

# BLUERIDGE LAW

GRACE PROFESSIONAL BUILDING  
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CROSS REFERENCE TO: DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS AND TERMS AND CONDITIONS GOVERNING EAGLES NEST A PLANNED COMMUNITY IN POLK COUNTY, TENNESSEE, recorded in MS Book 124, Pages 392-410, Polk County Deed records.

**RETURN RECORDED DOCUMENT TO:**

**(Recording Information)**

Blue Ridge Law  
931 East Main Street  
Blue Ridge, GA 30513  
File # Eagles Nest Retreat

STATE OF TENNESSEE  
COUNTY OF POLK

**AMENDMENT #1 TO:**

**DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,  
RESERVATIONS AND TERMS AND CONDITIONS GOVERNING  
EAGLES NEST A PLANNED COMMUNITY IN  
POLK COUNTY, TENNESSEE**

This AMENDMENT #1 to DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS AND TERMS AND CONDITIONS GOVERNING EAGLES NEST A PLANNED COMMUNITY IN POLK COUNTY, TENNESSEE recorded in MS Book 124, Pages 392-410, Polk County Deed records is made this \_\_\_ day of October, 2010, by DIVERSIFIED ENVIRONMENTAL SOLUTIONS, LLC, BY AND THROUGH ITS MANAGER, RICHARD ANSBAUGH, (hereafter referred to as “Declarant”) and \_\_\_\_\_:

**WITNESSETH:**

WHEREAS, Declarant’s predecessor Declarants recorded that certain DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS AND TERMS AND CONDITIONS GOVERNING EAGLES NEST A PLANNED COMMUNITY IN POLK COUNTY, TENNESSEE recorded in MS Book 124, Pages 392-410, Polk County Deed records (the “Covenants”); and

WHEREAS, in reference to amendments to the Covenants, the Covenants require “. . . approval of two thirds (2/3) of each class of Members . . .”; and

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WHEREAS, the classes of members are as follows:

Class A: “Class A Members shall be all Owners with the exception of Declarant . . . “ – The sole existing members of Class A are:

\_\_\_\_\_ – owners of Lot 6 of Eagle’s Nest Subdivision (2.72 acres)

Class B: “Declarant shall be a Class B Member and shall be entitled to four (4) votes for each Lot owned.”

WHEREAS, Orges and Declarant now desires to modify certain provisions of the Covenants;

NOW THEREFORE, Declarant and Orges modify, amend and alter the provisions of the Covenants, restating said Covenants in their entirety;

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## **DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR EAGLES NEST**

### **DECLARATION OF HOMEOWNERS’ ASSOCIATION FOR EAGLES NEST**

### **ROAD EASEMENT AND UTILITY EASEMENT AND EROSION CONTROL EASEMENT FOR EAGLES NEST**

### **EROSION AND SEDIMENTATION AGREEMENT/HOLD HARMLESS/INDEMNIFICATION**

### **FEEES FOR MUNICIPAL WATER AND EASEMENT AGREEMENT WATER USE, MAINTENANCE AND EASEMENT AGREEMENT FOR EAGLES NEST**

### **CONTROLLED ACCESS PROVISIONS FOR EAGLES NEST**

This DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR EAGLES NEST, DECLARATION OF HOMEOWNERS’ ASSOCIATION FOR EAGLES NEST, ROAD EASEMENT AND UTILITY EASEMENT AND EROSION CONTROL EASEMENT FOR EAGLES NEST, EROSION AND SEDIMENTATION AGREEMENT / HOLD HARMLESS/INDEMNIFICATION, FEES FOR MUNICIPAL WATER AND EASEMENT AGREEMENT/WATER USE, MAINTENANCE AND EASEMENT AGREEMENT FOR EAGLES NEST and CONTROLLED ACCESS PROVISIONS FOR EAGLES NEST is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by Diversified Environmental Solutions, LLC, by and through its Manager,

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## WITNESSETH:

WHEREAS, Declarant and Orges are the fee simple owners of all that tract or parcel of land being more particularly described below with any additional property added hereto by amendment (hereinafter referred to as the "Submitted Property"), said property being further described as follows:

All that tract or parcel of land lying and being in Section #30; Fractional Township 3 South; Range 5 East of Ocoee Basis Line; Third Civil District of Polk County, Tennessee, being shown as Eagle's Nest Subdivision on a plat of survey by Ocoee Land Surveying, Doyle A. McCracken, TN RLS #745, dated February 20, 2007, revised March 20, 2007, and recorded in Polk County Records in Plat Book 11, Page 118. Said plat is incorporated herein, by reference hereto, for a full and complete description of the above described property.

WHEREAS, Declarant desires to enhance the value and provide for the uniform development of the Subdivision;

NOW, THEREFORE, the Declarant hereby declares that the Submitted Property shall be held, conveyed, encumbered, used, occupied, and improved subject to the following additional covenants, restrictions and easements, all of which are in furtherance of a plan for subdivision, improvement and sale of real property and every part thereof. The covenants, restrictions and easements set forth herein shall run with the land and shall be binding on all parties having or acquiring and right, title or interest therein or thereto, and shall, subject to the limitations herein provided, inure to the benefit of each "Owner" (as hereinafter defined), his heirs, successors, and assigns.

## **DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR EAGLES NEST**

1. The exterior of all structures to be constructed on any of said lots shall be completed within one (1) year from date that construction begins. Outside landscaping must also be completed within the one (1) year time period, completed landscaping meaning that all areas are covered with natural growth, grass, sod, shrubs, trees and/or mulch. No bare dirt shall be exposed except during construction.
2. No dwelling shall contain less than 900 square feet of heated living area on the main floor (not counting any footage in the basement of the home), exclusive of garages, covered walks, open and/or screened porches, patios, terraces, pool areas or other similar areas, with total square heated living area square footage of no less than 900 square feet. All exterior surfaces shall be covered in a fashion to blend with the natural environment of the submitted property, including but not limited to stone combinations, wood or log (log siding is permissible, but no sheet materials (including but not limited to T-111) with cedar shake and board and batton are specifically allowed), but all in earth tones. In general, only wood siding or wood products are allowed. Roofing materials must be factory painted metal (colored roofs are allowed if approved by the Architectural Review Board, with Green (forest), Grey, Brown and Black generally being pre-approved as roof colors), slate, cedar shakes, or architectural shingles. No vinyl siding may be used. The roof pitch must be at least 7/12. Design and materials shall be approved by the Architectural Review Board. All exterior foundation materials shall be "rocked" in a manner to be consistent with the remainder of the dwelling.

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3. No inoperative cars, motorcycles, trucks, or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, that this provision shall not apply to any such vehicle being kept in an enclosed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the subdivision. All vehicles shall have current license plates.
4. No mobile, modular, prefab home or homes constructed in whole or in part off of any Lot will be allowed on any Lot. No prefabricated outbuildings shall be allowed on any Lot. No structure of a temporary nature shall be used as a residence either temporarily or permanently (including but not limited to trailers, basements, tents, shacks, garages, or barns). The owner of a lot may erect an attached garage or outbuilding if the structure is fashioned in appearance and likeness to the design of the main residence. Any garage or outbuilding will be enclosed completely.
5. Trailers and Commercial Vehicles - No parking of any travel trailer, or motor home (unless, in the case of a travel trailer or motor home, said travel trailer or motor home is housed in a completely enclosed garage), truck (excluding pickup truck), camper, tent, or other similar vehicle shall be placed on the property at any time for a period exceeding (48) hours. No industrial, commercial or farm equipment or vehicles, including without limitation dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on the Property, except for so long as necessary for use in connection with ongoing construction.
6. 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 that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. Large and/or potentially vicious breeds of dogs are specifically excluded, and may not be raised, bred or kept on any lot. Any animals must be under the control of the owner at all times.
7. Except during the construction of permanent improvements thereon, no Owner shall excavate or extract earth from any lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding lots unless approved by the Architectural Review Board.
8. Driveways, landscaping and the general appearance of an owner's lot shall be maintained in good order. To prevent mud and other debris from being tracked onto the street, a construction drive must be installed prior to beginning construction on the foundation and maintained until the permanent drive is completed. All permanent drives must be surfaced in a fashion to minimize impact on subdivision roads at the point of intersection with same.
9. Garbage and trash - No trash, garbage, or other waste material or refuse shall be placed or stored on any Lot except in covered sanitary containers. All such sanitary containers must be stored in each home, or within an enclosure designed therefore, which must be at least five (5) feet from any Lot line.

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10. Homeowners shall be responsible for the acts of their employees, sub-contractors, suppliers and other persons or parties involved in construction or alteration of a home site. In this regard, homeowner shall be responsible for ensuring:
  - a. That the construction site is kept clean and free of debris and waste material.
  - b. That stockpiles of unused materials are kept in a neat and orderly fashion.
  - c. That a freestanding, enclosed toilet (Port-a-Pot) be installed on the lot prior to beginning construction of the primary residence and removed as soon as residence is completed.
  - d. That no lot clearing debris or waste material is disposed of by burning or burying on any lot (Exception: Developer may clear and burn as needed to improve the appearance of the subdivision.)

Any damage to subdivision roads or other common property during construction of a new home shall be the responsibility of the homeowner. In addition, lot owners shall pay the Homeowner's Association a one-time \$250.00 Road Impact Fee, due at closing of the sale from Declarant (one fee per lot purchased).

11. All Lots shall be used for residential purposes only and no business or business activity shall be carried on upon any Lot at any time, with the exception that rentals of homes in the submitted property shall be allowed for a period not to exceed thirty (30) consecutive days, and said homes not to be used as rental residential primary residences. For any rentals made, there shall be an adult over the age of (25) onsite at all times that there is a person or persons less than (25) years of age onsite. The owner of the property shall remain responsible for conduct of guests and their compliance with these covenants. There shall also be an exception for home-based businesses involving no retail traffic or storage of inventory or equipment.
12. No utility trailer, junk nor household appliances shall be kept, stored or repaired in plain view on any lot, except that such may be kept, stored, or repaired in an enclosed building so as not to be subjected to view by lot owners or from subdivision roads.
13. Satellite Dishes / Antennas – Satellite dishes thirty six (36”) inches or less in diameter are permitted, but no satellite dish greater than thirty six (36”) shall be allowed. No external antennas shall be permitted on any lot. No antenna or satellite dish may be visible from any subdivision street.
14. Outdoor lighting - All outdoor lighting shall be so shaded and directed such that the light therefrom is directed to fall only on the same premises where light sources are located.
15. Clotheslines - No garments, laundry, rugs or other articles may be aired or dried on any Lot.
16. Personal recreational vehicles such as motorcycles or ATVs shall be operated in a safe manner at a moderate speed (not to exceed 15 mph), and shall be operated in a fashion such that they are not a nuisance to comfort, convenience and peaceful enjoyment of adjoining properties by their owners.

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17. Construction – construction on any lot shall only be permitted during the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday. Construction shall be prohibited on Sunday.
18. No structure shall draw power from a temporary pole except as necessary for the construction of a permanent home. Power shall be hooked up permanently, and all power must be run underground.
19. No barbwire or chain link fencing shall be allowed. Fences made of wood or stone are permitted as long as they are done in earth tones and compliment the main residence. Fences shall be no higher than four (4) feet. The only exception is the installation of a privacy fence around an in-ground pool.
20. Playground equipment and/or children’s toys shall be located behind the dwelling.
21. No lot owner may remove or top more than fifty (50%) percent of existing tree growth; said fifty percent to be distributed equally over the entire acreage of any lot, with the except that clear cutting shall be permitted for purposes of construction of a permanent dwelling house to an area not to exceed fifteen (15) feet out (in all directions) from the foundation of the structure, plus any attached decking. Only the Architectural Review Board may exceed these dimensions, with a fee due (an assessment) of \$1,000.00 to the Property Owner’s Association for EACH tree cut or topped in excess of these dimensions.
22. No lot shall be used in whole or in part for any illegal activity. No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, or the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye. No substance, thing or material shall be kept on any lot that will emit foul or obnoxious odors or that shall cause noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property.
23. All fuel storage tanks (including propane tanks), outdoor pools (which are subject to the Architectural Review Board’s review and only by approval of same), utility lines (including electrical, telephone, gas, water and cable television) or any wire or pipe shall be installed and maintained underground.
24. Mail receptacles must be constructed with similar material as used on the exterior of the main residence.
25. Declarant herein grants, to all owners of the above-referenced lots, all necessary easements for installation and maintenance of all current and future utilities, with said installations contemplated (but not limited) to be within an area adjacent to the road system. Only Declarant, his heirs and assigns shall be empowered to ever grant utility easements to properties not included in the “submitted property” as described above.  
  
All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconveniences caused there by the developer or any of their agents or servants are hereby waived by lot owners.
26. No portion of the above-described “submitted property” may be used to provide access to any property not a part of the “submitted property”.
27. No sign of any kind shall be displayed to the public view on any lot except such signs as comply with the provisions hereof. Builders may display such signs as are normally utilized to advertise the property

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during the construction and sales period. After an Owner closes his purchase on any lot in the subdivision, the only signs permitted on his lot will be: (a) a professionally prepared sign for identification purposes (not more than one square foot in area); and (b) a single sign to sell said lot of a type used by Brokers in the area, with the usual wording, such sign to be no more than four square feet in size. In the event any such sign is unsatisfactory, the sign will be removed. These limitations shall apply to signs of all types, including banners, signs on cloth, paper, cardboard or other materials.

28. There shall be no discharge of firearms at any time on the submitted property.
29. No parcel, or its configuration, as originally sold and conveyed by Declarant, shall be thereafter altered in size or configuration, or subdivided, by any parcel owner or his successors and assigns, provided that, Declarant reserves the unconditional right to alter the size or configuration, subdivide, or create new parcels, and/or to replat any unsold parcel, prior to its original sale and transfer to a parcel owner, and in such case any such altered or newly created parcels shall be subject to these covenants.

## **DECLARATION OF HOMEOWNERS' ASSOCIATION FOR EAGLES NEST**

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Homeowners' Association" or "Association" shall mean and refer to Eagles Nest Homeowners' Association, Inc., a non-profit corporation formed under the laws of the State of Tennessee, said non-profit corporation to be formed by "Developer" within three years of the recording date of this document.
- (b) "Properties" shall mean and refer to all such properties delineated as Eagles Nest.
- (c) "Common Properties" shall mean and refer to the portions of the Properties described as "common area(s)," "common drive(s)," or as "street(s)," "road(s)," "walkway(s)," "pathway(s)," "pond access," "dock(s)," "parking area(s)," "utility service area(s)," "park(s)," and shall include, but not be limited to, all parts of the Properties conveyed by the Developer to the Homeowners' Association.
- (d) "Unit" or "Lot" shall mean and refer to any Lot shown on a plat of all, or part, of Eagles Nest as now or hereafter recorded on the public records of Polk County, Tennessee.
- (e) "Developer" (a/k/a "Declarant") shall mean and refer to Diversified Environmental Solutions, LLC, its/his/her successors and assigns.
- (f) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties or any portion of the Properties, including the Developer with respect to any unsold Lot, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (g) "Member" shall mean and refer to all those Owners who are members of the Homeowners' Association as provided below.

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## Section 1: Membership and Voting Rights in the Association

Every person or entity who is a record Owner of a fee or undivided fee interest in any unit or Lot shall be a Member of the Homeowners' Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a Member. If two or more Lots (or portions thereof) are combined so as to serve as a residence Lot for one residence, said combined Lots shall be treated as one Lot for membership purposes. Developer shall not be required to pay dues or assessments on unsold Lots.

Such membership shall terminate and pass with conveyance or transfer of title to such Lot, and upon the terms and conditions set forth herein below.

## Section 2: Voting Rights

The Homeowners' Association shall have two classes of voting membership:

- A. Class A: Class A members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one vote per Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and 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 such Lot.
- B. Class B: The Class B Members shall be the Developer.

The Class B membership shall cease and become converted to Class A membership and entitled to vote as such on the happening of any of the following events, whichever occurs earlier:

1. Upon the initial sale of all lots owned by Developer or Diversified Environmental Solutions, LLC.
2. At the expiration of ten (10) years after the date of recording of this Declaration.
3. The Developer or Diversified Environmental Solutions, LLC voluntarily relinquish their Class B membership.

Until the happening of one of these events, the Homeowners' Association and Architectural Review Board "ARB" shall be exclusively controlled by the Class B Members. From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interests required for membership under Section 1.

Anything in this Declaration, the Homeowners Association Articles of Incorporation of By-laws to the contrary notwithstanding, for as long as Developer is the Owner of any Lots developed or intended to be developed within the properties, no vote, decision, or action which requires the approval or a vote of a majority or more of the Members of the Homeowners' Association voting on said matter, irrespective of



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class, shall be effective or implemented until Developer has approved of or consented to same in writing directed to the Board of Directors of the Homeowners' Association.

### Section 3: Declaration Superiority

Neither the Articles of Incorporation nor the by-laws shall, for any reason, be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

### Section 4: Duties of the Association

The Homeowners' Association shall, in addition to such obligations, duties and functions as are assigned to it by other provisions of this Declaration, have the obligations, duties and functions (subject to the provisions of this Declaration), to do and perform each and every one of the following for the benefit of the Owners and for the maintenance, administration and improvement of the Properties:

- a. Lands All real estate encompassed in the above legal description is subject to the membership requirements set forth herein and in the by-laws.
- b. Enforcement To take such action, whether or not expressly authorized herein or in any governing instrument, as may be reasonably necessary to enforce the restrictions, limitations, covenants, affirmative obligations, conditions and other provisions of this Declaration, and of the Articles of Incorporation and by-laws.
- c. Operation and Maintenance of Common Property To own, operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Property, together with all easements for operation and maintenance purposes and for the benefit of the Homeowners' Association or its Members over and within the Common Properties; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, condition and repair; and to maintain any parking areas and streets free and clear from obstructions and in a safe condition for vehicular use at all times.

The Homeowners' Association shall maintain and repair the road system within the subdivision.

- d. Water and other Utilities Acquire, provide and/or pay for water, sewer, garbage disposal, electrical, telephone and gas, cable television, and any other necessary utility services for the Common Properties.
- e. Taxes and Assessments To pay all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Homeowners' Association and/or any property owned by the Homeowners' Association. Such taxes and assessments may be contested or compromised by the Homeowners' Association; provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.
- f. Dedication for Public Use To promptly dedicate such streets, roads and drives and such water, sewer, or other utility lines or facilities and appropriate easements as may be specified by Developer

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or the Homeowners' Association to such municipalities, utility companies, political subdivisions, public authorities, or similar agencies or bodies as may be designated by Developer or the Homeowners' Association.

g. Insurance To obtain and maintain insurance as provided for by the by-laws or this Declaration.

h. Rule Making To make, establish, promulgate, amend or repeal any rules and regulations as may be deemed necessary by the Homeowners' Association.

i. Enforcement of Restrictions and Rules To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this declaration and the rules and regulations of the Homeowners' Association.

## Section 5: Powers and Authority of the Homeowners' Association

The Homeowners' Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Tennessee, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation, the by-laws, or this Declaration. The Homeowners' Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Homeowners' Association under this Declaration, the Articles of Incorporation and the by-laws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Homeowners Association including the following which are listed without intent to limit the foregoing articulation:

a. Assessments To levy assessments on the Owners of Lots and to enforce payment of such assessments, all in accordance with the provisions of this Declaration.

b. Right of Enforcement In its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration and the rules and regulations promulgated by the Homeowners' Association, and to enforce, by mandatory injunction or otherwise, all of the provisions thereof.

c. Easements and Rights-of-Way To grant and convey to any third party easements and rights-of-way in, on, over, and under the Common Properties and any private streets located thereon for the purposes of constructing, erecting, operating or maintaining thereon, therein, or thereunder, (1) overhead or underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio and antenna facilities and for other appropriate purposes; (2) public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes; and (3) any similar public or quasi-public improvements or facilities.

d. Right of Entry Without liability to any Owner, to cause its agents, independent contractors and employees, after notice, to enter upon any Lot or the exterior of any residence for the purpose of

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enforcing any and all of the provisions of this Declaration, for the purpose of maintain and repairing such Lot or residence if for any reason whatsoever the Owner thereof fails to maintain it in good condition and repair and so as to present an attractive exterior appearance as required by the Restrictive Covenants below.

e. Maintenance and Repair Contracts To contract and pay for, or otherwise provide for, the maintenance, restoration, and repair of all improvements of whatsoever kind and for whatsoever purpose from time to time located upon or within the Common Properties, including the road system and water system.

f. Insurance To obtain, maintain and pay for such insurance policies or bonds, whether or not required by provision of this Declaration or the by-laws, as the Homeowners' Association may deem to be appropriate for the protection or benefit of the Homeowners' Association, the Members of the Board, Owners, their tenants or guests, including but not by way of limitation, fire and extended coverage insurance covering the Common Properties, liability insurance, war risk insurance, boiler insurance, workmen's compensation insurance, malicious mischief insurance, automobile non-ownership insurance, and performance and fidelity bonds.

g. Utility Service To contract and pay for, or otherwise apply for, any necessary utility services including, but without limitation, water, sewer, garbage, electrical, telephone, cable television and gas services for the benefit of the Homeowners' Association.

h. Professional Services To contract and pay for, or otherwise provide for, any necessary services of architects, engineers, attorneys, certified public accountants, and such other professional and non-professional services as the Homeowners' Association deems necessary.

i. Street Maintenance To contract and pay for, or otherwise provide for, the construction, reconstruction, repair, replacement, or refinishing of any streets, roads, drives, parking areas, or other paved areas upon any portion of the Common Properties not dedicated to any governmental unit.

j. Protective Services To contract and pay for or otherwise provide for fire, security, and other such protective services as the Homeowners' Association shall from time to time deem appropriate or the benefit of the development, the Owners, their tenants and guests.

k. General Contracts To contract and pay for, or otherwise provide such materials, supplies, furniture, equipment, and labor as and to the extent the Homeowners' Association deems necessary.

m. Liens To pay and to discharge any and all liens from time to time placed or imposed upon any Common Property on account of any work done or performed by or on behalf of the Homeowners' Association in the fulfillment of any of its obligations and duties of ownership, maintenance, repair, operation or administration.

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## Section 6: Property Rights in Common Properties

A. Members' Easements of Enjoyment: Every member shall have a nonexclusive right, license, privilege, and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot. In addition, the Developer does hereby grant unto the Owners of each Lot in the properties a nonexclusive easement in perpetuity for ingress and egress over and across the streets, roads and walks in the Common Properties for all lawful purposes.

B. Title to Common Properties: The Developer shall convey to the Homeowners' Association legal title to the Common Properties, subject, however, to the following covenant which shall be deemed to run with the land and shall be binding upon the Homeowners' Association, its successors and assigns:

In order to preserve and enhance the property values and amenities of the development, the Common Properties and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Properties shall include, but not be limited to, the repair of damage to roadways, walkways, docks, outdoor lighting, fences, and landscape maintenance.

C. Extent of Members' Easements: The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Homeowners' Association, in accordance with its Articles and by-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.
- b. The right of the Homeowners' Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure.
- c. The right of the Homeowners' Association, as provided in its Articles and by-laws, to suspend the enjoyment right of any Member, except as to ingress and egress to and from such Member's Lot, for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.
- d. The right of the Homeowners' Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, cable television, telephone, electricity, gas and other utilities, and for completion of the development. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two thirds (2/3) of the votes irrespective of class of membership has been recorded, agreeing to such dedication, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.
- e. The right of the holder of a mortgage encumbering the Common Properties, upon foreclosure or proceeding in lieu of foreclosure, to enter upon and take possession of the Common Properties, for the purpose of operating, administering and maintaining said Common Properties for the use and

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benefit of all Owners of Lots within the Properties, subject to the terms, conditions and provisions of this Declaration.

D. Easement Reserved Unto Developer Over Submitted Property and Grant of Easement for Ingress and Egress to Owners: The Developer hereby reserves unto himself, his successors and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all property, including but not limited to, (1) the right to use the said properties for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities; (2) the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells, pumping stations and a water system; (4) the right and easement of ingress and egress for purposes of development and construction, including the rights to construct a road system through the submitted property to provide for orderly development of the project, location of said road system to be in its sole judgment and discretion; (5) the right to top or trim trees as necessary to enhance views and to grant easements for tree-topping/trimming privileges; and (6) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of Eagles Nest; provided, however, that said reservation and right shall not be considered an obligation of the Developer to provide or maintain any such utility, development, or service. Developer also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Submitted Property. Finally, the developer reserves the right to establish and continue to use any sales offices, signs, or parking spaces located on the Submitted Property in its effort to market the development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Developer until such time as such rights are specifically and expressly relinquished by Developer by reference to this provision. This paragraph may not be amended without the consent of the Developer.

Declarant herein grants to all future owners of any portion of the submitted property, their heirs and assigns (and reserves for itself, its heirs and assignments) easement for ingress and egress over and across all roads constructed by the Declarant serving the above-described property. These easements shall not be mere licenses, but shall inure to the benefit of the future owners, their heirs and assigns, as well as the Declarant, its heirs and assigns.

## Section 7: Covenant for Maintenance Assessments

A. Personal Obligation of Assessments: Claim of Lien: Each owner of any Lot (with the exception of the Developer, the Developer being subject to no assessments of any type during its ownership of lots) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners' Association: (1) Annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest and costs of collection including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees, shall also be the personal obligation of the person who was the

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Owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided the Homeowners' Association has caused a claim of lien to be recorded in the Public Records of Polk County giving notice to all persons that the Homeowners' Association is asserting a claim of lien upon the Lot prior to the conveyance of title to the Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by and officer of the Homeowners' Association or by a managing agent of the Homeowners' Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien. Liens for assessment may be foreclosed by suit brought in the name of the Homeowners' Association in like manner as a foreclosure of a mortgage on real property. In such foreclosure, the Owner of a residence shall be required to pay a reasonable rental for the residence and the Homeowners' Association shall be entitled, as a matter of law, to the appointment of a receiver to collect the same.

B. Purpose of assessments: The assessments levied by the Homeowners' Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties, and in particular for the improvement and maintenance of properties, services, and facilities devoted to the purpose and related to the use and enjoyment of the Common Properties and of the Lots situated upon the Properties, including but not limited to:

1. Payment of operating expenses of said Homeowners' Association;
2. Lighting, improvement, maintenance and beautification of access ways and easement areas, and the acquisition, maintenance, repair and replacement of directional markers and signs and traffic control devices, and cost of controlling and regulating traffic on the access ways, which are the responsibility of the Homeowners' Association;
3. Maintenance, improvement, and operation of drainage easements and systems;
4. Management, maintenance, improvement and beautification of streets (the Homeowners' Association shall have sole control over and responsibility for road maintenance throughout the subdivision and specific to the road system as originally designated on Developer's subdivision plat of survey referred to above), lakes, ponds, buffer strips, and recreation areas and facilities;
5. Garbage collection and trash and rubbish removal; but only when and to the extent specifically authorized by said Homeowners' Association;
6. Providing police protection, night watchmen, guard and gate services, but only when and to the extent specifically authorized by said Homeowners' Association;
7. Doing any other thing necessary or desirable, in the judgment of said Homeowners' Association, to keep the community neat and attractive or to preserve or enhance the value of the Properties therein, or to eliminate fire, health or safety hazards, or, which in the judgment of said Homeowners' Association, may be of general benefit to the Owners or occupants of lands included in the Properties.

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## C. Annual Assessments

Beginning January 1, 2010, the annual assessment shall be \$500.00 per Lot, payable on the first day of each year. The assessment shall be “per lot owned”. This annual assessment shall be prorated in the year of initial purchase. The annual assessment shall be paid directly to the Homeowners’ Association, or, in the event the Association is not yet activated, to the Developer to be held in accordance with the above provisions.

D. Increase of Assessments The Board of Directors of the Homeowners’ Association shall annually, and on the 1st of each year, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment in advance for each year. Any new annual assessment exceeding one hundred ten percent (110%) of the assessment for the previous year shall have the approval of two-thirds (2/3) of the votes of Class A Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance of the meeting and which notice shall set forth the purpose of the meeting.

E. Special Assessments for Capital Improvements In addition to the annual assessments authorized by the above section, the Homeowners’ 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 or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties and/or road system, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

F. Quorum and Notice for any action as set forth in “Increase of Assessments” and “Special Assessments for Capital Improvements” Written notice of any meeting called for the purpose of taking any action authorized in this Section shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members in person or by proxy entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

G. Uniform rate of assessment Both annual and special assessments must be fixed at a uniform rate for all Lots, and shall be collected on an annual basis (by January 10th of each year).

H. Certificate of Payment The Homeowners’ Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing and in recordable form, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Nonpayment of Assessment; Personal Obligation; the Lien; Remedies of the Association If the assessments are not paid on or before fifteen (15) days after the date when due, then such assessment shall become delinquent and shall, together with Interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

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If the Annual assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Homeowners' Association may bring an action of law against the Owner personally obligated to pay the same, or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest as provided herein together with the costs of the action and collection of the assessment, including a reasonable attorney's fee and costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit be brought. If the Homeowners' Association files a claim of lien on the public records of Polk County, against any Lot, a seventy-five dollar (\$75.00) lien fee may be charged and shall be added to the unpaid assessment and secured by the lien hereby created.

## Section 8: Architectural Control

A. Subdivision Architectural Control No building, wall, residence, garage, or any other structural improvement, or change or alteration to the exterior of existing structures or improvements, or in the landscaping (except landscaping located in a concealed and fenced courtyard or privacy area adjacent to a residence) shall be commenced, erected, or maintained, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, size, design, shape, finished grade elevation, height, materials, color and locations of the same shall have been submitted, together with a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes, shall have been approved in writing as to harmony of exterior design and location in relation to surrounding structures and topography by the Board of Directors of the Homeowners' Association or their appointees acting as an Architectural Review Board, sometimes herein referred to as the ARB. The provisions of this Section shall not apply to the Developer. So long as the Developer shall hold for sale in the ordinary course of business a Lot or residence in the properties, Developer shall serve as the sole member of the ARB.

After sale of Developer's last Lot or residence in the properties, the ARB shall consist of five members (or 67% of the property owners, whichever is less), each being an Owner of a Lot in Eagles Nest. Approvals or disapprovals shall be by a majority vote of ARB members present, all members of the ARB having had (30) days written notice of a meeting to consider submitted plans and issues.

### 1. Duties and Powers of the ARB The ARB shall have the following duties and powers:

- a. To promulgate from time to time residential planning criteria for the properties at the discretion of the ARB. Said planning criteria shall be set forth in writing and made available to all members and to all prospective members of the Homeowners' Association. Any planning criteria promulgated by the ARB shall be subject to final approval by the Board. Said planning criteria may include any and all matters considered appropriate by the ARB not inconsistent with the provisions of this Declaration; and
- b. To approve all buildings, fences, walls, pools, or other structures which shall be commenced, erected or maintained upon the Properties and to approve any exterior additions to, or changes or alterations therein, as herein provided, and to approve building plans and specifications and Lot grading and landscaping plans. The conclusion and opinion



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of the ARB shall be binding. If in its opinion, for any reason, including purely aesthetic reasons, the ARB should determine that said improvement, alteration, etc. is not consistent with the development plan formulated by the Developer or the planning criteria for Eagles Nest or lands contiguous thereto, such alteration or improvement shall not be made.

2. Approval or disapproval Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. The ARB approval or disapproval, as required by this Declaration, shall be in writing and set forth on one copy of the plans, etc. to be returned to the Owner. The remaining copy shall become the property of the ARB. In the event the committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or, in any event if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related criteria shall be deemed to have been fully complied with. Developer, the ARB, any agent or architect thereof, shall not be responsible in any way for any defects in any plan or specifications submitted, revised, or accrued in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans and specifications.

3. Developer approval Notwithstanding any provision otherwise, for so long as the Developer owns any subdivision lot, the Developer reserves the right to approve all contractors or builders constructing residences in the subdivision; said approval not to be unreasonably withheld by Developer. The work approved must be substantially in accordance with the plans, specifications, and Lot plans, as submitted and approved.

B. Enforcement of Planning Criteria The Developer and the Homeowners' Association shall have the right to enforce the provisions hereof and the planning criteria. Should any Owner fail to comply with the requirements hereof, or of the planning criteria after thirty (30) days' written notice, the Developer and the Homeowners' Association shall have the right to enter upon the Lot, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof or the planning criteria and charge the cost thereof to the Owner. Should the Developer or the Homeowners' Association be required to enforce the provisions hereof by legal action, the reasonable attorney's fees and costs incurred, whether or not judicial proceedings are involved, including the attorney's fees and costs incurred on appeal from judicial proceedings, shall be collectible from the Owner. The Developer and the Homeowners' Association, or their agents or employees shall not be liable to the Owner for any trespass or damages or injury to the property or person of the Owner unless caused by negligence.

C. Exemption for Developer Any provision of this Declaration to the contrary notwithstanding, for so long as Developer, its successors or assigns, shall hold for sale in the ordinary course of business a Lot or residence in the properties, developer shall be exempt from the requirements of this Section with respect to approval by the ARB of plans and specifications for construction or alteration of any structure or improvement.

## Section 9: Exterior Maintenance

A. Exterior Maintenance In addition to maintenance upon the Common Properties and rights of way, the Homeowners' Association shall have the right to provide exterior maintenance upon any vacant Lot or upon any improved Lot or the exterior of any residence situated thereon; subject, however, to the following

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provisions. Prior to performing any maintenance on a Lot or exterior of a residence located thereon, the Board of Directors of the Community Association shall determine that said property is need of repair or maintenance and is detracting from the overall appearance of the development. Prior to commencement of any maintenance work on a Lot or residence, the Homeowners' Association must furnish thirty (30) days' prior written notice to the Owner at the last address listed in the Homeowners' Association's record for said Owner notifying the Owner that, unless certain specified repairs or maintenance are made within said thirty (30) day period, the Homeowners' Association shall procure said repairs and charge same to the Owner. Upon the failure of the Owner to act within said period of time and to thereafter diligently pursue repairs or maintenance, the Homeowners' Association shall have the right to enter in or upon any such Lot, or to hire personnel to do so, to make such necessary repairs or maintenance as is specified in the written notice. In this connection, the Homeowners' Association shall have the right to paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trim and care for trees, shrubs, grass, walks, and other landscaping improvements, as well as general Lot cleanup, and removal of debris which, in the opinion of the Homeowners' Association, detracts from the overall beauty and setting of the property.

B. Assessment of Cost The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is done immediately upon completion and shall be a lien upon the Lot and a personal obligation of the Owner and shall become due and collectible, along with costs of collection and attorney's fees, in the same manner as delinquent assessments above.

C. Access at Reasonable Hours For the purpose solely of performing the maintenance authorized by this Article, the Homeowners' Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any residence at reasonable hours on any day except Sundays and holidays (except that in an emergency situation, as determined by the Homeowners' Association, such notice need not be given and entry may be made on any day).

D. Insurance The Board of Directors may maintain public liability insurance, to the extent obtainable, covering the Homeowners' Association and each Homeowners' Association member, lessee and occupant and the managing agent, if any, against liability for any negligent act or commission of omission attributable to them which occurs on, in, or with respect to the Common Properties or functions of the Homeowners' Association, including those functions of the ARB. All insurance premiums for such coverage shall be paid for by the Homeowners' Association.

## ROAD MAINTENANCE/IMPROVEMENT ASSESSMENTS FOR EAGLES NEST

Personal Obligation of Assessments: Claim of Lien: All purchasers of Lots within Eagles Nest, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to the homeowners' association described in this document, (1) Annual assessments or charges for regular road maintenance within Eagles Nest (included as part of the \$500.00 above-described for the Homeowners' Association assessments); and (2) special assessments for emergency repairs to said roads within Eagles Nest, these special assessments to be established by a majority vote of all lot owners, special assessments for emergency repairs or upgrades to said road shall be established, with each lot owner responsibility for a pro-rata share of said approved emergency assessment.

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The annual and special assessments, together with interest and costs of collection including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection, 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 fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided a claim of lien has been recorded in the Public Records of Polk County giving notice to all persons that a claim of lien upon the Lot is being asserted, prior to the conveyance of title to the Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by 1) an officer of the Homeowners' Association (if said Association has been established) or 2) by a representative of a majority of the lot owners in Eagles Nest. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, said satisfaction being executed either 1) by the record individual filing the lien, 2) an officer of the Homeowners' Association (if said Association has been established) or 3) by signatures indicating a majority of all lot owners. Liens for assessment may be foreclosed by suit brought in the name of the Homeowners' Association in like manner as a foreclosure of a mortgage on real property.

## **ROAD EASEMENT AND UTILITY EASEMENT AND EROSION CONTROL EASEMENT FOR EAGLES NEST**

It is the express intent of Declarant to grant an easement for ingress and egress to each Purchaser, their heirs, and assigns, of lots or property within Eagles Nest, over and across the road system serving said subdivision. It is the express intent of Declarant to reserve for Declarant, Declarant's heirs, and Declarant's assigns, the same easement for ingress and egress.

Declarant reserves for itself, its heirs and assigns an easement over all property in Eagles Nest for installation of utilities.

The easement is granted notwithstanding any error or omission in any individual conveyance to a purchaser of a lot or property, by the Declarant, which might fail to expressly grant or reserve such an easement.

Declarant has specifically recorded the above referenced subdivision plat of survey, showing a defined road system developed for the mutual use and benefit of all homeowners, so that all may rely on the use of said road system and so that all may purchase in reliance on said survey.

Declarant retains an easement to construct, maintain, inspect, replace, or remove erosion control devices and areas (but in no way shall be required to construct, maintain, inspect, replace, or remove erosion control devices). Activities may include the improvement of waterways, providing of new waterways, removal of vegetation and/or trees, planting vegetation and/or trees, rip-rap / silt fences / barrier installation, and the removal of silt. Said easement includes the right to clear and keep cleared all trees, roots, brush, and other obstacles and the construction, operation, and maintenance of erosion control devices and areas. Also retained is the right to cross said real estate for the purpose of conducting such corrective action on other lots or areas and to move equipment to the required areas. Also included is the right to grow vegetation and

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provide for the future maintenance of said vegetation. Said easement shall not be a mere license but shall be a right running with the land, and shall adhere to the benefit and burden of the Grantor, Grantee, their heirs and/or assigns.

## **EROSION AND SEDIMENTATION AGREEMENT/HOLD HARMLESS / INDEMNIFICATION**

Declarant and Lot Owner/Property Owner desire to insure that their investment and the investment of any future heirs/assigns in Declarant's development, including but not limited to the lands described in the Submitted Property, are protected and safeguarded from the ravages of erosion. For that purpose, and in consideration of \$10.00, the benefits to be derived by the Lot Owner and Declarant, and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant and Lot Owner/Property Owner (by acceptance of deed in the Property and Community) agree as follows:

Lot Owner/Property Owner shall be personally liable for any site work which results in run off of soil, water or any combination thereof on to the property of another in the development, onto the development roads, into any creeks or rivers, or onto the lands of another.

In the event that the site work of the Lot Owner/Property Owner is such as to cause run off or erosion or drainage onto the property of another in the development, onto the development roads, into creeks or rivers, or onto the lands of another, the Declarant or his authorized agent shall notify the Lot Owner/Property Owner of the alleged run off, erosion and/or drainage. Said notification shall be mailed via certified mail to the Lot Owner/Property Owner address record tax address and Lot Owner shall have five (5) days from the mailing of said letter to correct the erosion/drainage. Declarant shall also attempt to notify the property owner via telephone to facilitate the correction of the situation.

Lot Owner/Property Owner hereby grants a special lien against the property of said owner in the development in favor of the Declarant. In the event that the property owner does not address a problem in a manner reasonably designed to eliminate the problem, the Declarant shall have the right to enter onto the property of the Lot Owner/Property Owner after the five (5) day notice above-referenced and address the problem, and thereafter file a lien against the property in the fashion of a materialman's lien for work, all as if duly authorized and requested by Lot Owner. Said lien shall be filed in the same manner as materialman's liens are otherwise filed in the Office of the Clerk of the Superior Court for Polk County, TN.

Lot Owner, does hereby agree, for itself, its heirs, successors and/or assigns, to hold harmless and indemnify Declarant from any and all claims and debts, demands and actions, causes of action, suits, proceedings, agreements, contracts, judgments, damages, accounts, executions and any and all other claims and liabilities, whether or not well founded in fact or in law, and whether in law or equity, known and unknown, which may arise out of erosion on the Property and sedimentation control efforts (or lack thereof) of the Lot Owner, his heirs, successors and /or assigns. Said hold harmless / indemnification shall include the Lot Owner, its heirs, executors, successors and assigns and any Corporation held harmless / indemnified herein shall include any of its divisions, subsidiaries or related companies, as well as its owners, employees, agents, subcontractors and/or vendors.

Nothing contained herein shall be deemed to circumvent, take the place of or otherwise limit the authority of the Polk County Land Development Office or other Government regulatory officials and/or agencies.

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## **DURATION AND AMENDMENT**

This EROSION AND SEDIMENTATION AGREEMENT/HOLD HARMLESS / INDEMNIFICATION shall run with and bind the submitted property for a period of twenty years from the date when this declaration is filed for record with the Clerk of Polk County, after which time this agreement shall be automatically extended for successive periods of ten years, to bind the property ONLY until completion of a dwelling on the property and to automatically expire upon all liability for erosion and sedimentation issues (on the part of the Declarant) being extinguished.

Constructive Notice-Each owner, by his acceptance of a deed or other conveyance of a lot, acknowledges for himself, his heirs, legal representatives, successors and assigns, that he is bound by the provisions of this agreement.

## **FEES FOR MUNICIPAL WATER AND EASEMENT AGREEMENT WATER USE, MAINTENANCE AND EASEMENT AGREEMENT FOR EAGLES NEST**

There may become located on the Development city or municipal water. All future lot owners of Eagles Nest Subdivision and all other properties added by amendment shall have a permanent and perpetual right to contract for water service (and may obtain water service only from said Water System) from the above-described water system at the rates established by the municipality. Upon Owner's "tap-on" to these systems, Owner shall pay the fee charged by the municipality for the water tap-on (plus any additional charges as required by the city or municipality).

Each Owner shall comply with all city or municipality requirements concerning tap-on procedures and additional equipment necessary and/or required.

Developer reserves for itself, its successors and assigns, as well as for all city and/or municipal providers, a permanent and perpetual easement over all submitted property for the purpose of installation, repair, maintenance, upgrades and all other uses necessary for provision of water throughout the development.

## **CONTROLLED ACCESS PROVISIONS**

Decisions related to security measures, including, but not limited to, access privileges to visitors or service personnel shall be made by Declarant, or should Declarant have sold its last lot, by a majority of lot owners by majority vote.

## **DURATION AND AMENDMENT**

This declaration and the restrictions contained herein shall run with and bind the submitted property for a period of twenty years from and after the date when this declaration is filed for record with the Clerk of the Superior Court of Polk County, after which time this declaration and the restrictions shall be automatically renewed for successive periods of ten years; provided, however, that after the end of the said twenty year period and during any ten year renewal period (but only during such renewal period), this declaration and the restrictions contained herein may be terminated by an instrument executed by 2/3 of the lot owners and

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recorded in the Office of the Clerk of the Superior Court of Polk County, Tennessee, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

During the period of ownership of any lot by Declarant, Declarant shall have the sole right to modify, delete, and amend this document as it, in its sole discretion and judgment, deems necessary for the common welfare of owners in Eagles Nest and/or the orderly economic development of the subdivision and/or for clarification or correction of same.

## MISCELLANEOUS

1. Severability - A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.
2. Constructive Notice - Each owner, by his acceptance of a deed or other conveyance of a lot, acknowledges for himself, his heirs, legal representatives, successors and assigns, that he is bound by the provisions of this declaration, including, but not limited to, the easement provisions for all homeowners provided in this document.
3. Easement references: All easement references shall not be mere licenses, but a right running with the land, and shall benefit and burden the described properties.
4. Binding Effect - This declaration shall be binding upon the undersigned, its heirs, administrators, successors and assigns. Said declaration shall run with the title to the property described in Exhibit "A" and any subsequent property that is added hereto by amendment. Any references to Declarant in this document shall be deemed to refer to Declarant, its heirs, successors and assigns.

IN WITNESS WHEREOF, the Declarant and Orges have hereunto set their hands and seals as of the day and year first above written.

*[SIGNATURES NEXT PAGE]*

**B L U E R I D G E L A W**

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**DECLARANT**

**Diversified Environmental Solutions, LLC**

\_\_\_\_\_(SEAL)  
**By: Richard M. Ansbaugh**  
**Its: Manager**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

STATE OF TENNESSEE  
COUNTY OF POLK

Personally appeared before me, a notary public in and for said county and state, the within named **Diversified Environmental Solutions, LLC, through its Manager, Richard M. Ansbaugh**, with whom I am personally acquainted and who acknowledged that it executed the within instrument for the purpose therein contained.

WITNESS my hand and official seal at office this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public  
My Commission Expires:\_\_\_\_\_

*[SIGNATURES CONTINUED NEXT PAGE]*

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\_\_\_\_\_(SEAL)

\_\_\_\_\_

\_\_\_\_\_(SEAL)

\_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_

Witness

STATE OF TENNESSEE  
COUNTY OF POLK

Personally appeared before me, a notary public in and for said county and state, the within named \_\_\_\_\_, with whom I am personally acquainted and who acknowledged that they executed the within instrument for the purpose therein contained.

WITNESS my hand and official seal at office this \_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



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# B L U E R I D G E L A W

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## EAGLES NEST

### Schedule of assessments / fees

Homeowners' Association Fee - yearly (per lot per year)	\$500.00 (prorated in year of purchase)
Homeowners' Association Fee - special (per lot per year)	By majority vote of Lot Owners
Road Assessment – yearly (per lot per year)	Included in Homeowners' Association fee
Road Assessment – special (per lot per year)	By majority vote of Lot Owners
Recurring Water Service Fee	Municipal rates as charged by the municipality
Water tap-on fee	Municipal rate as charged by the municipality
Road Impact Fee	\$500.00, due at the time of closing of the sale of the lot from Declarant.