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**MAGNOLIA POINT GOLF AND COUNTRY CLUB**  
**PHASE IV**

**DECLARATION OF COVENANTS,**  
**CONDITIONS, EASEMENTS**  
**AND RESTRICTIONS**

**THIS DOCUMENT PREPARED BY:**

Christina E. Parrish  
Montgomery Land Company  
13400 Sutton Park Drive South, Suite 1402  
Jacksonville, FL 32224

Return,  
to:



**MAGNOLIA POINT GOLF AND COUNTRY CLUB  
PHASE IV  
DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS**

**THIS DECLARATION** is made this 13th day of January, 2003, by **MAGNOLIA POINT VENTURE, L.L.C.**, a Florida limited liability company (the "Developer"), whose address is 13400 Sutton Park Drive, South, Suite 1402, Jacksonville, Florida 32224.

**RECITALS**

A. Developer is the owner of that certain real property (the "Property") located in Clay County, Florida, and more particularly described in Exhibit "A" attached hereto and made a part hereof. The Property is a portion of a larger tract of land, subject to Green Cove Springs City Ordinances 0-36-85, 0-6-87, 0-11-91, and 0-2-95, commonly known and referred to herein as the "Magnolia Point Property".

B. It is the intention and desire of the Developer to develop the Property as a residential community. Homes within the Property shall be single-family dwellings and shall be developed and maintained as part of a residential development of superior quality, architectural design and condition.

C. Developer desires to maintain the beauty of the Property, to assure high-quality standards for the enjoyment of the Property, and to promote the health, safety and social welfare of each owner of a portion of the property. To provide for the preservation, enhancement and maintenance of the Property and the improvements thereon, Declarant desires to subject the property to the covenants, restrictions, easements, charges and liens of this Declaration, each and all of which is and are for the benefit of the Property and each owner of a portion thereof.

**DECLARATION**

NOW THEREFORE, Developer hereby declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens and all other matters set forth in this Declaration (the "Declaration"), which shall be deemed to be covenants running with the title to the Property and shall be binding upon the Developer and all parties having or acquiring any right, title or interest in the Property or any part thereof.

**1. DEFINITIONS**

As used in this Declaration, the terms below shall have the following meanings:

1.1 **"Architectural Committee"** means a committee composed of three or more Persons, appointed by the Board to exercise the functions delegated to it by the Board in connection with review and approval of architectural plans for improvements on the Magnolia Point Property.

1.2 **"Association"** means Magnolia Point Community Association, Inc., a Florida non-profit corporation. This is the Declaration to which the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") make reference. Unless otherwise specified herein, any actions required of the Association herein may be taken by its Board of Directors, defined hereinafter.

1.3 **"Board"** means the Board of Directors of the Association.

1.4 **"Common Area"** means and refers to those portions of the Magnolia Point Property, if any, conveyed to the Association for the use and enjoyment of all Owners.

1.5 **"Developer"** means Magnolia Point Venture, L.L.C., a Florida limited liability company and its successors and such of its assigns as to which the rights of the Developer hereunder are specifically assigned. Developer may assign all or only a

portion of such rights in connection with portions of the Property. In the event of such a partial assignment, the assignee may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. Reference in this Declaration to Magnolia Point Venture, L.L.C. as the Developer of the Property is not intended and shall not be construed to impose upon Magnolia Point Venture, L.L.C. any obligations, legal or otherwise, for the acts or omissions of third parties who purchase lots or parcels within the Property from Magnolia Point Venture, L.L.C. and develop and resell the same.

1.6 **"Dwelling Unit"** means any improved property located within the Property and intended for use as a family housing unit. A parcel of land shall be deemed unimproved until all improvements being constructed thereon are substantially complete.

1.7 **"Golf Course"** means that part of the Magnolia Point Development comprising the Magnolia Point Golf Course, together with all improvements thereon.

1.8 **"Lot or Lots"** means and refers to any plot of land designated as a lot on the Plat and to any resubdivided or replatted lot created pursuant to Article 3, Section 16.

1.9 **"Owner"** means the record owner or owners of the fee simple title to or life estate in any Lot.

1.10 **"Plat"** means the plat of Magnolia Point Golf and Country Club Phase IV recorded in Plat Book 39, pages 36 through 51, of the public records of Clay County, Florida, as the same may be amended from time to time. If additional property is submitted to the terms and provisions of this Declaration by appropriate amendment, and if any of such property is platted, the term "Plat" shall also refer to the plat of such additional property.

1.11 **"The Magnolia Point Development"** means the overall development constructed or planned to be constructed on the Magnolia Point Property, including the Golf Course, the Property and all residential, business and recreational projects and improvements located or to be located on such property.

1.12 **"Roadways"** means those portions of the Property designated on the Plat as streets, together with any real property which may hereafter be platted as Roadways and designated a "private street," or any real property which may be described in a subsequently recorded instrument executed by the Developer reciting that the property therein described shall be deemed to be a "Roadway" and shall be subject to the terms and provisions of this Declaration.

1.13 **"Rules Enforcement Committee"** means a committee of at least three members of the Association appointed by the Board of Directors who are not officers, directors, or employees of the Association or the spouse, parent, child, brother or sister of an officer, director or employee of the Association.

1.14 **"Surface Water or Stormwater Management System"** means a system which is designed and constructed or implemented within the Property to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C. or regulations of similar import. For purposes of this Declaration, the Surface Water or Stormwater Management System shall be deemed to be a part of the Common Area.

## 2. USE AND CONSTRUCTION RESTRICTIONS AND REQUIREMENTS

2.1 **Residential Purposes.** Each Lot shall be used exclusively for single-family residential purposes only, and no structure shall be erected on any such Lot other than one single-family residence. No business, commercial, religious, charitable or other enterprise of any kind shall be maintained upon or in connection with the use of any Lot. No building or part thereof on any Lot shall be rented separately from the rental of an entire Dwelling Unit. However, the Developer shall have the right to maintain facilities on the Magnolia Point Property for sales and promotional activity, maintenance and recreation, and shall have the right to sell or lease improved or unimproved Lots.

2.2 **Approval of All Plans and Specifications.** In order to insure the development of the Property as a community of the highest quality in which all improvements are harmonious in architectural design and aesthetic appearance, the Developer reserves to the Association the exclusive power and discretion to control and approve all improvements placed on any Lot. No paved area, fence, wall, shrubbery, building, or any other structure or thing shall be placed or maintained upon any Lot, nor shall

any exterior addition, change (including change in exterior colors) or alteration be made to existing improvements thereon until detailed plans and specifications of the same, prepared by a duly licensed architect, engineer, landscape architect or other similarly qualified professional, are submitted to and approved in writing by the Association as to harmony of external design, compliance with the terms of this Declaration and location in relation to surrounding structures and topography. The Association shall have the absolute right to refuse approval of any plans, which in its opinion are not suitable or desirable or do not comply with this Declaration. Notwithstanding the foregoing or anything herein otherwise provided, the Association shall have the right and a perpetual easement to locate, construct and maintain a fence around the perimeter of the Magnolia Point Property or any portion thereof.

Prior to review of the proposed improvements, the Association may require submission of all or any of the following documents or deposits, as are applicable to the proposed improvements:

- (a) Site plan showing all property lines, setbacks, easements, existing trees having a diameter of six (6) inches or more, drives, fences and underground trench locations, and existing and proposed surface contours and elevations of the Lot;
- (b) Floor plan or plans;
- (c) Elevations of all sides of the contemplated structure;
- (d) A summary specification list of proposed materials and samples or photographs, or pictures of exterior materials and colors which cannot be adequately described;
- (e) Landscaping plans; including, but not limited to: sod placement, location and size of plants and associated ground covering and location of sprinkler system.
- (f) Such additional information and materials which, in the opinion of the Association, may reasonably be required for its review.
- (g) A \$1500 refundable landscape deposit which, if collected, will be refunded within 30 days of the issuance of a certificate of Occupancy by the City of Green Cove Springs, provided the approved landscape plan has been completed and the construction site and surrounding sites have been cleaned and placed back in the natural condition. If the plans are not followed or the surrounding property is not cleaned the Association shall have the right to use said deposit for the completion of the work.

The Association shall preliminarily approve or disapprove proposed improvements within sixty (60) days from its receipt of a written request for its approval from the owner of the property in question, accompanied by all items required for Association review. Failure of the Association to act within such sixty (60) day period shall constitute preliminary approval. Upon preliminary approval, final construction documents or plans shall be submitted to the Association, which shall approve or disapprove such final plans within thirty (30) days after receipt. Failure of the Association to act within that thirty (30) day period shall constitute final approval. Upon approval of the final documents, the work may begin.

The Association may delegate to the Architectural Committee any or all rights of approval granted to the Association pursuant to this Section 2.

**2.3 Maximum Height - Minimum Square Footage of Dwelling Units.** No Dwelling Unit located on a Lot shall be in excess of two and one half stories in height, or shall contain less than 1,800 square feet of heated and air-conditioned enclosed living space, unless written approval of the Association is first secured, which approval may be arbitrarily withheld. Specifically excluded from "enclosed living space", without limitation, are garages, open or screened porches, terraces, and other covered areas.

**2.4 Setback Lines.** Except where setback lines are otherwise shown on the Plat, the following setback lines are hereby established for buildings, structures, additions or accessories located on any Lot: (i) 20 feet from the front lot line (the lot line adjacent or nearest to the Roadway furnishing access to such Lot) except that for corner Lots, one front setback may be 20 feet; (ii) 10 feet from the rear lot line or from the top of the bank on any lakefront Lot; (iii) 5 feet from the interior side lot lines of any Lot which is less than 95 feet wide; and (iv) 7.5 feet from the interior side lot lines of any Lot which is 95 feet wide or wider. The

Association shall have the right to increase, decrease or otherwise modify any of the above requirements in the process of approval pursuant to Section 2.2, so long as such changes shall preserve the general harmony of the Magnolia Point Development and shall not materially impair the value or use of the parcel for which such approval is sought or of any other parcel. For the purpose of this Section 2.5, fences, walls and unroofed and unscreened patios shall not be considered part of a building and may be erected outside of setback lines, subject to Association approval as provided in Section 2.2, and other applicable provisions of this Declaration.

2.5 **Time of Construction.** All homes shall be completed within one year of the commencement of construction, which shall be deemed to start when the lot is cleared for construction. If for any reason said construction is halted for more than 180 days, the owner shall remove any and all construction materials and improvements, permanent or otherwise, and the lot shall be restored to its original condition. Violation of this restriction may result in the maximum daily fine of \$100.

### 3. GENERAL COVENANTS AND RESTRICTIONS

3.1 **Nuisances.** No noxious or offensive activities shall occur upon any portion of the Property; nor shall anything be done thereon which is or may become a nuisance or annoyance to any resident of the Magnolia Point Development.

3.2 **Detached Structures and Objects.** No detached structure and none of the following objects, including but not limited to pens, yards and houses for pets; hothouses and greenhouses; above ground storage of construction materials, wood, coal, oil and other fuels; clothes racks and clothes lines, clothes washing and drying equipment and laundry rooms; tool shops and workshops; servants quarters and guest houses; garbage and trash cans and receptacles; above ground exterior air conditioning, heating and other mechanical equipment; and any other structures or objects determined by the Association to be of an unsightly nature or appearance, shall be placed on any Lot.

3.3 **Temporary, Movable Structures.** Other than temporary construction sheds and sanitary toilet facilities used during actual construction of the permitted permanent improvements, no shed, shack, trailer, tent or other temporary or movable building or structure of any kind shall be erected or permitted to remain on any Lot or Commercial Parcel.

3.4 **Grading.** No Lot or any other portion of the Property shall be graded, and no changes in elevation of any portion of the Property shall be made which would adversely affect any adjacent property, without the prior written consent of the Association.

3.5 **Trash.** Burning of trash, rubbish, garbage, leaves or other materials in the open, by an incinerator or otherwise, is prohibited. All garbage and trash must be stored in closed containers and in such location so as to be hidden from view of any Dwelling Unit, Lot, Commercial Parcel or Roadway.

3.6 **No Window Air Conditioners.** No window air conditioner unit shall be installed in any building.

3.7 **Fences, Hedges and Walls.** Hedges, fences or walls may not be built or maintained on any portion of any Lot except within the rear or interior side Lot lines and no closer to the front of the Lot than the rear line of the main residence, nor closer to a side street than the line of the main residence abutting such side street, when the residence is situated on a corner Lot. The location, composition and height of any fence, wall or hedge on the Property shall be subject to the approval of the Architectural Committee, which may grant or withhold such approval at its discretion. No fence or wall shall be erected nor hedge maintained on any part of the Property which is higher than six feet from the normal surface of the ground; in addition, where any part of a lot line of any Lot abuts along the Golf Course, no fence, hedge or wall along such lot line shall be permitted, except pursuant to a specific exception granted by the Architectural Committee.

3.8 **Antennas.** The installation of all aerials and antennae shall be prohibited except satellite dishes (maximum 24" in diameter) that meet State guidelines and exist in accordance with all applicable rules and regulations of the Federal Communications Commission or other governmental authorities having jurisdiction. The installation of such satellite dishes shall be subject to the approval of the Architectural Committee in accordance with architectural criteria imposed by the Developer or the Association from time to time.

3.9 **Garages.** Each Dwelling Unit shall have an attached garage containing space for at least two automobiles. No garage door opening shall face any Roadway, unless an exception is granted by the Architectural Committee. All garage doors must be kept closed except when in use.

3.10 **Mail Boxes.** There shall be no mail boxes or newspaper boxes or receptacles unless approval therefor is given by the Association as to the location, size and design of such boxes or receptacles.

3.11 **Signs.** A sign denoting the street address of the residence, located and designed in accordance with approved standards, shall be required on each Dwelling Unit. No other signs of any kind shall be displayed to the public view on any Lot, Dwelling Unit, or any vehicle parked on any part of the Property; provided, however, that nothing herein shall be construed to restrict in any manner the Developer or its agents from placing signs and advertising on the Property or any portion thereof.

3.12 **Parking; Storage; Repairs; Driveways.** No vehicles or boats (including, but not limited to boat trailers, travel trailers, camp trailers and motor homes) or any similar property shall be kept on any part of the Property except in such areas as may be specifically reserved and designated for such use, or stored on any Lot except within a garage or an enclosed screened area. Private passenger automobiles of the occupant of a Dwelling Unit and guests, having no commercial signs, may be temporarily parked in the driveway or parking area of the Dwelling Unit; other vehicles may be parked in such driveway or parking area during the time necessary for delivery and pickup service and solely for the purpose of such service. No repairing or overhauling of any vehicle is allowed on any part of a Dwelling Unit, a Lot, or any Roadway. All driveways must be either concrete or asphalt material and must be approved by the Architectural Committee.

3.13 **Maintenance by Owners.** Each Owner shall maintain his parcel, whether improved or unimproved, in good condition at all times, but no Owner shall cut any living tree having a trunk diameter greater than six (6) inches without the prior approval of the Association. No trash, garbage, rubbish, debris or refuse or unsightly object shall be allowed to be placed, accumulated or suffered to remain anywhere on the Property, unless stored as provided herein.

3.14 **Wash.** No exterior clothes drying shall be permitted.

3.15 **Animals.** Up to two (2) domesticated dogs, cats or birds may be kept in any Dwelling Unit or on any Lot, provided such pets are kept for the pleasure and use of the Owner, and not for commercial purposes, and are not permitted to run free. No other animals, livestock or poultry of any kind shall be kept on any Lot or other portion of the Property. If the Association, in its sole discretion, determines that any pet is dangerous or an annoyance to the other residents of the Property, or is destructive of wildlife or property, that pet may not thereafter be kept on the Property and shall promptly be removed by the Owner.

3.16 **Resubdividing; Replatting; Access Restrictions.** No Lot shall be resubdivided or replatted without the prior written approval of the Association. In the event of such approved replatting or resubdividing, all of the provisions of this Declaration shall apply to the portion of the Property so resubdivided or replatted and no such resubdividing or replatting shall affect any easement shown on the Plat or reserved in this Declaration except easements reserved along the side lot lines, as provided in Section 4.4, shall only apply to the resubdivided or replatted Lot. The Association shall have the right to approve the use of one or more contiguous Lots, all or part of any Lot, all of one Lot and part of a contiguous Lot or Lots, or any combination of contiguous parts of Lots which will form an integral unit of land suitable for use as a residential building site.

3.17 **Roadways; Easements; Traffic Control.**

(a) All of the Roadways are and shall remain privately owned and shall be the sole and exclusive property of the Developer, its successors, assigns, grantees and nominees, if any. Developer may relocate, extend or close any part of the Roadways, so long as all Owners (and mortgagees) of Lots contiguous to that part of any Roadway being relocated, closed or extended, consent thereto and so long as no Owner is denied reasonable access to a public dedicated street at the boundary of the Magnolia Point Property. Developer shall have the sole and absolute right at any time to dedicate to the public all or any part of the Roadways and all or any part of the easements reserved herein. Whenever Developer so elects, it may assign and convey all interest in the Roadways to the Association and when the Developer is no longer the owner of any Lot in the Magnolia Point Development, it shall assign and convey all interest in the Roadways to the Association and the Association shall accept said interest and the obligation to maintain said property. All costs of such transfer shall be paid by the Association. Upon such conveyance, the Association shall succeed to all rights thereto of the Developer hereunder including, without limiting the generality of the foregoing, the rights reserved to the Developer under subparagraphs (b) and (c) of this Section 3.17.

(b) Developer hereby grants to the present and future owners of the Golf Course and all present and future Owners, and to the lawful occupants of any buildings located within the Property, and to their guests, invitees and domestic help, and to delivery, pickup emergency medical care and fire protection services, police and other authorities of the law, mail and parcel carriers, representatives of utilities authorized to serve the Magnolia Point Property, holders of mortgage liens on the Magnolia Point Property or any part thereof and such other persons as Developer may from time to time designate, the non-exclusive and perpetual right of ingress and egress over and across the Roadways, subject however, to the right of Developer to install, erect, construct and maintain utility lines and facilities in such Roadways. Notwithstanding the foregoing provisions of this paragraph, Developer reserves and shall have the unrestricted and absolute right to deny ingress to any person who, in its opinion, may create or participate in a disturbance or nuisance on any part of the Magnolia Point Property and shall have the unrestricted and absolute right to restrict or in any manner limit the ingress of any party through the use of a controlled or guarded entranceway to the Magnolia Point Property upon such terms and conditions as the Developer may reasonably determine.

(c) In addition, Developer shall have the right, but no obligation, from time to time to control and regulate all types of vehicular traffic and parking on all or any part of the Roadways. Developer shall have the right, but no obligation, to remove or require the removal of any fence, wall, hedge, shrub, bush, tree or other thing, natural or artificial, placed or located on any Lot or Commercial Parcel, if the location of the same will, in the sole judgment of Developer, obstruct the vision of a motorist upon any of the Roadways. Developer shall also have the right to enforce claims for damage against any Owner responsible for damages to any Roadway. In the event and to the extent that the Roadways referred to in this subsection or easements over and across such Roadways for ingress and egress shall be dedicated to or otherwise acquired by the public, the preceding provisions of this paragraph relating to Roadways thereafter shall be of no further force or effect.

3.18 **Waterways.** All lakes, ponds, creeks and streams (hereinafter "waterways") now existing or which may be hereafter created within the Magnolia Point Property shall belong to the Developer unless specifically conveyed by Developer to an Owner as part of a Lot or unless conveyed by Developer to the Association as part of the Common Area. Even If so conveyed, the Developer reserves the right to regulate the level and flow of water therein and all use thereof. No power boats shall be permitted on such waterways and no Owner shall have any right to construct bulkheads, docks, boat houses, piers or other similar facilities on such waterways, nor any right to pump or otherwise remove any water from such waterways for the purpose of irrigation or other use, nor to place rocks, stones, trash, garbage, sewage, storm or other waste water, rubbish, debris, ashes or other refuse in such waterways or on any other portion of the Magnolia Point Property, without the written consent of the Developer. The Developer shall have the sole and absolute right to control the water level of such waterways, to construct bulkheads, docks, piers or other similar facilities and to control the growth and eradication of insects, plants, fowls, reptiles, animals, fish and fungi in and on such waterways, and to control the height, grade and contour of any embankment. Developer may delegate or assign such rights granted herein to the Association.

3.19 **Wetland Areas and Conservation Buffers.** Prior to initiating any clearing, construction, dredging or filling within the wetland areas or vegetated buffer limits delineated on the recorded plat, the lot owner shall apply to St. John's River Water Management District for a permit modification for such work.

3.20 **Common Area.** Each Owner shall have the non-exclusive right in common with the Developer and the owner of the Golf Course, to use the Common Area, subject to reasonable rules and regulations for such use enacted by the Association.

3.21 **Drainage.** No changes in elevation of property shall be made which will cause undue hardship to any adjoining property with respect to natural run-off of storm water or which shall result in any alteration of the drainage system for the Property and the lands adjacent to or near the Property or which, in the sole opinion of the Developer, shall in any way effect the drainage system for the benefit of the Property and lands adjacent to the Property without the prior written consent of the Developer. Developer reserves for itself, its successors and assigns, an easement in and over all lakes, streams and waterways in the Magnolia Point Property for drainage of any and all portions thereof.

3.22 **Maintenance of Water Management System.** The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or 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 system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

3.23 **Suspension of Member Rights; Fines.** The association Board of Directors may suspend, for a reasonable period of time, the rights of a member or a member's tenant or guests to use the common area. The Association may also impose reasonable fines not to exceed \$100 per violation against any member, tenant or guest violating the governing documents. Prior to imposing either a fine or suspension, a hearing must be held before the Rules and Enforcement Committee to afford the alleged violator an opportunity to be heard on the issue. At least 14 days notice of the hearing must be given. A majority of the committee must vote affirmatively to impose the fine or suspension and no suspension of the common area use rights may impair the right of an owner or tenant to have vehicular or pedestrian ingress and egress to and from the community.

3.24 **Pools.** All pools shall be in-ground and composed of materials thoroughly tested and accepted by the industry for such construction. The outside edges of the pool shall be a minimum distance of 4' from all sidewalls of the residence and meet all pool setback requirements imposed by the City of Green Cove Springs.

3.25 **Additional Covenants and Restrictions.** Other than the Developer, no Owner of any part of the Property shall without the prior written approval of the Association, impose any additional covenants or restrictions on any part of the Property.

#### 4. UTILITY SERVICES

4.1 **Water and Sewer.** The City of Green Cove Springs or its successors has the sole and exclusive right to provide all water and sewage facilities and service to the Property. No well of any kind shall be constructed on any Lot to provide potable water for use thereon, and no potable water shall be used except potable water which is obtained from the City of Green Cove Springs, or its successors or assigns. Nothing herein shall be construed as preventing the digging of a well to be used exclusively for air-conditioning, irrigation or the filling of swimming pools. All sewage from any improvement on the Property must be disposed of through the sewage lines and disposal plant owned or controlled by the City of Green Cove Springs, or its successors or assigns.

4.2 **Garbage Collection.** Garbage, trash and rubbish shall be removed from the Lots and Commercial Parcels only by parties, companies or agencies approved by the Association and each Owner agrees to pay when due the periodic charges or rates for such garbage collection service made by the party providing same.

4.3 **Utility Lines Underground.** Unless the Association expressly consents, in writing, all telephone, electric and other utility lines on the Property shall be located underground so as not to be visible.

4.4 **Easements.** The Developer, for itself and its successors and assigns, hereby reserves perpetual, alienable

easements, privileges and rights on, under and across the Roadways, across all lakes and waterways, as well as a strip 15 feet in width, around the perimeter of all lakes and waterways. Additional easements may be reserved or granted by the Developer at any time prior to the time any Lot affected by such easements is conveyed by the Developer to a third party. Within the easement areas, no structure or other improvements or landscaping shall be placed or permitted to remain which may damage or unreasonably interfere with the installation and maintenance of utilities and drainage facilities and the Owners shall bear the risk of loss of any such structure, improvement or landscaping except as otherwise provided in Section 2.2. Notwithstanding such restrictions, all easement areas, areas within any setback line, and all improvements therein, shall be maintained continuously by the Owner. All utility lines serving one Lot only from the point where such line connects to the main line shall be maintained by the Owner of that Lot.

## 5. ASSESSMENTS

The Association shall have the authority to levy assessments as provided herein against the Lots, and any Lot is subjected thereto as hereinafter provided:

### 5.1 Purposes. The Association may levy assessments for the purpose of enabling the Association:

- (a) To pay all ad valorem taxes assessed against the portions of the Magnolia Point Property used in common by all Owners, including Roadways and appurtenant security facilities, waterways, and other common areas, whether or not owned by or leased to the Association;
- (b) To pay all ad valorem taxes assessed against any properties, real or personal, or any interest therein, owned by or leased to the Association, and to pay any other taxes payable by the Association;
- (c) To pay all expenses required for the reasonable repair and maintenance of the portions of the Magnolia Point Property described in subsection (a) above, including, without limitation, paving, irrigation, landscaping, drainage and for the reasonable repair and maintenance and insurance of any buildings or other improvements owned by or leased to the Association;
- (d) To pay all expenses of providing security for the Magnolia Point Property including salaries of security personnel, maintenance of security gate houses and other related facilities, insurance on security gate houses and related facilities and any and all other expenses incurred in providing such security;
- (e) To pay for the expense of lighting the Roadways, including replacement of bulbs, poles (if any), wiring and any and all other expenses in connection therewith;
- (f) To pay for all expenses incurred in providing mosquito and other pest control for the Magnolia Point Property;
- (g) To pay for all expenses incurred in connection with providing fire protection for the Magnolia Point Property;
- (h) To pay for the expense of maintenance, improvement and operation of drainage easements and facilities;
- (i) To pay for the expenses of maintaining, repairing and replacing directional markers, signs and traffic control devices and costs of controlling and regulating traffic on the Roadways;
- (j) To pay all charges of trash and garbage collection and removal unless a separate charge is made to each Owner by the company providing such service. Any such expense for the Golf Course shall be paid by the Owners thereof and shall not be an Association expense;
- (k) To pay for all expenses of operating the Association, including without limitation, management fees, legal and accounting fees, payroll and general office operating expenses, and the expenses of doing any and all other things necessary or desirable in the judgment of the Board to keep the Magnolia Point Property neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, and to pay for such other expenses including, but not limited to, liability insurance, which in the judgment of the Board may be of general benefit to the residents of the Magnolia Point Development;
- (l) To repay funds, together with interest thereon, borrowed by the Association and used for purposes referred to herein;
- (m) To pay for such other benefits and services to the Owners as may be determined appropriate from time to time by the Board; and
- (n) To accumulate reasonable reserves for the foregoing purposes.

It shall not be necessary for the Association to allocate or apportion the funds collected or expenses paid pursuant



hereto among the various purposes specified herein and the judgment of the Board the expenditure of such funds shall be final. The Association in its discretion may hold such funds invested or uninvested, and may reserve such portions of the funds as it determines advisable for expenditure in years following the year for which the regular maintenance assessment was assessed.

5.2. **Annual General Assessment.** Except as provided in Section 5.6 below, each Lot within the Property is subject to an annual General Assessment by the Association for the purposes described in this Article. Such General Assessments must be allocated equally on a per Lot basis. The Board by a majority vote shall set the annual General Assessments at a level sufficient to meet the Association's obligations. The Board shall have the right, power and authority, during any fiscal year, to increase the annual General Assessment for the purpose of meeting its expenses and operating costs on a current basis. The Board shall set the date or dates that the General Assessments shall become due, and may provide for collection of General Assessments annually or in monthly, quarterly or semi-annual installments, provided however, that upon a default in the payment of any one or more installments, the entire balance of the yearly Assessment may be accelerated at the option of the Board and be declared due and payable in full.

5.3. **Special and Emergency Assessments.** In addition to the General Assessments authorized above, the Association may levy in any assessment year a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on, upon, or within the Common Areas and Master drainage System, including fixtures and personal property related thereto. The Association may levy an Emergency Assessment at any time by a majority vote of the Board, for the purpose of defraying, in whole or in part, the cost of any unusual or emergency matters that affect the Common Areas or the Master Drainage System, and the Emergency Assessment shall be due and payable at the time and in the manner specified by the Board.

5.4. **Lot Assessments.** The Association may levy in any assessment year a Lot Assessment against a particular Lot 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 specific Lot, or any other maintenance or special services provided to such Lot or its Owner, the cost of which is not included in the General Assessment.

5.5. **Commencement of General Assessments.** The General Assessments provided for herein shall commence as to each Lot on the day of the conveyance by Developer.

5.6. **Developer's Assessments.** Notwithstanding any provision of this Declaration to the contrary, during the Development Period (as defined below) the Lots and other portions of the Property owned by the Developer shall not be subject to any annual or special assessments levied by the Association or to any lien for such assessments. During the Development Period, the Developer shall pay the balance of the actual operating expenses of the Association (excluding costs of major repairs, deferred maintenance, replacements and reserves) remaining after the levying of and payment of assessments due from Owners other than the Developer pursuant to assessments levied by the Board of Directors pursuant to this Declaration. The Developer shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. The Development Period shall begin upon the conveyance of the first Lot in the Property to an Owner other than the Developer and shall continue until (i) the Developer shall notify the Association that it will no longer pay for operating deficits of the Association; or (ii) the Class B Membership shall cease and be converted to Class A Membership. Upon termination of the Developer's agreement to pay operating deficits, the Developer shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as other Owners. In no event shall the Developer be obligated to pay for operating deficits of the Association after the Developer no longer owns any Lots within the Property.

5.7. **Effect of Nonpayment and Remedies of the Association.**

(a). Any assessment not paid within fifteen (15) days after the due date shall be subject to a late fee as determined from time to time by the Board and shall bear interest at a rate of eighteen percent (18%) pr annum until paid.

(b) All charges against any Lot pursuant to this Declaration, together with such late fee, interest thereon, and cost of collection thereof (including reasonable attorneys' fees), shall become a lien on such Lot from and after the date of filing a notice of lien with the Clerk of the Circuit Court of Clay County, Florida. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the Lot, or both. Costs and reasonable attorneys' fees incurred in any such action shall be awarded to the prevailing party. The lien provided for in this Section shall be in favor of the Association. The Association shall have the power to bid for an interest in any Lot foreclosed at such foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(c) The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any institutional mortgage encumbering such property if that mortgage was recorded in the public records of Clay County, Florida prior to the recording date of such lien.

## 6. MEMBERS AND VOTING RIGHTS

6.1 **Memberships.** Every Owner and the Developer shall be a member of the Association. Membership shall be appurtenant to and may not be separated from title to any Lot.

6.2 **Classes.** The Association shall have two classes of membership:

- (a) The Class A members shall be all Owners with the exception of the Developer while the Developer is a Class B member.
- (b) The Class B member shall be the Developer, or its successors and assigns.

6.3 **Voting Rights.** Until such time as the Developer has conveyed to third parties all the Lots within the Magnolia Point Development, the Class B member shall have sole voting rights in the Association and the Class A members shall have no voting rights except as to matters specifically set forth herein and except for altering or amending the Articles of Incorporation or Bylaws of the Association, which rights shall be as provided in the Articles of Incorporation. Thereafter, the Class B membership shall cease and voting rights shall be as follows: Each Class A member shall have one vote for each lot owned on all matters to come before the Association.

## 7. RIGHTS OF DEVELOPER

In addition to rights elsewhere reserved, Developer hereby reserves to itself, its successors and assigns, the following rights and privileges:

7.1 **Rights Regarding Temporary Structures, Etc.** Developer hereby reserves the right to erect or maintain such dwellings, model houses, sales offices or other structures, and commercial and display signs as Developer, in its sole discretion, may deem advisable for development and marketing purposes. Nothing contained in this Declaration shall be construed to restrict the foregoing rights of Developer.

7.2 **Enforcement by Developer.** Developer reserves the right, but shall have no obligation, to enter upon any Lot to remove rubbish, signs, structures, plants or other things or to take such other action, all at the expense of the Owner, as Developer deems necessary in order to enforce this Declaration. Such entry, enforcement and removal shall not be deemed a trespass or make Developer liable in any respect for any damages on account thereof. The Owner of such Lot shall pay Developer on demand the actual cost of such enforcement plus ten percent (10%) of the cost in performing such service as a service fee. In the event that such charges shall not be paid on demand, such charges shall bear interest at the maximum legal rate of interest from the date of demand. All Lots shall be subject to a lien in favor of the Developer for all such costs and fees and Developer may, at its option, bring an action at law against the Owner personally obligated to pay the same, or upon giving the Owner ten (10) days notice of an intention to file a claim of lien against a Lot, may file and thereafter foreclose such lien.

## 8. AMENDMENT

8.1 **Amendment by Developer Without Owner Approval.** Developer reserves the right, without prior approval of any Owner:

- (a) To amend this Declaration for any other purpose so long as such amendment shall conform to the general purposes and standards set forth herein and shall not materially and adversely affect the rights of any Owner;
- (b) To amend this Declaration for the purpose of curing any ambiguity in or any inconsistency between the provisions set forth herein;
- (c) To include in any contract for sale, deed, or other instrument hereafter made, any additional covenants other than those set forth herein which do not lower the standards of this Declaration;
- (d) To release any Lot or other portion of the Property from any part of the covenants set forth in this Declaration which have been violated, if the Developer, in its sole discretion, determines such violation or violations to be minor or insubstantial and to make exceptions, without prior approval of any Owner, to the covenants and restrictions set forth in Sections 2 and 3 hereof if Developer deems such exception to be in the best interest of the Magnolia Point Development;
- (e) To file an amendment to this Declaration for the purpose of submitting other property to the terms and provisions of this Declaration, it being specifically understood that Developer owns additional land within the overall Magnolia Point Development which Developer intends to include under these covenants at some time in the future. Any such amendment may contain such additions or modifications as Developer shall provide, so long as such additions or modifications to these covenants do not materially increase the membership obligations or expenses appurtenant to any existing Lot. Such an amendment may be accomplished by filing a statement among the public records of Clay County incorporating such terms, covenants and restrictions of this Declaration as are applicable to the property included within such amendment or by adopting all or part of this Declaration by reference in a deed conveying such other property or in any other appropriate instrument or by Developer executing and filing an amended or restated declaration.

8.2 **Amendment Affecting Water Management System.** Any amendment to the Covenants and Restrictions which alter 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.

8.3 **Amendment With Owner Approval.** In addition to the rights of the Developer to amend this Declaration as reserved in Section 8.1, and notwithstanding the limitations on voting rights set forth in Section 6, this Declaration may be amended at any time upon the request of the Developer, if such requested amendment is approved by the affirmative vote of 75 % of votes cast by Owners other than the Developer at a duly called meeting of the Association, the notice for which meeting has contained notice of the proposed amendment. Upon the approval of any such amendment, the President and Secretary of the Association shall execute and record the same in the public records of Clay County, Florida.

## 9. ENFORCEMENT

9.1 **St. Johns River Water Management District.** The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or storm water management system.

## 10. CENTRAL TELECOMMUNICATION RECEIVING AND DISTRIBUTION SYSTEM

10.1 **Cable Television.** Developer hereby reserves unto itself, its successors and assigns, an exclusive easement for installing, maintaining and supplying the services of any central telecommunication receiving and distribution system serving the Property, including the right to connect any central telecommunication receiving and distribution system to such source as Developer may, in its sole discretion, deem appropriate, for which service Developer, its successors and assigns, shall have the right to charge the Association and/or individual Owners for cable television service to single-family residents as from time to time governed by the Ordinances of Clay County, Florida.

## 11. MISCELLANEOUS

11.1 **Enforcement.** In addition to Developer's rights reserved in Section 7.2, Developer, any Owner or the Association shall be entitled to bring actions at law for damages or in equity for injunctions against those parties violating or attempting to violate this Declaration, for the purpose of curing, correcting, preventing or enjoining any violation or attempted violation of the terms of this Declaration. All costs and expenses, including, but not limited to reasonable attorney's fees, incurred by Developer, any Owner or the Association to cure, correct, prevent, or enjoin any violation of the terms of this Declaration shall be recoverable against the party causing such violation. All remedies herein shall be cumulative to any and all other remedies provided elsewhere herein or at law or equity. The failure to bring any action to enforce this Declaration or to correct any violation of this Declaration shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto, nor shall such failure give rise to any claim or cause of action by any Owner or any other party against the Developer or the Association.

11.2 **Termination or Amendment.** The terms and provisions of this Declaration shall run with the title to the Property and any part thereof and unless otherwise altered or terminated in accordance with the terms and provisions herein, shall bind all persons in interest, all Owners and their heirs, legal representatives, successors and assigns for a period of fifty (50) years, and shall be automatically renewed for successive ten (10) year periods unless terminated by mutual agreement of not less than 80% in number of the Owners; provided, however, and notwithstanding the foregoing, the easements herein shall be perpetual.

11.3 **Disclaimer.** Neither the Developer nor the Association shall be liable to any Owner or other person for any loss or damage arising from any cause whatsoever, including without limitation the provision of, failure to provide, or negligence in provision of security, maintenance, repairs or other services by the Developer or the Association or either of them.

11.4 **Severability.** The invalidation of any one of the terms or provisions of this Declaration shall in no way affect any other provisions, which provisions shall remain in full force and effect.

11.5 **Headings.** The section headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

11.6 **Evidence of Approval.** All approvals required in this Declaration shall be evidenced by a certificate or other writing signed by the party giving such approval.

11.7 **Transfer of the Developer's Rights.** The Developer shall have the sole and exclusive right at any time to transfer and assign any or all rights, powers, privileges, authorities and reservations it may have under any paragraph of this Declaration to such other person or entity, as it shall elect. No such assignment shall require the consent of any Owner and in the event any such right is assigned, the Assignee shall assume all obligations of the Developer so assigned and the Developer, its officers, directors and stockholders shall thereupon be relieved of any and all obligation or liability with respect thereto.

11.8 **Privately Owned Golf Course.** The Golf Course, clubhouse, maintenance barn and cart barn are privately owned and operated as a private golf course and country club (the "Club") for the benefit of Club members. Club membership is a privilege extended by the owner of the Golf Course and purchase of a Lot does not automatically include any ownership rights or membership privileges in the Golf Course. Owners desiring to join the Club must apply for membership and be approved therefore pursuant to rules and regulations of the Club.

11.9 **Conflict or Ambiguity in Documents.** To the extent of any conflict, ambiguity, or inconsistency between this Declaration, the Articles, or the Bylaws, the terms of this Declaration shall control both the Articles and Bylaws.

11.10 **Usage.** Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

11.11 **Effective Date.** This Declaration shall become effective upon its recordation in the public records of Clay County, Florida.

11.12 **Disclaimers as to Water Bodies.** NEITHER THE DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY ADJACENT TO OR WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR

OTHER PORTION OF THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR LAKE BOTTOMS LOCATED THEREIN.

IN WITNESS WHEREOF, the Developer has executed this Declaration as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Elsa B. Murphy  
Print Name Elsa B. Murphy  
Christina E. Parrish  
Print Name Christina E. Parrish

MAGNOLIA POINT VENTURE, L.L.C., a Florida Limited Liability Company

By: MONTGOMERY LAND COMPANY  
Its Managing Member

By: Mitchell R. Montgomery  
Mitchell R. Montgomery, President

STATE OF FLORIDA )  
COUNTY OF DUVAL )

The foregoing instrument was acknowledged before me this 13th day of January, 2003, by Mitchell R. Montgomery, President of Montgomery Land Company, Managing Member of Magnolia Point Venture, L.L.C., a Florida limited liability company, on behalf of the corporation and the limited liability company. He did not take an oath and is personally known to me.

Elsa B. Murphy  
Print Name: Elsa B. Murphy

Notary Public, State of Florida at Large

ELSA B. MURPHY  
Notary Public, State of Florida  
My comm. expires February 11, 2006  
Comm. No. DD 091396

**EXHIBIT A**

**Property**

All of Magnolia Point Golf & Country Club Phase IV according to the plat thereof recorded in Plat Book 39, pages 36 through 51 of the current public records of Clay County, Florida.