot in the manner required by 4.11 hereof, or to maintain the structures and improvements on such Lot in a good and workmanlike manner, or in a neat and clean appearance, the Committee or the Board of Directors may, thirty (30) days after delivery of written notice to such Owner, authorize its agents to enter upon the Lot and perform any necessary maintenance at the expense of the Owner

and such entry upon the Lot will not be deemed a trespass. Such expense shall be deemed a special assessment against the Owner of the Lot and may be collected by the Association in the manner specified in Article VII hereof.

4.13 No sign of any kind shall be displayed on any Lot except approved signs showing the Owners' name and number of residence and temporary "For Sale" or "For Rent" signs containing less than two (2) square feet of display area. All of the above signs must be approved by the Committee prior to installation.

4.14 No satellite dishes or television antennas shall be installed unless same are screened from view on all sides. No television antennas or satellite dishes may be installed until such screening has been approved by the Committee.

4.15 No tree of a diameter in excess of four inches (4") at a height of four feet (4') above ground level may be removed from a Lot without the approval of the Committee. All requests for tree removal shall be submitted to the Committee along with a site plan showing the location of such tree or trees.

4.16 The Committee may require any Owner who violates 4.15 above, to replace trees removed without approval with trees of like kind and size, within thirty (30) days after written demand by the Committee. If an Owner fails or refuses to replace the trees as demanded, the Committee may replace the trees removed with trees of like kind and size and the cost thereof shall be considered a special assessment against the Owner's Lot which, if not paid within thirty (30) days after it is assessed, shall become a lien on the Lot as provided in paragraph 7.1 hereof.

4.17 No window air conditioning units may be placed in any window of a residence which is visible from the street.

4.18 If the Declarant elects not to install a mail substation within the Property, all mailboxes shall be uniform, designed and constructed in accordance with specifications promulgated by the Committee.

4.19 Individual wells for irrigation of lawns and landscaping only may be installed on a Lot upon approval of the

Committee.

4.20 All sewage shall be disposed of through a central system operated and maintained by a public or private utility selected by Declarant.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

5.1 Every Owner of a Lot, including Declarant shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

5.2 The Association shall have two (2) classes of voting members as follows:

5.2.a Class "A" members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a Lot, all such persons shall be members and the vote for such Lot shall be exercised as they may determine among themselves. In no event shall more than one (1) vote be cast with respect to any Lot owned by Class "A" members.

5.2.b Class "B" member shall be Declarant who shall be entitled to exercise five (5) votes for each Lot owned. The Class "B" membership shall cease and be converted to Class "A" membership when the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership, or ten (10) years following the date of conveyance of the first Lot, whichever occurs first.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

6.1 The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof to the extent it deems advisable, as well as such other personnel as the Association shall deem to be necessary or advisable for the proper operation of the Association, whether such personnel are

furnished or employed directly by the Association or by any person or entity with whom it contracts. The Association may obtain and pay for legal, accounting and management services necessary or desirable in connection with its obligations hereunder or the enforcement of this Declaration.

6.2 The Association shall hold and own "Common Property" and may acquire or dispose of the same by sale, grant of easement or otherwise make agreements with respect to the Common Property subject to the restrictions and provisions of this Declaration, the Articles and By-Laws.

The Association shall, at all times, pay the real property ad valorem taxes and assessments, if any, assessed against the Common Property and any other governmental liens which may be assessed against the Common Property, unless the taxes for such Common Property are assessed against each Owner as a part of the tax assessment for each Owner's Lot.

6.3 The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Stormwater Management System. Maintenance of the Surface Water or Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other Surface Water or stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved by the St. Johns River Water Management District.

6.4 The Association shall obtain such fidelity bonds as it deems necessary and as may be required by the Federal Home Mortgage Corporation and the Federal National Mortgage Association, which bonds shall be in effect for all persons responsible for handling money. Such bonds shall be in such amounts as the Board deems necessary or convenient or may be required by a mortgagee.

6.5 The Association shall manage and maintain the Common Property, including but not limited to those parcels dedicated to the Association on the subdivision plat of the Property, Surface and Stormwater Management Systems serving the Property, amenity center, those portion of the recreation area, landscaped median and shelter, identification signs, landscaped buffer adjacent to U.S. 1, located on Common Property and all mitigation and jurisdictional areas.

6.6 The Association shall interpret and enforce the provisions of this Declaration and, in connection therewith, collect and expend the assessments permitted herein for such purposes.

6.7 The Association may exercise any of the rights and privileges expressly granted in this Declaration, the Articles and By-Laws, the laws governing not-for-profit corporations, and every other right and privilege reasonably to be implied from the existence of any right or privilege granted herein or reasonably necessary to effectuate any right or privilege granted herein.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENT

7.1 Declarant hereby covenants for each Lot within the Property and each Owner of a Lot is hereby deemed to covenant by acceptance of his deed for such Lot, whether or not it shall be so expressed in his deed, to pay to the Association annual assessments and special assessments as defined hereinafter. Such assessments will 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 Property and a continuing lien on each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly

assumed by them.

7.2 The annual assessments levied by the Association shall be paid either in monthly or annual installments and used exclusively to promote the health, safety, welfare, and recreation of Owners of Lots in the Property, and for the improvement and maintenance of all common roads, Common Property, landscaped areas and all areas required to be maintained under the St. Johns River Water Management District Permit pertaining to the Property, for the administration of the Association, for the establishment of a maintenance, repair and reserve account, for the installing and maintenance of street lighting and signage, for payment of taxes and insurance on all Common Property and for such other purposes as are set forth or permitted in this Declaration, the Articles of Incorporation or By-laws.

Assessments shall also be used for the maintenance and repair of the Surface Water or Stormwater Management Systems including but not limited to work within retention areas, drainage structures and drainage easements.

7.3 In addition to the annual assessments 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 on the Common Property. Any such assessment must be approved by a majority of each Class of members who are voting in person or by proxy at a meeting duly called for such purpose. The right of assessment for annual and special assessments authorized herein shall be equal and uniform for all Lots.

7.4 The annual assessments authorized herein shall commence upon substantial completion of the roads and utilities serving a Lot. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the due date thereof, and shall fix the dates such amounts become due. Notice of the annual assessments shall be mailed to every Owner subject thereto.

7.5 Notwithstanding any provision to the contrary herein, Declarant, for any Lots which it owns, shall not be liable for assessments either annual or special so long as it funds any deficit in the operating expenses of the Association. Provided further, the Declarant, in its sole discretion, may at any time commence paying assessments as to Lots owned by it and thereby automatically terminate its obligation to fund any deficit in the operating expenses of the Association.

7.6 The Association shall, on demand and for a reasonable charge, furnish to the Owner liable for any assessment a certificate in writing, signed by an officer of the Association, setting forth whether the assessments against a specific Lot have been paid, and if not, the amounts owed therefore.

7.7 Any assessment not paid within thirty (30) days after the due date shall be deemed in default and such assessment together with interest from the due date at the highest rate allowed by law a late fee, not to exceed \$20.00 for each assessment not paid within fifteen (15) days after the due date and costs of collection thereof, including a reasonable attorney's fee at the trial and appellate level, shall become a continuing lien against the Lot. The Association may bring an action at law against the Owner personally obligated to pay same, or may foreclose the lien against the Lot as provided herein. The Association shall have the right to record a Claim of Lien in the Public Records of St. Johns County, Florida, giving notice to all persons that the Association is asserting a lien upon the Lot. Said Claim of Lien shall state the description of the Lot, name of the record Owner thereof, the amount due and the due date thereof. Such Claim of Lien shall be signed and verified by an officer of the Association and shall continue in effect until all sums secured by same have been fully paid. Upon full payment of the total amount due, the party making payment shall be entitled to a recordable Satisfaction of Lien. No Owner may waive or escape liability for the assessments provided for herein by abandonment of his Lot.

7.8 The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which become 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.

ARTICLE VIII

EASEMENTS

8.1 For so long as Declarant is a Class B member, Declarant reserves the right without further consent from any other Lot Owners to grant to any public utility company, municipality or other governmental unit, water or sewage company or cable television company an easement over all easements shown on any plat of the Property, and also, in and to, a five foot (5') strip of land located parallel to and along all side and rear lot lines and a ten foot (10') strip of land located along and adjacent to all front lot lines for all purposes including the right to erect and lay or cause to be erected or laid, constructed, maintained, removed or repaired all light and telephone poles, wires, water and gas pipes and conduits, catch basins, cable television lines, surface drains, sewage lines and such other customary or usual appurtenances as may, from time to time, in the opinion of Declarant or any utility company or governmental authority, be deemed necessary or advisable. Any purchaser by accepting a deed to any Lot does thereby waive any claim for damages against Declarant, their successors or assigns incurred by the construction, maintenance and repair of said utilities, or on account of temporary or other inconvenience caused thereby.

8.2 The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water or Stormwater Management System for access to operate, maintain or repair the system. By this easement, the Association shall have the right to

enter upon any portion of any lot which is 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 or Stormwater Management System as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Stormwater Management System. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

ARTICLE IX

GENERAL PROVISIONS

9.1 Enforcement of these restrictions by the Declarant or any Lot Owner shall be by proceedings at law or in equity against any person violating or attempting to violate any covenant or restriction either to restrain the violation or to recover damages, or both. The prevailing party in any such action shall be entitled to recover reasonable attorney's fees and court costs at all levels of the proceeding.

9.2 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.

9.3 Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions hereof, which shall remain in full force and effect.

9.4 The Declarant reserves and shall have the sole right (a) to amend these covenants and restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein, (b) to release any Lot from any part of this Declaration which has been violated (including violations of

building restriction lines) if the Declarant, in its sole judgment, determine such violations to be minor or insubstantial; provided, however, that authority to release such violations shall arise only upon substantial completion of the building upon each Lot, and (c) to comply with any requirement of any mortgagee or any governmental agency or similar entity having jurisdiction over the Property.

9.5 In addition to the rights of the Declarant provided for in Section 9.4 hereof, the Association, with the consent of seventy-five percent (75%) of each class of votes entitled to be cast in accordance with this Declaration, may amend or alter this Declaration or any part thereof.

9.6 Any failure of the Declarant, the Association or Lot Owners, their successors or assigns to promptly enforce any of the restrictions or covenants contained herein, shall not be deemed a waiver of the right to do so thereafter.

9.7 The Declarant reserves and shall have the sole right to annex additional contiguous land on which additional Lots may be developed and make same subject to this Declaration without the joinder or consent of any Lot Owner, the Association, the holder of a mortgage or lien affecting the Property or any other person. The Owners of Lots developed on such contiguous land shall be members of the Association in accordance with the provisions of this Declaration and shall be subject to all covenants, rules, regulations and by-laws in the same manner and with the same effect as the original Lot Owners.

9.8 Any amendment to the Covenants and Restrictions which alters 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.

9.9 Notwithstanding any other term or condition contained in this Declaration, the Declarant shall have the right to transact upon the Property any business necessary to effect the sale of Lots including, but not limited to, the right to maintain model homes, have signs, and locate a sales trailer on the

Property.

O.R. 1145 PG 0763

9.10 All rights reserved herein by the Declarant shall be fully assignable and transferrable.

9.11 These covenants and restrictions shall run with the land and shall be binding on all parties and all persons claiming through, by or under them until December 31, 2024. After said date, said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then Owners of the lots has been recorded agreeing to change said covenants in whole or in part.

IN WITNESS WHEREOF, the undersigned Declarant has affixed its hand and seal on this 25 day of August, 1995.

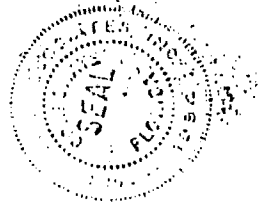
Signed, sealed and delivered
in the presence of:

Henry P. Swartz
Witness Henry P. Swartz
(type or print name)

John D. Bailey Jr.
Witness John D. Bailey Jr.
(type or print name)

EAGLE CREEK ASSOCIATES, INC.

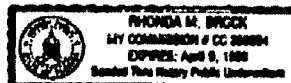
By: Frank A. Darabi
FRANK A. DARABI
Its President
710 North Waldo Avenue, Suite A
Gainesville, Florida 32601



STATE OF FLORIDA
COUNTY OF St. Johns

THE FOREGOING instrument was acknowledged before me this 25 day of Aug 25, 1995, by Frank A. Darabi, the President of Eagle Creek Associates, Inc., a Florida corporation, on behalf of the corporation, who (X) is personally known to me or () has produced _____ as identification.

Rhonda M. Bruck
Signature of Notary
Rhonda M. Bruck
(Name of Notary Typed, Printed
or Stamped)
Commission Number: _____
My Commission Expires: _____



CONSENT OF MORTGAGEE

Barnett Bank of the St. Johns, the owner and holder of a First Mortgage and Security Agreement dated March 30, 1995, recorded in Official Records Book 1103, Page 671, as modified by Mortgage and Note Modification and Notice of Future Advance and Consolidation Agreement dated November 30, 1995, recorded in Official Records Book 1143, Page 1573, (the "First Mortgage") and Second Mortgage and Security Agreement dated November 30, 1995, recorded in Official Records Book 1143, Page 1513, (the "Second Mortgage") all of the public records of St. Johns County, Florida, upon the real property described in the Declaration of Covenants and Restrictions for Eagle Creek of St. Augustine, (the "Declaration of Covenants and Restrictions") recorded in Official Records Book 1145, Page 744, all of the public records of St. Johns County, Florida, hereby agrees to the filing of the Declaration of Covenants and Restrictions as covenants running with the land and to the subordination of the lien of the First Mortgage and Second Mortgage to the terms of the Declaration of Covenants and Restrictions.

DATED this 14 day of December, 1995.

Signed, sealed and delivered
in the presence of:

BARNETT BANK OF THE ST. JOHNS,
a state banking corporation

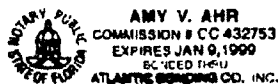
Amy V. Ahr
Witness Amy V. Ahr
(type or print name)

Charles R. McElrath
Witness Charles R. McElrath
(type or print name)

By John E. Dondero
Its President Vice President
2155 Old Moultrie Road
St. Augustine, Florida 32086

STATE OF FLORIDA
COUNTY OF ST. JOHNS

THE FOREGOING instrument was acknowledged before me this 14th day of December, 1995, by John E. Dondero as Assistant Vice President of Barnett Bank of the St. Johns, a state banking corporation, on behalf of the corporation, who () did not take and who (X) is personally known to me or has produced as identification.



Amy V. Ahr
Notary Public
Amy V. Ahr
(name of notary, typed/printed)
My commission number CC 432753
My commission expires 1/9/99

RET → THE NEIGHBORHOOD MANAGERS
79 MASTERS DL
ST. AUG., FL 32084

Public Records of
St. Johns County, FL
Clerk# 04-061838
O.R. 2262 PG 230
08:30AM 08/16/2004
REC \$13.00 SUR \$14.00

2
③
90
This Instrument Prepared By:
Stephen A. Faustini
Upchurch, Bailey and Upchurch, P.A.
780 North Ponce de Leon Boulevard
St. Augustine, Florida 32085-3007
FN: 4-96-079

FIRST AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
EAGLE CREEK OF ST. AUGUSTINE

THIS FIRST AMENDMENT to Declaration of Covenants and Restrictions for Eagle Creek of St. Augustine ("Eagle Creek") is made this 9TH day of December, 2003, by Eagle Creek of St. Augustine Homeowners' Association, Inc. ("the Association").

WITNESSETH:

WHEREAS, the developer of Eagle Creek heretofore executed a Declaration of Covenants and Restrictions for Eagle Creek of St. Augustine dated August 28, 1995, and recorded in Official Records Book 1145, Page 744 of the public records of St. Johns County, Florida ("the Declaration"); and

WHEREAS, the Association desires to amend the Declaration to provide that the Association may suspend a member's rights to use the common areas and impose a fine for violation of the governing documents of Eagle Creek or the rules and regulations of the Association as provided by Section 720.305, Florida Statutes (2002); and

WHEREAS, pursuant to Section 9.5 of the Declaration the Association has the power to amend the Declaration with the consent of 75% of each class of votes entitled to be cast; and

WHEREAS, the following amendment was approved by the requisite number of votes;

NOW, THEREFORE, the Association hereby amends the Declaration as follows:

1. The following Section 9.12 is hereby added to the Declaration:

9.12 The Association may suspend, for a reasonable period of time, the rights of an Owner or an Owner's tenants, guests, or invitees, or both, to use Common Property and facilities, and may levy reasonable fines, not to exceed \$100 per

violation, against any Owner or any tenant, guest, or invitee, for any violation of this Declaration, Chapter 720, Florida Statutes, the governing documents of Eagle Creek, or the rules of the Association. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. The suspension of voting rights and the levying of fines shall be in done in accordance with the procedures set forth in Section 720.305, Florida Statutes (2002), as amended from time to time. In addition to the foregoing, the Association may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of ninety days.

2. In all other respects, the Declaration remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the Association has caused these presents to be executed this 19th day of January, 2004

Signed, sealed and delivered in the presence of:

EAGLE CREEK OF ST. AUGUSTINE
HOMEOWNERS' ASSOCIATION, INC.

Patricia Reames
Witness: PATRICIA REAMES
(print or type name)

By: Paul E "Bud" Markel
Name: CARL E "Bud" MARKE
Its President

Witness: _____
(print or type name)

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 19 day of January, 2004, by PAUL "Bud" MARKE as president of Eagle Creek of St. Augustine Homeowners' Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation. He/she is personally known to me.

Patricia Reames
Notary Public

Page 2 of 3

PATRICIA REAMES
Notary Public, State of Florida
My comm. expires Sept. 24, 2004
Comm. No. CC974519

CERTIFICATE OF APPROVAL

The undersigned, being the Secretary of Eagle Creek of St. Augustine Homeowners' Association, Inc., hereby certifies that the foregoing amendment to the Declaration of Covenants and Restriction for Eagle Creek of St. Augustine, was approved by the Association at a meeting of the board of directors held on 19 JANUARY, 2004.

Dated: 19 JANUARY, 2004.

EAGLE CREEK OF ST. AUGUSTINE
HOMEOWNERS' ASSOCIATION, INC.

By: T R Boman
Print Name: T. R. BOMAN
Its: Secretary

(CORPORATE SEAL)

