

THIS INSTRUMENT PREPARED BY
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OR 14 PG 904

DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

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1298621

DECLARATION OF RESTRICTIVE COVENANTS
(HEADWATER CREEK)

THIS DECLARATION OF RESTRICTIVE COVENANTS is made and entered into this 14th day of February, 1994, by JIMMY BOYNTON REALTY, INC., a Florida corporation, and BUBBA SEAY, whose mailing address is 743 E. Tennessee Street, Tallahassee, Florida 32308, the owners of the property described in Exhibit "A" located in Leon County, Florida. By this instrument, the owners impose upon the land described in Exhibit "A" for the benefit of the present and the future owners of the land, the following conditions, restrictions and limitations which shall be covenants running with the land, binding upon the owners, their heirs and assigns, and all persons claiming any right, title or interest in the land and all subsequent purchasers of the land, their heirs, personal representatives and assigns.

ARTICLE I - DEFINITIONS

1. "Declarant", as used herein, shall mean JIMMY BOYNTON REALTY, INC. and BUBBA SEAY, the owners of the property described in Exhibit "A".
2. "Association" shall mean HEADWATER CREEK HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit.
3. "Easement" shall mean the land shown on the plat of HEADWATER CREEK SUBDIVISION as roadway and drainage easement, which said plat either has been or will be recorded in the Public Records of Leon County, Florida. Fee simple title to the Easement shall remain vested in the Declarant until conveyed to the Association as provided for herein.
4. "Lot" shall mean a parcel of land contained in the property described in Exhibit "A". The property is divided into "lots" as shown on the plat of HEADWATER CREEK prepared by BOBBY A. PRESNELL & ASSOCIATES, which plat either has been or will be recorded in the Public Records of Leon County, Florida.
5. "Maintenance" shall mean the exercise of reasonable care to keep the roads, landscaping, drainage and other related improvements in good repair and condition.

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6. "Member" shall mean every person or entity that holds membership in the Association.

7. "Subdivision" shall mean the property described in Exhibit "A" as divided into lots as shown on the plat of the property that either has been or will be recorded in the Public Records of Leon County, Florida.

8. "Owner" shall mean the record owner, whether one (1) or more persons or entities, of a legal or beneficial interest in a lot, but shall not include those holding title as security for the performance of an obligation.

**ARTICLE II - MEMBERSHIP AND
VOTING RIGHTS IN THE ASSOCIATION**

1. Membership: Any person who owns property that is subject to these restrictions shall automatically be a member of the Association, provided, however, that where any lot is owned by more than one (1) person, one (1) of the owners shall be designated to cast the vote on matters to come before the Association on behalf of all of the owners of the lot. In the event the owner of a lot is a corporation or partnership, a partner or corporate officer shall be designated to cast the vote on behalf of the partnership or corporation.

2. Voting Rights: The Association shall have two (2) classes of voting members as follows:

"Class A" - Class A membership shall be all owners with the exception of the Declarant, and shall be entitled to one (1) vote for each lot owned.

"Class B" - Class B membership shall be the Declarant, who shall be entitled to exercise two (2) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership.

not it is expressed in his deed, agrees to pay the assessments as provided in this Article.

2. Annual Assessments: Annual assessments shall be paid by each lot owner to the Association. The annual assessment for the year 1994, shall be Seventy-Five Dollars and No Cents (\$75.00) for each lot owned within the subdivision. For the year 1995, and each subsequent year, the annual assessment may be increased by a vote of the Association, not to exceed ten percent (10%) over the assessment of the previous year. Declarant shall not be subject to annual assessments or to special assessments as provided for below until such time as its Class B voting rights are converted to Class A voting rights as provided for in Article II above.

3. Special Assessment: In addition to the annual assessments, the Association may have a special assessment in any year for the purpose of defraying in whole or in part, the cost of maintenance or repair of the roads in the subdivision. Any such assessment must be approved by a majority vote of the membership of the Association. Special assessments shall be determined like annual assessments on a per lot basis.

4. Effect of Nonpayment of Assessments and Remedies of the Association: Any assessment not paid within sixty (60) days after the due date shall be deemed in default and shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for assessment provided for herein by abandonment of his lot.

5. Subordination of Assessment Lien: The assessment liens provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of a lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the assessment lien as to the payments which became due

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prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due.

ARTICLE IV - EASEMENTS

Within the easements as shown on the plat of HEADWATER CREEK SUBDIVISION, no structure, plant or other object shall be placed or permitted to remain which may damage or interfere or change the direction or flow of stormwater and drainage within the easement or interfere with the installation and maintenance of utilities or the safe passage of automobile traffic. The private roadway easement and drainage facilities and any other common area improvements shall be conveyed to the Association before more than seventy percent (70%) of the lots within the subdivision have been sold by the Declarant. Once the Association obtains fee simple title to the roadways and easements it may, after a majority vote of the members of the Association, dedicate to public use, any road or drainage easement within the subdivision. The Declarant reserves the right to dedicate the roadways or other easements to public ownership at any time before legal title to the roadways and easements are conveyed to the Association. The HEADWATER CREEK HOMEOWNERS ASSOCIATION, INC. is responsible for the maintenance of all roadway and drainage easements within HEADWATER CREEK SUBDIVISION.

ARTICLE V - USE RESTRICTIONS

The subdivision shall be occupied and used only as follows:

1. Each lot shall be used for single family residential purposes only.
2. No mobile home that is five (5) years or older, regardless of size, shall be placed within the subdivision until approved by the Declarant. If no action has been taken after thirty (30) days from the date in which the approval of a mobile

on the property. Approval shall not be arbitrarily withheld. If the Declarant should die or sell all of the property he owns within the subdivision without appointing a successor to exercise the powers provided in this paragraph, the Homeowners Association shall appoint a committee as successor to the Declarant.

3. Out buildings or accessory buildings are permitted as long as construction of the buildings is compatible with the construction and appearance of the main residence.

4. No building or residence shall be located nearer than sixty (60) feet from the centerline of any roadway and shall otherwise comply with all county setback regulations.

5. All conventionally built homes shall contain at least nine hundred (900) square feet of heated and cooled area, exclusive of porches and garages. All mobile homes shall contain at least seven hundred (700) square feet, and all modular homes shall contain at least seven hundred (700) square feet of heated and cooled space, exclusive of porches and garages.

6. No hogs shall be kept on any of the lots within the subdivision, nor shall any animal be kept on any lot that causes nuisance or annoyance because of noise or smell.

7. No noxious or offensive activity shall be carried on upon any lot, nor shall any act be committed which would constitute an annoyance or nuisance to the other residents in the subdivision or to the general public.

8. No commercial enterprise shall be allowed to exist in the subdivision.

9. Any major mechanical or repair work performed on any motor vehicle shall be done in an enclosed garage or carport and shall not be visible from the street. All inoperable motor vehicles must be removed from the subdivision within fourteen (14) days unless stored out of sight in a barn or shed.

10. No mobile homes shall be placed on any lot unless such mobile home has been manufactured by a company engaged in the manufacture of mobile homes. It is the intention of this

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restriction to prohibit the location of any "homemade" mobile home on any lot.

ARTICLE VI - WAIVER

So long as the Declarant owns any property within the subdivision, he shall have the authority to waive the enforcement of any of the provisions of Article V, so long as strict enforcement would result in unnecessary hardship. Once the Declarant has sold all of the property owned by him within the subdivision, this right to waive enforcement of the Use Restrictions in Article V shall be conferred to the Association.

ARTICLE VII - ENFORCEMENT

The Declarant, HEADWATER CREEK HOMEOWNERS ASSOCIATION, INC., or the owner of any lot subject to these restrictions, may bring an action to enforce these restrictions in any court of competent jurisdiction. The prevailing party in any such litigation shall be entitled to recover attorneys' fees and court costs.

ARTICLE VIII - AMENDMENT

Declarant, or its assigns, reserves the right to amend these covenants so long as Declarant retains Class B votes in the Association. After Declarant no longer has Class B status, these covenants may be amended by a majority vote of the Board of Directors of the Association, together with the written consent of two-thirds (2/3) of the lot owners. The right to amend these covenants, however, is subject to the following limitations:

1. Consent of County: Notwithstanding any rights of Declarant or the owners to amend these Restrictive Covenants as provided for in this Article to the contrary, any amendment to the Restrictive Covenants that attempts to modify any provision mandated by Sections 10-1556 (a)(1) through (a)(13) of the Leon County Code of Laws, being a part of Ordinance No. 92-9 (3/10/92), shall have the written consent and joinder of Leon County, in compliance with subsection (a)(14) of that Ordinance.

2. Scrivener's Errors and Nonmaterial Changes: Amendments for correction of scrivener's error or other nonmaterial changes may be made by Declarant alone until Declarant's Class B membership is terminated and by the Board thereafter and without the need of consent of the owners.

3. Limitations: Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, or of any institutional mortgagee under this Declaration without the specific written approval of the Declarant or institutional mortgagee affected thereby. Furthermore, notwithstanding anything to the contrary herein, no amendment shall be made which would increase the liabilities of a then owner or prejudice the rights of a then owner or his family, guests, invitees and lessees to utilize or enjoy the benefits of the then existing common areas unless the owner or owners so affected consent to such amendment in writing.

4. Effective Date of Amendments: Any amendment to this Declaration shall become effective upon a Certificate of Amendment to the Declaration setting forth the amendment or modification being recorded in the Public Records of Leon County, Florida.

ARTICLE IX - EFFECT

Each and every conveyance of any lot in this subdivision is expressly made subject to the provisions of this Declaration of Restrictive Covenants, whether or not the terms of such conveyance incorporates or refers to these provisions.

ARTICLE X - CONSTRUCTION

Once construction on any structure within the subdivision is begun, construction shall proceed continuously until completion. The construction period for a primary residence shall not exceed seven (7) months, unless approval is obtained from the Declarant or the Association.

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ARTICLE XI - MISCELLANEOUS

1. Severability: In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or reduction in the scope or term of the same by reason of judicial application of the legal rules against perpetuities or otherwise shall in no way affect any other provisions which shall remain in full force and effect for such period of time and to such extent as may be permitted by law.

2. Notices: Any notice required to be sent to any member of owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

3. Interpretation of Declaration: The Board shall have the right and responsibility to determine all questions arising in connection with this Declaration and to construe and interpret the provisions of this Declaration in good faith.

4. Captions, Headings and Titles: Articles and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only, and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder nor the terms and provisions of this Declaration.

5. Context: Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding

6. Attorneys' Fees: In connection with any litigation arising out of this instrument, including appeals, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictive Covenants to be executed the day and year first above written.

WITNESSES

(Please Type or Print Names Beneath Signatures):

JIMMY BOYNTON REALTY, INC.

Doris Jean Lanham
Witness - Doris Jean Lanham

By: *James M. Boynton*
JAMES M. BOYNTON,
Its President

Patrick G. Langston
Witness - Patrick G. Langston

Doris Jean Lanham
Witness - Doris Jean Lanham

Bubba Seay
BUBBA SEAY

Patrick G. Langston
Witness - Patrick G. Langston

STATE OF FLORIDA,
COUNTY OF LEON.

The foregoing Declaration of Restrictive Covenants pertaining to HEADWATER CREEK was acknowledged before me by JAMES M. BOYNTON, in his capacity as President of JIMMY BOYNTON REALTY, INC., a Florida Corporation, under oath and personally known to me, on this 14th day of February, 1994.

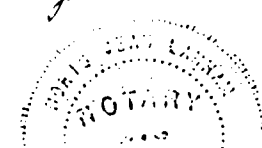


Doris Jean Lanham
NOTARY PUBLIC - Doris Jean Lanham
(Please Type or Print Name of Notary)

My Commission Expires: Notary Public, State of Florida
My Comm. Exp. Feb. 17, 1995
Bonded thru PICHARD Ins. Agency

STATE OF FLORIDA,
COUNTY OF LEON.

The foregoing Declaration of Restrictive Covenants pertaining to HEADWATER CREEK was acknowledged before me by BUBBA SEAY, under oath and personally known to me, on this 14th day of February, 1994.



Doris Jean Lanham
NOTARY PUBLIC - Doris Jean Lanham
(Please Type or Print Name of Notary)

My Commission Expires: Notary Public, State of Florida
My Comm. Exp. Feb. 17, 1995

A part of lands described in Official Records Book 1485, Page 0154, of the Public Records of Leon County, Florida, and lying in Section 7, Township 1 South, Range 3 West, Leon County, Florida, described as follows:

COMMENCE at a found iron pipe 2" marking the Southwest corner of the Southwest Quarter of Section 7, Township 1 South, Range 3 West of Leon County, Florida; thence Northerly along the said Section 7 boundary line North 00 degrees 01 minutes 23 seconds West 6.65 feet to the Northerly right-of-way boundary of State Road No. 20 (66 foot right-of-way) for the POINT OF BEGINNING.

From said POINT OF BEGINNING and leaving said right-of-way boundary, thence continue Northerly along said Section 7 boundary line North 00 degrees 01 minutes 23 seconds West 3643.88 feet; thence South 89 degrees 54 minutes 56 seconds East 1760.08 feet to the Northwest corner of Whippoorwill Woods Subdivision (unrecorded); thence South 00 degrees 07 minutes 18 seconds West 1544.17 feet; thence South 89 degrees 58 minutes 21 seconds East 405.00 feet; thence South 00 degrees 06 minutes 50 seconds West 849.61 feet; thence North 89 degrees 53 minutes 10 seconds West 256.23 feet; thence South 07 degrees 13 seconds West 170.00 feet; thence South 89 degrees 53 minutes 10 seconds East 256.25 feet; thence South 00 degrees 06 minutes 50 seconds West 431.31 feet; thence North 53 degrees 25 minutes 27 seconds West 35.35 feet; thence South 81 degrees 45 minutes 44 seconds West 99.80 feet; thence South 00 degrees 06 minutes 50 seconds West 382.46 feet to the centerline of a 60 foot ingress/egress and utility easement known as Whippoorwill Drive; thence Westerly along said centerline South 89 degrees 37 minutes 44 seconds West 60.00 feet; thence leaving said centerline right-of-way North 00 degrees 06 minutes 50 seconds East 374.16 feet; thence South 81 degrees 45 minutes 44 seconds West 68.46 feet; thence North 33 degrees 33 minutes 47 seconds West 134.01 feet; thence North 80 degrees 27 minutes 59 seconds West 158.79 feet; thence South 89 degrees 42 minutes 30 seconds West 69.58 feet; thence South 00 degrees 22 minutes 16 seconds East 504.33 feet to the centerline of a 60 foot ingress/egress and utility easement known as Whippoorwill Drive; thence along said centerline South 89 degrees 37 minutes 44 seconds West 1545.66 feet, and a projection thereof; thence leaving said centerline South 00 degrees 01 minutes 23 seconds East 260.82 feet along the Easterly right-of-way boundary of said 60 foot roadway easement and a projection thereof; thence leaving said right-of-way boundary South 89 degrees 37 minutes 44 seconds West 8.32 feet to the aforesaid Northerly right-of-way boundary of STATE ROAD NO. 20; thence along said right-of-way boundary North 83 degrees 02 minutes 00 seconds West 52.07 feet to the POINT OF BEGINNING.

CONTAINING 147.756 acres, more or less.

A portion of the Southerly 30 feet thereof and the Westerly 60 feet of the Southerly 260.82 feet subject to a 60 foot ingress/egress and utility easement.

EXHIBIT "A"

AMENDED

DECLARATION OF RESTRICTIVE COVENANTS

(HEADWATER CREEK)

0092
THE PUBLIC
RECORDS
OFFICE
LEON COUNTY
FLORIDA
AUG 18 PM '94

THIS AMENDED DECLARATION OF RESTRICTIVE COVENANTS is made and entered into this 1st day of August, 1994, by JIMMY BOYNTON REALTY, INC., a Florida corporation, and BUBBA SEAY, whose mailing address is 743 E. Tennessee Street, Tallahassee, Florida 32308, the owners of the property described in Exhibit "A" located in Leon County, Florida. By this instrument, the owners impose upon the land described in Exhibit "A" for the benefit of the present and the future owners of the land, the following amended conditions, restrictions and limitations which shall be covenants running with the land, binding upon the owners, their heirs and assigns, and all persons claiming any right, title or interest in the land and all subsequent purchasers of the land, their heirs, personal representatives and assigns.

This Amended Declaration of Restrictive Covenants (Headwater Creek) shall replace in total that certain document entitled "Declaration of Restrictive Covenants (Headwater Creek)" dated February 14, 1994, and recorded in Official Records Book 1741, Page 1904, of the Public Records of Leon County, Florida. This amendment is made pursuant to Article VIII of the original Restrictive Covenants. Declarant owns all of the property as described in Exhibit "A" at the time of this amendment.

ARTICLE I - DEFINITIONS

1. "Declarant", as used herein, shall mean JIMMY BOYNTON REALTY, INC. and BUBBA SEAY, the owners of the property described in Exhibit "A".

2. "Association" shall mean HEADWATER CREEK HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit.

3. "Easement" shall mean that certain easement for ingress, egress and utilities given by Declarant to all of the current or future owners of the lots within HEADWATER CREEK SUBDIVISION. The Easement either has been or will be recorded in the Public Records of Leon County, Florida. The Easement describes the roadways within the subdivision as shown on the plat of HEADWATER CREEK.

OR 1753 PG 1925

4. "Lot" shall mean a parcel of land contained in the property described in Exhibit "A". The property is divided into "lots" as shown on the plat of HEADWATER CREEK prepared by BOBBY A. PRESNELL & ASSOCIATES, which plat either has been or will be recorded in the Public Records of Leon County, Florida.

5. "Maintenance" shall mean the exercise of reasonable care to keep the roads, landscaping, drainage and other related improvements in good repair and condition.

6. "Member" shall mean every person or entity that holds membership in the Association.

7. "Subdivision" shall mean the property described in Exhibit "A" as divided into lots as shown on the plat of the property that either has been or will be recorded in the Public Records of Leon County, Florida.

8. "Owner" shall mean the record owner, whether one (1) or more persons or entities, of a legal or beneficial interest in a lot, but shall not include those holding title as security for the performance of an obligation.

**ARTICLE II - MEMBERSHIP AND
VOTING RIGHTS IN THE ASSOCIATION**

1. Membership: Any person who owns property that is subject to these restrictions shall automatically be a member of the Association, provided, however, that where any lot is owned by more than one (1) person, one (1) of the owners shall be designated to cast the vote on matters to come before the Association on behalf of all of the owners of the lot. In the event the owner of a lot is a corporation or partnership, a partner or corporate officer shall be designated to cast the vote on behalf of the partnership or corporation. The Association shall be governed by a Board of Directors elected by the members of the Association. The first election of directors shall be held before fifty percent (50%) of the lots have been sold by the developer.

OR 1753 PG 1926

"Class A" - Class A membership shall be all owners with the exception of the Declarant, and shall be entitled to one (1) vote for each lot owned.

"Class B" - Class B membership shall be the Declarant, who shall be entitled to exercise two (2) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership.

ARTICLE III - ASSESSMENTS

1. Liens and Personal Obligations of Assessments: Each owner of a lot by acceptance of his deed for such lot, whether or not it is expressed in his deed, agrees to pay the assessments as provided in this Article.

2. Annual Assessments: Annual assessments shall be paid by each lot owner to the Association. The annual assessment for the year 1994, shall be Seventy-Five Dollars and No Cents (\$75.00) for each lot owned within the subdivision. For the year 1995, and each subsequent year, the annual assessment may be increased by a vote of the Association, not to exceed ten percent (10%) over the assessment of the previous year. Declarant shall not be subject to annual assessments or to special assessments as provided for below until such time as its Class B voting rights are converted to Class A voting rights as provided for in Article II above.

3. Special Assessment: In addition to the annual assessments, the Association shall have a special assessment in any year for the purpose of defraying in whole or in part, the cost of maintenance or repair of the roads, streets, common areas and facilities including drainage easements and rights of way providing ingress and egress in the subdivision. Such assessment will begin within one (1) year after construction of the private streets or roads or other common facilities. Declarant shall not be subject to special assessments until more than fifty percent (50%) of the lots have been sold or deeded away. The owner of each lot within

OR 1753 PG 1927

Attached as Exhibit "B" to these Amended Restrictive Covenants is an estimate prepared by a Florida registered civil engineer, reasonably estimating the total maintenance and replacement cost of the roadways within the easement. A reasonable portion of the annual and special assessments as determined by the Board of Directors of the Association shall be set aside for future major road repairs and replacements.

4. Effect of Nonpayment of Assessments and Remedies of the Association: Any assessment not paid within sixty (60) days after the due date shall be deemed in default and shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same. In addition to filing suit for collection, the Association may file a claim of lien for the past due assessments that will be an encumbrance against the lot owned by the person in default. The Association may foreclose the lien to enforce payment of the assessments due. No owner may waive or otherwise escape liability for assessments provided for herein by abandonment of his lot.

5. Subordination of Assessment Lien: The assessment liens provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of a lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the assessment lien as to the payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due.

ARTICLE IV - EASEMENTS

Within the easements as shown on the plat of HEADWATER CREEK SUBDIVISION, no structure, plant or other object shall be placed or permitted to remain which may damage or interfere or

OR 1753 PG 1928

roadway easement and drainage facilities and any other common area improvements shall be conveyed to the Association before more than seventy percent (70%) of the lots within the subdivision have been sold by the Declarant. After the Association obtains fee simple title to the roadways and easements, if two-thirds (2/3) of the owners of two-thirds (2/3) of property abutting the roadways presents the Association with a signed petition proposing that the Association dedicate the roadway to Leon County, and if Leon County elects to take title to the roadways, then the Association shall make such dedication. Until such dedication, HEADWATER CREEK HOMEOWNERS ASSOCIATION, INC. is responsible for the maintenance of all roadway and drainage easements within HEADWATER CREEK SUBDIVISION and shall not dedicate the roadways except as provided herein.

ARTICLE V - USE RESTRICTIONS

The subdivision shall be occupied and used only as follows:

1. Each lot shall be used for single family residential purposes only.

2. No mobile home that is five (5) years or older, regardless of size, shall be placed within the subdivision until approved by the Declarant. If no action has been taken after thirty (30) days from the date in which the approval of a mobile home has been made, then approval shall be presumed. Approval shall be based on compliance with these restrictions and location on the property. Approval shall not be arbitrarily withheld. If the Declarant should die or sell all of the property he owns within the subdivision without appointing a successor to exercise the powers provided in this paragraph, the Homeowners Association shall appoint a committee as successor to the Declarant.

3. Out buildings or accessory buildings are permitted as long as construction of the buildings is compatible with the construction and appearance of the main residence.

4. No building or residence shall be located nearer than sixty (60) feet from the centerline of any roadway and shall otherwise comply with all county setback regulations.

5. All conventionally built homes shall contain at least nine hundred (900) square feet of heated and cooled area, exclusive of porches and garages. All mobile homes shall contain at least seven hundred (700) square feet, and all modular homes shall contain at least seven hundred (700) square feet of heated and cooled space, exclusive of porches and garages.

6. No hogs shall be kept on any of the lots within the subdivision, nor shall any animal be kept on any lot that causes nuisance or annoyance because of noise or smell.

7. No noxious or offensive activity shall be carried on upon any lot, nor shall any act be committed which would constitute an annoyance or nuisance to the other residents in the subdivision or to the general public.

8. No commercial enterprise shall be allowed to exist in the subdivision.

9. Any major mechanical or repair work performed on any motor vehicle shall be done in an enclosed garage or carport and shall not be visible from the street. All inoperable motor vehicles must be removed from the subdivision within fourteen (14) days unless stored out of sight in a barn or shed.

10. No mobile homes shall be placed on any lot unless such mobile home has been manufactured by a company engaged in the manufacture of mobile homes. It is the intention of this restriction to prohibit the location of any "homemade" mobile home on any lot.

ARTICLE VI - WAIVER

So long as the Declarant owns any property within the subdivision, he shall have the authority to waive the enforcement of any of the provisions of Article V, so long as strict enforcement would result in unnecessary hardship. Once the Declarant has sold all of the property owned by him within the subdivision, this

OR 1753 PG 1930

right to waive enforcement of the Use Restrictions in Article V shall be conferred to the Association.

ARTICLE VII - ENFORCEMENT

The Declarant, **HEADWATER CREEK HOMEOWNERS ASSOCIATION, INC.**, or the owner of any lot subject to these restrictions, may bring an action to enforce these restrictions in any court of competent jurisdiction. The prevailing party in any such litigation shall be entitled to recover attorneys' fees and court costs.

ARTICLE VIII - AMENDMENT

Declarant, or its assigns, reserves the right to amend these Restrictive Covenants or the Articles or Bylaws of the Association until sixty-six and two-thirds percent (66 2/3%) of the lots in the subdivision have been conveyed by the Declarant. After sixty-six and two-thirds percent (66 2/3%) of the lots have been sold, these Restrictive Covenants and the Association Articles and Bylaws may then only be amended by a vote of not less than sixty-six and two-thirds (66 2/3%) of the lot owners without regard to the Class A or Class B voting rights. The right to amend these Restrictive Covenants, however, is subject to the following limitations:

1. Consent of County: Notwithstanding any rights of Declarant or the owners to amend these Restrictive Covenants as provided for in this Article to the contrary, any amendment to the Restrictive Covenants that attempts to modify any provision mandated by Sections 10-1556 (a)(1) through (a)(13) of the Leon County Code of Laws, being a part of Ordinance No. 92-9 (3/10/92), shall have the written consent and joinder of Leon County, in compliance with subsection (a)(14) of that Ordinance.

2. Scrivener's Errors and Nonmaterial Changes: Amendments for correction of scrivener's error or other nonmaterial changes may be made by Declarant alone until Declarant's Class B membership is terminated and by the Board thereafter and without

OR 1753 PG 1931

3. Limitations: Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, or of any institutional mortgagee under this Declaration without the specific written approval of the Declarant or institutional mortgagee affected thereby. Furthermore, notwithstanding anything to the contrary herein, no amendment shall be made which would increase the liabilities of a then owner or prejudice the rights of a then owner or his family, guests, invitees and lessees to utilize or enjoy the benefits of the then existing common areas unless the owner or owners so affected consent to such amendment in writing.

4. Effective Date of Amendments: Any amendment to this Declaration shall become effective upon a Certificate of Amendment to the Declaration setting forth the amendment or modification being recorded in the Public Records of Leon County, Florida.

ARTICLE IX - EFFECT

Each and every conveyance of any lot in this subdivision is expressly made subject to the provisions of this Declaration of Restrictive Covenants, whether or not the terms of such conveyance incorporates or refers to these provisions.

ARTICLE X - CONSTRUCTION

Once construction on any structure within the subdivision is begun, construction shall proceed continuously until completion. The construction period for a primary residence shall not exceed seven (7) months, unless approval is obtained from the Declarant or the Association.

ARTICLE XI - MISCELLANEOUS

1. Severability: In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect

or scope thereof shall be deemed limited to the maximum term and scope permitted by law. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or reduction in the scope or term of the same by reason of judicial application of the legal rules against perpetuities or otherwise shall in no way affect any other provisions which shall remain in full force and effect for such period of time and to such extent as may be permitted by law.

2. Notices: Any notice required to be sent to any member of owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

3. Interpretation of Declaration: The Board shall have the right and responsibility to determine all questions arising in connection with this Declaration and to construe and interpret the provisions of this Declaration in good faith.

4. Captions, Headings and Titles: Articles and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only, and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder nor the terms and provisions of this Declaration.

5. Context: Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof, and vice versa.

6. Attorneys' Fees: In connection with any litigation arising out of this instrument, including appeals, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees.

OR 1753 PG 1933

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictive Covenants to be executed the day and date first above written.

WITNESSES
(Please Type or Print Names Beneath Signatures):

JIMMY BOYNTON REALTY, INC.

Cynthia T. Ragans
s. Cynthia T. Ragans

By: James M. Boynton
JAMES M. BOYNTON,
Its President

Gena F. Corriveau
s. Gena F. Corriveau

Jennifer Latimer
s. Jennifer Latimer

Bubba Seay
BUBBA SEAY

Gena F. Corriveau
s. Gena F. Corriveau

STATE OF FLORIDA,
COUNTY OF LEON.

The foregoing Declaration of Restrictive Covenants pertaining to HEADWATER CREEK was acknowledged before me by JAMES BOYNTON, in his capacity as President of JIMMY BOYNTON REALTY, INC., a Florida Corporation, under oath and personally known to me, on this 1st day of August, 1994.

Gena F. Corriveau
NOTARY PUBLIC -
(Please Type or Print Name of Notary)

My Commission Expires:



GENA F. CORRIVEAU
MY COMMISSION # CC 206883 EXPIRES
December 29, 1995
BONDED THRU TROY FARM INSURANCE, INC.

STATE OF FLORIDA,
COUNTY OF LEON.

The foregoing Declaration of Restrictive Covenants pertaining to HEADWATER CREEK was acknowledged before me by BUBBA SEAY, under oath and personally known to me, on this 1st day of August, 1994.

Gena F. Corriveau
NOTARY PUBLIC -
(Please Type or Print Name of Notary)

My Commission Expires:

OR 1753PG1934

A part of lands described in Official Records Book 1485, Page 0154, of the Public Records of Leon County, Florida, and lying in Section 7, Township 1 South, Range 3 West, Leon County, Florida, described as follows:

COMMENCE at a found iron pipe 2" marking the Southwest corner of the Southwest Quarter of Section 7, Township 1 South, Range 3 West of Leon County, Florida; thence Northerly along the said Section 7 boundary line North 00 degrees 01 minutes 23 seconds West 6.65 feet to the Northerly right-of-way boundary of State Road No. 20 (66 foot right-of-way) for the POINT OF BEGINNING.

From said POINT OF BEGINNING and leaving said right-of-way boundary, thence continue Northerly along said Section 7 boundary line North 00 degrees 01 minutes 23 seconds West 3643.88 feet; thence South 89 degrees 54 minutes 56 seconds East 1760.08 feet to the Northwest corner of Whippoorwill Woods Subdivision (unrecorded); thence South 00 degrees 07 minutes 18 seconds West 1544.17 feet; thence South 89 degrees 58 minutes 21 seconds East 405.00 feet; thence South 00 degrees 06 minutes 50 seconds West 849.61 feet; thence North 89 degrees 53 minutes 10 seconds West 256.23 feet; thence South 07 degrees 07 minutes 13 seconds West 170.00 feet; thence South 89 degrees 53 minutes 10 seconds East 256.25 feet; thence South 00 degrees 06 minutes 50 seconds West 434.31 feet; thence North 53 degrees 25 minutes 27 seconds West 35.35 feet; thence South 81 degrees 45 minutes 44 seconds West 99.80 feet; thence South 00 degrees 06 minutes 50 seconds West 382.46 feet to the centerline of a 60 foot ingress/egress and utility easement known as Whippoorwill Drive; thence Westerly along said centerline South 89 degrees 37 minutes 44 seconds West 60.00 feet; thence leaving said centerline right-of-way North 00 degrees 06 minutes 50 seconds East 374.16 feet; thence South 81 degrees 45 minutes 44 seconds West 68.46 feet; thence North 33 degrees 33 minutes 47 seconds West 134.01 feet; thence North 80 degrees 27 minutes 59 seconds West 158.79 feet; thence South 89 degrees 42 minutes 30 seconds West 69.58 feet; thence South 00 degrees 22 minutes 16 seconds East 504.33 feet to the centerline of a 60 foot ingress/egress and utility easement known as Whippoorwill Drive; thence along said centerline South 89 degrees 37 minutes 44 seconds West 1545.66 feet, and a projection thereof; thence leaving said centerline South 00 degrees 01 minutes 23 seconds East 260.82 feet along the Easterly right-of-way boundary of said 60 foot roadway easement and a projection thereof; thence leaving said right-of-way boundary South 89 degrees 37 minutes 44 seconds West 8.32 feet to the aforesaid Northerly right-of-way boundary of STATE ROAD NO. 20; thence along said right-of-way boundary North 83 degrees 02 minutes 00 seconds West 52.07 feet to the POINT OF BEGINNING.

CONTAINING 147.756 acres, more or less.

A portion of the Southerly 30 feet thereof and the Westerly 60 feet of the Southerly 260.82 feet subject to a 60 foot ingress/egress and utility easement.

OR 1-753 PG 1935

SURVEYING



ENGINEERING

BOBBY A. PRESNELL AND ASSOCIATES INCORPORATED
1221 COMMERCIAL PARK DRIVE SUITE #1
TALLAHASSEE, FLORIDA 32303

— 386-3462 —

July 26, 1994

Mr. Jimmy Boynton
743 East Tennessee Street
Tallahassee, Florida 32308

RE: Roadway Maintenance Estimate - Headwater Creek Subdivision

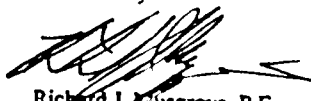
Dear Mr. Boynton:

As per your request, I am pleased to forward our estimate of annual roadway maintenance costs for the Headwater Creek Subdivision. These maintenance costs are estimated as follows:

Monthly Grading of Unpaved Roadways	\$350.00 per Month
Swale Mowing - Four Times per Year	\$500.00 per Year

The estimated annual expenditure, based on the above work, will be \$4700.00 per year.

Certified By:


Richard J. Musgrove, P.E.
Vice President, Engineering