RETURN TO:
GAYLE DAVIDSON, DEVELOPMENT REVIEW COORD
MARION COUNTY ENGINEERING DEPT.
412 S. E. 25th AVENUE
OCALA, FL 34471-2687

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY
DATE: 07/23/2004 12:45:13 PM
FILE #: 2004106360 OR BK 03780 PGS 0497-0523

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Declaration of Covenants and Restrictions for Silver Hammock Preserve

Prepared By

Tim D. Haines
GRAY, ACKERMAN & HAINES, P.A.
125 NE 1st Avenue, Suite 1
Ocala, Florida 34470

Draft Date: June 2, 2004

RECORD: $_____

Return to:
Tim Haines
125 NE 1st Avenue, Suite 1
Ocala, FL 34470

This Instrument Prepared by:
Tim Haines/jp
Gray, Ackerman & Haines, P.A.
125 NE 1st Avenue, Suite 1
Ocala, FL 34470

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DECLARATION OF COVENANTS AND RESTRICTIONS FOR SILVER HAMMOCK PRESERVE

THIS DECLARATION OF COVENANTS AND RESTRICTIONS for **SILVER HAMMOCK PRESERVE** (hereinafter referred to as the *"Declaration"*) is made on the date hereinafter set forth by **ROBERT P. DRAKE, individually and as Trustee** (hereinafter referred to as "*Declarant*").

W I T N E S S E T H:

WHEREAS, Declarant is the sole owner in fee simple of certain real property located in Marion County, Florida, platted as Silver Hammock Preserve as per plat thereof recorded in Plat Book 8, at Page 54-56, public records of Marion County, Florida (hereinafter referred to as the "*Property*"); and

WHEREAS, the Declarant desires to provide for the preservation of the values in the Property and for maintenance of certain common facilities in the Property sometimes referred to herein as Silver Hammock Preserve and designated by this Declaration and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each subsequent owner of all or part thereof; and

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Property to create a homeowners' association to which shall be delegated and assigned the powers of maintaining and administering the common area properties and facilities; administering and enforcing the covenants and restrictions; and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Florida, a not for profit corporation called Silver Hammock Preserve Property Owners' Association, Inc. (hereinafter referred to as the "*Association*"), to exercise the aforesaid functions.

NOW, THEREFORE, Declarant declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Property, shall be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1.
DEFINITIONS

Section 1.1 ***"Architectural Review Board" or "ARB"*** – shall mean the Declarant until such time as the Declarant assigns his right to act as the Architectural Review or ARB to the Board of Directors of the Association pursuant to Article 7, Section 7.1 of the Declaration.

Section 1.2 ***"Articles"*** -- shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of Florida (a true copy of which is attached hereto as Exhibit "A"), including any amendments thereto.

Section 1.3 ***"Assessments"*** -- shall mean any of the types of Assessments defined below in this Section.

1.3.1 ***"Common Assessment"*** -- shall mean a charge against each Owner and his Lot, representing a portion of the expenses of operating, maintaining, repairing, improving and replacing the Common Areas, located within the platted subdivision of Silver Hammock Preserve including, but not limited to, managing, operating, and maintaining the Surface Water or Storm Water Management System. Maintenance of the Surface Water or Storm Water Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities permitted by the St. John's River Water Management District.

1.3.2 ***"Special Assessment"*** -- shall mean a charge against one or more Owners and their Lots equal to the cost incurred by the Association in connection with the enforcement of this Declaration against such Owner(s) for such Owner(s)' failure to duly perform their obligations hereunder.

1.3.3 ***"Reconstruction Assessment"*** -- shall mean a charge against each Owner and his Lot representing a portion of the cost incurred by the Association for reconstruction of any portion or portions of the Improvements located on the Common Areas or any portion or portions of the Surface Water or Storm Water Management System.

1.3.4 ***"Capital Improvement Assessment"*** **--** shall mean a charge against each Owner and his Lot representing a portion of the cost incurred by the Association for installation or construction of any Improvements on any portion of the Common Areas which the Association may from time to time authorize.

Section 1.4 ***"Association"*** -- shall mean and refer to Silver Hammock Preserve Property Owners' Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

Section 1.5 ***"Board" or "Board of Directors"*** -- shall mean the Board of Directors of the Association.

Section 1.6 ***"Buildable Area"*** – shall mean the portion of each Lot, as depicted on the Plat, and designated thereon *"Buildable Area"*. The designation of a portion of a Lot as a *"Buildable Area"* does not constitute a representation and warranty that all portions of the Buildable Area may, in fact, be built upon. Building may be restricted within the *"Buildable Area"* as a result of easements encumbering the same including, but not limited to, drainage easements and the requirements of the St. Johns River Water Management District.

Section 1.7 ***"Bylaws"*** -- shall mean the Bylaws of the Association adopted by the Board (a copy of which is attached hereto as Exhibit "B") including any amendments thereto.

Section 1.8 ***"County"*** -- shall mean the County of Marion, in the State of Florida.

Section 1.9 ***"Common Areas"*** -- shall mean and refer to those areas of land shown on any recorded subdivision plat of the Property which areas are intended to be used and enjoyed by Owners of Lots in the Property, which include without limitation, any private roads, drainage areas, Surface Water or Storm Water Management System, easements for roads, walkways, parking areas, paths, utilities, and all improvements now or hereafter constructed thereon including, without limitation, streets, lighting systems, signage, structures, and landscaping thereon, including any Surface Water or Storm Water Management System (as defined below). All personal property and real property, including easements, licenses, leaseholds, or other real property interests, including the improvements thereon, owned by the Association or maintained by the Association for the common use and enjoyment of the Owners, are to be devoted to and intended for the common use and enjoyment of the members of the Association, their families, guests, and persons occupying "*Dwelling Units*" on a guest or tenant basis, and to the extent authorized by this Declaration or by the Board of Directors.

Section 1.10 ***"Common Expenses"*** -- shall mean the actual and estimated costs of ownership, maintenance, management, operation, insurance, repair, reconstruction and replacement of the Common Areas (including unpaid Special Assessments and including those costs not paid by the Owner responsible for the payment); any costs incurred in exercising the rights of the Association granted in Article 3, the costs of all utilities; the costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees, agents or independent contractors; the costs of all utilities, gardening and other services benefitting the Common Areas, the costs of fire, casualty and liability insurance, Workmen's Compensation insurance, and other insurance covering or connected with the Common Areas; costs of bonding the officers, agents, and employees of the Association; costs of errors and omissions liability insurance for officers, employees and agents of the Association; taxes paid by the Association, including real property taxes for the Common Areas; amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Areas or any portion thereof, and the costs of any other item or items so designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Common Areas or for the benefit of the Owners.

Section 1.11 ***"Declarant"*** – shall mean and refer to Robert P. Drake, Trustee, his successors and assigns.

Section 1.12 ***"Declaration"*** -- shall mean and refer to this Declaration of Covenants and Restrictions for Silver Hammock Preserve and any amendments and supplements thereto.

Section 1.13 ***"Dwelling Units"*** -- shall mean and refer to a Lot as defined herein with an detached single-family residential unit constructed thereon for which a Certificate of Occupancy has been issued by the applicable governmental authorities.

Section 1.14 ***"Front Lot Line"*** -- shall mean and refer, for any Lot, to the boundary line of that Lot running substantially parallel to, and adjacent to, the platted roadway of Silver Hammock Preserve. Each Lot shall have a single Front Lot Line. In the event of any dispute as to the location of the Front Lot Line, the determination of the Board of Directors of the Association shall be final.

Section 1.15 ***"Gate"*** – shall mean and refer to any gate, barricade, and associated entry features installed within the Common Areas and operated by the Association to control access to the Property.

Section 1.16 ***"Gopher Tortoise Conservation Area"*** -- shall mean the rear one hundred fifty feet (150') of Lots 8 and 9 as identified on the Plat.

Section 1.17 ***"Lot"*** -- shall mean and refer to any plot of land shown upon the plat of Silver Hammock Preserve and designated as a numbered Lot, and shall exclude any Common Areas owned in fee simple by the Association.

Section 1.18 ***"Member"*** -- shall mean and refer to the Declarant and any Owner.

Section 1.19 ***"Owner"*** -- shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any *"Lot"* which is a part of or situated upon the Property; however, notwithstanding any applicable theory of the law of mortgages, *"Owner"* shall not mean or refer to a Mortgagee unless and until such Mortgagee has acquired title pursuant to foreclosure or any deed or proceeding in lieu of foreclosure.

Section 1.20 ***"Plat"*** -- shall mean and refer to the subdivision of Silver Hammock Preserve, as recorded in Plat Book "8", at Pages 54 through 56 of the public records of Marion County, Florida.

Section 1.21 ***"Property"*** -- shall mean and refer to the property platted as Silver Hammock Preserve, as per plat thereof recorded in Plat Book 8, at Page 54-56, public records of Marion County, Florida, as well as any other real property subjected to the Declaration pursuant to Article 3 hereof.

Section 1.22 ***"Rear Lot Line"*** -- shall mean and refer, for any Lot, to the boundary line of that Lot running substantially parallel to, and separated by the entire body of the Lot from, the Front Lot Line. Lots located at the corner of the Plat may have two Rear Lot Lines. In the event of any dispute as to the location of the Rear Lot Line or Rear Lot Lines, the determination of the Board of Directors of the Association shall be final.

Section 1.23 ***"Rear Yard"*** – shall mean and refer to the portion of the Buildable Area lying on the opposite side of any Dwelling Unit built on a Lot from the Front Lot Line (i.e., the portion of the Buildable Area lying between the Dwelling Unit and the Rear Lot Line). In the event of any dispute as to the location of the Rear Yard, the determination of the Board of Directors of the Association shall be final.

Section 1.24 ***"Side Lot Line"*** – shall mean and refer, for any Lot, to all boundaries of that Lot other than the Front Lot Line or Rear Lot Line or Rear Lot Lines, as those terms are defined herein. Each Lot shall have at least two Side Lot Lines. In the event of any dispute as to the location of the Side Lot Lines, the determination of the Board of Directors of the Association shall be final.

Section 1.25 ***"Surface Water or Storm Water Management System"*** -- shall mean and refer to a system, temporary or permanent, which is designated 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, over drainage, environmental degradation, and water pollution, or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to the provisions of Chapters 40C-4, 40C-40, or 40C-42 of the Florida Administrative Code.

ARTICLE 2.
USE RESTRICTIONS

Section 2.1 **Use Restrictions**. The use restrictions contained in this Article shall apply uniformly to all Lots and Dwelling Units on the Property.

Section 2.2 **Buildable Area**. No Dwelling Unit or other improvements, with the exception of fencing and utility lines constructed in accordance with Sections 2.16 and 2.17 below, may be erected, constructed, and installed outside the Buildable Area of each Lot. The designation of a portion of a Lot as a *"Buildable Area"* does not constitute a representation and warranty that all portions of the Buildable Area may, in fact, be built upon. Building may be restricted within the *"Buildable Area"* as a result of easements encumbering the same including, but not limited to, drainage easements and the requirements of the St. Johns River Water Management District.

Section 2.3 **Gopher Tortoise Conservation Area.** Each Owner of a Lot containing any portion of the Gopher Tortoise Conservation Area shall manage the portion of the Gopher Tortoise Conservation Area within that Owner's Lot in perpetuity for maintenance of gopher tortoises. Such management shall include vegetation management to prevent the encroachment of woody plant material (trees and shrubs) to assure that the woody plant material does not exceed thirty percent (30%) cover within the Gopher Tortoise Conservation Area. In order to ensure compliance each such Owner shall mow the ground cover, clear out wooded shrubs and thin trees lying within the Gopher Tortoise Conservation Area once every three years. Mowing will occur only between October and January. Gopher tortoises within the Gopher Tortoise Conservation Area shall not be harassed or harmed and are protected by

all guidelines set forth by the Florida Fish and Wildlife Commission pursuant to F.A.C. 68A-27-005.

Section 2.4 **Residential and Agricultural Use Only**. No Lot shall be used for any purpose except for residential or agricultural purposes. All commercial uses are prohibited other than commercial agricultural uses which will be restricted to the commercial breeding and raising of horses. No Owner may have more than two (2) horses per Lot. Offspring of existing horses shall not count against the maximum number of horses permitted hereunder until they reach one (1) year of age. Commercial breeding or raising of cattle, dogs, goats, poultry, rabbits, or dairy animals is not permitted.

Section 2.5 **Occupancy.** No Dwelling Unit may be regularly occupied by more than seven (7) individuals (any individual spending more than thirty (30) days during any calendar year within a Dwelling Unit shall be considered to be an occupant thereof for purposes of this provision).

Section 2.6 **Restrictions on Dwelling Units**. All Dwelling Units on the Lot must be of conventional construction, and built on site. Mobile homes, modular homes, or homes moved from any other location are prohibited. Any Dwelling Unit must contain at least 2,250 sq. feet of living space. Living space shall mean heated and cooled space under roof exclusive of garages, whether attached or detached, heated or cooled, and exclusive of porches, decks, pools, breezeways, basements, attics, and accessory structures. In computing living space or total space under roof the square footage of any detached structure shall not be included.

Section 2.7 **Subdivision - Multi Units**. Only one Dwelling Unit may be erected on each Lot, although an additional garage apartment or detached guest house may be permitted by the ARB. No Lot may be subdivided, except to increase the size of an Owner's property upon which no more than one (1) Dwelling Unit is constructed.

Section 2.8 **No Temporary or Accessory Structures**. No portable, storage, temporary or accessory buildings, sheds or structures, or tents, shall be erected, constructed or located upon any Lot for storage or otherwise, without the prior written consent of the ARB. All accessory buildings (exclusive of garages and garage apartments approved by the ARB) must be located in the Rear Yard.

Section 2.9 **Pets**. Dogs, cats, and other domestic pets, not to exceed a total of four (4) per Lot, are permitted. Offspring of existing pets shall not count against the maximum number of pets allowed hereunder until they reach six (6) months of age. No cattle, pigs or hogs shall be permitted for any purpose. All pets shall be kept within the boundary of the Owner's Lot, unless accompanied by the Owner.

Section 2.10 **Restriction on Activity**. No noxious or offensive activity shall be conducted or permitted to exist upon any Lot or in any Dwelling Unit, nor shall anything be done or permitted to exist on any Lot or in any Dwelling Unit that may be or may become an annoyance or private or public nuisance. No Lot, driveway, or Common Area shall be used for purposes of vehicle repair or maintenance, other than routine maintenance such as oil changes or tune-ups of vehicles owned by the Owner.

Section 2.11 **Lot Maintenance**. Each Owner shall maintain his Lot and all improvements thereon in a clean, neat and attractive condition, and shall keep his Lot free of any accumulation of junk, trash, abandoned vehicles, used construction materials, equipment or any other unsightly objects and shall not permit any natural or artificial feature on his or her Lot to become obnoxious, overgrown, or unsightly.

Section 2.12 **Swale Maintenance**. The Declarant has constructed a Surface Water or Storm Water Management System, including a drainage swale, upon certain Lots for the purpose of managing and containing the flow of excess surface water, in any, found upon such Lot from

time to time. Each Owner of the Lot from which a portion of the Surface Water or Storm Water Management System is located shall be responsible for maintenance, operation, and repair of any drainage swales on their Lot. Maintenance, operation, and repair shall be the exercise of practices such as mowing and erosion control, which allows the swales to provide drainage, water storage, conveyance or other storm water management capabilities as permitted by the water management district. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swales shall be authorized and any damage to any swale, whether caused by natural or human induced phenomena, shall be repaired, and the drainage swale returned to its former condition as soon as possible by the Owner of the Lot upon which the drainage swale is located.

Section 2.13 **Restrictions on Walls and Fences.** Any fencing running along the Front Lot Line shall be either split rail or 3 or 4 board fencing of treated wood unless an alternate fencing is approved by the ARB. Fencing may be backed by wire mesh approved by the ARB. Fencing along the Side Lot Lines and Rear Lot Lines may be the same as fencing along the Front Lot Line or may be wire mesh fencing with one row of treated wood along the top if approved by the ARB. Fencing will not be less than forty-eight inches (48") in height nor exceed fifty-six inches (56") in height unless an alternate height is approved by the ARB. Wood fencing shall be brown or natural wood color unless a different color is approved by the ARB.

Section 2.14 **Garages and Parking**. Each Dwelling Unit shall have an attached or detached garage designed for storage of at least two (2) automobiles. The design and exterior, including colors of any garage shall be compatible with that of the Dwelling Unit located on the Lot. All motor vehicles, whether belonging to the Lot Owner, his or her guests or invitees, shall be parked on that Owner's Lot and within the Buildable Area. No on-street parking is permitted. Under no circumstances may more than four (4) vehicles be regularly maintained on any Lot.

Section 2.15 **Signs**. No commercial sign or other sign shall be erected or maintained on any Lot or Dwelling Unit within public view except as may be required by legal proceedings, and except for a single commercial real estate sign not to exceed eighteen inches by thirty inches (18" x 30") in size on a Lot. Property identification and like signs identifying the Owner of a Lot and/or a farm name may be erected or affixed to the Dwelling Unit, so long as the same do not exceed a total of six (6) square feet . Campaign or political signs are permitted so long as the same do not exceed 18 inches by 30 inches. No homesite may display, however, more than one sign for any individual political candidate and campaign or political signs may not be displayed more than three weeks prior to the election to which the signs are related and must be removed within one week after said election. These restrictions shall not apply to restrict the Declarant from erecting such signs as the Declarant deems in its sole discretion to be necessary to assist the Declarant in selling any Lot or Dwelling Unit.

Section 2.16 **Tree Removal Restrictions**. For purposes of this provision all portions of a Lot not lying within the Buildable Area are designated as *"Open Space"*. With the exception of the Buildable Area, and areas within the Open Space lying within fifteen feet (15') of a Lot Line which may be cleared for fencing and survey work, and one (1) fifteen foot (15') wide path cleared through the Open Space for utility easements, no living tree shall be removed from the Open Space without prior ARB approval. The foregoing shall not prohibit mowing or bushhogging in the Open Space to remove undergrowth, and the ARB shall approve, after notification and an opportunity to inspect the Property, the removal of any dead trees or of any living trees which do not exceed five inches (5") in diameter at five feet (5') above ground level. Such removal must be by hand, however. Heavy equipment such as tractors are not permissible for said removal. By accepting the conveyance of a Lot, each Owner acknowledges that the tree removal restrictions set forth herein are critical to the overall planned development for Silver Hammock Preserve, and are intended to assure each Lot Owner visual privacy. Each Owner, by acceptance of a deed to a Lot, acknowledges a violation of this tree removal restriction is extremely difficult to remedy and, therefore, consents to extraordinary relief should it be determined that a violation of this provision has

occurred. Said relief may consist of remediation by planting of a replacement tree or trees in amounts and locations to be determined by the ARB. Without limiting the foregoing, and in addition thereto, the Association shall be entitled to levy a fine for any such violation pursuant to Section 6.3 below, and each Owner expressly acknowledges that a fine in the amount of $100.00 per day for each tree improperly removed, continuing from the date of removal until remediation satisfactory to a majority of the ARB has been made, is fair and reasonable, and in the event the ARB determines that appropriate remediation is not possible, a fine of One Thousand Dollars ($1,000.00) per tree removed is reasonable.

Section 2.17 **Set-back Requirements and Building Location**. All Dwelling Units and accessory structures shall be built within the Buildable Area as depicted on the Plat.

Section 2.18 **Garbage and Yard Trash.** No Lot or any other part of the Property shall be used or maintained as a dumping ground for rubbish of any kind except as set forth herein. Trash, garbage, wrecked or junk vehicles, appliances, furniture, building materials, debris, weeds, scrap metal, or other unsightly objects may not be maintained outside an approved structure on any Lot.

Section 2.19 **Wildfire Protection Restrictions.** All Dwelling Units, garages, guest houses, and other outbuildings or structures shall be required to comply with the model building codes as adopted by the County. In the case of conflict between the Building Code and this restriction, the more stringent fire protection requirements shall be utilized to mitigate the combustibility of structures exposed to potential wild fires:

2.19.1 Only fire retardant roof covering assemblies rated Class A, B, or C shall be used.

2.19.2 Vents shall be screened with a corrosion resistant non-combustible wire mesh with a mesh opening not to exceed nominal one-fourth inch (6.3mm) in size.

2.19.3 Eaves shall be boxed in with nominal one-half inch (12.7mm) sheeting or non-combustible materials.

2.19.4 Porches, decks, patios, balconies, and similar undersides of overhangs shall be constructed of at least 2" thick (nominal) pressure treated lumber or other material with equal or greater fire resistance rating.

2.19.5 The underside of overhanging buildings shall be constructed with materials specified in Section 2.19.4.

2.19.6 Exterior vertical wall coverings shall be constructed of a least nominal one-half (12.7mm) sheeting or equivalent material.

2.19.7 Every fireplace and woodstove chimney and flue shall be provided with an approved spark arrestor constructed with minimal 12-gauge welded wire or woven wire mesh, with the openings not to exceed 12.7mm. Vegetation shall not be allowed within ten feet (3.05 meters) of a chimney outlet.

2.19.8 Outbuildings, patio covers, trellises and other accessory structures shall be constructed to meet the requirements of this Section 2.19.

In addition, the following restrictions shall be applied to any area lying within thirty feet (30') of a Dwelling Unit, garage, porch, barn, guest house or other outbuilding (said thirty foot area hereinafter the *"Defensible Space"*):

2.19.9 Ground fuel within the Defensible Space shall be treated, mowed, mulched, converted to compost, or removed as needed so that it does not become a fire hazard.

2.19.10 Live vegetation within the Defensible Space shall have all dead material removed and shall be thinned and pruned to reduce fire intensity and rate of spread.

2.19.11 Dead trees within the Defensible Space shall be removed.

2.19.12 Vegetation under trees within the Defensible Space shall be maintained at a height which will preclude its functioning as a *"ladder"* for fire to travel from ground vegetation to tree crowns.

2.19.13 The following vegetation shall be prohibited within the Defensible Space:

2.19.13.1 Saw Palmetto
2.19.13.2 Wax Myrtle
2.19.13.3 Yaupon Holly
2.19.13.4 Red Cedar
2.19.13.5 Gallberry

Section 2.20 **Access**. No Lot shall be used as a means of access to property other than property in Silver Hammock Preserve.

Section 2.21 **Driveways.** All driveways which connect to the street of Silver Hammock Preserve, said street being maintained by the Association, must be constructed in the following manner:

2.21.1 That portion of any driveway which is constructed in the road right-of-way must be paved with reinforced concrete a minimum of four inches (4") in thickness.

2.21.2 No driveway may be less than twenty feet (20') nor more than forty feet (40') wide where the same connects to the paved street. No driveway may be less than ten feet (10') wide where it connects to the Owner's property line.

2.21.3 The connection of all driveways to the street shall be made in conformance with either one of the following two options, at the Lot Owner's discretion:

2.21.3.1 The surface of the driveway must be lower than the street and the connection of the driveway to the street must be constructed in a fashion to assure that the driveway slopes away from the street at a rate sufficient to provide that the driveway is at least six inches (6") lower than the street at a point midway between the edge of the street and the boundary line of the Lot served by the driveway; or

2.21.3.2 A culvert must be installed in the swale adjacent to the Lot served by the driveway. The culvert must be at least fifteen inches (15") in diameter and so installed as to assure that the natural flow of water in the swale is not restricted.

2.21.4 All construction of driveways and culverts, set forth above, must be in accordance with accepted building and engineering standards. Each Owner shall be responsible for the maintenance of the driveways and culverts serving his or her Lot in good condition so that they do not become unsightly or cause damage to the street, swales, ditches, or Common Areas of Silver Hammock Preserve.

2.21.5 All driveway construction shall be approved by the ARB. The ARB shall approve only driveways approximately twenty (20') feet in width, built of suitable materials, which shall be required to meander through the Open Space to the Buildable Area to assure, to the extent practicable in the discretion of the ARB, that there is no un-obscured site line along the driveway from the Dwelling Unit or other structure located on the Lot to the adjacent road right-of-way.

Section 2.22 **Water and Sewer**. All potable water, septic and sewer systems shall meet all State, County, and other regulatory agency requirements.

Section 2.23 **Exterior Maintenance**. Each individual Owner shall have the responsibility to maintain the exterior of their respective Dwelling Unit. Failure to maintain the exterior of the Dwelling Unit in reasonable condition, as determined by the ARB shall constitute a Non-Monetary Default pursuant to Section 6.2 entitling the Association to levy a fine. In addition to the foregoing, the Association shall have the right, but not the duty, to provide maintenance to any exterior areas visible from the roads or adjacent Lots, including repairs to walls and roofs, painting, landscaping and lawn maintenance. The Association shall have the right to make reasonable repairs and perform reasonable maintenance in its sole discretion, after ten (10) days written notice to an Owner of a Dwelling Unit to perform maintenance and failure by the Owner to perform said maintenance. Any and all costs incurred by the Association in performing repairs and maintenance under this Section shall be paid out by the Owner. If the Owner fails to pay, then the Association shall have the right to impose a Special Assessment against said Owner to pay for the cost of repairs and replacements. Such Assessment shall in every respect constitute a lien on the Lot or Dwelling Unit as would any other Assessments by the Association. The Association shall have the right to enter upon any Lot or upon the exterior of any Dwelling Unit for the purpose of providing repairs and maintenance as provided in this Section, and any such entry by the Association or its agent shall not be deemed a trespass. No such entry shall be made without prior written notice mailed to the last known address of the Owner advising him that unless corrective action is taken within ten (10) days the Association will exercise its right to enter the Property pursuant to this Section.

Section 2.24 **Construction on Lots**. All exterior construction and landscaping of any Dwelling Unit shall be completed before any person may occupy the same. All construction on any Dwelling Unit shall be completed within twelve (12) months from the issuance of the building permit for that Dwelling Unit. All construction on any Lot shall be at that Lot Owner's risk and that Lot Owner shall be responsible for any damage to Common Areas, utilities, public rights-of-way, sidewalks, or curbing resulting from construction on such Lot. Repairs of construction damage must be made within thirty (30) days.

Section 2.25 **Vehicles.** No motorcycle, boat, trailer, camper, travel trailer, recreational vehicle, mobile home, or other powered or non-powered vehicle, other than a private passenger vehicle, shall be parked or maintained on any Lot or public right-of-way, except in an enclosed garage or in the Rear Yard of a Lot within a covered structure approved by the ARB.

Section 2.26 **Recreational Equipment**. All permanent recreational equipment, including but not limited to swing sets, swings, sandboxes, and trampolines, shall be located in the Rear Yard unless approved by the ARB. For each Lot the location of the Rear Yard shall be determined by the ARB in its sole discretion. Any other recreational equipment shall be kept within the Dwelling Unit except when in use, except for a single basketball pole and hoop which may be erected adjacent to the driveway serving the Dwelling Unit within thirty feet (30') of the Dwelling Unit or any garage located on the Lot.

Section 2.27 **Landscaping.** Sodding will be required on all Front and Side Yards, outside of planting beds and/or natural areas. Natural areas and planting beds are encouraged, so long as the same are maintained and attractive. If not sodded, seeding and/or sprigging is required in Rear Yards, outside of planting beds and/or natural areas. Shrubs shall be planted in the front and

on each side of each Dwelling Unit. Wood mulch or pine bark shall be used in any areas on each Lot around shrubs and trees unless the area up to the base of the shrub or tree is sodded. The determination of the location of the Front Yard and Side Yard shall be made by the ARB.

Section 2.28 **Vacant Lots.** The grassy areas of any vacant Lots shall be kept regularly mowed and trimmed, and all areas of vacant Lots shall be kept free of trash, debris, and unsightly or noxious weeds or underbrush. The Association shall have the right, but not the duty, to provide such maintenance to vacant Lots, after ten (10) days notice to the Owner of a vacant Lot to perform such maintenance and failure by the Owner to perform said maintenance. Any and all costs incurred by the Association in performing maintenance under this Section shall be paid by the Owner.

Section 2.29 **Household Garbage and Yard Trash.** The Association shall be responsible for selecting a garbage franchisee who will be contracted on an annual basis or subject to annual review with an annual termination provision for unsatisfactory service. The Association will contract with only one garbage franchisee to service the Property and each Dwelling Unit must use and pay for garbage services provided by the garbage franchisee selected by the Association or must personally transport trash and garbage to a landfill or garbage box. So long as the Association has contracted with a garbage franchisee, no Lot Owner may use any other third party garbage franchisee to haul garbage or trash from that Owner's Lot, except for the removal of lawn waste by a tree removal or landscaping service. No Lot or any other part of the Property shall be used or maintained as a dumping ground for rubbish of any kind except as set forth herein. Trash, garbage or other waste shall be bagged, tied, and kept in covered sanitary containers in the garage, or at the rear of the Dwelling Unit out of sight from the street within an approved fenced area. On those days and only on those days when garbage pickup or trash pickup are made at the Lot, the Owners shall place their garbage (bagged and tied) on their Lot and adjacent to the street for pickup not earlier than sundown prior to the day of pickup. All receptacles will be removed from the curbside not later than sundown of the day of pickup. In the event trash or garbage must be collected from a receptacle servicing more than one Lot to meet the requirements of a collection company or agency, all trash and garbage shall be in plastic bags and tied securely before being placed in the receptacle. In no event shall trash or garbage be placed outside the receptacle. Nothing contained herein shall prohibit the Declarant, or any builder of a Dwelling Unit, from maintaining receptacles, or sites for the collection of trash, or debris, which receptacles or sites do not otherwise comply with this section, on a Lot or on the Properties during construction of improvements to the Properties or construction of a Dwelling Unit.

Section 2.30 **Lighting**. All exterior lighting on any Lot or Dwelling Unit must be designed and erected so as to avoid annoyance to any other Owner, and to avoid unreasonable illumination of any other portion of the Properties except the Lot upon which the lighting is erected. The ARB shall have sole authority to determine whether exterior lighting constitutes an annoyance or unreasonably illuminates other portions of the Property. This provision shall not apply to street lighting installed by the Declarant, the Association, or any governmental entity.

Section 2.31 **Mail Boxes**. No mail box or paper box or other receptacle of any kind for use in the delivery of mail, newspaper, or magazines, or similar material shall be erected by an Owner unless the size, location, design, and type of material for said boxes or receptacles shall have been approved by the ARB and said boxes shall display only the name of the Owner and the street number of the Lot. Nothing may be added or attached to the mail box, paper box, or post supporting the same, including without limitation, flags, signs, flowers, decorations, numbers, and license plates.

ARTICLE 3.
PROPERTY SUBJECT TO THIS DECLARATION ANNEXATIONS; PROPERTY RIGHTS

Section 3.1 **The Property**. The Property as heretofore defined and any improvements now or hereinafter constructed thereon, shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

Section 3.2 **Annexation**. Additional land adjacent to the Property may be annexed to the Property by the Declarant without the consent of the Owners provided that if any Mortgage encumbering any Lot is guaranteed or insured by the Federal Housing Administration (FHA) or the Veterans Administration (VA), then consent of the FHA and/or the VA to such annexation must be obtained, and provided the annexation does not change the general nature or character of the subdivision. Upon annexation of said additional land, the Owners of Lots within the land so annexed for all intents and purposes shall be deemed to be Members of the Association in accordance with the provisions of this Declaration, with the right to use the Common Areas identified herein, or identified within the supplemental declaration referred to hereafter, upon the same terms and conditions as initial Members of the Association. The Owners of the Lots shall be subject to its rules, regulations, Articles and Bylaws in the same manner and with the same effect as the original Owners, and shall have the same rights and obligations granted by this Declaration as the original Owners. When land is annexed, the Declarant shall file a supplemental declaration in the Public Records of the County, which supplemental declaration shall reference this Declaration and shall contain the legal description of the land annexed. In the event of annexation as set forth herein any portion of the Property than owned by the Declarant or Association may be designated as Common Areas for the use and benefit of the Members. For example, upon annexation the Declarant may convert a Lot within the original Property, or a portion thereof, to be a Common Area to provide ingress and egress to the land annexed.

Section 3.3 **Owner's Easements of Enjoyment**. Every Owner shall have a non-exclusive perpetual right and easement of enjoyment in and to the Common Areas, if any, which right and easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

3.3.1 any limitations or conditions set forth in the deed, grant of easement, license, this Declaration, or other conveyance or agreement creating the right of the Association in and to that portion of the Common Areas; and

3.3.2 the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless an instrument, signed by Members representing a majority of the votes of the membership, agreeing to such dedication or transfer has been recorded.

Section 3.4 **Maintenance Easements.** The Association shall have a non-exclusive perpetual right and easement on every Lot for the purpose of maintaining the Common Areas and providing such other services to the Owners as are authorized or permitted by this Declaration, which right and easement is assignable. The easement granted herein shall not entitle the Association to enter any Dwelling Unit unless specifically authorized by other provisions of this Declaration.

Section 3.5 **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 St. Johns River Water Management System 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.

Section 3.6 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the Owner's respective Lot.

Section 3.7 **Construction and Sales**. There is hereby reserved to the Declarant, its designees, successors and assigns (including without limitation its agents, sales agents, representatives and prospective purchasers of Lots), easements over the Common Areas, if any, for construction, utilities lines, display, maintenance, sales, parking and exhibit purposes in connection with the erection of improvements and sale and promotion of Lots within the Property and for ingress and egress to and from and parking for construction sites at reasonable times, provided, however, that such use shall terminate upon the sale of all Lots.

Section 3.8 **Utility Easements**. To the extent that permits, licenses and easements over, upon or under the Common Areas are necessary so as to provide utility services and roads to the Property, or for such other purposes reasonably necessary or useful for the proper maintenance and operation of the Property, each Owner and his heirs, successors and assigns, do hereby designate and appoint the Declarant (and the Association, upon termination or conversion of the Class B membership) as his agents and attorneys-in-fact with full power in his name, place and stead, to execute instruments creating, granting or modifying such easements; provided, however, that such easements shall not unreasonably interfere with the intended use of the Common Areas, if any.

Section 3.9 **Gopher Tortoise Conservation Area Easement.** The Association and Developer shall have a non-exclusive perpetual right and easement for pedestrian traffic over, upon, and across Lot 8 and Lot 9 for the sole purpose of relocating gopher tortoises discovered within, or located on, the Property into the Gopher Tortoise Conservation Area, and for providing for inspection of the Gopher Tortoise Conservation Area by appropriate federal, state, or local officials. This easement shall be limited to pedestrian traffic, shall not entitle any third party to enter into any Dwelling Unit, garage, or other enclosed area, and may be used only between 9:00 a.m. and 5:00 p.m. on weekdays after reasonable attempts have been made to notify and coordinate with, by telephone, the then Owners of Lot 8 and Lot 9. This easement shall not prohibit the Owners of Lot 8 and Lot 9 from constructing any improvements on their Lots except that pedestrian access from NE 43rd Lane Road to the Gopher Tortoise Conservation Area may not be completely blocked or rendered substantially difficult to use.

ARTICLE 4.
MEMBERSHIP AND VOTING RIGHTS

Section 4.1 **Membership in Association**. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 4.2 **Voting Rights in Association**. The Association shall have two (2) classes of Voting Membership.

Class A. Class A. Members shall be all Owners, with the exception of, until conversion from Class B Membership, the Declarant, and shall be entitled to one vote for each Lot

owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant who shall be entitled to four (4) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership three (3) months after ninety percent (90%) of all Lots in all phases of Silver Hammock Preserve that will ultimately be operated by the Association have been conveyed to Owners other than the Declarant. At such time the Class B Member shall be deemed a Class A Member entitled to one (1) vote for each Lot in which they hold the interest required for Membership under Article 4, Section 4.1.

ARTICLE 5.
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1 **Creation of the Lien and Personal Obligation for Assessments**. The Declarant for each Lot within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay Assessments to the Association, such Assessments to be established and collected as hereinafter provided. The Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment fell due.

Section 5.2 **Purpose of Assessments**. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property, and for the improvement and maintenance of the Common Areas including, but not limited to the Gate, the Surface Water and Storm Water Management System, and for enforcement of the Declaration.

Section 5.3 **Maintenance**. The Association shall maintain the Common Areas, including the Gate, the Surface Water and Storm Water Management System, and shall assume all of Declarant's responsibility to the County, its governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas or the Property including, but not limited to, roads and water distribution systems, or any Surface Water or Storm Water Management System, and shall indemnify and hold Declarant harmless with respect thereto. Nothing contained herein shall obligate the Association, or otherwise make it responsible for, initial construction of improvements required by the County.

Section 5.4 **Fixing Common Assessment**. The Board of Directors of the Association shall be authorized to assess the Members in such amount as they shall determine necessary:

5.4.1 to maintain, repair, improve, reconstruct and replace the Common Areas, including the Gate and any Surface Water or Storm Water Management System, operate the Association, perform other maintenance, repairs, or services authorized or permitted by the Declaration; and

5.4.2 to provide for the maintenance of improvements, including, but not limited to, irrigation systems and landscaping lying within public or private rights-of-way; and

5.4.3 to install such safety devices and signs as the Board of Directors shall approve along any streets or walkways; and

5.4.4 to provide for the installation, maintenance, repair, improvement and replacement of all improvements located within the easements granted to the Association in Article 3; and

5.4.5 to otherwise achieve those purposes set forth in Section 5.2 above, as determined to be necessary or advisable by the Board of Directors, and to provide funds necessary to pay all Common Expenses.

The Common Assessment shall be allocated among the Owners, including the Declarant, on the basis of Lots held by each Owner as a portion of the total of Lots held by all Owners. Notwithstanding the foregoing, for so long as Declarant is a Class B Member, the Declarant shall have the option, in its sole discretion, to (i) pay Assessments on the Lots owned by it, or (ii) not to pay Assessments on any Lots and in lieu thereof to fund any resulting deficit in the Association's operating expenses not produced by Assessments receivable from Owners other than the Declarant. The deficit to be paid under option (ii), above, shall be the difference between (i) actual operating expenses of the Association (exclusive of capital improvement costs, reserves and management fees) and (ii) the sum of all monies receivable by the Association (including, without limitation, Assessments, interest, late charges, fines, rent and incidental income) and any surplus carried forward from the preceding year(s). The Declarant may from time to time change the option stated above under which the Declarant is making payments to the Association by written notice to such effect to the Association. When all Lots within the Property are sold and conveyed to purchasers, other than the Declarant, the Declarant shall have no further liability of any kind to the Association for the payment of Assessments, deficits or contributions.

The Common Assessment, determined and allocated as set forth above, shall be fixed at such times, and shall be payable in such installments, as the Board may approve.

Section 5.5 **Assessments for Capital Improvements**. In addition to the Common Assessment authorized above, the Association may levy, in any assessment year, an Assessment applicable to that year for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, or within the easements granted to the Association in Article 3, including fixtures and personal property related thereto. Any such Assessment shall have the assent of a majority of the votes of the membership who are voting in person or by proxy at a meeting duly called for this purpose. Notwithstanding the foregoing, the levy of any Assessment pursuant to this provision which would exceed, for each Owner, the total amount of the prior year's Common Assessment, will require a majority vote of all Non-Declarant Owners.

Section 5.6 **Notice and Quorum for any Action Authorized under Sections 5.4 and 5.5**. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.4 and 5.5 shall be sent to all Members not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30 %) of the votes of the membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be twenty-five (25%) of the votes of the membership. The Association may call as many such subsequent meetings as necessary to obtain an authorized quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting, without written notice.

Section 5.7 **Uniform Rate of Assessment**. The Common Assessment, and any Reconstruction Assessment and Capital Improvement Assessment, must be fixed at a uniform rate for all Lots, except as to undeveloped Lots owned by the Declarant pursuant to Section 5.4 above, and may be collected on a monthly, semi-annual, quarterly or annual basis as determined by the Board of Directors.

Section 5.8 **Date of Commencement of Assessments; Due Dates**. The Assessments provided for in this Article shall commence as to all Lots on the first day of the month next following the conveyance of the Common Area or the conveyance of the first Lot to an Owner other than Declarant, whichever shall occur first. The First Common Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Common Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as to third parties as of the date of its issuance.

ARTICLE 6.
COLLECTION OF ASSESSMENTS

Section 6.1 **Monetary Defaults and Collection of Assessments**.

6.1.1 **Late Fees and Interest**. If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the defaulting Owner a late fee of ten (10%)percent of the amount of the Assessment, or Ten ($10.00) Dollars, whichever is greater, plus interest at the highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association.

6.1.2 **Acceleration of Assessments**. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such defaulting Owner to pay to the Association Assessments for the next twelve (12) month period, based upon the then existing amount and frequency of assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the Common Assessments, for all Special Assessments, and for all other Assessments payable to the Association .

6.1.3 **Lien for Assessments**. The Association has a lien on each Lot for unpaid Assessments owed to the Association by the Owner of such Lot, and for late fees and interest, and for reasonable attorneys' fees incurred by the Association incident to the collection of the Assessments or enforcement of the lien, and all sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances in order to preserve and protect the Association's lien. The lien is effective from and after recording a lien in the public records in the County, stating the legal description of the Lot, the name of the record Owner, and the amount due as of the recording of the claim of lien. A recorded claim of lien shall secure all sums set forth in the claim of lien, together with all Assessments or other monies owed to the Association by the Owner until the lien is satisfied. The lien is in effect until all sums secured by it have been fully paid or until the lien is barred by law. The claim of lien must be signed and acknowledged by an officer or agent of the Association. Upon payment in full of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the lien.

6.1.4 **Collection and Foreclosure**. The Association may bring an action in its name to foreclose a lien for Assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The applicable Owner shall be liable

to the Association for all costs and expenses incurred by the Association in connection with the collection of any unpaid Assessments, and the filing, enforcement, or foreclosure of the Association's lien, including reasonable attorneys' fees and all sums paid by the Association for taxes and on account of any other mortgage, lien, or encumbrance in order to preserve and protect the Association's lien. The Board is authorized to settle and compromise the Association's lien if the Board deems a settlement or compromise to be in the best interest of the Association.

6.1.5 Subordination of Lien. The lien of the Association for Assessments or other monies shall be subordinate and inferior to the lien of any first mortgage of record held by an institutional lender. An institutional lender shall refer to any bank, bank holding company, trust company, or subsidiary thereof, savings and loans association, savings bank, federal national mortgage association, insurance company, union pension fund, mortgage company, an agency of the United States government, or the Declarant . Any person who obtains title to a Lot pursuant to the foreclosure of a first mortgage of record held by an institutional lender, or any Mortgagee who accepts a deed to a Lot in lieu of foreclosure of the first mortgage of record held by an institutional lender shall not be liable for any Assessments or for other monies owed to the Association which are chargeable to the former Owner of the Lot and which became due prior to acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the payment of such funds is secured by a claim of lien recorded prior to the recording of the foreclosed or underlying mortgage. The unpaid Assessments or other monies are Common Expenses collectable from all of the Owners, including such acquirer and his successors and assigns. The new Owner, from and after the time of acquiring such title, shall be liable for payment of all future Assessments as may be assessed to the Owner's Lot. Any person who acquires a Lot, except through foreclosure of a first mortgage of record or acquiring title by sale, gift, devise, operation of law or by purchase at a judicial or tax sale, shall be liable for all unpaid Assessments and other monies due and owing by the former Owner to the Association; provided, however, that this obligation shall not be applicable to loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration, if the applicable statues, rules or regulations of the FHA or VA prohibit such liability.

6.1.6 Unpaid Assessments Certificate. Within fifteen (15) days after written request by any Owner or any Mortgagee holding or making a mortgage encumbering any Lot, the Association shall provide the Owner or Mortgagee a written certificate as to whether or not the Owner of the Lot is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration, and any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Lot shall be protected thereby.

6.1.7 Application of Payments. Any payments made to the Association by any Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien; next toward reasonable attorneys' fees incurred by the Association incidental to the collection of Assessments and other monies owed to the Association by the Owner or for the enforcement of its lien; next towards interest on any Assessments or other monies due to the Association, as provided herein; and next towards any unpaid Assessments owed to the Association in the inverse order that such Assessments were due.

Section 6.2 Non-Monetary Defaults. In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their employees, guests, or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, including rules and regulations establishing operating procedures and policies for the Gate, and rights

of access to the Property, the Association shall notify the Owner and any tenant of the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within fourteen (14) days after such written notice, or if the violation is not capable of being cured within such fourteen (14) day period, if the Owner or tenant fails to commence and diligently proceed to cure completely such violation as soon as practicable within fourteen (14) days after written notice by the Association, or if any similar violation is thereafter repeated, the Association may, at its option take any one or all of the following actions:

6.2.1 Impose a fine against the Owner or tenant as provided in Section 6.3 of this Article;

6.2.2 Commence an action to enforce the performance on the part of the Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief;

6.2.3 Commence an action to recover damages;

6.2.4 take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten (10%) percent of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorneys' fees, shall be assessed against the applicable Owner as a Special Assessment and shall be due upon written demand by the Association. The Association shall have a lien for any such Special Assessment and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such Special Assessment, and the Association may take such action to collect such Special Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records of the County.

Section 6.3 **Fines.** The amount of any fine shall be determined by the Board, and shall not exceed One Hundred Dollars ($100.00) per violation. For continuing violations each day the violation is in existence may be considered a separate violation. In such event, the fine may be levied on the basis of each day of the continuing violation, with a single notice and opportunity for hearing, except that no such fine for a continuing violation shall exceed Fifty Dollars ($50.00) a day (with no cap on the aggregate amount of said fine). Any fine shall be imposed by written notice to the Owner or tenant, signed by an officer of the Association, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the Owner or tenant has the right to contest the fine by delivering written notice to the Association within fourteen (14) days after receipt of the notice imposing the fine. If the Owner or tenant timely and properly objects to the fine, the Board shall appoint a committee of at least three (3) Members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or the sister of an officer, director or employee of the Association, to conduct a hearing within thirty (30) days after receipt of the Owner's or tenant's objection, and shall give the Owner or tenant not less than fourteen (14) days' written notice of the hearing date. At the hearing, the committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The Owner or tenant shall have the right to attend the hearing and to produce evidence on its behalf. The committee shall ratify, reduce or eliminate the fine and shall give the Owner or tenant written notice of its decision. Any fine shall be due and payable within fourteen (14) days after written notice of the imposition of the fine, or if a hearing is timely requested within fourteen (14) days after written notice of the committee's decision. Any fine levied against an Owner shall be deemed a Special Assessment, and if not paid when due

all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within fourteen (14) days after same is due, the Association shall have the right to evict the tenant pursuant to Section 6.6 of this Article.

Section 6.4 **Negligence**. An Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repairs or replacement rendered necessary by his act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or Dwelling Unit or the Common Areas.

Section 6.5 **Responsibility of an Owner for Occupants, Tenants, Guests and Invitees**. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Dwelling Unit, and for all employees, guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association , the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, by any resident of any Dwelling Unit, or any guest or invitee of an Owner or of any resident of a Dwelling Unit shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

Section 6.6 **Right of Association to Evict Tenants, Occupants, Guests, and Invitees**. With respect to any tenant or any person present in any Dwelling Unit or any portion of the Property, other than an Owner and the members of his immediate family permanently residing with him in the Dwelling Unit, if such person shall materially violate any provision of this Declaration, the Articles or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Common Areas or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner as a Special Assessment, and the Association may collect such Special Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

Section 6.7 **No Waiver**. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant, or condition in the future.

Section 6.8 **Rights Cumulative**. All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants, or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association thus exercising the same from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

Section 6.9 **Enforcement By or Against other Persons**. In addition to the foregoing, this Declaration may be enforced by Declarant or the Association, by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the person against whom enforcement is sought, provided such proceeding results

in a finding that such person was in violation of this Declaration. In addition to the foregoing, any Owner shall have the right to bring an action to enforce this Declaration against any person violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, but no Owner shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any person, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees.

ARTICLE 7.
ARCHITECTURAL REVIEW

Section 7.1 **Composition of Architectural Review Board**. The Declarant, acting in his own name or Declarant's appointed agent, shall constitute the Architectural Review Board (referred to herein as "*ARB*"). At such time as Declarant in his sole and absolute discretion shall determine, Declarant may, in lieu of continuing to serve as the ARB, transfer the authority to serve in that capacity to the Board of Directors of the Association. At such time Declarant in his sole and absolute discretion transfers such authority to the Board of Directors of the Association, the Board of Directors of the Association shall henceforth be and constitute the ARB.

Section 7.2 **Large Homes**. It is the intention of the Developer to require stricter standards for large homes within the development. Owners are hereby placed on notice that design standards may be different, and more strenuous, for homes in excess of 6,000 square feet, that specific ARB approval will be required for any Dwelling Unit which is located on two (2) or more Lots, and that the ARB may decline to approve any Plans for a Dwelling Unit that the ARB determines, in its sole discretion, to be excessive in size or otherwise unsuited to the general character of the neighborhood.

Section 7.3 **Scope of Review**. No Dwelling Unit or other building or outbuilding, driveways, fence not in compliance with Section 2.13, or other structure or improvement shall be erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the ARB provided however that improvements erected, altered, added onto or repaired by Declarant shall be exempt from the provisions of this Article 7. Nothing contained herein shall require that the ARB approve improvements of the interior structures which improvements are not visible or apparent from the exterior of the structure. The ARB's approval shall include, but not be limited to, assuring that the improvements comply with individual Lot grading guidelines established by the ARB.

Section 7.4 **Submission of Plans**. Prior to the initiation of construction upon any Lot, the Owner thereof shall first submit to the ARB site plans for the improvements, including the layout materials of any driveway, exterior elevations and specification of exterior materials and colors, and any other information deemed necessary by the ARB for the performance of its function. In addition the Owner shall submit the identity of the individual or company intended to perform the work and a projected commencement and completion date. As a precondition to review and approval of any plans and specifications or other materials submitted to it, the ARB may assess a reasonable fee, including a fee for initial review and approval and for inspections of construction to assure compliance with the approved plans, specifications, and other materials. Initially the fee for such review and inspection with regard to plans and specifications for a Dwelling Unit shall be One Hundred Dollars ($100.00).

Section 7.5 **Plan Review**. Upon receipt by the ARB of the material identified in Section 7.4 above, including any fee assessed for ARB review or inspection, the ARB shall have thirty (30) days in which to review said plans. The proposed improvements will be approved if, in the reasonable opinion of the ARB (i) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (ii) the improvements will not violate any restrictive covenant or encroach upon any easement or building set back lines; (iii) the improvements will not result in the reduction in property value or use of adjacent

property (iv) the individual or company intended to perform the work is acceptable to the ARB; and (v) the improvements will be substantially completed, including all cleanup, within twelve (12) months of issuance of a building permit. The ARB's approval shall include, but not be limited to, assuring that the improvements comply with individual Lot grading guidelines established by the ARB. In the event that the ARB fails to issue its written approval within 30 days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ARB's approval shall be deemed to have been granted without further action.

Section 7.6 **Contingent Approval**. In the exercise of its sole discretion the ARB may require the Owner to provide assurances that the improvements will be completed in accordance with the materials submitted to the ARB.

Section 7.7 **Maintenance**. All Dwelling Units, buildings, fences, walls, outbuildings, or other structures or improvements approved by the ARB shall be maintained in accordance with the materials submitted to the ARB, and as approved by the ARB, and in good condition as determined by the ARB. Any failure to maintain any such Dwelling Unit, buildings, fence, wall, outbuilding, or other structures or improvements in accordance with the approval obtained from the ARB, and in reasonable condition as determined by the ARB, shall constitute a Non-Monetary Default hereunder pursuant to 6.2, entitling the Association to pursue the remedies set forth therein.

Section 7.8 **Non-conforming Structures**. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article 7 to the same extent as if erected without prior approval of the ARB. The Association, ARB or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

Section 7.9 **Immunity of ARB Members**. No individual member of the ARB shall have any personal liability to any Owner or any other person for the acts or omissions of the ARB if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ARB or any member thereof arising from acts or omissions of the ARB committed in good faith and without malice. Any approval given by the ARB, whether written, spoken, or implied, shall not constitute or imply compliance with this Declaration or any governmental regulations.

Section 7.10 **Address for Notice**. Requests for approval or correspondence with the ARB shall be addressed to the attention of the *"Arbors ARB"*, c/o Robert P. Drake, 1224 SE Fort King Street, Ocala, Florida 34471, and mailed or delivered to the principal office of the Declarant at that address, or such other address as may be designated from time to time by the ARB and the Declarant. No correspondence or request for approval shall be deemed to have been received until actually received by the ARB in form satisfactory to the same.

Section 7.11 **Variances**. The ARB may authorize variances in compliance with the architectural provisions, and all of the use restrictions, of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Any variance granted for the use restriction set forth in Article 2 must, before becoming effective, be approved by a two-thirds (2/3) vote of the Membership of the Association. Such variances must be evidenced in writing. If such variances are granted in writing and approved in writing by the ARB, no violation of the covenants, conditions, and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms or provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variances, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting its use of the premises including, but not limited to, zoning ordinances

and setback requirements and requirements imposed by any governmental or municipal authority.

Section 7.12 **Attorneys Fees and Costs**. For all purposes necessary to enforce or construe this Article the ARB and the Declarant, shall be entitled to collect reasonable attorneys fees, costs and other expenses from the Owner whether or not judicial proceedings are involved. If such fees, costs or expenses are not paid by the Owner to the Declarant within fifteen (15) days of Declarant providing to Owner a written notice thereof, the Declarant may levy a special assessment in the amount of said fees, costs, and expenses against such Owner which special assessment shall constitute a lien on the Owner's Lot pursuant to Section 6.1 and shall be collectible as set forth in this Declaration.

ARTICLE 8.
EASEMENT RESERVED TO DECLARANT

Section 8.1 **Easement over Common Areas**. For so long as Declarant is the Owner of any Lot, the Declarant hereby reserves unto itself the right to grant easements over, upon, under and across all Common Areas, including, but not limited to, the right to use the said Common Areas to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, cable television, water or other public conveniences or utilities, drainage and the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe public convenience or utility installation or to provide for drainage and to maintain reasonable standards of health, safety and appearance and the right to locate wells, pumping stations, lift stations and tanks; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 8.2 **Establishment of Easements**. All easements, as provided for in this Article, shall be established by one or more of the following methods, to wit:

8.2.1 by a specific designation of an easement on the recorded Plat of the Property;

8.2.2 by a reservation of specific statement provided for an easement in the deed of conveyance of a given Lot or Dwelling Unit; or

8.2.3 by a separate instrument, said instrument to be subsequently recorded by the Declarant.

ARTICLE 9.
COVENANTS AGAINST PARTITION AND SEPARATE TRANSFER OF MEMBERSHIP RIGHTS

Recognizing that the full use and enjoyment of any Lot is dependent upon the right to the use and enjoyment of the Common Areas and the improvements made thereto, and that it is in the interest of all of the Owners that the right to the use and enjoyment of the Common Areas be retained by the Owners of Lots, it is therefore declared that the right to the use and enjoyment of any Owner in the Common Areas shall remain undivided, and such Owners shall have no right at law or equity to seek partition or severance of such right to the use and enjoyment of the Common Areas. In addition, there shall exist no right to transfer the right to the use and enjoyment of the Common Areas in any manner other than as an appurtenance to and in the same transaction with, a transfer of title to a Lot. Any conveyance or transfer of a Lot shall include the right to use and enjoyment of the Common Areas appurtenant to such Lot subject to reasonable rules and regulations promulgated by the Association for such use and employment, whether or not such rights shall have been described or referred to in the deed by which said Lot is conveyed. The Declarant shall convey the Declarant's interest in the Common Areas to the Association.

ARTICLE 10.
AMENDMENTS TO DECLARATION

Section 10.1 **General Amendments.** This Declaration may be amended only by the affirmative vote or written consent of the Members having not less than two-thirds (2/3) of the votes of the Membership. No amendment shall be permitted which changes the rights, privileges and obligations of the Declarant without the prior written consent of the Declarant. Nothing contained herein shall affect the right of the Declarant to make whatever amendments or Supplemental Declarations are otherwise expressly permitted hereby without the consent or approval of any Owner or Mortgagee.

Section 10.2 **Additional Requirements for Amendments**. Any amendment to this Declaration which alters the surface water or storm water management system, beyond maintenance in its original condition, including the water management provisions of the Common Areas, must have the prior written approval of the St. Johns River Water Management District, notwithstanding any other provisions contained herein.

ARTICLE 11.
SURFACE WATER OR STORM WATER MANAGEMENT SYSTEM

Section 11.1 **Responsibility for 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 systems 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 systems shall be as permitted, or as modified, or as approved by the St. Johns River Water Management District.

Section 11.2 **Enforcement.** The St. Johns River Water Management District shall have the right to enforce, by 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 storm water management system.

Section 11.3 **Additional Requirements for Amendments.** Any amendment to this Declaration which alters the surface water or storm water management system, beyond maintenance in its original condition, including the water management provisions of the Common Areas, must have the prior written approval of the St. Johns River Water Management District, notwithstanding any other provisions contained herein.

ARTICLE 12.
GENERAL PROVISIONS

Section 12.1 **Enforcement**. The Association, the Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 12.2 **Severability**. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 12.3 **Duration**. The covenants and restrictions of this Declaration shall run with and bind the land for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration

may be revoked after the initial forty (40) year period upon the vote of not less than sixty-five percent (65%) of the Members and by Mortgagees holding first mortgages on not less than fifty percent (50%) of the Lots. Any revocation must be recorded.

Section 12.4 **Right of Association to Merge**. The Association retains the right to merge with any other property owners' association. This right shall be exercised by the recordation of an amendment to this Declaration recorded among the Public Records of the County, which amendment shall set forth a legal description of the Property to which this Declaration, as amended shall apply. The amendment shall further have attached to it a resolution of this Association and the property owners' association with which a merger is to take place, and such resolution shall be certified by the Association Secretary thereof and shall state:

12.4.1 That a meeting of the Association was held in accordance with its Bylaws.

12.4.2 That a two-thirds (2/3) vote of the Membership approve the merger.

The foregoing certificates, when attached to the amendment, shall be deemed sufficient to establish that the appropriate procedure was followed in connection with the merger.

Section 12.5 **FHA/VA Approval**. If any mortgage encumbering any Dwelling Unit is guaranteed or insured by the Federal Housing Administration or by the Veterans Administration, then upon written demand to the Association by either such agency, the following action, if made by Declarant or if made prior to the completion of seventy-five percent (75%) of the Dwelling Units which may be built with the Property, must be approved by either such agency: (i) any annexation of additional property; (ii) any mortgage, transfer or dedication of any Common Area; (iii) any amendment to this Declaration, the Articles or the Bylaws, if such amendment materially and adversely affects the Owners or materially and adversely affects the general scheme of development created by this Declaration; provided, however, such approval shall specifically not be required where the amendment is made to add any property specifically identified in this Declaration, or to correct errors or omissions, or is required to comply with the requirements of any Institutional Lender or is required by any governmental authority; or (iv) any merger, consolidation or dissolution of the Association. Such approval shall be deemed given if either agency fails to deliver written notice of its disapproval of any such action to Declarant or to the Association within twenty (20) days after a request for such approval is delivered to the agency by certified mail, return receipt requested, or equivalent delivery, and such approval may be conclusively evidenced by a certificate of Declarant or the Association that the approval was given or deemed given.

Section 12.6 **Transfer of Assets to Local Government.** The Association may, upon a two-thirds vote of the Members, transfer all assets of the Association, including Common Areas, to the local government having jurisdiction over the same. Any such transfer may require that conditions of the local government entity be met prior to said transfer, including conversion of Association property to standards and conditions required by the local government.

Section 12.7 **Litigation**. In any litigation arising out of, or relating to, these Covenants and Restrictions, the prevailing party shall be entitled to recover it's reasonable costs and attorneys' fees.

DATED this 1st day of July, 2004.

Signed and delivered in our presence as witnesses:

Doreen Rockwell
Print Name: DOREEN ROCKWELL

Dorthy M DeJesus
Print Name: Dorthy M. DeJesus

Robert P Drake
ROBERT P. DRAKE, Individually and as Trustee

STATE OF FLORIDA
COUNTY OF MARION

The foregoing **DECLARATION OF COVENANTS AND RESTRICTIONS FOR SILVER HAMMOCK PRESERVE,** was acknowledged before me by **ROBERT P. DRAKE, Individually and as Trustee,** who is,

✓ Personally known to me, OR
____ Produced _____ as identification.

Dated: this 1st day of July, 2004.

Doreen A. Rockwell
Print Name DOREEN A. ROCKWELL
Notary Public, State of Florida
Commission Number _____
Commission Expires _____

DOREEN A. ROCKWELL
Notary Public, State of Florida
My comm. expires Aug. 21, 2005
Comm. No. DD051517

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