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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LYDIA ESTATES

THIS DECLARATION is made on the date of execution stated at the end of this instrument. This Declaration is made by A. F. Alan Custom Homes, Inc., referred to in this instrument as the "Developer".

INTRODUCTION: The Developer is in the process of developing the multi-phase, gated, residential community in North Jacksonville to be known as Lydia Estates. In order to preserve the tangible and intangible value of the community, the Developer wishes to impose reasonable restrictions or conditions upon the development, ownership, and use of Lydia Estates. Also, the Developer needs to comply with applicable requirements of public land use laws and regulations. It is for these reasons that the Developer is making and recording this Declaration.

(33)

SUMMARY OF KEY TERMS FOR TITLE EXAMINERS AND CLOSING AGENTS: This summary is not an exhaustive analysis of this Declaration, and all affected persons should read all of the provisions of this instrument. Nevertheless, in order to assist title examiners and closing agents in routine transactions, the Developer provides the following summary of key terms, which the experience of the Developer indicates are routinely reviewed in most transactions:

1. **Assessments and Liens:** assessments may be due to Lydia Estates Homeowners Association, Inc. Unpaid assessments are secured by liens against the lots. Interested persons are entitled to receive a written certificate from the Association setting forth the status of the annual or special assessments due for the particular lot. Article III.

2. **Assessments and Mortgages:** mortgagees who are not also owners in default in the payment of assessments are not required to pay assessments accruing prior to the time that the mortgagee acquires title by foreclosure or deed in lieu of foreclosure. Liens for assessments accruing prior to that time are

automatically subordinate to the rights of mortgagees. Section 3.7.

3. **Building restriction lines for Residences:** the front building restriction line is 20 feet. The side building restriction lines are 15 feet, but they may be reduced to not less than 5 feet, if the space between adjoining residences is not less than 15 feet. The rear building restriction line is 10 feet, except where the particular lot is subject to a rear easement per the plat, and then the rear building restriction line is 15 feet. Section 7.3.

4. **Specific easements:** this Declaration contains a number of provisions granting or reserving easement rights, as for example, rights of ingress and egress over the private roadways. However, no lot is made subject to a specific easement, as for example a rear easement for drainage and utilities, except as shown on the plat, or except as may be evidenced in the public records of Duval County, Florida, by separate instruments.

5. **Additional properties:** the Developer has reserved the right to add additional properties to Lydia Estates, subject to various limitations contained in this Declaration. Article IX and various provisions throughout the Declaration.

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ARTICLE I
DEFINITIONS

Section 1.1 **Articles.** This means the Articles of Incorporation for the Association filed with the Florida Department of State on the 31st day of July, 1997, under Document No. N97000004347, and all duly adopted amendments.

Section 1.2 **Association.** This means Lydia Estates Homeowners Association, Inc.

Section 1.3 **Bylaws.** This means the instrument commemorating the rules for managing the business and regulating the affairs of the Association, as adopted at the organizational meeting for the Association, and all duly adopted amendments.

Section 1.4 **Common Areas.** See Article II.

Section 1.5 **Declarant or Developer.** This means A. F. Alan Custom Homes, Inc., a Florida corporation, the plat maker and the Developer of Lydia Estates, Unit One. Also, these terms include any transferee or successor in interest to A. F. Alan Custom Homes holding the rights of the Developer under this Declaration.

Section 1.6 **Declaration.** This means this Declaration of Covenants, Restrictions and Easements imposed by the Developer upon the record title of Lydia Estates, and any duly adopted and recorded amendment to this instrument.

Section 1.7 **FHA.** This means the U. S. Department of Housing and Urban Development, Federal Housing Administration, and where applicable, will include the Secretary of that Department and any successor to that agency.

Section 1.8 **Lydia Estates.** This means the plat of Lydia Estates, Unit One, according to the plat thereof, recorded in Plat Book 51, Pages 43A, 43B, 43C, and 43D, of the current public records of Duval County, Florida. Also, this term will include any additional units, appearing in additional plats, which are made subject to the terms of this Declaration by a recorded instrument executed by the Developer or other persons having the fee simple title. As well, this term may include other residential properties which are not within any plats having the name "Lydia Estates" but which are offered the right by Developer to become subject to this Declaration by recordation of an instrument signed by all fee simple owners. In various provisions of this Declaration, there are understandings concerning the impact of the additional properties which may be added to Lydia Estates and made subject to this Declaration. The additional properties which may be added are identified in Article IX, below.

Section 1.9 **Lot.** This means any one of the 68 parcels shown on the plat of Lydia Estates, Unit One, numbered 1 through 24, inclusive, 60 through 97, inclusive, and 109 through 114, inclusive. Also, this term means any single building site or parcel added to Lydia Estates pursuant to this Declaration.

Section 1.10 **Member.** This term means the persons who have proprietary interests in the Association. This term is interchangeable with the term "Owner," as all owners are required to be members of the Association.

Section 1.11 **Owner.** This means any record owner, whether one or more persons or entities, of a fee simple interest to any of the lots in Lydia Estates, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.12 **Residence.** This means a detached, single-family residential structure located upon a lot within Lydia Estates.

Section 1.13 **Surface Water or Storm Water Management System.** This 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 1.14 **VA.** This means the U. S. Department of Veterans Benefits, Veterans Administration, and where applicable will include the Secretary of that Department, and any successor to that agency.

Section 1.15 **Water Management District.** This means the St. Johns River Water Management District, a Florida public agency, and any successor to that agency.

ARTICLE II
COMMON AREAS

Section 2.1 **Tract "A" Recreation Area.**

2.1.1 This is the parcel referred to on the plat of Unit One as Tract "A" Recreation Area lying adjacent to Lots 68, 69, and 70.

2.1.2 For convenience, that parcel will be referred to as Tract A.

2.1.3 At the time of the recordation of this Declaration, the Developer is retaining ownership of Tract A, but the Developer cannot convey or further encumber (beyond the development loan) Tract A, except as allowed by this Declaration.

2.1.4 Tract A is being retained by the Developer for future improvement by the Developer as a recreation area for the owners and their social invitees. However, at the time of the recordation of this Declaration, the Developer is not committing to create the recreation area, or to install particular facilities, if it is improved. If the Developer proceeds with the development of Tract A as a recreation area, the Developer may record an instrument imposing such additional covenants, restrictions, or easements as the Developer may deem to be necessary, as for example rules governing the proper use of any recreational facilities. When the Developer records that notice, the Developer will also record a quit-claim deed conveying the fee simple title to the Association, free and clear of all liens and encumbrances, except matters on the plat, the terms of this Declaration, and taxes and assessments not yet due and payable, and upon the recordation of that quit-claim deed, the Association will be deemed to have accepted the title and to become responsible for Tract A

in accordance with the terms of this Declaration. Alternatively, the Developer reserves the right neither to convert Tract A to lots nor to develop it as a recreational area, but, instead, to convey it by quit-claim deed to the Association at any time for ownership and use and maintenance by the Association as the Association may deem to be appropriate.

Section 2.2 **Tract "B" Conservation Easement.**

2.2.1 This is the parcel designated as Tract "B" Conservation Easement on the plat of Unit One, lying adjacent to Lots 65, 66, 67, 68, and Tract A. For convenience, in the balance of this writing, that parcel will be referred to as Tract B.

2.2.2 At, or soon after, the time of the recordation of this Declaration, the Developer will record a quit-claim deed conveying the fee simple title for Tract B to the Association free and clear of all liens and encumbrances, except matters on the plat, this Declaration, and taxes and assessments not yet due and payable.

2.2.3 By this instrument, the Developer subjects the fee simple title for Tract B to a conservation easement pursuant to Florida Statutes, Section 704.06 (1995) and the Water Management District Permit Number 4-031-0572. This conservation easement prohibits or limits any or all of the following:

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

2.2.3.2 Dumping or placing of soil or other substance or material as land fill or dumping or placing of trash, waste, or unsightly or offensive materials.

2.2.3.3 Removal or destruction of trees, shrubs, or other vegetation.

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

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

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

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

2.2.3.8 Acts or uses detrimental to the preservation of the

structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

2.2.4 The Association will be responsible for maintenance of Tract B.

Section 2.3 **Lake/Stormwater Management Facility.**

2.3.1 This is the designation for several areas appearing on various pages of the plat of Unit One. Unless otherwise expressed, the use of the term "Lake/Stormwater Management Facility" will include all of those areas.

2.3.2 The Lake/Stormwater Management Facility areas lie within the boundaries of various lots, and the owners of those lots will hold the fee simple title to the Lake/Stormwater Management Facility areas, subject to this Declaration.

2.3.3 The Lake/Stormwater Management Facility areas exist as components of the surface water or stormwater management system. That is their sole purpose. Recreational uses are not allowed. This prohibition against recreational uses includes, without limitation, the installation of docks and the use of boats of any kind. The Association will have the exclusive jurisdiction to determine reasonable rules and regulations for control of the Lake/Stormwater Management Facility.

2.3.4 The Lake/Stormwater Management Facility areas will be maintained by the Association, and the Association, through its officers, employees, and independent contractors will have reasonable rights of ingress and egress over the lots to and from the Lake/Stormwater Management Facility areas in order to perform the duties of maintenance or to determine if any reasonable rules and regulations concerning use are being violated.

Section 2.4 **Private Roadways.**

2.4.1 Lydia Estates Drive, Lydia Estates Drive North, Lydia Estates Drive South, Lydia Estates Drive East, and Lydia Terrace are the roadways shown on the plat of Unit One as providing ingress and egress to and from Dunn Avenue and the lots and the common areas.

2.4.2 Lydia Estates will be a gated community, and, therefore, all of the public will not have access. Hence, these roadways will not be owned by the public (City of Jacksonville or any other governmental agency) but, rather, will be owned by the Association and will be private roadways. At, or shortly after, the time of the recordation of this Declaration, the Developer will record a quit-claim deed conveying the fee simple title for these private roadways to the Association, free and clear of all liens and encumbrances, except

matters on the plat, this Declaration, and taxes and assessments not yet due and payable. Upon recordation of that quit-claim deed, the Association will be deemed to have accepted title, subject to this Declaration.

2.4.3 The Developer now grants to every lot and the common areas shown on the plat of Unit One a perpetual, automatically transferrable, easement for pedestrian and vehicular ingress to and from the lots and the common areas and Dunn Avenue. The beneficiaries of these easements are the lot owners, their business and social invitees, and all public or private bodies having legal or contractual jurisdiction, as for example, the police, the fire department, garbage collectors, the property appraiser and tax collector, the provider of utility services, and mortgagees.

2.4.4 The use of the private roadways will be subject to reasonable rules and regulations promulgated by the Association from time to time. These rules and regulations may include without limitation restrictions on the speed of vehicles, installation of speed reducing devices, restrictions on the size and weight of vehicles, restrictions on the use of bicycles, skates, and similar transportation, and restrictions on or prohibition of the parking of vehicles within the roadways.

2.4.5 The surface and sub-surface of the private roadways will be maintained by the Association, and the Association must establish a capital reserve fund for this purpose.

2.4.6 The Developer reserves the right to extend the private roadways into the additional properties which may be added pursuant to this Declaration. This reserved right includes the right to grant to future beneficiaries of the extended private roadways the concurrent right to use the private roadways within Unit One. In that event, the beneficiaries of the private roadways named in this Section 2.4 will automatically have reciprocal rights over the extended private roadways. Once the Developer has completed substantial construction of the extended private roadways in accordance with the public permits, the Developer will convey title for the extended private roadways to the Association in the manner contemplated in this Section 2.4 for the private roadways within Unit 1, and the Association will become the owner of the extended private roadways and the party responsible for their maintenance, in the same fashion as now provided in this Section 2.4.

Section 2.5 **Entranceway.**

2.5.1 The entranceway will be located within the boundaries of Lydia Estates Drive, just inside Lydia Estates, Unit One, near the intersection of Lydia Estates Drive and Dunn Avenue. The improvements for the entranceway will consist primarily of an electronic security gate accessible by remote controls to be provided to owners and certain public beneficiaries such as fire, police, and ambulance services. Also, the entranceway will consist of landscaping and related facilities.

2.5.2 The entranceway area will be owned by the Association, as part of its ownership of Lydia Estate Drive.

2.5.3 The use of the entranceway will be by those persons and vehicles having the right to enter onto the private roadways.

2.5.4 The use of the entranceway will be subject to the reasonable rules and regulations promulgated by the Association from time to time.

2.5.5 The entranceway will be maintained by the Association.

2.5.6 The Developer reserves the right to create additional entranceways in the additional properties which may be added to Lydia Estates pursuant to this Declaration. In that event, those entranceways will be owned by the Association, if required by the plan of development, and, in all events, will be maintained by the Association.

Section 2.6 **Association Fencing.**

2.6.1 Association fencing is not the fencing which may be installed by owners of individual lots, but, rather, it is fencing which is being installed by the Developer for the benefit of the entire community. The Developer is installing "fencing" in the form of brick walls and shadowbox fences. These fences are or will be located along some of the boundaries of Unit One and will be extended into any additional properties which may be added pursuant to this Declaration.

2.6.2 The Association will own the brick walls and will be responsible for their maintenance. The owners of the parcels upon which the shadow box fences are installed will own the shadow box fences and will be responsible for their maintenance, with the Association to have the right to perform the maintenance at the expense of any defaulting owner. Although the Association will be responsible for maintenance of the brick walls and the shadow box fences, only the brick walls will be owned by the Association, with the shadow box fences being owned by the owner(s) of the area(s) within which the shadow box fencing is located. The areas within which Association fencing is or may be located may be owned by the owners (therefore, being part of the lots) or by the Association (therefore, a part of the common areas). The Association is hereby granted an easement over the areas within which the fencing lies or will lie for the installation replacement, and maintenance of the fencing.

2.6.3 The Association, through its officers, employees, and independent contractors, will have reasonable rights of ingress and egress over the areas described in Section 2.6.2 in order to perform the duties of maintenance.

Section 2.7 **Drainage and Utility Easements.**

2.7.1 The adoption and dedication on the plat of Unit One grants to the City of Jacksonville a drainage easement for the Lake/Stormwater Management Facility areas. The Association will have concurrent, drainage easement rights for the purpose of utilizing and maintaining the surface water or stormwater management system.

2.7.2 Throughout the plat, there are shown other drainage and utility easement areas, which the Developer has or will be dedicating to public or private providers of drainage and utility services to Lydia Estates. The Association is granted concurrent drainage easement rights to the extent necessary to operate and maintain the surface water or stormwater management system.

2.7.3 The Developer reserves the right to extend the drainage and utility easements shown on the plat of Unit One for the benefit of the additional properties which may be added to Lydia Estates pursuant to this Declaration. In that event, the Developer will have the right to grant concurrent easement rights over the drainage and utility easements shown on the plat of Unit One, subject to the approval of the governments or public agencies having jurisdiction over the permitting of horizontal development.

Section 2.8 **Other Easements.**

2.8.1 On the plat of Unit One, there are other easement areas shown, as for example, the 5 foot non-access easement area over the rear of Lots 6, 7, 8, and 9. These easement areas may or may not be expressly dedicated by the Developer to particular persons or entities. Unless otherwise provided by the plat, by law, or by contract, these easement areas will be maintained by the owners of the areas on the plat which are shown to be subject to these other easements (as for example, the owners of Lots 6, 7, 8, and 9, for the 5' non-access easement, and the Association, for the buffer easement over Tract B). However, the Association will have jurisdiction to maintain any of these easement areas which are not being maintained by the responsible party(ies), and will have the right to seek reimbursement for the maintenance from the responsible party(ies) who are in default in the performance of their maintenance duties.

Section 2.9 **Rights of Access in favor of the Association and the Owners.**

2.9.1 Wherever the Association is given title to and/or responsibility for maintaining a common area, the Association, through its officers, employees, and independent contractors will have the reasonable right of access to any part of Lydia Estates in order to perform the duties of ownership and maintenance.

2.9.2 In some communities of lesser complexity of development, the owners are given easements of enjoyment for use throughout the common areas. However,

because of the intricate design of Lydia Estates, the easements of enjoyment and use in favor of the owners are limited to the expressed provisions appearing from time to time in this instrument and any duly adopted amendments. For example, if Tract A is developed as a recreational area for the owners and their social invitees, then all of the owners and their social invitees will have rights of enjoyment and use, subject to the reasonable rules and regulations of the Association.

Section 2.10 **Certain Prerogatives of the Association.**

2.10.1 The Association has the right to dedicate or transfer all or any part of the common areas to any public agency, public authority, or public utility for ownership, management, and maintenance, for the purposes of the common areas stated in this Declaration and for such other purposes as may be mutually agreed by the owners. No dedication or transfer will be effective unless an instrument agreeing to the dedication or transfer is signed by the owners of not less than two-thirds of the lots. For this purpose, the Developer will have the special voting rights afforded by Section 3.3.3, below, but, in that event, the dedication will be subject to the prior approval of the FHA and the VA. The instrument of dedication or transfer must be recorded in the current public records for Duval County, Florida.

2.10.2 The rules contained in the foregoing Section 2.10.1 apply to the creation of a mortgage against any common area.

Section 2.11 **No Absolute Liability for Injuries.** No absolute liability is imposed upon the Association or the owners for damages to property or to persons occurring within the common areas. The Association may carry insurance coverage for itself and the owners for liability which may be imposed in particular circumstances.

Section 2.12 **Additional Common Areas.**

2.12.1 The Developer reserves the right to create additional common areas within the properties which may be added to Lydia Estates pursuant to this Declaration.

2.12.2 These additional common areas may be owned by the Association or by the owners of the lots, as the plan of development may require.

2.12.3 Regardless, these additional common areas will be maintained by the Association in the manner required by this Declaration.

2.12.4 Article III, below, contains understandings concerning adjustments in assessments in the event that additional common areas are added.

2.12.5 In the creation of these new common areas, the Developer will

have the right to modify or limit the easements of enjoyment and use for the owners in similar fashion to that appearing in this Declaration as originally recorded.

2.12.6 If any of these additional common areas are to be owned by the Association, then title must be conveyed to the Association free and clear of all encumbrances, except matters reflected on the plat, the terms of this Declaration, as it may be amended, taxes and assessments which are not yet due and payable, and any easements which are part of the plan of development for Lydia Estates.

ARTICLE III
ASSESSMENTS

Section 3.1 **Purposes.** In this Declaration and the other governing documents, and, in applicable provisions of law, regulation, or permits, the Association has enumerated duties which it must perform and rights which it may exercise. Also, the Association may need to promote the recreation, health, safety, and welfare of the owners, their families, and their invitees. In order to fund its activities, the Association will need to adopt assessments for payment by the owners. It is the purpose of this Article III to establish the rules concerning the adoption and payment of these assessments.

Section 3.2 **The Budget Process.**

3.2.1 The initial budget for the Association has been adopted by the Developer based upon its experience and research. This budget contains line items for expected, recurring obligations, as for example, taxes and utilities. Also, this budget contains line items for anticipated amounts for periodic capital repair or replacement, as for example, maintenance of the private roadways.

3.2.2 Except as provided in Section 3.2.3, below, all subsequent budgets will be adopted by the board of directors, but they will not be binding upon the members if they are in excess of the limitations contained in this Article III, unless approved by the members as provided below.

3.2.3 As a part of its plan of development for additional properties which may be added to Lydia Estates pursuant to this Declaration, the Developer will analyze the existing budget for the Association and determine modifications, if any, which need to be made to the existing budget because of the expanded responsibility of the Association. The Developer will have the right to adopt the amended budget, effective the following January 1st. The Developer will be responsible for paying all expenses of the added common areas accruing prior to the effective date of the amended budget.

Section 3.3 **The Amount of the Assessments.**

3.3.1 The initial, annual and special assessments are as follows:

3.3.1.1 For lots within Unit One, the initial, annual assessment is $250 per lot.

3.3.1.2 For the nineteen lots which may become members of the Association pursuant to Article IX, below, the initial, annual assessment is $250 per lot.

3.3.1.3 For all lots within Unit One and for all of the nineteen lots referenced in Article IX, there will be a one-time, initial capital reserve or road improvement fund payment of $100.

3.3.1.4 For the nineteen lots which may be added pursuant to Article IX, there will be an additional, one-time payment of $150 for the equipment to access the private roadways through the security gate.

3.3.1.5 The payment of these annual and special assessments will be as prescribed in subsequent provisions of this Section 3.

3.3.2 As provided below, the initial, annual assessment for lots will be prepaid for 1997 and 1998. Except as provided in Section 3.2.3, above, there will be no increases in the maximum annual assessment of $250 prior to January 1, 1999. From and after January 1, 1999, the maximum amount of the annual assessment may be increased each year but not more than 5% above the maximum assessment for the previous year, except for increases caused by the Developer's budget for additional common areas contemplated in Section 3.2.3, above. If the maximum amount of the annual assessment proposed by the board of directors is in excess of 5% above the maximum assessment for the previous year, then the budget must be approved by a vote of the owners.

3.3.3 In the adoption of budget increases above the 5% ceiling established in 3.3.2, the vote will be on the basis of one vote per lot, except for the rights reserved to the Developer in Section 3.2.3, above. The understandings in this Section 3.3.3 are qualified by the understandings contained in Section 4.4.6, below.

3.3.4 Special assessments may be proposed by the board of directors from time to time. However, they will not be effective unless they are approved by a vote of the owners in accordance with the rules established in the immediately preceding paragraph. However, nothing in this section will preclude the Developer from adopting for the Association an initial, reasonable, capital contribution to be paid by the initial purchasers of lots at the time of closing.

3.3.5 Annual and special assessments must be fixed at a uniform rate for all lots. However, that rule does not preclude the special assessment for the equipment to access the private roadways through the security gate that will be charged to the owners of the 19 lots, which may be added pursuant to Article IX.

3.3.6 On the Tuesday closest to October 15 each calendar year, beginning with October of 1998, the board of directors will meet to consider and to adopt a budget for the coming year. The budget meeting of the board will be open to all members. Notice of the budget meeting of the Board of Directors will be provided to the owners in the manner required by Florida statutes, Chapter 617. Each budget adopted by the board must reflect the estimated revenues and expenses for the coming year and the estimated surplus or deficit as of the end of the coming year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer, or another person. The Board of Directors shall provide each owner with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the owner within 10 business days. Additionally, the Board of Directors shall prepare (or cause to be prepared) an annual financial report within 60 days after the closing of the fiscal year. At the time of the drafting of this Declaration, it is anticipated that the fiscal year will be the calendar year, and, therefore, the report must be prepared by March 1 for the following calendar year. Within 10 business days, the Board of Directors shall provide each owner with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial report must consist of either financial statements presented in conformity with generally accepted accounting principles; or a financial report of actual receipts and expenditures, cash basis, which report must show: the amount of receipts and expenditures by classification; and the beginning and ending cash balances of the Association.

3.3.7 If a vote of the owners is necessary to approve an annual or special assessment, then the board of directors must serve written notice of the meeting on all owners. Service may be by hand delivery to residences occupied by owners or by regular mail, postage prepaid, to the last address to which owners have given notice to the secretary of the Association, or, if necessary under the circumstances, to the last address of the owner on the rolls of the property appraiser and tax collector for Duval County, Florida. The written notice must be served not less than 30 days nor more than 60 days in advance of the meeting. However, the board will have the discretion to shorten the time of the notice as may be reasonably required under circumstances the board deems to be an emergency. In order to establish a quorum, two-thirds of the lots must be represented in person or by proxy. An affirmative vote of two-thirds of the lots constituting the quorum will be necessary in order to approve an annual or special assessment. If the required quorum is not present, the meeting may be continued to another date, time, and/or place, but the board will be required to serve written notice of the meeting not less than 30 days before the continued date and time. If, at the continued meeting, there is not a quorum, then those who are present will be deemed to be a quorum, and they may adopt the annual or special assessment by an affirmative vote of

two-thirds of the lots constituting the quorum.

Section 3.4 **When Assessments Become Due and Method of Payment.**

3.4.1 The initial, annual and special assessments contained in Section 3.3.1, above, will be due and payable as follows:

3.4.1.1 These rules apply to closings occurring in 1997 and 1998. However, the Developer reserves the right for the Association to adopt similar rules for closings occurring in any subsequent year.

3.4.1.2 At closing, purchasers of lots in Unit One will be required to prepay the initial, annual assessment for 1997 and 1998, plus the road improvement fund fee. However, the annual assessment for the year of closing will be prorated on a 365 day year so that the purchaser will not be required to pay for any portion of the assessment accruing prior to the day of closing, and, as well, for closings occurring in 1998, no purchaser will be required to pay any of the 1997 assessment.

3.4.1.3 Owners of the nineteen lots which may be added pursuant to Article IX will prepay the annual assessment, the road improvement fund fee, and the access equipment fee at the time specified in Section 9.4, below. These owners will be afforded the same proration benefits afforded above to purchasers in Unit One.

3.4.2 Commencing on January, 1999, annual assessments adopted by the board of directors will come due on January 1 of each calendar year, and, unless changed by the board of directors, will be due and payable annually, in advance. They will be delinquent if not paid by February 1 (or such other due date as the board may establish). They become delinquent 30 days after the due date(s) established by the board of directors.

3.4.3 Annual assessments adopted by the board but required to be approved by the owners will become due on January 1 of each calendar year, as well, but pending the approval of the increased budget by the owners, the maximum annual assessment from the previous calendar year will be due and payable on January 1 of that calendar year, with the increase to be retroactive to January 1, when approved.

3.4.4 The board of directors will have the discretion to establish the payment schedule for assessments, which may be any reasonable period, as for example annually, quarterly, or monthly. In circumstances contemplated in Section 3.4.2, the annual assessment for the prior year, which is to be paid pending adoption of the new budget, will be due and payable under the payment schedule adopted for the prior year, so that, for example, if the payment is annual, then it is due in full on January 1.

3.4.5 The recommendation of the board for the adoption of special

assessments must contain a recommended due date and schedule for payment, and those terms will become part of the obligation when adopted by the requisite numbers of lots.

3.4.6 Interested persons (owners, purchasers, lenders, closing attorneys, or agents, title insurers, and the like) will be entitled to receive a written certificate from an officer or agent of the Association setting forth the status of the annual or special assessments due for the particular lot. A properly issued certificate is binding upon the Association as of its date. The Association will be entitled to charge a reasonable fee for the service of issuing the certificate.

3.4.7 The board of directors will have the discretion to engage an independent contractor having experience and expertise in the management of the books and records of homeowners associations and the collection of their assessments. The reasonable fees of the manager will be a line item in the annual budget. In the same fashion, the board of directors will have the discretion to engage attorneys (at the expense of the Association, for reimbursal by the defaulting owner) to represent the Association in the issuance of demand letters, the creation of liens, and the enforcement of assessments and the liens. In no event will the board of directors have the right to delegate its duties to consider and propose annual and special assessments.

3.5 **Liability for Assessments.**

3.5.1 Unless exempted as provided below, all owners, including the Developer, are personally liable for all annual and special assessments. Multiple owners of a lot are jointly and severally liable. This means that an action for collection of an assessment may be brought against any owner who is in default, whether or not the Association has or will pursue any other defaulting co-owner and whether or not the Association has or will foreclose a lien for the security of the unpaid assessment.

3.5.2 The Developer may elect to be exempt from payment of assessments for lots owned by the Developer, upon the following terms and conditions only:

3.5.2.1 The Developer must guarantee the entire shortfall of revenues for the annual or special assessment, as the case may be, with the guarantee being made in writing and delivered to the president of the Association for retention in the records of the Association. This guarantee of the entire shortfall means that the Developer must obligate itself to pay any operating expenses incurred that exceed the assessments receivable from other owners and other income of the Association.

3.5.2.2 The exemption will end when the earliest of the following events occur: the Developer's written guarantee of the shortfall lapses due to passage of time and is not renewed; the Developer breaches the written guarantee of the shortfall and fails to fully cure the breach within 10 days following the service of a written notice of default

by the Association or by any owner; the Developer files or has filed against it an action for relief in bankruptcy or takes any other action which would lead a reasonable person to conclude that the Developer cannot perform its written guarantee as a shortfall; or when title for any particular lot is transferred voluntarily or involuntarily by the Developer.

3.5.3 Builders (other than the Developer) are exempt from payment of assessments for lots owned by them upon the conditions stated in this section. The exemption will end when the earliest of the following events occurs: the closing of the sale by the Builder to a purchasing consumer of the lot and the completed residence; or 180 days after the closing of the purchase from the Developer.

3.5.4 Owners who are not exempt under Sections 3.5.2 and 3.5.3 will be exempt only upon the following terms and conditions:

3.5.4.1 Successors in title to owners who have defaulted in the payment of assessments will not be personally liable for the unpaid assessments owed by their predecessor, but title will be taken subject to the lien rights of the Association.

3.5.5 The personal liability for assessments not only includes the principal amount of the assessment but also includes all of the following: interest from 30 days after the due date(s) until payment in full at the simple, per annum rate of 18%; reasonable attorney's fees incurred by the Association in the pursuit of collection, including demand letters, preparation and recordation and service of claims of lien, and legal action for recovery; and all court costs, including abstracts of title, and the like.

Section 3.6 **Liens.**

3.6.1 As security for the payment of assessments, the Association has a lien against any lot owned by a defaulting owner.

3.6.2 The lien exists as of the due date of the assessment, without the necessity of any writing other than this Declaration. Liens are enforceable when any assessment is more than 30 days past due. The statute of limitation for commencing enforcement of a lien is the fifth anniversary of its due date.

3.6.3 Claims of lien are enforceable in the same manner as provided by Florida law for the enforcement of mortgages.

Section 3.7 **Rights and Duties of Mortgagees.**

3.7.1 The special understandings contained in this section for mortgagees do not apply to mortgagees who are also owners in default in the payment of assessments.

3.7.2 Mortgagees are not required to collect assessments.

3.7.3 Mortgagees are not required to pay assessments accruing prior to the time that the mortgagee acquires title by foreclosure or deed in lieu of foreclosure. From and after the time that the mortgagee acquires title by foreclosure or deed in lieu of foreclosure, the mortgagee becomes responsible for the payment of assessments in the same manner as any other owner. However, for the year that title is acquired by the mortgagee, the annual and special assessments then in force will be prorated on the calendar year, based upon a 365 day year, with liability for the assessments accruing from the day that title is acquired.

3.7.4 Liens for unpaid assessments accruing prior to the time that the mortgagee acquires title are automatically subordinate to the lien of the mortgage.

3.7.5 Failure to pay assessments will not constitute a default under any mortgage, unless the owner and their lender should otherwise agree among themselves.

3.7.6 Successors to mortgagees, such as assignees, the VA, the FHA, private mortgage insurers, and purchasers at foreclosure sales, are subject to the same duties and have the same rights as mortgagees.

ARTICLE IV
ASSOCIATION

Section 4.1 **Scope.** This article is not encyclopedic about the Association, but, rather, it supplements other provisions of this Declaration and the other governing documents for the Association.

Section 4.2 **Membership**.

4.2.1 All owners are required to be members of the Association.

4.2.2 All owners automatically become members of the Association at the time they acquire their fee simple interest in the lot.

4.2.3 Membership in the Association runs with the title to the lot and cannot be transferred separately from the title.

4.2.4 Abandonment of ownership of a lot does not discharge the obligations of membership, including payment of assessments.

Section 4.3 **Voting Rights of Members.**

4.3.1 Subject to the restrictions contained in this Declaration or the

other governing documents, all members of the Association have voting rights in the Association.

4.3.2 In this instrument and the other governing documents for the Association, there will be references to the term "voting interests" or similar language. Unless otherwise expressly stated, there will be only one vote per lot, without regard to the number of owners of the lot, and, therefore, unless otherwise expressly stated, the number of lots will determine the existence of a quorum for the meeting. Where lots are owned by two or more individuals, those individuals must designate one of them in writing to act as agent for all of them in casting the vote for the lot. Where a lot is owned by a legal entity or legal relationship (i.e., a corporation, limited partnership, partnership, limited liability company, etc.), the vote for the lot shall be cast by the person who is designated in writing by the governing body (i.e. the board of directors of a corporation). If a written designation of a representative is not made, then the lot will be counted for determining a quorum, but the participation of the lot will be considered as an abstention.

Section 4.4 **Voting Rights of Developer.**

4.4.1 Until the happening of the events expressed in this Section 4.4, the Developer will be entitled to elect all of the members of the board of directors of the Association.

4.4.2 Members other than the Developer are entitled to elect at least a majority of the members of the board of directors three months after 90% of the lots in all units of Lydia Estates that will ultimately be operated by the Association have been conveyed to members. "Members other than the Developer" does not include builders, contractors, or others who purchase a lot for the purpose of constructing improvements for resales.

4.4.3 The Developer is entitled to elect at least one member of the board of directors of the Association as long as the Developer holds for sale in the ordinary course of business at least 5% of the lots in all of the units in Lydia Estates that will ultimately be operated by the Association.

4.4.4 Notwithstanding the foregoing, the Developer reserves the right to transfer control of the Association to the members other than the Developer at any time. "Transfer control" means that the members other than the Developer are entitled to elect at least a majority of the members of the board of directors.

4.4.5 After the Developer is no longer entitled to elect a majority of the members of the board of directors, or after the Developer relinquishes control of the Association, the Developer may exercise the right to vote in the same manner as any other member, except for the purpose of selecting the majority of the members of the board of directors.

4.4.6 Article III, above, provides that the board of directors will adopt budgets that will establish the annual assessments beginning with January 1, 1999. Article III goes on to provide that the budgets adopted by the board of directors cannot be increased more than 5% above the maximum assessment for the previous year, except for increases caused by the Developer's budget for additional common areas contemplated in Section 3.2.3, without a vote of the owners. Section 3.3.3 states that the vote of the owners to approve any increases above 5% will be on the basis of one vote per lot, except for the rights reserved to the Developer in Section 3.2.3. The understandings contained in this Section 4.4.6 qualify those understandings. For increases in the budget above the 5% ceiling, the Developer will have only one vote per lot, as will all other members. However, for as long as the Developer holds for sale in the ordinary course of business at least 5% of the lots in all of the units of Lydia Estates that will be ultimately operated by the Association, the Developer will have three votes per lot for the purpose of vetoing any budget increases above the 5% ceiling. This provision also applies to any votes by the owners for approval of any special assessments proposed by the board of directors.

ARTICLE V
VA/FHA

The Developer intends to submit Lydia Estates for approval by the VA as a PUD in order to be able to obtain VA guaranteed loans for purchasers of completed residences. The Developer plans to use VA approvals and VA appraisals and related documentation in order to convert over to FHA insured loans, as circumstances may require. The Developer has prepared this Declaration and the governing documents for the Association with the intention that they comply with the requirements of Florida Statutes, Chapter 617 and with the perceived requirements of the VA. Nevertheless, the Developer contemplates the possibility that there may be a need to modify this Declaration and the governing documents in order to conform to the requirements of the VA or the FHA not now contemplated. Therefore, the Developer reserves the right to make any unilateral amendments to this Declaration reasonably required by the VA (or the FHA) in order to obtain subdivision and individual loan approvals.

ARTICLE VI
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

Section 6.1 **Use of Property: Surface Water or Storm water Management System.** The Association shall be responsible for the maintenance, operation and repair of the surface water or storm water management system. Maintenance of the surface water or storm water management system(s) shall mean the exercise of practices which allow the system(s) to provide drainage, water storage, conveyance or other surface water or storm water 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 storm water management system shall be permitted, or if modified, as approved by the St. Johns River Water Management District.

Section 6.2 **Amendment.** Any amendment of this Declaration which alters the surface water or storm water 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.

Section 6.3 **Enforcement.** The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration (including but not limited to this article) which relate to the maintenance, operation and repair of the surface water or storm water management system.

Section 6.4 **Easement for Access and Drainage.** The Association shall have a perpetual non-exclusive easement over all areas of the surface water or storm water 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 storm water management system, at a reasonable time and in a reasonable manner, to operate, maintain, or repair the surface water or storm water 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 storm water management system. No person shall alter the drainage flow of the surface water or storm water management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

ARTICLE VII
ARCHITECTURAL CONTROL

Section 7.1 **Jurisdiction over Horizontal Development.** The Developer reserves exclusive jurisdiction over horizontal development of Unit One and any of the properties which may be added to Lydia Estates pursuant to this Declaration, subject to the jurisdiction of the governments or public agencies overseeing development, as for example the City of Jacksonville and the St. Johns River Water Management District. "Horizontal development" or "horizontal improvements" is a trade term employed for convenience in order to denote customary site development improvements such as paved roadways and drainage facilities.

Section 7.2 **Jurisdiction over Vertical Improvements.**

7.2.1 Jurisdiction over vertical improvements and its exercise will be upon the following terms:

7.2.1.1 The Developer will have exclusive jurisdiction over Unit One for as long as the Developer holds title to at least one lot in Unit One. However, any owner will have standing to enforce this Declaration against any person installing or retaining vertical improvements which have not been approved pursuant to the procedures established in this Declaration.

7.2.1.2 The Developer will have exclusive jurisdiction over vertical improvements within properties added pursuant to this Declaration for as long as the Developer holds title to at least one lot in each of the added properties.

7.2.1.3 When the exclusive jurisdiction of the Developer over vertical improvements expires, that exclusive jurisdiction will shift automatically to the board of directors for the Association.

7.2.1.4 The Developer, or the board of directors, as the case may be, will have the discretion to appoint an architectural review committee to gather facts and to make recommendations to the Developer or the board of directors, as the case may be. The architectural review committee will not have the power to decide any issues, unless specifically authorized in writing from the Developer or the board of directors, as the case may be.

Section 7.3 **Specific Rules concerning Vertical Improvements.**

7.3.1 Scope. The following specific rules concerning vertical improvements apply presently only to Unit One. The economic and legal or regulatory forces at work in the future may necessitate a change in the overall plan of development, with the resulting need to modify these specific rules. Therefore, the Developer reserves the right to add to or to modify these rules when adding additional properties pursuant to this Declaration. "Vertical improvements" is a trade term used for convenience in order to denote the improvements which may be added to the lots pursuant to this Declaration by the Developer or others, other than the horizontal improvements.

7.3.2 Minimum square footage for residences. All residences must contain 1,800 square feet of heated and cooled area. However, if reasonable or necessary under the circumstances, during the architectural review process, the minimum square footage may be reduced by up to, but not more than, 90 square feet.

7.3.3 Maximum height of residences. The maximum height of residences must not exceed the maximum height allowed by zoning in force from time to time and must not exceed the maximum height as established by the Developer or the Association, whoever then has jurisdiction over architectural control and review.

7.3.4 Limitations on building materials for residences. The Developer or the Association, whoever has jurisdiction over the architectural review and control process, will have the right to determine any limitations or restrictions on building materials.

7.3.5 Limitations on exterior decor for residences.

7.3.5.1 Color. The Developer or the Association, whoever has

jurisdiction over the architectural review and control process, will have the right to determine any limitations or restrictions on exterior colors. This provision is intended to preclude owners from painting the exteriors of their residences with colors which are not in harmony with the general architectural plan for Lydia Estates.

7.3.5.2 Window coverings. Window coverings must be of a customarily attractive type and style, as for example, mini-blinds or drapes and sheers. Window coverings made from newspaper or other forms of paper or foil may be installed but cannot remain in place more than 15 days after taking occupancy.

7.3.6 Front, side, and rear set-backs for residences. The front building restriction line is 20 feet. The side building restriction lines are 15 feet, but they may be reduced to not less than 5 feet, if the space between adjoining residences is not less than 15 feet. The rear building restriction line is 10 feet, except where the particular lot is subject to a rear easement per the plat, and then the rear building restriction line is 15 feet.

7.3.7 Landscaping and other building site considerations for residences. Landscaping and other building site considerations for residences will be subject to the architectural control by the Developer or the Association, whoever then has jurisdiction. Additionally, the Association will have the right to enter upon any lot which does not properly maintain its landscaping and have the landscaping maintained, with the concurrent right of immediate reimbursal from the defaulting owner(s), with the right of reimbursal to be secured by a lien of the same type as provided above for annual or special assessments. Thus, for example, the Association will have the right to have excessive, unmowed grass cut or dead trees removed at the expense of the owner(s).

7.3.8 Swimming pools. Only inground swimming pools will be allowed. Their site plan is subject to prior approval through the review process established in this Section 7.

7.3.9 Outbuildings and Setbacks. The only outbuildings which will be allowed will be those which are installed on a permanent foundation, shingled on the roof in the same fashion as the residence, and approved in advance as to style and location by the architectural review process established in this Section 7. Setbacks are 3' from lot lines.

7.3.10 Fences and walls. If the Developer improves Tract A as a recreational area, it is likely that the fencing will be chainlink in order to allow the users of the recreational facility to have a view over the Tract B area. Also, the Developer has reserved the right in Article II, above, to install brick walls and shadowbox fences along the perimeter of Lydia Estates for ownership and maintenance by the Association. With regard to fences and walls to be installed by the individual owners, they must first be approved pursuant to the review process contained in this Section 7, for materials, height, and location. All of these types of fences must be made of wood, as chainlink fencing will not be allowed. No fences

may be installed forward or in front of a residence. No fence may be installed across the rear of any lot which abuts or is a part of the Lake/Stormwater Management Facility, so as to avoid blocking access to and from the lake for activities permitted by this Declaration.

7.3.11 Window air-conditioning and heating units. Window air-conditioning and heating units are not allowed.

7.3.12 Driveways and sidewalks. The Developer or the Association, whoever has jurisdiction over architectural review and control, will have the right to establish criteria for the size, location, and materials involved with driveways and sidewalks.

7.3.13 Types of utility services.

7.3.13.1 All residences will have central water and sewer services.

7.3.13.2 Wells for irrigation purposes only will be allowed.

7.3.13.3 Satellite dishes are permitted provided that they are not larger than 36" in diameter. The Developer or the board of directors, as the case may be, will have the power to impose reasonable landscaping screening requirements and safety restrictions.

7.3.13.4 Solar collectors, clothes lines, or other energy devises based on renewal resources are not prohibited, but the Developer or the board of developers, as the case may be, will have the right to make reasonable determinations concerning location, size and esthetic aspects.

7.3.14 Combining and subdividing lots.
Provided that each residence has a minimum land area required by zoning in force from time to time, lots may be combined or subdivided, but only after approval through the architectural review process established in this Section 7. The resulting parcel containing a residence will be deemed a "lot" for all other purposes under this Declaration, such as voting rights.

7.3.15 Mailboxes. All initial mailboxes will be installed by the Developer. All mailboxes must be made of brick or stucco and must conform to general design criteria established by the Developer or the Association, whoever has jurisdiction over architectural review and control.

7.3.16 Other Improvements. The Developer does not deem it necessary to list all of the improvements which might now be installed by an owner. Also, the Developer contemplates that human ingenuity and technology may bring into being in the future

improvements which are not now contemplated. Therefore, the Developer reserves for itself or the Association, whoever has jurisdiction over architectural review and control, the power to approve any improvements in order to preserve the architectural, esthetic, and monetary values of Lydia Estates.

7.3.17 Garages and Carports. Unless otherwise specifically approved pursuant to the process established in this Declaration, no garage, tool shed, or storage room may be constructed separate and apart from the residence. Each residence must have an enclosed garage or carport for not less than two and not more than four cars. No carport will be permitted unless otherwise specifically approved by the process established in this Declaration as being part of a total design which contributes to the esthetic appearance of the dwelling and the neighborhood. Without the prior written approval of the Developer, or the Board of Directors, as the case may be, no garage may be permanently enclosed or converted to other use without the substitute of another garage on the lot meeting the requirements of this Declaration.

7.3.18 Recreational Facilities. All recreational facilities constructed or erected on a lot, including, without limitation, basketball backboards, platforms, playhouses, dog houses, or other structures of similar kind or nature, must be approved in accordance with the process established in this Declaration and must be adequately walled, fenced, or landscaped in a manner specifically approved during the process of approving the recreational facility.

Section 7.4 **Plan Review.**

7.4.1 Before installation of any improvements covered by Section 7.3, above, the owner(s), or their agent, must submit the proposed improvement to the Developer, or the Association, whoever has jurisdiction over architectural review and control.

7.4.2 The Developer or the board of directors, as the case may be, may make any reasonable requirement for information and documentation in order to make an informed decision as to whether or not the requested vertical improvement is in conformity with this Declaration, including the evolving, architectural harmony of Lydia Estates.

7.4.3 The Developer or the board of directors, as the case may be, must exercise good faith in making its determination about the approval of the requested vertical improvements. Included in the concept of good faith is a timely response, which is recommended to be 30 or less days. However, a failure to respond within any period of time will not act as an automatic approval, but the affected owner will have standing to seek the remedies provided in Article X, below.

7.4.4 The Developer or the board of directors, as the case may be, must keep written records of its decisions for a period of three years.

Section 7.5 **Relief.**

7.5.1 If a proposed vertical improvement does not conform to all of the specific requirements of this Declaration but is within substantial conformity, then the Developer, or the board of directors, as the case may be, will have the discretion to grant relief from the specific requirements of this Declaration. This relief must be expressly stated in a recordable, written report on the action taken on the application. If the Developer, or the board of directors, as the case may be, or the applicant owner, reasonably believe that a future transaction may be impaired because of a lack of record notice of this relief, then the Developer, or the board of directors, as the case may be, must record the written summary of the action in the current public records for Duval County, Florida.

7.5.2 If an error is made in the installation of an approved vertical improvement, so that there is a violation of the specific requirements of this Declaration, then the Developer, or the board of directors, as the case may be, will have the discretion to release the violation, if the Developer or the board of directors, as the case may be, reasonably concludes that the violation(s) is not a material violation of the specific requirement within this Declaration or does not have a material, adverse impact upon the adjoining lots and the overall plan of development for Lydia Estates. For example, a residence may be substantially constructed only to have the survey show that it violates the front building restriction line established in Section 7.3, above. If the Developer, or the board of directors, as the case may be, reasonably conclude that the violation is not objectionable upon the grounds stated in this section, then the Developer or the board of directors may grant relief by giving a written release, which must be recorded by the Developer, or the board of directors, as the case may be, in the current public records of Duval County, Florida.

ARTICLE VIII
LAND USE COVENANTS

Section 8.1 **Scope.** This Article VIII supplements this Declaration by adding general land use covenants applicable presently to Unit One only. As with the architectural control matters, future economic or legal or regulatory issues may necessitate a change in the plan of development, so that the Developer may need to modify or to add to these land use covenants. The Developer reserves the right to take those actions.

Section 8.2 **Residential and Business Uses.** Lydia Estates is a residential community, and, therefore, all business uses are precluded, except for home offices allowed by zoning, with no signs and no customer traffic. Residences shall not be used as group homes. The foregoing limitation upon business uses does not apply to the construction and sales activities of the Developer or any other builder.

Section 8.3 **Level of Maintenance by Owners of Permitted Vertical Improvements.** All owners must timely and properly maintain all vertical improvements

permitted under Section 7.

Section 8.4 **Maintenance by Owners of Yards and Landscaping.** All owners must timely and properly maintain their yards and landscaping.

Section 8.5 **Maintenance and Removal by Owners of Trees.** All owners must timely and properly maintain their trees and must timely and properly remove any dead trees.

Section 8.6 **Handling of Garbage and Trash Containers and Collection.** All garbage and trash containers must be made of plastic and not of metal. They must stored inside the garage or inside an attractive, matching fenced area and must not be left out except for the reasonable time necessary to have collection made.

Section 8.7 **Noise, Nuisances, and Lawful Uses.** Excessive noise and any activities which constitute nuisances under Florida tort law are prohibited. Moreover, in all events, both inside and outside of residences, the activities within Lydia Estates must be in conformity with applicable law, both civil and criminal.

Section 8.8 **Vehicles and Boats.** The understandings contained in this Section 8.8 are in addition to any rules the Association may adopt for the use of the private roadways. Passenger motor vehicles are permitted. They must be parked off the street and in the driveway or within the garage. Passenger vehicles which are inoperable must be repaired within a reasonable time and while inoperable must be stored within the garage. Work on inoperable passenger vehicles must be conducted within the garage. Only the following types of trucks and off-road motor vehicles are permitted, subject to the rules of the Association concerning the types of vehicles which may pass over the private roadways: pick-up trucks; vans which are not larger than non-commercial, customized vans; and sports utility vehicles. The foregoing rules concerning passenger motor vehicles apply as well to permitted trucks and off-road vehicles. Motor homes and travel trailers are not permitted. Boats and boat trailers are permitted only if parked to the rear of the front face of the residence and only if totally screened from view from the street.

Section 8.9 **Pets.** No pets are permitted except not more than two dogs and three cats. None of the permitted animals may be tied up outside or contained in exterior facilities such as outside dog runs.

Section 8.10 **Oil and Mining Operations.** Oil and mining operations are not allowed.

Section 8.11 **Rights of the Developer and the Association to Interpret these Covenants and to Enforce them, including Performance of Maintenance.** The language in the foregoing sections of this Article VIII is intended to be limiting and instructive but not exhaustive. The Developer recognizes that it is not possible to set forth express language

which might apply to all circumstances. Therefore, the Developer reserves to itself, while it has jurisdiction over architectural review and control, and for the Association thereafter, the power to interpret reasonably these land use covenants and to take any reasonable action necessary to prevent their violation. Therefore, as an example, the Association may effect yard and landscaping maintenance at the expense of any defaulting owner, or the Association may remove a dead tree at the expense of the defaulting owner(s). Nothing in this Section 8.11 is intended to preclude the standing of any owner to enforce this Declaration against any person violating this Declaration, but the aggrieved owner must first submit the issue to the Developer or the Association, whoever has jurisdiction over architectural review and control.

ARTICLE IX
ADDING ADDITIONAL PROPERTIES

Section 9.1 **Additional Units.** Unit One contains 34 acres, more or less. The Developer owns an adjoining tract having approximately 32 acres. At this time, the Developer plans to develop the adjoining 32 acres into two additional units, having approximately 16 acres each. As well, there presently exists adjoining undeveloped acreage which is not owned by the Developer but which the Developer may acquire in the future. All of these unplatted, yet to be developed tracts may be added by the Developer to Lydia Estates. For convenience, in this Declaration, they will be referred to as the "Additional Units".

Section 9.2 **Lydia Terrace.** Lydia Terrace is a residential community fronting on Wingate Road and lying west of Unit One. It is an unplatted development consisting of 19 lots described by metes and bounds. Lydia Terrace was developed by the Developer and was marketed with the understanding that the individual lot owners would have the option to join the Association and become subject to the terms of this Declaration. For convenience, these 19 lots will be referred to as "Lydia Terrace".

Section 9.3 **Adding Additional Units.**

9.3.1 The Developer will have the right to add Additional Units to Lydia Estates provided that their addition is made in accordance with the terms of this Declaration.

9.3.2 Before any Additional Units will be considered to be added, their title must be made subject to a recorded supplement to this Declaration imposing the terms of this Declaration upon the fee simple title and modifying or adding provisions to the extent permitted to the Developer by the terms of this Declaration.

Section 9.4 **Adding Lydia Terrace**.

9.4.1 Any present or future owner of any of the 19 lots in Lydia Terrace may become a member of the Association and enjoy the benefits of that membership, including but not limited to the use of Tract A, if it is developed as a recreational area.

However, membership is conditioned upon full performance of the requirements contained in this Section 9.4.

9.4.2 Application for membership must be made by a letter delivered to an officer or director of the Association. The application must be supported by reasonable evidence of ownership of the lot and by a cashier's or official check payable to the Association for the assessments required by the Association in accordance with this Declaration.

9.4.3 If the application is in order, then the applying owner(s) must execute a form of joinder and subordination promulgated by the board of directors from time to time. The Association will be responsible for recording the instrument of joinder and subordination.

Section 9.5 **Effect of this Declaration on Additional Units which are not Added.** The Developer has planned the development of Unit One so that it stands alone and does not need the Additional Units to be added. Therefore, this Declaration and the plan of development for Unit One are not binding upon the Developer or covenants against the title to the Additional Units, if they are never added. Therefore, for example, the Developer will have the right to sell the acreage described in Section 9.1 unencumbered by this Declaration or the plan of development for Unit One.

ARTICLE X
LAWS AND REMEDIES

Section 10.1 **Laws.** This Declaration and the relationships which it creates are to be construed and enforced in accordance with the laws of the State of Florida.

Section 10.2 **Enforcement and Standing to Enforce this Declaration.** This Declaration touches and concerns Lydia Estates and runs with the title to Lydia Estates, including any of the 19 lots in Lydia Terrace which become subject to this Declaration in accordance with Section 9, above. Therefore, this Declaration is enforceable against all of the property constituting Lydia Estates and all of the owners and their successors in interest and assigns. The Association has standing to enforce this Declaration. Any owner has standing to enforce this Declaration. The VA, the FHA, and St. Johns River Water Management District, as their interests may appear, have standing to enforce this Declaration.

Section 10.3 **Remedies.**

10.3.1 Except as limited by this Declaration, all remedies afforded by Florida law will be available.

10.3.2 In addition to the other remedies provided by Florida law, the Association may suspend, for a reasonable period of time, the rights of a member or a

member's tenants, guests, or invitees, or both, to use the common areas and facilities. Also, the Association may levy reasonable fines, not to exceed the maximum amount allowed by Florida Statutes, Chapter 617, against any member or any tenant, guest, or invitee. However, suspension of common area use rights shall not impair the right of an owner or tenant of a lot to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The Association may not suspend the voting rights of a member.

10.3.3 If the Association is bringing an action to recover unpaid assessments, whether by collection or by enforcement of a lien or both, the following limitations on remedies will not apply, and the Association will be entitled to proceed immediately with the use of the judicial system to recover the unpaid assessments.

10.3.4 No party may file a lawsuit for resolution of a dispute without first pursuing mediation before a certified mediator in Duval County, Florida, under the rules of mediation applicable to court-ordered mediation. If, after a good faith attempt, the mediation is not successful, then the matter must be made subject to non-binding arbitration. If the parties involved in the dispute cannot agree as to the identity of a single arbitrator, then each party will be entitled to select their own arbitrator, with that panel selecting enough additional arbitrators to create a panel of an odd number of arbitrators. Pre-arbitration discovery and the use of the rules of evidence will be at the discretion of the arbitration panel. As well, the arbitration panel will have the discretion to conduct fact finding by hearing or to consider the conflict by written statements submitted by the participants or their attorneys. All parties to the conflict will jointly and equally share in the reasonable fees and expenses of the arbitration panel, but the arbitration panel will have the right to recommend the payment of fees and expenses, including attorney's fees and expenses for the parties. The court will not be bound by the findings and recommendations of the arbitration panel, but the court may consider them in reaching its decision.

10.3.5 If the non-binding arbitration does not cause a resolution of the dispute, then any party to the dispute may bring a judicial action. Personal jurisdiction and venue for all actions will lie with the appropriate state court in Duval County, Florida. The prevailing party(ies) will be entitled to recover all costs and a reasonable attorney's fee. For reasons of cost effectiveness and efficiency, all trials by jury are waived, so that all trials will be before the judge sitting as a trier of fact.

ARTICLE XI
ADDITIONAL PROVISIONS

Section 11.1 **Transfers of the Developer's Right.** Throughout this Declaration, various rights are reserved to the Developer. The Developer reserves the right to transfer its rights under this Declaration subject to the terms and conditions of this Declaration. Thus, for example, the Developer may sell some or all of the acreage described in Section 9.1, above, and transfer with the title the rights reserved in this Declaration. Transfers of the Developer's

rights will not be binding on third parties unless they are evidenced in writing and recorded in the current public records of Duval County, Florida. The Developer is required to serve a notice of any such transfer upon the board of directors for the Association.

Section 11.2 **Mortgagee Notice Rights.** Upon written request to the Association, identifying the name and address of the mortgagee, any mortgagee will be entitled to timely written notice of the following:

11.2.1 Any condemnation loss or any casualty loss which affects a material portion of the common areas or any lot on which there is a first mortgage held, insured, or guaranteed by the mortgagee.

11.2.2 Any delinquency in the payment of assessments owed by an owner of a lot subject to a first mortgage held, insured, or guaranteed by the mortgagee, which remains uncured for a period of 60 days.

11.2.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

11.2.4 Any proposed action which would require the consent of a specified percentage of mortgagees.

Section 11.3 **Amendments.**

11.3.1 In some provisions within this Declaration, the Developer has reserved the right to add to or to modify this Declaration for specific purposes. Those reserved rights are not limited by the understandings in this Section 12.

11.3.2 For as long as the Developer holds for sale in the ordinary course of business at least 5% of the lots in all units of Lydia Estates that will ultimately be operated by the Association, the Developer will have the right to veto any amendments.

11.3.3 This Declaration cannot be amended except by a writing signed by the owners of two-thirds of the affected lots, or their duly appointed attorneys-in-fact. The amendment may provide for an earlier effective date, but it will not be binding upon third parties until it is recorded in the current public records of Duval County, Florida.

11.3.4 "Affected lots" referenced in the foregoing Section 12.3 is intended to mean less than all owners of all lots subjected to this Declaration, if the circumstances so require. For example, an Additional Unit may be added in the future with a later discovery that it is appropriate to amend a land use covenant only for that unit because of particular circumstances. In that event, an amendment affecting that unit only may be made, provided that the requisite number of owners within that unit approve the amendment.

In that case, the approval by owners of lots in other units will not be required.

THIS INSTRUMENT must be executed in multiple counterparts. In that event, any fully executed counterpart will be entitled to treatment as an original.

AGREEMENT BETWEEN DEVELOPER AND DEVELOPMENT LOAN LENDER

Developer and First South Bank, the Development Loan Lender, mutually agree as follows:

1. On the 21st day of April, 1997, the Developer executed and delivered to the Development Loan Lender a development loan mortgage securing the original principal sum of $900,000. That mortgage was recorded in Official Records Book 8600, Pages 673 through 694 of the current public records of Duval County, Florida. The Development Loan Lender remains the owner and holder of that mortgage, and, therefore, it has full authority to make this agreement.

2. The Development Loan Lender has joined in the execution of the plat for Unit One in order to subordinate its mortgage to the terms and conditions of the plat. Similarly, the Development Loan Lender is entering into this agreement in order to subordinate its mortgage to the terms and conditions of this Declaration.

3. By making this agreement, the Development Loan Lender does not agree to assume the responsibilities of the Developer under this Declaration. However, all of the rights of the Developer under this Declaration are hereby assigned to the Development Loan Lender as additional collateral. Although this assignment is presently effective, the Development Loan Lender agrees not to exercise its rights under this assignment unless and until the Developer should have an uncured default in the development loan.

4. The Development Loan Lender now releases from the lien, operation, and effect of its mortgage the following common areas: Tract A; Tract B; private roadways; and entranceway. This release also includes all easement or other rights in favor of the Association expressed in this instrument and necessary for the Association to perform the duties imposed upon it by this Declaration.

5. The Development Loan Lender has been induced to enter into this agreement with the Developer in reliance upon the scheme of regulation established by this Declaration. Therefore, until the Development Loan Lender is paid in full, the consent of the Development Loan Lender to any modification contemplated in Article XII, above, will be required.

Signed, sealed and delivered in the presence of:

Signature of Witness

Dorothy T. Terry
Printed Name of Witness

Myra Thompson
Signature of Witness

MYRA THOMPSON
Printed Name of Witness

A. F. ALAN CUSTOM HOMES, INC.

BY: _____
Alan L. Fixel, President

Date: 7-31, 1997

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledge before me this 30th day of July, 1997, by Alan L. Fixel, President of A. F. Alan Custom Homes, Inc., a Florida corporation, on behalf of the corporation, who:

[X] is personally known to me.

[ ] produced a current Florida Driver's License as identification.

[ ] produced _____ as identification.

My commission expires:

Seal]

MYRA L. THOMPSON
MY COMMISSION EXPIRES
DECEMBER 3, 1998
#CC 329421
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

Myra L. Thompson
Signature of Notary Public

_____
Printed Name of Notary
Commission No. _____

Frances L. McKeithan
Signature of Witness
FRANCES L. McKeithan
Printed Name of Witness
Diana S. Johnson
Signature of Witness
Diana S. Johnson
Printed Name of Witness

FIRST SOUTH BANK

BY: _____
David L. Faulk, Vice-President

Date: 8/4, 1997

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledge before me this 4 day of August 1997, by David L. Faulk, Vice-President of First South Bank, who:

[✓] is personally known to me.

[ ] produced a current Florida Driver's License as identification.

[ ] produced _____ as identification.

My commission expires:

[Seal]

Frances L. McKeithan
Signature of Notary Public

FRANCES L. McKeithan
Printed Name of Notary

Commission No. _____

FRANCES L. MCKEITHAN
MY COMMISSION # CC311406 EXPIRES
August 26, 1997
BONDED THRU TROY FAIN INSURANCE, INC.

F:\MYRA\REAL\Lydia.C&R.wpd\July 30, 1997\GP-2603