

# **DECLARATION OF COVENANTS AND RESTRICTIONS**

## **FOR** **FAWN COVE SUBDIVISION**

THIS DECLARATION MADE THIS \_\_\_\_ DAY OF \_\_\_\_ 19\_\_ BY FAWN RIDGE CORPORATION, A FLORIDA CORPORATION (THE "DEVELOPER").

### **RECITALS:**

A. The purpose of this declaration is to subject all Fawn Cove Subdivision which is described in Plat Book \_\_, Page \_\_, Public Records of Brevard County, Florida, to the Covenants and Restrictions contained in this document. This document is sometimes referred to as the 'Covenants' or the "Declaration."

B. Developer declares that the property within platted Fawn Cove Subdivision as described in Exhibit "A" attached hereto, shall be conveyed and occupied subject to all matters set forth in this document and the plat. These covenants shall run with the title to land and shall be binding upon the Developer and all parties acquiring any interest in the Subdivision after the recording of these Covenants in the Public Records.

### **ARTICLE I**

#### **Mutual Benefits And Obligations**

The Covenants contained in this document are for the purpose of protecting the value and desirability of the Subdivision and made for the mutual benefit of each and every Owner of a Lot in the Subdivision. They are intended to be nondiscriminatory. They are also intended to create enforceable rights and obligations in favor of and against each Lot and its Owner. Each Owner, his or her family, friends, guests, tenants, and invitees shall comply with the provisions of these Covenants while present within the Subdivision.

### **ARTICLE II**

#### **Definitions**

**Section 2.1: Subdivision.** This term shall include all the property known as Fawn Cove Subdivision as recorded in Plat Book \_\_, Page \_\_, of the Public Records of Brevard County, Florida and as described in Exhibit "A" attached hereto.

**Section 2.2: Board of Directors.** The Board of Directors of the Subdivision.

**Section 2.3: Lot or Parcel** Each platted Lot in the Subdivision in Exhibit "A" attached hereto, regardless of whether a dwelling has been constructed on such Lot.

**Section 2.4: Owner.** Each person who owns record title to a Lot, excluding those having such title merely as security for performance of an obligation as described in Section 697.01. Florida Statutes.

**Section 2.5: Common Property.** A covered bridge, walls, signage, lighting, irrigation, landscaping and other such entrance amenities will be constructed at the entrance to the Subdivision on Spotted Fawn Way and along the eastern boundary of Lot 1 and the western boundary of Lot 32. Such entrance amenities are intended for the common use and benefit of all Owners and shall, along with the easements associated therewith, be deemed Common Property .

**Section 2.6: Assessments.** Annual, and special Assessments by the Association against Lots in the Subdivision made in accordance with the terms of these Covenants.

**Section 2.7: Association.** Fawn Cove Homeowners Association, Inc.. a Florida not-for-profit corporation.

**Section 2.8: Developer.** The developer shall be Fawn Ridge Corporation, a Florida Corporation.

**Section 2.9: Residence.** A single family home constructed on a Lot.

**Section 2.10: Surface Water or Stormwater Management System.** "Surface Water or Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

### **ARTICLE III**

#### **Subdivision Assessments**

**Section 3.1: General Purposes.** The Association is organized for the purpose of providing common services to the Lot Owners. owning and maintaining the Common Property, maintaining right of ways and Common Use Easements, providing enforcement of the Covenants and engaging in activities for the mutual benefit of the Owners. All lot Owners are members of the Association. Provisions relating to the Association are contained in the Articles of Incorporation and By-Laws of the Association. The Association shall have the right to increase or reduce the services it provides by affirmative vote of the members in accordance with the By-Laws of the Association. In order to pay for these services, the Association will charge Assessments against the lots and their Owners. Each Owner is personally obligated for Assessments which came due during the time such Owner owned the Lot, provided. however, that the Developer shall not be responsible for any assessments on Lots

owned by the Developer. The Developer hereby obligates itself to pay any operating expenses incurred that exceed the assessments receivable from other members and from income sources of the Association.

**Section 3.2: Creation of Lien for Assessments.** All Lots owned by Owners other than the Developer are subject to a continuing lien to secure unpaid Assessments due to the Association in accordance with the provisions of the Covenants. This continuing lien will also secure interest on unpaid Assessments and the cost of collecting unpaid Assessments including reasonable attorney's fees. The Association shall have the right to a lien on each Lot for unpaid Assessments commencing upon the initial conveyance of the Lot to an Owner other than the Developer. The lien will be effective from and after recording a Claim of Lien in the Public Records of Brevard County, Florida, stating the Lot description, the name of the record Owner, the amount due, and the due date. The lien will remain in effect until all sums due to the Association have been fully paid. All Lots shall be sold subject to the terms and provisions of the continuing lien described in this paragraph.

**Section 3.3: Annual Assessments.** The Association shall fix the amount and the due date of the annual assessment. Initially, annual Assessments shall be payable in one annual installment. The board shall notify the Owners of each Lot of the amount and the date on which the Assessments are payable and the place of payment of Annual assessments shall be uniform.

**Section 3.4: Date of Commencement of Annual Assessments.** The annual Assessment for each lot shall begin upon conveyance of the Lot to a person or entity other than the Developer. The first annual Assessment for each Lot shall be made for the balance of the fiscal year of the Association. The first annual Assessment shall be due and payable in advance in the installments and at the place established by the Association at the time of such conveyance.

**Section 3.5: Special Assessments.** The Association may levy a special Assessment to pay in whole or in part for the cost of any major repair or replacement of a capital improvement owned by the Association without concurrence of the Owners. A major repair is a repair made to an existing capital improvement which exceeds Five Hundred Dollars (\$500.00) and the useful life of which is greater than one (1) year. Replacement of a capital improvement means any replacement of an existing capital improvement. The Association may levy or collect a special Assessment to acquire a new capital improvement if the special Assessment is approved by a vote of sixty percent ( 60% ) of the Owners. The Association may also levy a special assessment to pay, in whole or in part, for the cost of maintenance of unimproved Lots. Any such assessment may be levied against the owner of any such Lot, or paid by the Association.

**Section 3.6: Effect of Non-Payment of Assessments: Remedies of the Association.** Any assessment not paid within fifteen (15) days after the due date shall bear a late fee of Twenty-Five Dollars (\$25.00) and interest from the due date at the rate of eighteen percent (18%) per annum until paid. The Association may bring an action against the Owner of the Lot for payment of the Assessment and may enforce its lien for the Assessment by foreclosure or any other means available under the law. The Association may waive payment of the late fees and interest on an Assessment, but not waive payment of the Assessment. No member may waive or otherwise escape liability for Assessments by non-use of common property or by abandonment of the Lot owned by such Owner.

**Section 3.7: Subordination of Lien to Mortgages.** The lien of any assessment authorized by these Covenants shall be subordinate to the lien of any first mortgage on the Lot so long as all Assessments levied against the Lot which fell due on or prior to the date of the Mortgage is recorded have been paid. The sale or transfer of any Lot pursuant to a mortgage foreclosure proceeding or by a deed in lieu of foreclosure shall extinguish the lien for Assessment which fell due prior to the date of the sale, transfer or foreclosure, but not for Assessments which fall due after such a date.

**Section 3.8: Damage by Owners.** The Owner of a Lot shall be responsible for any expense incurred by the Association to repair or replace common property and common use easements which is necessary by reason of his carelessness, neglect or willful action or by that of his family, his guests, agents, or invitees. Any such expense shall be part of the Assessment to which the Owner's Lot is subject and shall be due and payable in the same manner as the annual Assessment provided for in these Covenants.

**Section 3.9: Maximum Annual Assessment.** Until January 1, 1998. the annual assessment shall be \$120.00 per Lot.

(a) From and after January 1, 1998. the maximum annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of membership.

(b) From and after January 1, 1998, the maximum annual assessment may be increased above ten (10%) percent by a majority vote of the Owners who are voting in person or by proxy, at a meeting duly called for such purpose.

(c) The Board Of Directors may fix the annual Assessment at an amount not in excess of the maximum.

#### ARTICLE IV

##### Owner's Rights and Obligations and Use Restrictions

**Section 4.1: Right to Use Common Property.** Each Owner and members of such Owner's family residing with the Owner, or the tenant of a non-residential Owner, has the non-exclusive right to use the Common Property for the purpose for which it is intended and limited by the provisions hereof. This right shall pass with title to the Lot owned by the Owner.

**Section 4.2: Utilities.** Each Owner may use the utilities constructed in the roads or other easements benefiting the Subdivision, as the same may be relocated from time to time, subject to regulations and ordinances of Brevard County and the Provisions hereof.

**Section 4.3: Rights and Obligations of Lake Front Owners.** Platted Lots 12 through 22, inclusive, shall be required to maintain that portion of Lot extending to the waters edge, and no other

owner shall have access to such area notwithstanding any other terms and conditions contained herein.

**Section 4.4: Maintenance of Road Right-of-Way in Front of Street.** The construction, installation and maintenance of driveways, driveway approaches, mailboxes, sidewalks, landscaping, swales, irrigation systems and yards located between a Lot and the paved portion of a road right-of-way shall be the responsibility of the respective Lot Owners.

**Section 4.5: Limitation on Use of Lots for Access Other Than For Lot Owners.** Owners other than the Developer are hereby prohibited from granting access across their respective Lots for the purpose of providing ingress and egress to Fawn Cove Subdivision to owners of property outside the Subdivision.

**Section 4.6: Lot Line Easement.** Easements of ten feet (10') in width along front lot lines and seven and one-half feet (7 1/2') in width along all side Lot lines for installation and maintenance of public utilities and drainage facilities are hereby reserved. Within these easements, no structure, planting or other material shall be placed or permitted to remain which would damage or interfere with the installation or maintenance of the utilities or which may change the direction of flow or drainage channels in the easements. If any Lot or portion thereof is joined with another Lot to or for a single Residence building site, the side Lot line public utility and drainage easements referenced herein shall apply to the side lines of the single building site.

## **ARTICLE V**

### **Rights and Obligations of the Association**

**Section 5.1: Enforcement Rights.** The Association, its agents or employees, shall have the right, but not the obligation, to enter upon any Lot to cure any violation of these Covenants, including, without limitation, the right to remove any structure which is in violation of these Covenants and to enforce maintenance and repair of Lots and improvements. Any such removal, curing, maintenance or repair shall be at the expense of the Owner of the Lot responsible therefore and/or on which the violation has occurred or exists. which expense shall be payable by such owner to the Association on demand. Entry to remove and cure any violation of these Covenants shall not be a trespass and the Association shall not be liable for any damage on account of the entry.

The rights of the Association described in this Article shall not be construed as a limitation of the rights of the Developer or any Owner to prospective proceedings at law or in equity for the recovery of damages against persons violating or attempting to violate these Covenants or for the purpose of preventing or enjoining any violations or attempted violations. The remedies contained in this paragraph shall be construed as cumulative of all other remedies provided at law or in equity. The failure of the Association to enforce these Covenants, however long continuing, shall not be a waiver of the right to enforce these Covenants at a later time.

**Section 5.2: Other Assessments.** Any amount owed by any Owner to the Association as the result of the Association's abating or curing violations of these Covenants or maintaining or repairing Lots or improvements constructed thereon shall be due and payable within fifteen (15) days from the date of the receipt of a statement of such amounts from the Association. If any of said

sums are not paid when due, they shall be added to and become a part of the annual Assessment to which the Lot is subject and enforceable as provided in Article III of these Covenants.

**Section 5.3: Common Property Rights.** The Association shall have the right to regulate, maintain and preserve the Common Property for the safety and convenience of the Property Owners and their guests.

**Section 5.4: Entrance Way.** The Association shall have an easement over and across the east ten feet (10') of Lot 1 and the west ten feet (10') of Lot 32 for the construction and maintenance of the entrance amenities described in Section 2.5 hereof. The Association shall be responsible for maintaining the entrance way amenities. Maintenance shall include, but not limited to, the obligation to cut grass, trim shrubbery and otherwise keep the Common Property in a safe and attractive condition. Any irrigation, Common Property, lighting or drainage fixtures or improvements placed in the Common Property shall be maintained by the Association. This shall include keeping painted surfaces clean and attractive; as well as keeping all irrigation, lighting and drainage fixtures in a safe working condition.

**Section 5.5: Common Property.** The Association shall be responsible to maintain the Common Property and such other common property as may be deeded to the Association by the Developer or purchased by the Association from time to time. The Association shall own said premises and the easements associated therewith for the use and benefit of all the Lot Owners for the purpose of maintenance, preservation of existing vegetation, improvement, supplemental planting, drainage, retention and such other purposes as are permitted herein or approved by the Association, subject to the limitations contained herein. The Association has the right to use said Common Property for constructing improvements, drainage and retention, maintaining the right to cut any trees, bushes or shrubbery, make and grading of the soil, or take any other similar action reasonably necessary to maintain reasonable standards of health, safety, welfare, and appearance, all subject to any limitations contained herein. The administration, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property shall be the responsibility of the Association, except as otherwise provided herein.

**Section 5.5.1: Limitation for Access other than for Lot Owners.** The Association and all Owners of Lots other than the Developer are hereby prohibited from granting access across the Common Property, or their Lots for the purpose of providing ingress and egress or other access to the Subdivision, including the Subdivision streets and right-of-ways, to owners of real property other than the Owners of Lots in the Subdivision. This prohibition shall not preclude the Developer from granting rights to other property owners as hereinafter setforth.

**Section 5.5.2: Surface Water or Stormwater Management System.**

(a) Duties of the Association. The Association shall be responsible for the maintenance, operation and repair of the Subdivision's 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 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 (hereinafter referred to as the "District"). The Association shall be responsible for such maintenance and operation.

Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified, as approved by the District. The Association shall operate, maintain and manage the surface water or stormwater system in a manner consistent with District Permit No. 4-00-0532-ERP requirements and applicable District rules and shall assist in the enforcement of the Restrictions and Covenants contained herein. The Association shall levy and collect adequate Assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system. Association Assessments shall be used for the maintenance and repair of the surface water or storm water management systems including, but not limited to, work within retention areas, drainage structures and drainage easements. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which complies with Section 40c-42.027, Florida Administrative Code, and be approved by the District prior to such termination, dissolution or liquidation.

(b) Amendments. Any amendment to the Covenants and Restrictions which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

(c) Enforcement. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

#### **Section 5.6: Classification of Membership.**

The Homeowners Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owner. 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Class A members shall also include all owners, with the exception of the Declarant, of lots in additional units if additional units are subjected to these restrictions as elsewhere provided in the Declaration.

Class B. The Class B member shall be the Declarant or successor developer and shall be entitled to three (3) votes for each Lot owned (to include each lot in additional units if additional units are subjected to these restrictions provided in the Declaration). The Class B membership shall cease and be converted to Class A membership on the happening of either of the Following events, whichever occurs earlier:

(a) 3 months after 90% of the residential lots in all phases of the subdivision have been conveyed by the developer (or successor developer) to members (excluding conveyances to builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale ), or

(b) Upon the election of the Declarant or successor Developer.

Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of the Subdivision.

**Section 5.7: Membership Vote.** Voting shall be allowed by certified written mailed-in ballot on all issues that require a vote by the full Association. The maximum number of votes that may be cast is the sum of all votes held by qualified Class A members and the Class B member either present in person, or by proxy at the time the vote is taken at a meeting, or by actual ownership of platted lots if by certified written ballot. The number of votes needed for a quorum on any vote of the Association shall be a minimum of 30% of the sum of all the votes held by qualified Class A members and Class B members for any ballot to be valid. All matters to be voted on by the Association shall require a quorum and shall be decided by a majority of those votes cast by owners represented by the quorum. Voting shall also be permitted by general or limited proxy at any meeting of the Association.

**Section 5.8: Voting Qualifications.** To be qualified to vote, a Class A member must be current in payment of all assessments and any liens which have been levied against that member or any Lot owned by that member as of the date of the vote. Any person designated in writing by the Declarant shall be qualified to cast the votes for each Lot owned by the Class B member.

## **ARTICLE VI**

### **Easements and Rights Reserved by the Developer and the Association**

**Section 6.1 : Future Easements.** There is hereby reserved to the Developer and its successors and assigns, together with the right to grant and transfer the same, the right, the power and privilege to, at an time hereafter, grant to itself, the Association, any governmental entity, or any other parties such other and further additional easements as may be reasonably necessary desirable, in the sole opinion and within the sole discretion of the Developer, for the future orderly development of the Subdivision in accordance with the objects and purposes set forth in this Declaration. It is expressly provided, however, that no such further or additional easements shall be granted or created over and upon any Lot pursuant to the provisions of this Section if any such easement shall preclude the ability to construct a single family residence home on the Lot. The easements contemplated by this Section may include, without limitation, such easements as may be required for utility, drainage, road right-of-way or other purposes reasonably related to the orderly development of the Subdivision in accordance with the objects and purposes specified in this Declaration. Such further or additional easements may be hereafter created, granted or reserved by the Developer without the necessity for the consent or joinder of the Owner of the particular portion of the Subdivision property over which any such further or additional easement is granted or required.

**Section 6.2: Easement for Access and Drainage.** The Association shall have a perpetual non-exclusive easement over all areas of the surface water and stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is 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 stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or storm water management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water management District.

**Section 6.3: Developer Rights Regarding Temporary Structures, Etc.** Developer reserves the right to erect and maintain temporary dwellings, model homes, and/or other structures upon Lots owned by the Developer and to erect and maintain such commercial and display signs as Developer, in its sole discretion, deems advisable. Developer reserves the right to do all acts necessary in connection with the construction of improvements on the Lots. Developer may also permit builders to construct model homes on Lots and to erect display signs. Nothing contained in the Covenants shall be construed to restrict the foregoing rights of the Developer.

**Section 6.4: Further Restrictions.** Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and right-of-way on any Lot in the Subdivision owned by the Developer and on the Common Property. The easements granted by the Developer shall not materially or adversely affect any improvements or unreasonably interfere with use of the Subdivision Common Property.

**Section 6.5: Release of Restrictions, Easements.** If a Residence is erected, or the construction of the Residence is substantially advanced in a manner that violates the restrictions contained in these Covenants or in a manner that encroaches on any Lot line, Common Property, or easement area, Developer shall have the right to release the Lot from the restriction it violated. Developer shall also have the right to grant an easement to permit any encroachment by the Residence over the Lot line, or on the Common Property, or the easement area, so long as the Developer, in the exercise of its sole discretion, determines that the release or easement will not materially and adversely affect the health and safety of Owners, the value of adjacent Lots and appearance of the Subdivision.

**Section 6.6: Developer Rights Regarding Building Contractors.** John A. McKinley is to be sole and exclusive builder for Fawn Cove, unless Developer, in writing, approves alternate builders for construction of single family homes. This provision shall not be binding upon the holders of any first mortgages, or their successors and assigns, who acquire a Lot by reason of foreclosure or deed in lieu of foreclosure. Additionally, this provision shall not apply to a Lot after the first residence is built thereon.

**Section 6.7: Reserved Ownership Rights of Developer.** The Developer, its successors and assigns, may, in addition to retaining or selling platted Lots, grant to the owners or parcels adjacent to the Subdivision or any other third parties, ingress, egress and access rights or across any Lot owned by Developer, for the purpose of accessing Fawn Cove Subdivision. Notwithstanding the foregoing, should Developer grant such access over and across the Developer owned lots for the purpose of accessing Fawn Cove Subdivision, Developer shall require that the Owners of lots accessing Fawn Cove Subdivision submit their lots to the Covenants and Restrictions of this Declaration and become members of the Association for all purposes contained herein.

## **ARTICLE VII**

### **Architectural Control**

**Section 7.1: Architectural Review Committee.** Except for the initial construction of Single Family Homes and other improvements upon any Lot and improvements to the Common Property by the Developer only and except as otherwise provided in this document, NO IMPROVEMENTS SHALL BE CONSTRUCTED ON THE COMMON PROPERTY AND NO ALTERATIONS OF THE EXTERIOR OF ANY HOME OR ALTERATION OR PERMANENT IMPROVEMENT OF ANY LOT SHALL BE EFFECTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE ARCHITECTURAL REVIEW COMMITTEE (hereinafter referred to as the A.R.C.). The A.R.C. shall have the right to approve or disapprove any building, fence, wall, screened enclosure, grading, floor, elevation and drainage plan, drain, mailbox, solar energy device, decorative building, landscaping plan, landscape device or object, or other improvement, change or modification and to approve or disapprove any exterior additions, changes, modifications or alterations to a Single Family Home.

**Section 7.2: Duties of Architectural Review Committee.** The A.R.C. shall approve or disapprove the plans for an improvement or modification within ten (10) days after the same is submitted to it in proper form. If the plans are not approved within ten (10) days, they shall be deemed to have been disapproved. The plans submitted to the A.R.C. for approval shall include all plans necessary for construction and shall meet the following standards:

**Section 7.3: Plan Submission to A.R.C.** All plans must be drawn in a professional manner, fully dimensioned, and shall include the following as a minimum:

(a) Plot Plan: An accurately drawn and dimensioned plot plan in 1."= 10' scale showing all building setbacks, easement, fences, drives, swimming pools, patios, walks and other architectural elements.

(b) Floor Plan(s): Drawn to scale of 1/4"=1 foot.

(c) Elevation Plans: Drawn to scale of 1/4"= 1 foot, and showing the exterior elevations of the building as they will actually appear after all back filling.

(d) Specifications of all external materials such as roofing, siding, brick, etc. as well as exterior color schemes must be submitted for approval: actual samples may be required by the A.R.C.

(e) Landscaping plans in 1"= 10' scale indicating existing trees, trees to be removed and proposed new material. Including tree and plant list (type and size) for existing and proposed trees.

Any landscaping plan changes or alterations submitted to the Association shall provide for and include the following items:

- (1) A landscape theme;
- (2) A list of all plant stock included in the scheme; and
- (3) The size of such stock at the time of planting.

The Entire Lot including that portion of the Lot between the street pavement and the right-of-way line, shall be landscaped and maintained. No gravel, rocks, artificial turf, or other similar materials shall be permitted as a substitute for a grass lawn. It shall be the goal of the A.R.C. in the approval of any landscape plan and layout plan to preserve all existing trees where possible.

The A.R.C. shall not be responsible for defects in plans or specifications or for defects in the improvements. The A.R.C.'s review of plans is limited solely to appearance of the improvements and does not include compliance with applicable building codes.

**Section 7.4: A.R.C. Membership.** The Architectural Review Committee shall be comprised of three (3) regular members and two (2) alternate members. A vote of two (2) is necessary to carry any decisions of the A.R.C. The alternate members shall fill any vacancies that might occur.

**Section 7.5: Selection.**

(a) Both regular and alternate members of the A.R.C. shall be elected from among the membership of the Association and such non-members as are approved by the Developer. Each A.R.C. member shall be elected by a majority vote by the Association in three (3) successive elections. Elections shall be held annually during the month of January of each year.

(b) The Developer has the right to select the membership of the A.R.C. at his total discretion until the last Lot is sold. After the last Lot is sold, the A.R.C. shall be elected as set out above in subpart(a) of this section.

**Section 7.6: Plan of Development.** It is the plan of the Developer to develop Fawn Cove Subdivision into a highly restricted Community of quality homes. The A.R.C. shall evaluate the proposed improvements with emphasis upon their harmonious incorporation into the Community as a whole and with specific emphasis on external design, location of the improvement in relation to the surrounding structures and/or improvements, topography and conformity to the Declaration.

**Section 7.7: Construction Restrictions.** The following construction restrictions are approved by the A.R.C.:

(a) A minimum of fifty (50) feet set back shall be required from the nearest part of the front of the building to the front Lot line. A minimum of twenty (20) feet set back shall be maintained between the side walls of all structures and the side lines of the Lot unless waived by the A.R.C. on

irregularly shaped Lots. A minimum of fifty (50) feet set back shall be maintained between the rear wall of all structures and the rear Lot line. The building shall have a setback fifty (50) feet from the lake.

b) The ground floor of the main structure exclusive of any open porches, patios (enclosed otherwise), breeze-ways, and garages, shall not be less than 2500 square feet for a one-story dwelling and not less than 1300 square feet for the ground floor of a dwelling and one-half or two stories. Each residence shall have an enclosed garage for a minimum of two cars. No carports shall be permitted. No lot improvement shall exceed 2 stories or thirty (30) feet in height whichever is greater.

(c) There shall be no exposed flat roofs. Nor shall roof pitch be less than five feet (5') in twelve feet (12'), except porches or patios locate in the rear of the house or flared eaves incorporated in the roof structure. Any variations in the five feet (5') in twelve feet (12') pitch requirement shall be subject to approval by the A.R.C.

(d) All utilities from right-of-way to residence shall be installed underground.

(e) T -111 type and similar type siding shall not be permitted.

(f) Any and all garage doors or opening shall face or open to the side boundaries of the Lot. This requirement shall be waived at the discretion of the A.R.C. upon its finding that this requirement is impracticable as applied to the specific Lot being reviewed pursuant to Section 7.2 of these Covenants. Garage door materials shall be subject to A.R.C. approval.

(g) Recommended roofing materials include wood, shingle, clay and clay tile, or concrete tile. Other roofing materials must be approved by the A.R.C. Asphalt shingles must be classified as architectural with a minimum 240 lb. in weight and 25 year warranty.

(h) Exterior Plan. The A.R.C. shall have final approval of all exterior color plans and each Owner must submit to the A.R.C. a color plan showing the color of the roof, exterior wall, shutters, trims etc. The A.R.C. shall consider the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of the Subdivision. At no time shall the exterior finish of any side of any residence be stuccoed in excess of 50% of the total area.

(i) Driveway Construction. All dwellings shall have a paved driveway of stable and permanent construction of at least twelve (12) feet in width at the entrance to the garage. Unless prior approval is obtained from the A.R.C., all driveways must be constructed of concrete, brick, paver, or other approved surfaces. The grade of any portion of a driveway that is constructed on and across any part of the adjacent street right-of-way or drainage easement must be constructed in accordance with the original Subdivision engineering plans or County driveway requirements.

(j) Games and Play Structures. All basketball backboards and any other fixed games and play structures other than basketball structures, shall be located at the rear of the dwelling, or on the

inside portion of corner Lots as specifically approved by the A.R.C. No platform, dog house, playhouse or structure of similar kind or nature shall be constructed on any part of a Lot located front of the rear line of the residence constructed thereon, and any such structure must have prior approval of the A.R.C. Notwithstanding the foregoing, basketball structures may be located in rear of front building set back with the approval of the A.R.C.

(k) Swimming Pools and Tennis Courts. Any swimming pool or tennis court to be constructed on any Lot shall be subject to the approval of the A.R.C. Any lighting of a pool or other recreational area shall be designated so as to buffer the surrounding residences from the lighting and must be approved by the A.R.C.

Any swimming pool constructed on any Lot shall be subject to the following restrictions, reservations and conditions:

(1) Construction may be of concrete or a concrete type material or fiberglass. The pool deck shall be no higher than 2" below the slab level of the first floor.

(2) The outside edge of any pool wall may not be closer than four (4') feet to a line extended and aligned with the side walls of the house. All swimming pools shall be situated in the rear of the house.

(3) No screening of pool area may extend beyond a line extended and aligned with the side walls of the house.

(4) Pool screening may not be higher than the roof of the house.

(l) Air Conditioning Compressor Units. No compressor units shall be placed on the front of any dwelling or otherwise placed or located so as to be visible to or from any public street. If said compressor unit must be placed to the side or rear of any such dwelling, but is still visible to or from any public street, it shall be permissible to so locate said unit if the same is screened with a permanent type of building material.

(m) Window Air Conditioning Unit. No window or wall air conditioning units shall be located in front of the rear building line of any residence or where they can be viewed from any public street.

(n) Bare Aluminum Colors. Colored or painted finishes are required on all exposed metal including, but not limited to, trim, exterior flashings, gutters, windows, doors, and screened material. No aluminum color will be accepted.

(o) The construction of homes on any Lots must be completed within twelve ( 12) months after commencement of construction. Any failure to comply with this requirement shall subject the Lot Owner to an assessment of Fifty (\$50.00) Dollars per week of non-compliance.

(p) Lots shall be irrigated in a manner sufficient to maintain lawn and shrubbery in an attractive condition.

(q) All Lots shall be planted with Bahia or Floratan Sod or substitute approved by the A.R.C.

### **Section 7.8: Maintenance of Residences and Lots.**

(a) All Lots, residences and improvements on the Lots shall be maintained by the Owner in a neat and attractive condition. All landscaping of Common Property will be maintained by the Association except as otherwise provided herein.

(b) In the event of damage or destruction by fire or other casualty to the Residence, or improvements on any Lot, the Owner shall, upon receipt of the insurance proceeds, repair or rebuild such damaged or destroyed residence or improvement in a good workmanlike manner in strict compliance with the original plans and specifications and building layout of said improvement as constructed by the Developer within a reasonable time not to exceed one (1) year and in accordance with the provisions of these Covenants. All debris must be removed and the Lot restored to a slightly condition within sixty (60) days of such damage or destruction.

### **Section 7.9: Miscellaneous Use Restrictions.**

(a) All fences and shrub lines must be approved by the A.R.C. prior to construction. The A.R.C. may require that the composition and color of any fence be consistent with fences around surrounding Residences.

(b) All Lots in the Subdivision are residential parcels and shall be used exclusively for single family residential purposes. Detached auxiliary buildings, including dog houses or storage building, are not permitted without prior approval of the A.R.C. and the design and construction must be aesthetically consistent with the primary Residence. No Lot may be subdivided without the prior written consent of the Developer, which consent shall be recorded in the Public Records of Brevard County, Florida in order to be effective.

(c) Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened as not to be visible from any road or adjacent property within sight distance of the Lot at any time except during refuse collection. No outside burning of wood, leaves trash, garbage or household refuse shall be permitted. Clothes lines, if any, shall be contained within the courtyard walls. No clothing or cleaning articles shall be hung or displayed on any part of the lot so that it is visible outside of the Lot. Nothing herein contained shall be construed to conflict with Florida Statute 163.04.

(d) No animals, except household pets, shall be kept on any Lot. Pets shall be kept only in the Residence or within a fenced area. Residents shall not breed such animals as a hobby or for profit. No animal shall be permitted off the Lot unless on a leash. Further, no pet shall be permitted on any Lot or the Common Area to be attached to a fixed yard leash.

(e) No commercial activity shall be conducted on any Lot with the exception of the Developer's real estate sales office and Developer real estate sales activities.

(f) No oil or natural gas drilling, refilling, quarrying or mining operations of any kind shall be permitted upon any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot.

(g) All signs, billboards and advertising structures of any kind are prohibited. Builder/Owner signs are permitted during construction periods. Real Estate Broker signs will be permitted upon approval by the Developer. No sign may be nailed or attached to trees. For Sale signs shall not exceed four (4) square feet or be taller than thirty-six (36) inches.

(h) No fence, wall, hedge, or scrub planting which obstructs sight lines at elevations between three (3') feet and six (6') feet above any roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25') from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10') feet from the intersection of a street property line with the edges of a driveway or alley pavement. Except as herein provided, no trees shall be permitted to remain within such distance of such intersections unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines. Any such tree or a rare or unusual species may be permitted to remain in place upon application to and written permission from the Developer and approval by the appropriate City, county or state official or department.

(i) Fences.

(1) No Fence with a height above six (6') feet shall be permitted on any Lot.

(2) No Fence shall be permitted to be constructed with a height above four (4') feet within fifty (50') feet of the high water line of any lake or retention pond in the Subdivision.

(3) No Fence shall be constructed extending beyond the front set back line.

(4) No fence shall be constructed along the rear lot line or along the rear drainage easements on Lots 12 through 22.

(5) Prior approval must be received from the A.R.C. before the construction of any fence shall be permitted.

(j) no mailbox or paper box of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected on any Lot until the size, location, design, and type of material for the box is approved by the A.R.C. If the United States mail services involved shall indicate a willingness to make delivery to wall receptacles attached to the Residence, each Owner, on the request of the A.R.C., shall promptly replace the boxes previously employed for such purpose or purposes with wall receptacles attached to the Residence.

(k) Owners shall not do anything that will disturb or interfere with the reasonable rights and comforts of other Owners.

(l) The parking of vehicles in the Subdivision is restricted as follows:

(1) Automobiles. Automobiles without any advertising or logos on the vehicle shall be permitted to be parked in driveways and garages. Automobiles with advertising or logos shall be parked only in garages.

(2) Passenger Vans. Passenger vans not outfitted for recreational purposes and without any advertising or logos shall be permitted to be parked in driveways and garages. Passenger vans outfitted for recreational purposes or with advertising or logos shall be permitted only in garages.

A "passenger van" is a van that weighs less than five thousand (5000) pounds, has seating for more than two (2) passengers, and has a non-commercial license plate. "Outfitted for recreational purposes" shall mean a van that has 110-120 volt electrical service, running water, LP gas or sanitary waste facilities. No removable ladders or other commercial equipment shall be stored on the exterior of any passenger van. A "non-passenger van" is any van that does not comply with the definition of a "passenger van". A non-passenger van shall be subject to the same restrictions as a truck rated one-half (1/2) ton or less, as more fully provided in subparagraph (3) below.

(3) Trucks and Non-Passenger Vans. Trucks rated one-half (1/2) ton or less, without any advertising or logos, used as the residence's regular or usual form of transportation, and non-passenger vans without any advertising or logos shall be permitted in the Subdivision if parked in garages. Such trucks and non-passenger vans shall also be permitted in driveways for periods of less than four (4) hours. Trucks of more than one-half (1/2) ton, or trucks or non-passenger vans with any advertising or logos, or trucks not the resident's regular or usual form of transportation are not permitted to be parked in the Subdivision unless present solely for the actual and continuous repair or construction of a Residence.

(4) Motor Homes, Travel Trailers, Recreational Vehicles, Motor Coaches, Motorcycles, Golf Carts, Boats, Campers, Trailers and Motor Homes shall be permitted to be parked in the Subdivision if parked in garages or on the Lot screened from view of the road.

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**AMENDMENT 10 March 2000**

All boats must have a natural plant barrier shielding its view from the neighbors on each side. Further; boats on lake lots (Lots 12 to 22) must have a natural plant barrier shielding any boats from rear view.

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(5) Mobile Homes. Mobile homes and any other trailer or vehicle not specifically permitted by sections (1) through (4) above shall not be parked in the Subdivision at any time.



(6) Lawns, Streets. No vehicle shall be parked on any yard, lawn, travel area of streets, or other area not intended for vehicular use.

(m) Satellite Dishes. Satellite dishes are permitted provided they are shielded from view of road and surrounding Owners and the placement thereof must be approved by the A.R.C. Antennas will be permitted, i.e., C.B., ham, wireless TV antenna.

**Section 7.10: Motor Boat Use Restriction.** No non-electric motorized boats shall be permitted to be used on the lakes of retention areas situated in the Subdivision. Only man-powered, wind propelled or electric operated boats may be used on said lakes or retention areas.

**Section 7.11: Duty to Maintain Drainage Easements.** It shall be the duty of the Association to maintain those drainage easements which are part of the surface water or stormwater management system, and it shall be the duty of the individual Owners of Lots to maintain the areas encompassed within the other platted drainage easements which are located on their Lots. Said duty shall include the obligation to cut grass, cut any trees, bushes or shrubbery, repair erosion, or take any other similar action reasonably necessary to maintain reasonable standards of health, safety or appearance. If any assessment penalty or fee is charged by any governmental agency for the maintenance of the surface water or storm water management system, any such assessment, penalty or fee shall be paid by the Association.

**Section 7.12: Variance.** The A.R.C. may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require. Such variance must be evidenced in writing signed by at least three (3) members of the A.R.C. If such variances are granted, no violation of the Covenants, conditions, and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declarations for any purpose as to the particular property and particular provisions hereof covered by the variance. Nor shall such variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and set back lines or requirements imposed by any governmental or municipal authority.

## **ARTICLE VIII**

### **Utility Provisions**

**Section 8.1: Water System.** City water provided by City of Melbourne. Each Lot Owner to supply his own meter and supply line.

**Section 8.2: Sewage Systems.** Each Owner shall maintain and repair all portions of the sewage disposal system including septic tank and drain field within the boundaries of his Lot.

**Section 8.3: Garbage Collection.** Garbage, trash and rubbish shall be removed from the Lots by the entity selected by Harris Sanitation or the applicable collection contractor. Each Lot Owner shall pay when due the periodic charges or taxes for such garbage collection service.

**Section 8.4: Electrical and Telephone Service.** All telephone, electric, and other utilities lines and connections between the main or primary utilities lines and the Residence and the other buildings located on each Lot shall be concealed and located underground in a manner acceptable to Brevard County.

## **ARTICLE IX**

### **General Provisions**

**Section 9.1: Duration and Amendment.** These Covenants shall run with and bind the land submitted or subjected hereto and shall be and remain in effect in perpetuity and shall inure to the benefit of and be enforceable by the Developer, the Association, the Owners and their respective legal representatives, heirs, successors and assigns, unless modified or terminated by a duly recorded written instrument executed in conformance with the requirements as described below. These Covenants may be modified or terminated only by a duly recorded written instrument recorded by the President and Secretary of the Developer until the Developer no longer owns any Lots. and thereafter by the President and Secretary of the Subdivision Association upon an affirmative vote of two-thirds (2/3) of the Owners, provided however, no such amendment shall affect the right of lien of any first mortgage without such mortgagee's express consent. The Developer specifically reserves the absolute and unconditional right so long as it owns any Lots to amend the Declaration to conform to the requirements of the Federal Home Loan Mortgage Association or any other Administration, Federal National Mortgage Association or any other generally recognized institution involved in the purchase and sale of home loan mortgages or to clarify the provisions herein, without the consent or joinder of any party. Notwithstanding anything in these Covenants to the contrary, the provisions of these Covenants affecting the rights or duties of the Developer shall not be amended or terminated at any time without the consent in writing of the Developer. Any such amendment or termination which affects the surface water management system must have the prior approval of the St. Johns River Water Management District.

**Section 9.2: Notices.** Any notice required to be sent to any person pursuant to any provisions of these Covenants will be effective if such notice has been deposited in the United States mail, postage prepaid, addressed to the person for whom it is intended at his last known place of residence or to such other address as may be furnished to the Secretary of the Association, the effective date of the notice shall be the date of the mailing.

**Section 9.3: Severability.** Whenever possible, each provision of these Covenants shall be interpreted in a manner that is effective and valid. If any provision of the Covenants is prohibited or held invalid the prohibition or invalidity shall not affect any other provision which can be given effect. To this end, the provisions of these Covenants are declared to be severable.

**Section 9.4: Assignment by Developer.** Developer shall have the sole and exclusive right to transfer to such persons, firms, or corporations as it shall select, any or all of the easements and rights whatsoever given to or reserved by Developer in these Covenants. All easements and rights reserved in these Covenants shall be for the benefit of the Developer, its successors and assigns.

**Section 9.5: Disputes and Construction of Terms.** In the event of any dispute arising under these Covenants, or in the event of any provision of these Covenants requiring construction, the issue shall be submitted to the Board of Directors of the Subdivision Association. The Board of Directors shall give all persons having an interest in the issue an opportunity to be heard after reasonable notice. The Board shall, when appropriate, render its decision in writing, mailing copies thereof to all parties who have noted their interest.

**Section 9.6: Right of Developer to Modify.** The Developer retains the right to change, alter, or modify these restrictions in any manner and at any time prior to the Developer's sale of the last Lot in the subdivision.

**Section 9.7: Existing Residence (Lot 13).** Any improvement located on Lot 13 as of the date of Plat recording are hereby grandfathered in. Any improvements, whatsoever, to Lot 13, after the date of Plat are bound and restricted to the Covenants herein.

## **ARTICLE X**

### **Tenants**

**Section 10.1: Leases.** Article I provides that all persons who are present in the Subdivision must comply with the Covenants. In order to enforce this provision, all Owners leasing or renting their Lots shall be required to incorporate the following provision in their lease or rental agreement (substantially in the following form):

The Leased Premises are part of a Subdivision. All persons occupying property in Fawn Cove Subdivision are required to observe the Covenants and Restrictions of the Fawn Cove Home Owners Association. Copies of all Covenants and Restrictions are to be obtained from the landlord.

In addition, all Owners leasing their Lots are required to provide the Association with a copy of the lease and the names and addresses of the Landlord and the Tenant unless they are contained in the lease or rental agreement.

IN WITNESS HEREOF, the undersigned, being the Developer herein, has hereunto set their hand and seal the day and year first above written.

Signed, sealed and in the presence of:

\_\_\_\_\_

Fawn Ridge Corporation  
a Florida Corporation

By: \_\_\_\_\_  
John McKinley, President

STATE OF FLORIDA  
COUNTY OF BREVARD

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me personally appeared John McKinley, President of Fawn Ridge Corporation, a Florida Corporation, to me known to be the person who signed the foregoing instrument as such officer and acknowledged the execution thereof to be his free act and deed as such officer for the use and purposes therein mentioned, and that he affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal on the day and year last aforesaid.

\_\_\_\_\_

KAREN M. BROWN  
Notary Public

**EXHIBIT " A "**

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 10, TOWNSHIP 27 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 10: THENCE SOUTH 89°50'40" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER (SE 1/4), A DISTANCE OF 1276.68 FEET; THENCE SOUTH 00° 16'40" WEST, A DISTANCE OF 641.45 FEET; THENCE SOUTH 00°19'25" WEST, A DISTANCE OF 671.14 FEET TO THE NORTH RIGHT-OF-WAY LINE OF LAKE WASHINGTON ROAD (100' R/W); THENCE SOUTH 89° 19'00" WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID LAKE WASHINGTON ROAD, A DISTANCE OF 1259.67 FEET; THENCE NORTH 00°26.20" WEST, ALONG THE EAST LINE OF LAKEWOOD ESTATES, SECTION ONE, AS RECORDED IN PLAT BOOK 22, PAGE 99 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND THE NORTHERLY EXTENSION THEREOF, ALSO BEING THE WEST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 10, A DISTANCE OF 1331.10 FEET TO THE POINT OF BEGINNING, CONTAINING 38.49 ACRES, MORE OR LESS, SUBJECT TO TAXES FOR THE YEAR 1977 AND SUBSEQUENT YEARS, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.