

**Amended and Restated
Covenants, Conditions, and Restrictions
for Hickory Creek
(Units 1, 2, 3 and 4)**

THIS DECLARATION is made on the date hereinafter set forth by HICKORY CREEK ASSOCIATION, INC., a Florida non-profit corporation, doing business as HICKORY CREEK ASSOCIATION, hereafter referred to as "Association".

WITNESSETH:

WHEREAS, Association is the owner of all the common areas in the Hickory Creek subdivisions described as:

Hickory Creek, Unit One, as recorded in Plat Book 45, Pages 96, 96A, 96B, and 96C; Unit Two, as recorded in Plat Book 43, Pages 71, 71A, 71B, 71C; Unit Three, as recorded in Plat Book 44, Pages 59 and 59A; Unit Four, as recorded in Plat Book 45, Pages 61, 61A, 61B and 61C, of the current public records of Duval County, Florida, hereinafter referred to as the "Plat".

WHEREAS, the Association has the right and authority to enforce covenants, conditions and restrictions for the benefit of all of the owners of the properties in the above-described subdivision.

NOW, THEREFORE, Association hereby declares that all of the properties and the common areas therein described above shall be subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall insure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

1. **"Association"** shall mean and refer to the Hickory Creek Association, Inc., a Florida non-profit corporation, its successors and assigns.
2. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. **"Properties"** shall mean and refer to all lots and common areas in the above-described subdivision and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. **"Common Areas"** shall mean all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.
5. **"Lot"** shall mean and refer to the building plots of land (improved and unimproved) shown upon the recorded subdivision plat of the properties and subdivisions described above.

ARTICLE II - PROPERTY RIGHTS

1. Owner's Easements of Enjoyment. Every owner and the Association shall have a right and easement of enjoyment in and to any Common Area which shall be appurtenant to and shall pass with the title to every lot (improved and unimproved), subject to the following provisions:

a. the right of the Association to charge reasonable admission and other fees for the use of any recreational facility hereafter situated upon any Common Area;

b. the right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, as to any owner for any period during which any assessment against such owner's lot remains unpaid.

c. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by its members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds of all votes eligible to be cast by members of the Association.

2. Delegation of Use. Any owner may delegate, in accordance with the by-laws, such owner's right of enjoyment to the Common Area and facilities to the members of such owner's family, tenants, or contract purchasers who reside on the property.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

1. Assessment. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

2. Membership. The Association membership shall be all owners and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. Each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: 1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (3) any and all fines levied by the Association for the violation of these covenants. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment and/or fine, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment or fine fell due. The personal obligation for delinquent assessments or fines shall not pass to such owner's successors in title unless expressly assumed by them, but the lien shall survive any conveyance of title.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in Hickory Creek and for the improvement and maintenance of the common areas, islands in roadways, Hickory Creek Boulevard fence systems, signs, lakes and lake systems. Said maintenance, in addition to the foregoing, shall include the continual maintenance and cleaning of the filter system for drainage and the storm water management system required by the Department of Environmental Regulation and/or the St. Johns River Water Management District. Said continual maintenance and cleaning shall be the sole responsibility of the Association.

3. Maximum Annual Assessment. The initial maximum assessment shall be \$88.06 per year per lot, commencing on the 11th day of May, 2010.

a. The maximum assessment may be increased each year but not more than 5% above the maximum assessment for the previous year without a vote of the membership, to include notification and explanation to owners prior to billing.

b. The maximum assessment may be increased more than 5% by a vote of two-thirds of members who are voting in person or by proxy, at a meeting duly called for such purpose.

c. The Board of Directors shall fix the assessment annually at amounts not in excess of the maximum, except as may be increased pursuant to the above.

4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, re-construction, repair or replacement of a capital improvement upon any common area, including fixtures and personal property related thereto; provided that any such special assessment shall have the assent of two-thirds of the votes of members who are voting in person or by proxy at a meeting duly called for such purpose.

5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 30% of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a quarterly basis.

7. Date of Commencement of Annual Assessments. The Board of Directors of the Association shall fix the amount of the annual assessment against each lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of 10% per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property involved, or both. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of such owner's lot.

9. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments becoming due or from the lien thereof.

ARTICLE V - LAND USE AND BUILDING TYPE

1. Land Use and Building Type. No one shall use any lot except for single-family residential purposes. Unless otherwise specifically allowed or permitted under these covenants, no structure shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height. No out-building or other structure at any time situate on said land shall be used as a hospital, sanitarium, church, charitable, religious or philanthropic institution, or for business or manufacturing purposes, and no duplex residence, garage apartment or apartment house shall be erected or placed on or allowed to occupy said land. These terms may not be modified by variance approval of any governmental agency, nor any Association committee.

2. Garage. Each home shall have an attached two car garage. No garage shall be permanently enclosed or converted to another use. All garages shall contain at least 400 square feet of usable space appropriate for parking automobiles. All garages must have doors which shall be maintained in a proper working condition, free of rot, rust and deterioration (including windows), and shall be kept closed when not in use. Carports shall not be permitted and the terms of this section may not be modified by variance approval of any governmental agency, nor any Association committee.

3. Outbuildings. No outbuilding shall be erected, placed or altered on any lot without the prior written submission of a variance request and written approval by the Board of Directors via the Architectural Control Committee (hereinafter ACC), and has been determined not to be in conflict with Article V, section 6 of these covenants. No metal building may be approved. Specific building dimensions and barriers shall be determined by the ACC for presentation to the Association based on lot size, location and any other specific circumstances and must have been determined not to be an infringement upon other owners' viewing or property rights. All approved buildings will be accompanied with appropriate landscaping to be determined by the ACC upon original written approval. It will be the responsibility of the property owner to ensure all required city and state permits are obtained and submitted with the variance request.

4. Approval of Structure. No residence, structure, wall or swimming pool shall be erected, placed or altered on any lot unless and until the construction plans and specifications and a plan showing the location of the structure have been approved in writing by the Board of Directors via the Architectural Control Committee as to quality of workmanship and materials, harmony

of external design with existing structures, and as to location of improvements with respect to topography and finished grade elevation. No exposed block or built up roof will be permitted in the construction of any dwelling. Approval shall be as provided in paragraph 21 below. No fence, wall or structure of any kind will be permitted below the top of the slope of the lake bank as shown on the final survey on waterfront lots and are not an option for a variance application. Exceptions for bulkheads for property preservation will be reviewed on a case by case basis. Docks shall not be permitted and are not an option for a variance application.

5. Dwelling Size. Unless specifically approved in writing by the Board of Directors via the Architectural Control Committee, no dwelling shall be permitted on any lot unless the ground floor area of the main structure, exclusive of one-story open porches and garages, shall contain at least 1400 square feet for a one-story dwelling and at least 900 square feet for the ground floor of a dwelling of more than one story, with at least 1400 square feet for both stories combined.

6. Building Location. No building shall be located on any lot nearer than 25 feet to the front line or nearer than 15 feet to any side street line. No building shall be located nearer than 7.5 feet to an interior lot line. No dwelling shall be located on any lot nearer than 10 feet to the rear lot line, or nearer to the rear lot line than the rear building restriction line. No dwelling shall be located closer than 15 feet from any existing dwelling. The Architectural Control Committee is authorized to issue a variance in regard to the above measurements as it may deem prudent on a case by case basis.

7. Lot Area. No dwelling shall be erected or placed on any lot having an area of less than 8,800 square feet.

8. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

9. Recreational and Commercial Vehicles. No commercial vehicles, recreational vehicles, boats or trailers of any type shall be permitted to be placed on any lot subject to these covenants, unless such shall be placed or parked in a fenced side yard or fenced rear yard of a lot, but not placed in the side yard of a corner lot on the side abutting a street. No wheeled vehicles of any kind or any other offensive objects may be kept or parked in a state of disrepair between the paved road and residential structures. Travel trailers and motorized homes shall not be permitted. No automobiles, trailers, recreational vehicles or boats shall be parked in the roadways or on the right-of-way adjoining the lots or between the paved road and residential structures. For purposes of this paragraph, a vehicle which is a 3/4 ton or less truck used as transportation to and from the lot owner's employment shall not be considered a commercial vehicle. Exceptions for maintenance of boats, travel trailers, recreational vehicles and motorized homes may be considered by the ACC upon prior written application and if approved, for no more than seven consecutive days.

10. Temporary Structures. No structure of a temporary character, trailer, tent, motorized home, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

11. No Subdivision. No lot located within Hickory Creek shall be subdivided to constitute more than one building plot.

12. Mailboxes. No individual lot owner shall cause to be constructed any mailbox facility other than the cluster mailbox receptacles provided and approved by the United States Postal Service.

13. Fences. No fence shall be installed which restricts or prohibits ingress and egress as granted by easements herein. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the rear of the house or the side of the house in the case of a corner lot unless approved by the Board of Directors via the Architectural Control Committee and in no event shall any fence exceed a maximum height of six (6) feet or be lower than a minimum height of five (5) feet unless approved by the ACC. All fences shall be constructed and maintained to present a pleasing appearance as to quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finished grade elevation. Front yard and chain link fences shall not be permitted and are not subject to any variance. The Association has the right to release from such requirements areas such as sewer lift stations, play grounds, etc. from the above fence restrictions.

14. Signs. No sign of any kind shall be displayed to the public view on any lot without the prior written approval of the Board of Directors via the Architectural Control Committee except one sign of not more than two square feet advertising the property for sale, or after one (1) year from the closing date on the lot, one sign of not more than two (2) square feet advertising the property for rent, or signs used by a builder to advertise the property during the construction and sales period. The entranceway identification signs shall be exempt from this provision and shall remain for the enjoyment of the owners of all lots. The Architectural Control Committee shall have the right to promulgate standards for the quality, size, appearance, location and type of all signs to be displayed to public view. Security System signs are the only exception to this rule.

15. Clotheslines. Clotheslines shall not be in public view.

16. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

17. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial use.

18. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Rubbish, trash, garbage or other waste shall be kept in closed sanitary containers constructed of metal or rigid plastic. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall not be visible from the street except on scheduled garbage pick up days.

19. Motorists' Vision to Remain Unobstructed. No fence, wall, hedge, shrub, bush, tree or other thing, natural or artificial, placed or located on any lot, if the location of same will, in the

sole judgment and opinion of the Architectural Control Committee, obstruct the vision of motorists upon any of the streets.

20. Landscaping. The mass indiscriminate cutting down of trees is expressly prohibited without the written consent of the Architectural Control Committee, EXCEPT those areas where buildings and other improvements shall be located; i.e. homes, patios, driveways, gardens, parking and recreational areas, etc. Also, selective cutting and thinning for lawns and other general improvements shall be permitted. All yards shall be maintained to present a neat and pleasing appearance. Lawns shall be mowed and trimmed and contain a minimum amount of weeds. All disturbed areas on any lot must be seeded or covered with sod or mulch and maintained to present a pleasing appearance and to prevent the growth of weeds. Shrubs shall be trimmed and maintained. Plants and trees shall be trimmed and maintained to present a pleasing appearance. It is the responsibility of each lot owner whose lot abuts a lake to maintain the lake bank to the waters' edge (avoiding vegetation planted by the Association or agent contracted by the Association for the purpose of algae control and oxygenation). If any tree falls or grows into the lake, it is the sole responsibility of the owner of the lot where the tree has entered the lake to have it removed. It is the responsibility of each lot owner to maintain the area between the front property line of his lot and the street, as well as the side property line and the street in the case of corner lots. It is the responsibility of each lot owner to prevent erosion on all areas of his lot, including easements, by sodding, seeding and mulching, or other methods which may be deemed appropriate.

21. Architectural Control Committee.

a. **Membership.** The Architectural Control Committee shall be composed of three persons appointed by the Board of Directors of the Association. A majority of the committee may designate a representative to act for it. In the event of the death or resignation of any member of the committee, the Board of Directors shall designate a successor. Only one (1) member of each household shall be allowed to serve either on the Board of Directors or Architectural Control Committee simultaneously. Neither the members of the ACC nor its designated representative shall be entitled to any compensation for services performed pursuant to these covenants.

b. **Procedure.** The ACC shall present all variance requests along with the ACC recommendations to the Board of Directors for approval. The board's approval or disapproval as required in these covenants shall be in writing. In the event the board fails to approve or disapprove a written variance request within thirty (30) days after the plans and specifications and all governmental approvals have been submitted to it, ACC approval will not be required and the related covenants shall be deemed to have been fully complied with.

22. Utility Lines. All water, sewer, electrical, telephone, television, gas and other utility lines shall be placed underground.

23. Air Conditioning units. No air conditioning units may be installed in any window if such unit shall be visible from any public street. This covenant shall not be subject to variance requests.

24. Driveways. Unless approved in writing by the Board of Directors via the Architectural Control Committee, there shall be only one driveway per lot, said driveway serving the garage on the lot. All changes to existing driveways (i.e., pavers, cobblestones, tiles, shape, material,

color, aesthetics, etc.) shall be subject to written approval of the ACC through written variance application.

25. Utility Provisions. The City of Jacksonville or its successors has the sole and exclusive right to provide all water and sewer facilities and service to the property described herein. No well of any kind shall be dug or drilled on any one of the lots or tracts to provide water for use within the structures to be built, and no potable water shall be used within said structures except potable water which is obtained from the City of Jacksonville or its successors or assigns. Nothing herein shall be construed as preventing the digging of a well to be used exclusively for use in the yard and garden of any lot or tract or to be used exclusively for air conditioning. All sewage from any building must be disposed of through its sewage lines and through the sewer lines and disposal plant owned or controlled by the City of Jacksonville or its successors or assigns. No water from air conditioning systems, ice machines, swimming pools, or any other form of condensate water shall be disposed of through the lines of the sewer system. The City of Jacksonville has a non-exclusive perpetual and unobstructed easement and right in and to, over and under property as described in this Declaration and the plat of the Property for the purpose of ingress, egress and installation and/or repair of water and sewage facilities. Any liquid, gas or propane above ground storage tanks shall be constructed from public view by fence or landscaping.

26. Enforcement. Any person owning any portion of the above described lands may institute proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain any existing or threatened violation or to recover damages. The prevailing party in any such litigation shall be entitled to recover reasonable attorney's fees and costs.

27. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions hereof which shall remain in full force and effect.

28. Indemnification. The owner or owners of all lots abutting the lakes within Hickory Creek shall, by virtue of having acquired said lots subject to these covenants and restrictions, be deemed to have assumed all of the obligations and responsibilities as set forth in the Plat of Hickory Creek, Units One, Two, Three and Four.

29. Amendment. The covenants and restrictions of this Restated Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than 66% of the lot owners.

30. Legal Action on Violation. If any person, firm or corporation, or other entity shall violate or attempt to violate any of these covenants and restrictions, the Board of Directors or any person or persons owning any lot on said land may (a) proceed at law for the recovery of damages against those so violating or attempting to violate any of such covenants and restrictions; and (b) maintain a proceeding in equity against those so violating or attempting to violate any such covenants and restrictions, for the purpose of preventing or enjoining all or any of such violations or attempted violations. The remedies contained in this paragraph shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Board of Directors, its successors or assigns, to enforce any covenant or restriction or any

obligation, right, power, privilege, authority, or reservation herein contained, however long continued, shall in no event be deemed as a waiver of the right to enforce the same hereafter as to the same breach or violation thereof occurring prior to or subsequent thereto. Lot owners found in violation of these restrictions shall be obliged to pay attorney's fees to the successful plaintiff in all actions seeking to prevent, correct or enjoin such violations or in damage suits thereon. All restrictions herein contained shall be deemed several and independent.

31. Bids and Contracts. A minimum of three bids must be obtained by the Board of Directors in regard to contract work for the Association. Contracts shall last no longer than three years without review and reconsideration.

32. Fines for Violations of the Covenants and Restrictions. The Association may levy fines as established by the Board of Directors upon lot owners who violate any of these covenants and may recover same, including attorney's fees incurred by the Association whether or not suit is filed and may enforce same at law and the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees.

IN WITNESS WHEREOF, the Board of Directors of the Association has executed this instrument this 11th day of May, 2010.

IRV NORWOOD
Witness signature
IRV NORWOOD
Witness printed name

HICKORY CREEK ASSOCIATION, INC.
BY: *Jeffery G. Broekman*
It's President

Billie Maynard
Witness signature
Billie Maynard
Witness printed name

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 19 day of May, 2010, by Jeffery G. Broekman, as President of the Hickory Creek Association, Inc., who has executed same on behalf of said corporation and who has produced DL as identification or who is by me personally known.

Sheila Waters
Signature of Notary
Sheila Waters
Printed name of Notary

