

## UNBOUND AGREEMENT

This Agreement, entered into this 19<sup>th</sup> day of SEPTEMBER, 2002, by and between ELW PATIO HOMES ASSOCIATION, INC, a Florida corporation (hereinafter referred to as "Association") and the EAST LAKE WOODLANDS COMMUNITY ASSOCIATION, INC., a Florida corporation (hereinafter referred to as "ELWCA") are the parties to this Agreement.

### WITNESSETH:

WHEREAS, Association is a community located in a planned unit development in Pinellas County, Florida, commonly known as East Lake Woodlands;

WHEREAS many Associations in East Lake Woodlands are "Unbound". These Unbound Associations consist of Unit/Lot owner/members who are not obligated to be a member of ELWCA but are bound by Association documents. It is the intent of the parties that the Association become a member of the ELWCA by this Agreement, and the Unit/Lot owners shall obtain the rights and obligations inherent with the governing documents of ELWCA, as members of the Association.

WHEREAS the Association membership shall be pursuant to the ELWCA governing documents as recorded in the Public Records of Pinellas County, Florida, as properly amended from time to time and as other wise set forth herein;

WHEREAS, the parties hereto recognize that they will mutually benefit from this Agreement. Furthermore, the parties agree that the various services provided from time to time by ELWCA protects and enhances the value of the various single-family patio homes, cluster homes and condominiums located within East Lake Woodlands and the Community as a whole.

NOW THEREFORE, in consideration of the mutual covenants and agreement hereinafter set forth, as well as other good and valuable consideration, the receipt

and sufficiency of such being hereby acknowledged by both parties hereto, it is mutually covenanted and agreed as follows:

1. Incorporation: The above recitations are true and correct and are incorporated herein by this reference.

2. Term: This Agreement shall be effective commencing January 1, 2003, and shall continue in effect for a period of fifteen (15) years until December 31, 2017. This Agreement shall automatically renew for successive periods of fifteen years, unless either party provides written notice of non-renewal to the other party, no less than one year before the end of any fifteen-year term.

3. Services: ELWCA will provide Community services as authorized and pursuant to its governing documents and this Agreement.

4. Authority: The Association hereby represents to ELWCA that entering into this contract is a duly authorized, valid and binding act of the Association.

5. Association Benefits and Notices: Incidental to the benefits provided to the Association and its members by ELWCA pursuant to this Agreement, the respective owner(s) of a unit or lot governed by the Association shall be members of ELWCA with all membership rights pursuant to the Articles of Incorporation and Bylaws of ELWCA, as amended from time to time, as otherwise set forth herein.

ELWCA shall provide copies of its regular monthly Board meetings and annual budget to the Association, the Association shall be responsible to distribute to the Associations individual members minutes of the ELWCA Board meetings, the ELWCA annual budget and any other notices or information required under the governing documents.

6. Entry Access: In recognition of various existing easements for ingress and egress in favor of the Association members, ELWCA shall provide without cost to the Owner(s) of Units/Lots within Association, gate activation cards or the technical equivalents, to allow access to all of the gates, or controlled access points, to East Lake Woodlands. The Associations agree that in providing gate activation and considering the other benefits afforded to the Association and its members under this Agreement, that gates operated and maintained by ELWCA do not unreasonably interfere with the rights of the Association or its members as easement holders.

7. Management/Communication: To facilitate harmony and enhance communication, the governing Board of the ELWCA will deal directly with the Association officers and directors, or their designated agent, to communicate, manage, and execute the terms and conditions of this Agreement. The Association may request that an item be placed on the ELWCA Board meeting agenda by notifying ELWCA or its designated agent no less than five (5) days before the next regularly scheduled ELWCA Board meeting. Within twenty days of the execution of this Agreement, the Association shall provide ELWCA, in writing, with the names, addresses and phone numbers of the current Directors, Officers and, if in existence, the Property Manager of the Association. The Associations shall provide this updated information, in writing, to ELWCA annually. The Association shall provide ELWCA, no less than annually, with the names, addresses, and phone numbers, if available, of the current Association owner/members. ELWCA shall provide notice of its Annual Meeting to the owner/members in accordance with its Bylaws.

8. Dues: The Association agrees to pay to ELWCA its share of ELWCA operating and capital assessments commencing on the effective date of this Agreement and continuing as long as this Agreement is in effect as set forth below:

- a) For the base year commencing January 1, 2003, the per Unit/Lot assessments for each respective Unit/Lot located within Association shall be sixteen dollars and thirty-four cents (\$16.34) per Unit/Lot per month. The monthly assessment noted herein shall be subject to increases as set forth in this Agreement.
- b) It is understood and agreed that the amount of ELWCA share due from the Association under this Agreement may vary from year to year depending on the annual budget adopted by ELWCA. The Association's payments shall not be increased from one year to the next in excess of 6.5%. Any increased assessments pursuant to the annual budget adopted by ELWCA shall be equal for all Units/Lots up to the 6.5% cap.
- c) The payments provided for hereunder shall be due and payable on the first day of each month from the Association to ELWCA. ELWCA shall provide to the Association, as noted herein, a copy of its annual operating and capital reserve budget for the next ensuing year upon which payments shall be based.

9. Pending Litigation: ELWCA and Association are presently parties to pending litigation known as Pinellas County Circuit Court Case No. N/A. By execution of this Agreement, both parties hereto agree to a Stipulation for Dismissal With Prejudice of Case No. N/A.

10. Indemnification Insurance: ELWCA shall maintain general public liability insurance covering its own operations covering bodily injury, death or property damage, liability on an occurrence basis and in an amount not less than One Million Dollars (\$1,000,000.00) and shall provide to the Association as of the date of this Agreement and as of each anniversary thereof evidence satisfactory to the Association of said insurance. The Association shall purchase insurance to cover any loss for which the ELWCA may become liable under the indemnity provision set forth herein. ELWCA shall have no responsibility hereunder to arrange any insurance coverage on behalf of the Association.

Unless due to the negligence or intentional misconduct of Association, ELWCA has hereby agreed to indemnify, defend and hold harmless the Association, its officers, directors, representatives, agents (other than ELWCA), and its employees, if any, from and against any and all third party claims and liabilities (including reasonable attorney's fees) arising or alleged to arise out of the negligent act or omission of ELWCA or any of its officers, directors, representatives, agents or employees, but only insofar as such claims or liabilities (exclusive of any deductible) would not be covered by the normal Property Damage and Liability Insurance coverage which a prudent Association would ordinarily carry with respect to such claims and liabilities.

Unless due to the negligence or intentional misconduct of ELWCA, Association has hereby agreed to indemnify, defend and hold harmless ELWCA, its officers, directors, representatives, agents, and its employees, if any, from and against any and all third party claims and liabilities (including reasonable attorney's fees) arising or alleged to arise out of the negligent act or omission of Association or any of its officers, directors, representatives, agents or employees, but only insofar as such claims or liabilities (exclusive of any deductible) would not be covered by the normal Property Damage and Liability Insurance coverage which a prudent corporate entity comparable to ELWCA would ordinarily carry with respect to such claims and liabilities.

11. Notices: All notices, requests, consents, instructions, and communications required or permitted under this Contract shall be in writing (including E-mail, telex, telecopy, and telegraphic communication) and shall be (as elected by the person giving such notice) hand-delivered by messenger or nationally recognized overnight courier service, telecommunicated, telecopied, or mailed (air mail if international) by registered or certified mail (postage prepaid), return receipt requested, and addressed to each party at their respective addresses as set forth below or to such other addresses, any party may designate by notice complying with the terms of this Section.

If to Association: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Fax Number: \_\_\_\_\_

With copy to: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Fax Number: \_\_\_\_\_

If to ELWCA: \_\_\_\_\_

MANAGEMENT & ASSOC.

1050-A EASTLAKE WOODLANDS PRW/

OLDSMAR FL 34677

Attention: MANAGER

Fax Number: \_\_\_\_\_

With Copy to: BOARD PRESIDENT

Attention: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Each such notice, request, or other communication shall be considered given and shall be deemed delivered (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telex or telegraph or telecopies if transmitted before 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. on a nonbusiness day; or (c) on the date on which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Rejection, refusal to accept, or inability to deliver of which no notice was given shall be deemed to be receipt of such notice, request, or other communication.

12. Default: If either party to this Agreement has reason to believe that it or the other party is in default of any provision of this Agreement, including default as to payment, the party shall promptly notify in writing the other party. Such notification shall specify in reasonable detail the facts and circumstances constituting the default. Promptly upon receipt of such notification, the parties shall consult with each other as to what steps shall be taken to cure the default or to mitigate or remedy consequences thereof.

13. Dispute Resolution: In connection with any dispute arising under, from, or as a result of this Agreement, the parties agree that the prevailing party or parties shall be entitled to recover all costs and attorneys fees incurred (including attorneys fees and costs incurred to obtain a judgment for prevailing party attorney fees and costs and those incurred in any appeals from any litigation and enforcement of judgments), including reasonable attorneys' fees and fees for the services of accountants, paralegals, legal assistants, and similar persons. Except that it shall be a mandatory condition precedent to litigation to engage in non-binding mediation with all costs and fees to be divided equally between the parties.

14. Third party liability: It is specifically understood and agreed that no person, firm, or other legal entity shall be a third party beneficiary hereunder. The provisions of this Agreement shall not be enforceable by anyone other than the parties hereto, and that only the parties hereto shall have any rights hereunder.

15. Consent and Waiver: No consent or waiver, express or implied, by a party to or of any breach of default by another party in the performance of such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party hereunder. Failure on the part of a party to complain of any act or failure to act of another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned party of its rights hereunder.

16. Assignment: ELWCA shall not assign this Agreement or any of its rights or obligations to any party without the prior written consent of the Association; all of the terms and provisions of this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns or permitted assigns.

17. Cooperation: The parties hereto agree that they will from time to time, at the reasonable request of either of them, execute and deliver such assignments, instruments and conveyances and take such further action as may be required to accomplish the purposes of this Agreement.

18. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior contemporaneous agreements, undertakings, negotiations and discussions, whether oral or written of the parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. This agreement is deemed to be authored by both parties and shall not be construed more harshly against the other.

19. Severability: The unenforceability or invalidity of any one or more provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. The rights available to the parties under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right. Any one or more and/or any combination of such rights may be exercised by a party from time to time, and no such exercise shall exhaust the

rights or preclude any other party from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

20. U.S. Currency: All amounts stated herein are in United States currency.

21. Generally Accepted Accounting Principles and Practices: All calculations made or referred to herein shall be made in accordance with generally accepted accounting principles and practices applied on a consistent basis, except where otherwise indicated herein.

22. Remedy at Law and Equity: For any breach of the Agreement, the Association and ELWCA confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agrees that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any right or rights at law or by statute or otherwise of any party aggrieved as against the other for breach or threatened breach of any provisions hereof, it being the intention of this clause to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

23. Counterparts: This Agreement may be executed in several counterparts, each of which, when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the same date as of the date written in the beginning of this Agreement.

24. Governing Law/Jurisdiction/Venue: This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida. The parties acknowledge that a substantial portion of negotiations and anticipated performance of this Agreement occurred or shall occur in Pinellas County, Florida, and that therefore, without limiting the jurisdiction or venue of any other federal or state courts, that any lawsuit, action, or other legal proceeding arising out of or related to this Agreement may be brought in the courts of record of the State of Florida in Pinellas County or the District Court of the United States, Middle District of Florida; (ii) consents to the jurisdiction of such court in any such lawsuit, action,

or proceeding; and (iii) waives any objection that it may have to the laying of venue of any such lawsuit, action, or proceeding in any such court.

25. Integration: This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, writings, agreements, and/or understandings between the parties with respect to the subject matter of this Agreement with the exception of the Agreement dated (If none write none.) 10-17-94, by and between the parties which shall remain binding on the parties and continue in full force and effect unaltered by this Agreement.

26. Captions/Titles. The captions and titles of this Agreement are for convenience only and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Agreement.

27. Binding Effect: The parties hereby represent to each other that execution of this Agreement has been duly authorized by the Board of Directors of the respective parties and that entering into this Agreement is a duly authorized, valid and binding act of Association.

28. Modification: This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties/party against whom enforcement is sought.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ELW PATIO HOMES ASSOC. INC.  
(Association Name)

By: Thomas W. Galt  
Title: PRESIDENT


ATTEST:

Bernadette P. Massaro

Paul M. Ziegler-Brey, Secretary of ELW Patio  
Homes Inc. hereby certifies  
that the execution of this Agreement has been authorized by the Board of Directors  
of said Association.

EAST LAKE WOODLANDS  
COMMUNITY ASSOCIATION, INC.

ATTEST:

By:   
Title: PRESIDENT



, Secretary of EAST LAKE  
WOODLANDS COMMUNITY ASSOCIATION, INC., hereby certifies that the  
execution of this Agreement has been authorized by the Board of Directors of said  
Association.

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