

*This instrument prepared by:*

Cheryl L. Hastings, Esq.  
GRANT, FRIDKIN, PEARSON, ATHAN & CROWN, P.A.  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108  
(239) 514-1000

(space above line for official use only)

**SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM FOR  
EL JARDIN IV, A CONDOMINIUM**

**THIS AMENDMENT** is made this 22<sup>nd</sup> day of November 2005 by Crosswinds at Palencia, LLC, a Florida limited liability company ("Developer").

**RECITALS:**

A. Developer has submitted certain real property to the condominium form of ownership as more particularly described in that certain Declaration of Condominium (the "Declaration") for **EL JARDIN IV, A CONDOMINIUM** (the "Condominium"), dated September 16, 2005, recorded at Official Records Book 2538, Page 1973, *et seq.*, of the Public Records of St. Johns County, Florida; as amended by that certain First Amendment to Declaration of Condominium for El Jardin IV, a Condominium, dated October 18, 2005, recorded at Official Records Book 2565, Pages 195 through 205, of the Public Records of St. Johns County, Florida;

B. When the Declaration was originally recorded, the Condominium improvements had not been substantially completed; and

C. The Developer wishes to amend the Declaration pursuant to Florida Statutes, Section 718.104(4)(e) to record Certificates of Substantial Completion for Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 15 and Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 18 of the Condominium, together with the related common elements, and to record graphic descriptions and a plot plan consistent with said Certificates.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the Developer hereby amends the Declaration as follows.

1. The Developer declares that Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 15 are substantially completed as evidenced by (i) the Certificate of Substantial Completion attached hereto as Exhibit "A;" and (ii) the plot plan and graphic descriptions attached hereto as Exhibit "B;" and Developer hereby amends the Declaration to include such Certificate, plot plan and graphic descriptions.

2. The Developer declares that Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 18 are substantially completed as evidenced by (i) the Certificate of Substantial Completion attached hereto as Exhibit "C;" and (ii) the plot plan and graphic descriptions attached hereto as Exhibit "D" and Developer hereby amends the Declaration to include such Certificate, plot plan and graphic descriptions.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed on the date first above written.

Mary K Burke  
Signature of Witness #1

MARY K BURKE  
Printed Name of Witness #1

Christine Meade  
Signature of Witness #2

Christine Meade  
Printed Name of Witness #2

**CROSSWINDS AT PALENCIA, LLC, a Florida limited liability company**

**By: Bentley Management, L.L.C., a Michigan limited liability company, as Manager**

By: Bernard Gieberman  
Bernard Gieberman, as Manager

STATE OF MICHIGAN  
COUNTY OF OAKLAND

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 31 day of October 2005, by Bernard Gieberman, as Manager of Bentley Management, L.L.C., a Michigan limited liability company, as Manager of Crosswinds at Palencia, LLC, a Florida limited liability company, who X is personally known to me OR \_\_\_\_\_ as produced \_\_\_\_\_ identification.

(Notary Seal)

Amy L. Webb  
Notary Public of ~~Florida~~ Michigan

Amy L. Webb

Printed Name of Notary Public

My Commission Expires:

AMY L. WEBB  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Mar 20, 2008  
ACTING IN COUNTY OF Oakland

r:\data\wd\_real\crosswinds\palencia\eljardin-iv\amendment to declaration2.doc

**JOINDER AND CONSENT**

The undersigned, being the owner and holder of a mortgage recorded at Official Records Book 2198, Page 0267, of the Public Records of St. Johns County, Florida, which encumbers the land described on Exhibit "A" of the Declaration of Condominium for El Jardin IV, a Condominium, hereby joins in and consents to the Second Amendment to Declaration of Condominium for El Jardin IV, a Condominium, to which this instrument is attached.

Signed, Sealed and Delivered in the Presence of:

Witnesses:

Ohio Savings Bank, a Federal Savings Bank

Jennifer Preston  
 Witness #1  
Jennifer Preston  
 Printed Name of Witness #1

By: [Signature]  
 Craig Ridinger, as Vice President

Debra L. Wood  
 Witness #2  
Debra L. Wood  
 Printed Name of Witness #2

STATE OF FLORIDA       )  
 COUNTY OF SEMINOLE    )

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 25th day of October 2005, by Craig Ridinger, as Vice President of Ohio Savings Bank, a Federal Savings Bank, who is personally known to me or who produced \_\_\_\_\_ as identification.

(SEAL)



DEBRA L. WOOD  
 MY COMMISSION # DD 113546  
 EXPIRES May 13, 2006  
 Bonded Thru Budget Notary Services

Debra L. Wood  
 Notary Public  
Debra L. Wood  
 Printed Name of Notary  
 My Commission Expires: 5/13/06


## EXHIBIT "A"

**PRIVETT-NILES & ASSOCIATES, INC.**  
**SURVEYING & MAPPING CONSULTANTS**  
3000 N. PONCE DELEON BLVD., SUITE D  
ST. AUGUSTINE, FL 32084  
TELEPHONE: 904-829-2591  
FACSIMILE: 904-829-5070

**EL JARDIN IV,  
A CONDOMINIUM,  
BUILDING 15**

### **SURVEYOR'S CERTIFICATE OF SUBSTANTIAL COMPLETION**

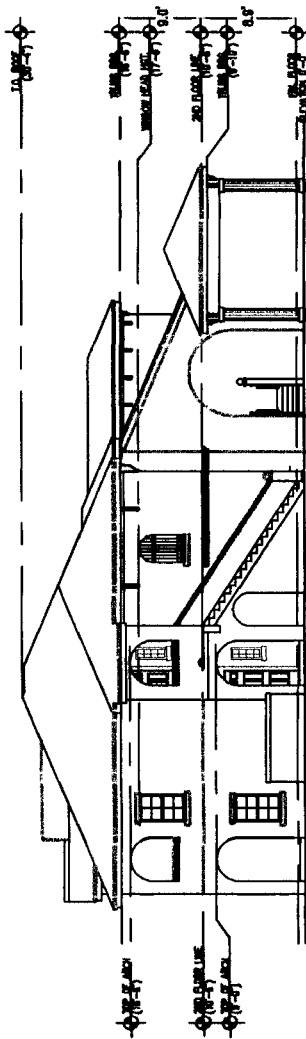
THE UNDERSIGNED LAND SURVEYOR HEREBY CERTIFIES THAT THE CONSTRUCTION OF THE IMPROVEMENTS COMPRISING EL JARDIN IV. A CONDOMINIUM, BUILDING 15. IS SUBSTANTIALLY COMPLETE SO THAT THE ATTACHED GRAPHIC DESCRIPTION OF THE IMPROVEMENTS TOGETHER WITH THE PROVISIONS OF THE DECLARATION OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY. IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND SO THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS. ALL PLANNED IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO LANDSCAPING, UTILITIES SERVICES, ACCESS TO BUILDING 15, AND CONDOMINIUM COMMON ELEMENT FACILITIES AS SET FORTH IN THE DECLARATION OF CONDOMINIUM HAVE BEEN SUBSTANTIALLY COMPLETED.

  
\_\_\_\_\_  
ALBERT D. BRADSHAW, STATE OF FLORIDA (L.S.#5257)  
PRIVETT-NILES & ASSOCIATES, INC. (L.B.#6824)

# EXHIBIT "B"

MAP TO SHOW CONDOMINIUM SURVEY OF:

## EL JARDIN IV



GRAPHIC SCALE  
0 10 20  
1 inch = 20 feet

SCALE: 1"=20'  
DATE: 11/9/05

PREPARED BY:

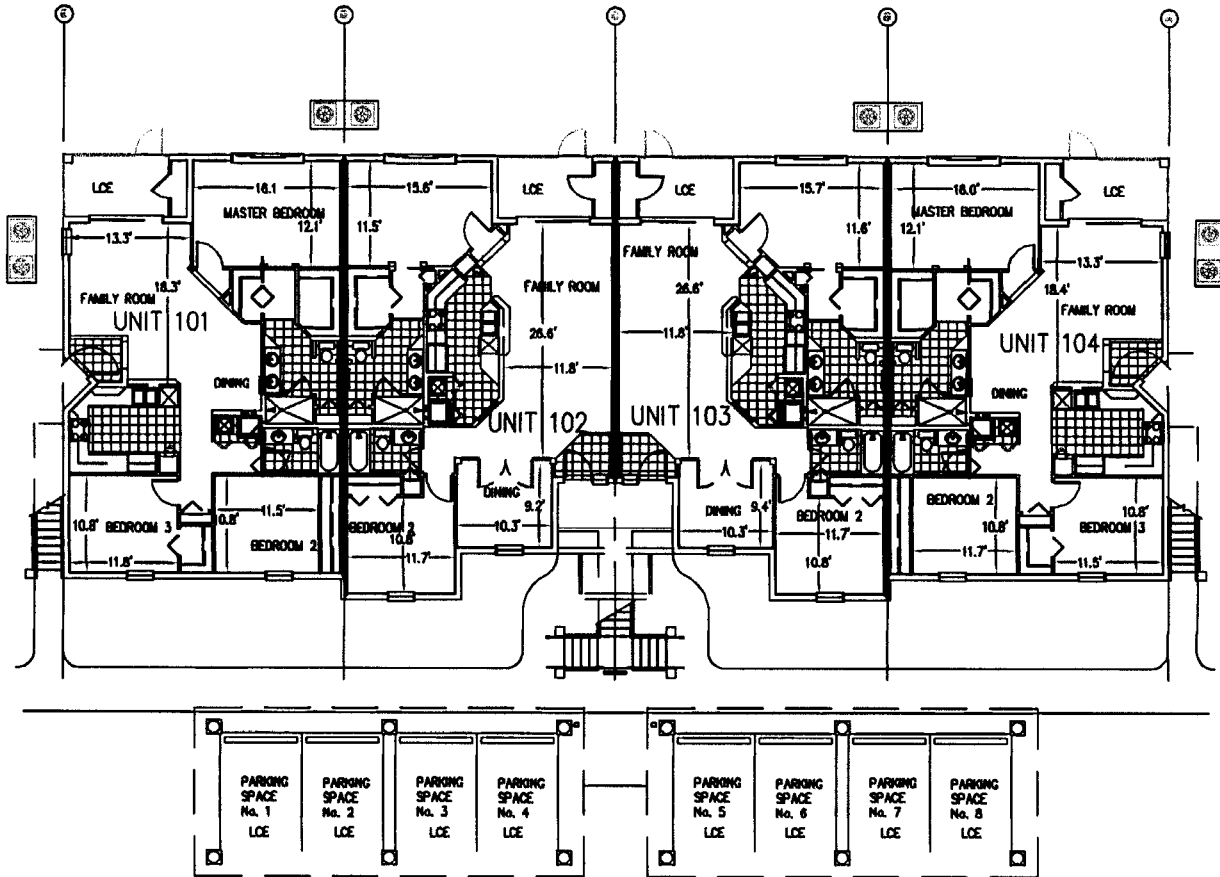
PRIVETT-NILES & ASSOC., INC.  
SURVEYORS, MAPPERS AND LAND PLANNERS  
3000 N. PONCE DE LEON BLVD.  
ST. AUGUSTINE, FLORIDA, 32084  
(904) 829-2591 LB No.6824

## TYPICAL SIDE VIEW PLAN PALENCIA 8 PLEX - BUILDING 15

## EXHIBIT "B"

**EL JARDIN IV**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'

DATE: 11/9/05

# **FIRST FLOOR PLAN** **BUILDING 15**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

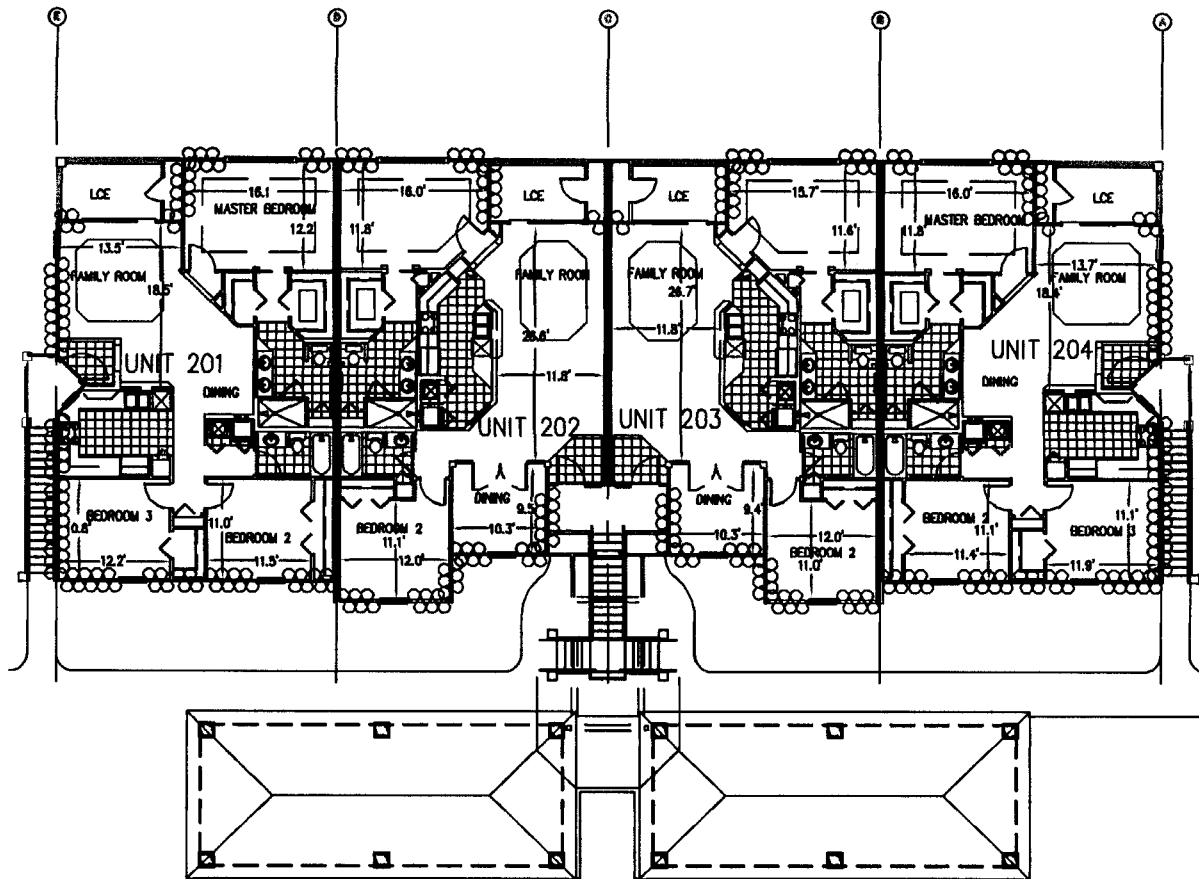
**PRIVETT-NILES and ASSOCIATES, INC.**  
 SURVEYING AND MAPPING CONSULTANTS  
 LICENSED BUSINESS No. 0624

**3000 N. PONCE DE LEON BOULEVARD, SUITE "D"**  
**ST. AUGUSTINE, FLORIDA 32084**  
**(904) 829-2581 FAX: (904) 829-5070**

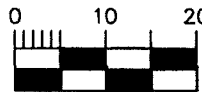
## EXHIBIT "B"

**EL JARDIN IV**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'  
DATE: 11/9/05

## **SECOND FLOOR PLAN BUILDING 15**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

**PRIVETT-NILES and ASSOCIATES, INC.**  
SURVEYING AND MAPPING CONSULTANTS  
LICENSED BUSINESS No. 0824

3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
ST. AUGUSTINE, FLORIDA 32084  
(904) 828-2591 FAX: (904) 828-5070

## EXHIBIT "C"

**PRIVETT-NILES & ASSOCIATES, INC.  
SURVEYING & MAPPING CONSULTANTS  
3000 N. PONCE DELEON BLVD., SUITE D  
ST. AUGUSTINE, FL 32084  
TELEPHONE: 904-829-2591  
FACSIMILE: 904-829-5070**

**EL JARDIN IV,  
A CONDOMINIUM,  
BUILDING 18**

### **SURVEYOR'S CERTIFICATE OF SUBSTANTIAL COMPLETION**

THE UNDERSIGNED LAND SURVEYOR HEREBY CERTIFIES THAT THE CONSTRUCTION OF THE IMPROVEMENTS COMPRISING EL JARDIN IV, A CONDOMINIUM, BUILDING 18, IS SUBSTANTIALLY COMPLETE SO THAT THE ATTACHED GRAPHIC DESCRIPTION OF THE IMPROVEMENTS TOGETHER WITH THE PROVISIONS OF THE DECLARATION OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY, IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND SO THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS. ALL PLANNED IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO LANDSCAPING, UTILITIES SERVICES, ACCESS TO BUILDING 18, AND CONDOMINIUM COMMON ELEMENT FACILITIES AS SET FORTH IN THE DECLARATION OF CONDOMINIUM HAVE BEEN SUBSTANTIALLY COMPLETED.



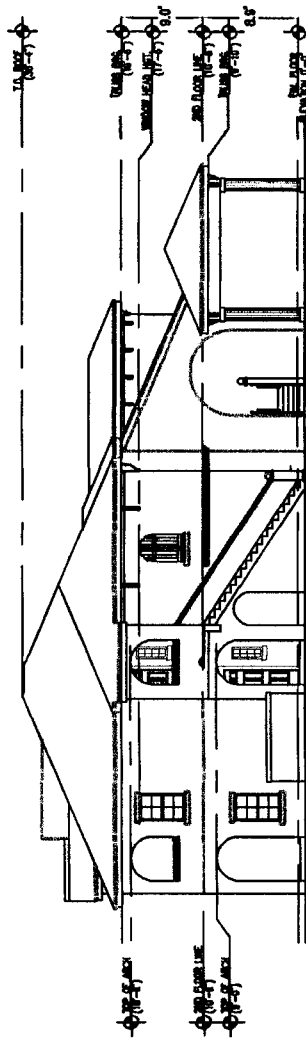
**ALBERT D. BRADSHAW, STATE OF FLORIDA (L.S.#5257)  
PRIVETT-NILES & ASSOCIATES, INC. (L.B.#6824)**



# EXHIBIT "D"

MAP TO SHOW CONDOMINIUM SURVEY OF:

## EL JARDIN IV



GRAPHIC SCALE  
0 10 20  
1 inch = 20 feet

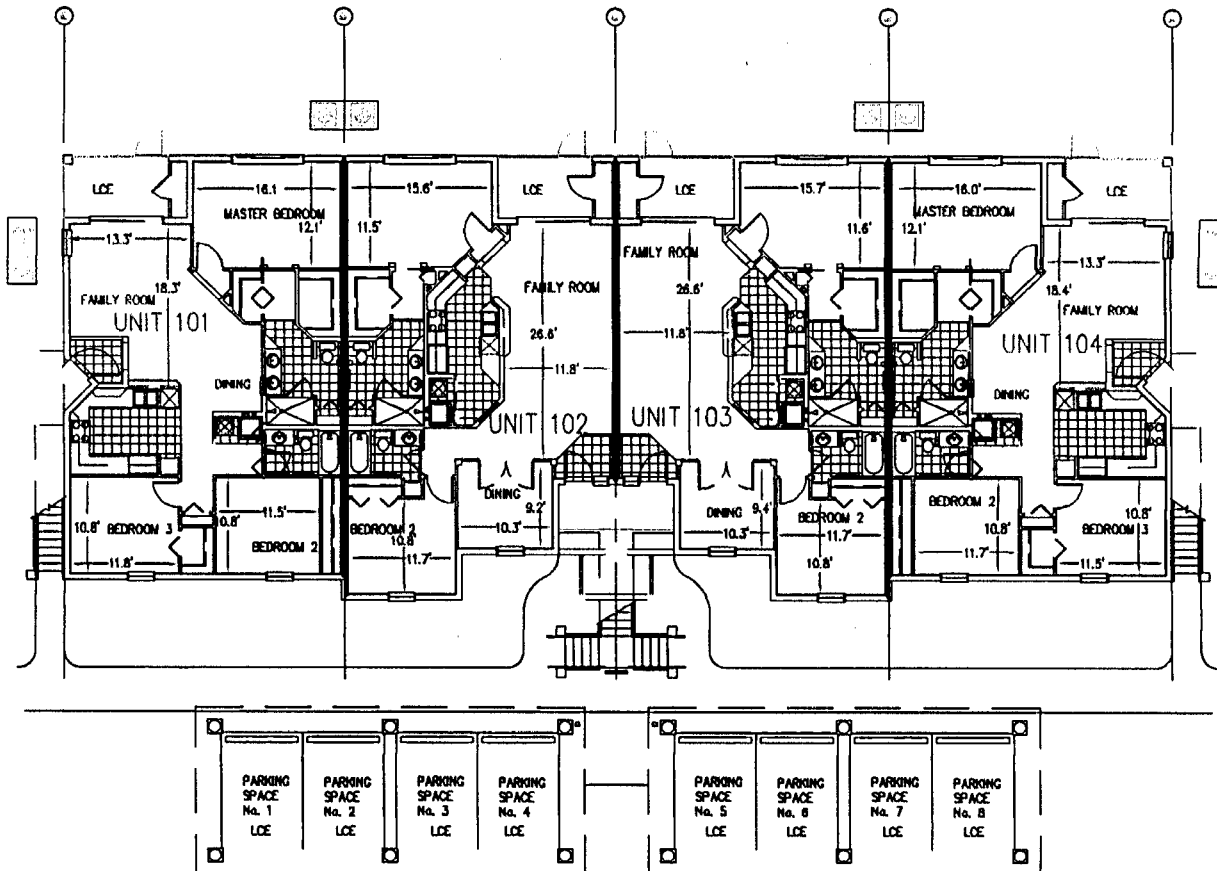
SCALE: 1"=20'  
DATE: 11/9/05

PREPARED BY:  
PRIVETT-NILES & ASSOC., INC.  
SURVEYORS, MAPPERS AND LAND PLANNERS  
3000 N. PONCE DE LEON BLVD.  
ST. AUGUSTINE, FLORIDA, 32084  
(904) 829-2591 LB No.6824

## TYPICAL SIDE VIEW PLAN PALENCIA 8 PLEX - BUILDING 18

**EXHIBIT "D"****EL JARDIN IV**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'  
DATE: 11/9/05

## **FIRST FLOOR PLAN BUILDING 18**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

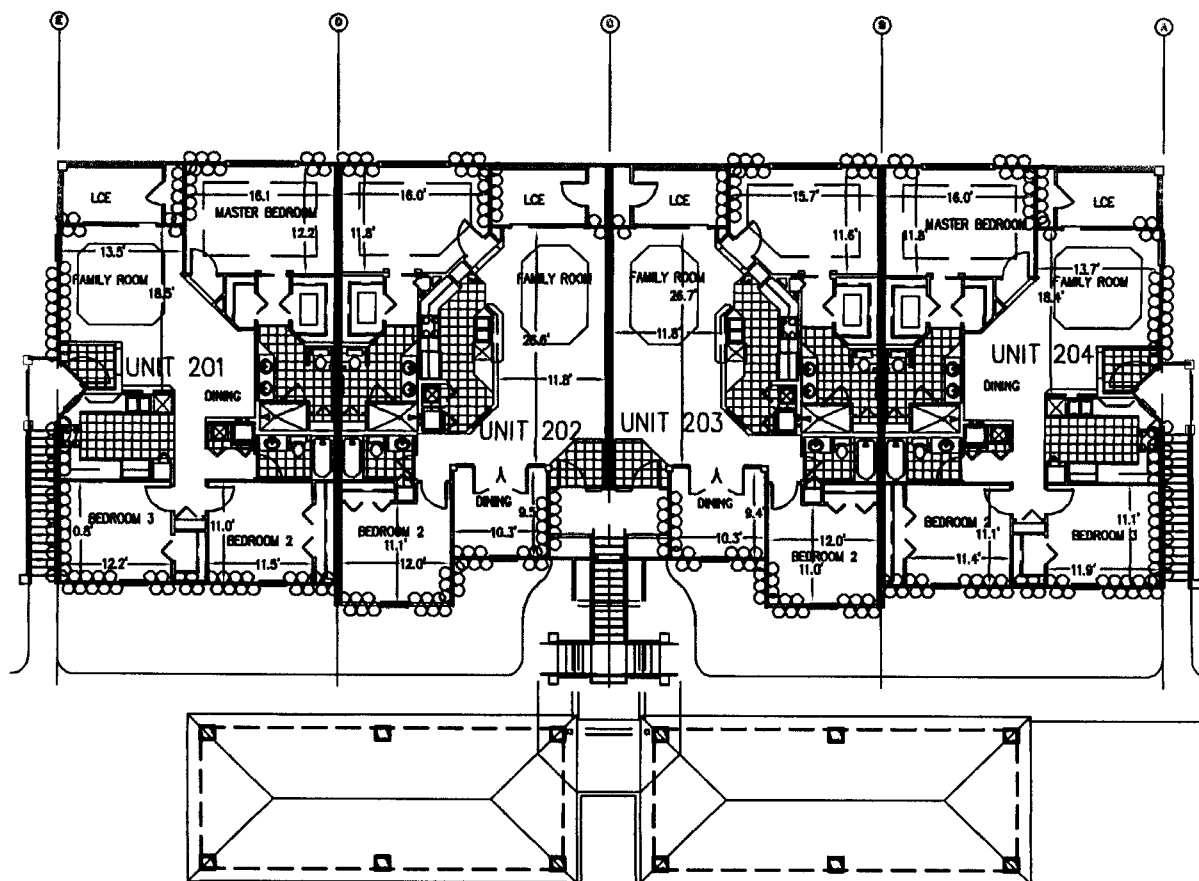
**PRIVETT-NILES and ASSOCIATES, INC.**  
SURVEYING AND MAPPING CONSULTANTS  
LICENSED BUSINESS No. 0824

3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
ST. AUGUSTINE, FLORIDA 32084  
(904) 829-2591 FAX: (904) 829-5070

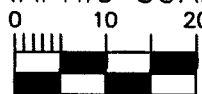
## EXHIBIT "D"

**EL JARDIN IV**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'  
DATE: 11/9/05

## **SECOND FLOOR PLAN BUILDING 18**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

**PRIVETT-NILES and ASSOCIATES, INC.**  
SURVEYING AND MAPPING CONSULTANTS  
LICENSED BUSINESS No. 0624

3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
ST. AUGUSTINE, FLORIDA 32084  
(904) 829-2501 FAX: (904) 829-5070

①  
*This instrument prepared by:*

Cheryl L. Hastings, Esq.  
GRANT, FRIDKIN, PEARSON, ATHAN & CROWN, P.A.  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108  
(239) 514-1000

(space above line for official use only)

**FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM FOR  
EL JARDIN III, A CONDOMINIUM**

**THIS AMENDMENT** is made this 13<sup>th</sup> day of August 2005 by Crosswinds at Palencia, LLC, a Florida limited liability company ("Developer").

**RECITALS:**

A. Developer has submitted certain real property to the condominium form of ownership as more particularly described in that certain Declaration of Condominium (the "Declaration") for **EL JARDIN III, A CONDOMINIUM** (the "Condominium"), dated July 26, 2005, recorded at Official Records Book 2494, Page 0257, *et seq.*, of the Public Records of St. Johns County, Florida;

B. When the Declaration was originally recorded, the Condominium improvements had not been substantially completed; and

C. The Developer wishes to amend the Declaration pursuant to Florida Statutes, Section 718.104(4)(e) to record a Certificate of Substantial Completion for Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 13 of the Condominium, together with the related common elements, and to record graphic descriptions and a plot plan consistent with said Certificate.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the Developer hereby amends the Declaration as follows.

The Developer declares that Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 13 are substantially completed as evidenced by (i) the Certificate of Substantial Completion attached hereto as Exhibit "A;" and (ii) the plot plan and graphic descriptions attached hereto as Exhibit "B;" and Developer hereby amends the Declaration to include such Certificate, plot plan and graphic descriptions.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed on the date first above written.

Christine Meade  
Signature of Witness #1

Christine Meade  
Printed Name of Witness #1

Mary K Burke  
Signature of Witness #2

MARY K BURKE  
Printed Name of Witness #2

**CROSSWINDS AT PALENCIA, LLC, a Florida  
limited liability company**

By: [Signature]  
Bernard Gliberman, Managing Member

STATE OF MICHIGAN  
COUNTY OF OAKLAND

8th I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this day of August 2005, by Bernard Gliberman, as Managing Member of Crosswinds at Palencia, LLC, a Florida limited liability company, who ☒ is personally known to me OR \_\_\_\_\_ produced \_\_\_\_\_ as identification.

(Notary Seal)

Amy L. Weiss  
Notary Public of Florida Michigan  
AMY L. WEISS  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
Printed Name of Notary Public  
My Commission Expires: Mar 20, 2008  
ACTING IN COUNTY OF \_\_\_\_\_  
My Commission Expires:

AMY L. WEISS  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Mar 20, 2008  
ACTING IN COUNTY OF Oakland

**JOINDER AND CONSENT**

The undersigned, being the owner and holder of a mortgage recorded at Official Records Book 2198, Page 0267, of the Public Records of St. Johns County, Florida, which encumbers the land described on Exhibit "A" of the Declaration of Condominium for El Jardin III, a Condominium, hereby joins in and consents to the First Amendment to Declaration of Condominium for El Jardin III, a Condominium, to which this instrument is attached.

Signed, Sealed and Delivered in the Presence of:

*Witnesses:*

Ohio Savings Bank, a Federal Savings Bank

Jef Preston  
 Witness #1  
Jennifer Preston  
 Printed Name of Witness #1

By: [Signature]  
 Craig Ridinger, as Vice President

Debra L. Wood  
 Witness #2  
Debra L. Wood  
 Printed Name of Witness #2

STATE OF FLORIDA     )  
 COUNTY OF SEMINOLE   )

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 5th day of August 2005, by Craig Ridinger, as Vice President of Ohio Savings Bank, a Federal Savings Bank, who is personally known to me or who produced \_\_\_\_\_ as identification.

(SEAL)



DEBRA L. WOOD  
 MY COMMISSION # DD 113546  
 EXPIRES: May 13, 2006  
 Bonded Thru Budget Notary Services

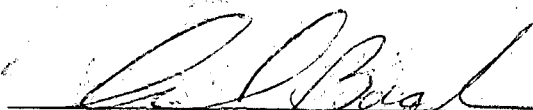
Debra L. Wood  
 Notary Public  
Debra L. Wood  
 Printed Name of Notary  
 My Commission Expires: 5/13/06

**PRIVETT-NILES & ASSOCIATES, INC.**  
**SURVEYING & MAPPING CONSULTANTS**  
3000 N. PONCE DELEON BLVD., SUITE D  
ST. AUGUSTINE, FL 32084  
TELEPHONE: 904-829-2591  
FACSIMILE: 904-829-5070

**EL JARDIN III,  
A CONDOMINIUM,  
BUILDING 13**

**SURVEYOR'S CERTIFICATE OF SUBSTANTIAL COMPLETION**

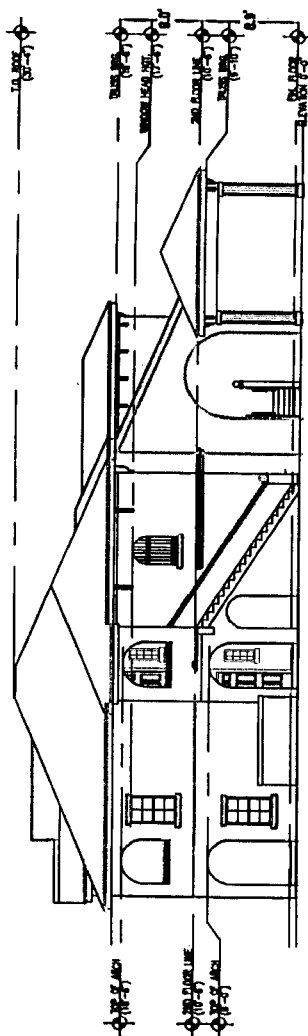
THE UNDERSIGNED LAND SURVEYOR HEREBY CERTIFIES THAT THE CONSTRUCTION OF THE IMPROVEMENTS COMPRISING EL JARDIN III, A CONDOMINIUM, BUILDING 13, IS SUBSTANTIALLY COMPLETE SO THAT THE ATTACHED GRAPHIC DESCRIPTION OF THE IMPROVEMENTS TOGETHER WITH THE PROVISIONS OF THE DECLARATION OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY, IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND SO THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS. ALL PLANNED IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO LANDSCAPING, UTILITIES SERVICES, ACCESS TO BUILDING 13, AND CONDOMINIUM COMMON ELEMENT FACILITIES AS SET FORTH IN THE DECLARATION OF CONDOMINIUM HAVE BEEN SUBSTANTIALLY COMPLETED.

  
\_\_\_\_\_  
ALBERT D. BRADSHAW, STATE OF FLORIDA (L.S.#5257)  
PRIVETT-NILES & ASSOCIATES, INC. (L.B.#6824)

**EXHIBIT "A"**

MAP TO SHOW CONDOMINIUM SURVEY OF:

# EL JARDIN III



GRAPHIC SCALE  
0 10 20  
1 inch = 20 feet

SCALE: 1"=20'  
DATE: 07/21/05

PREPARED BY:

PRIVETT-NILES & ASSOC., INC.  
SURVEYORS, MAPPERS AND LAND PLANNERS  
3000 N. PONCE DE LEON BLVD.  
ST. AUGUSTINE, FLORIDA, 32084  
(904) 829-2591 LB No.6824

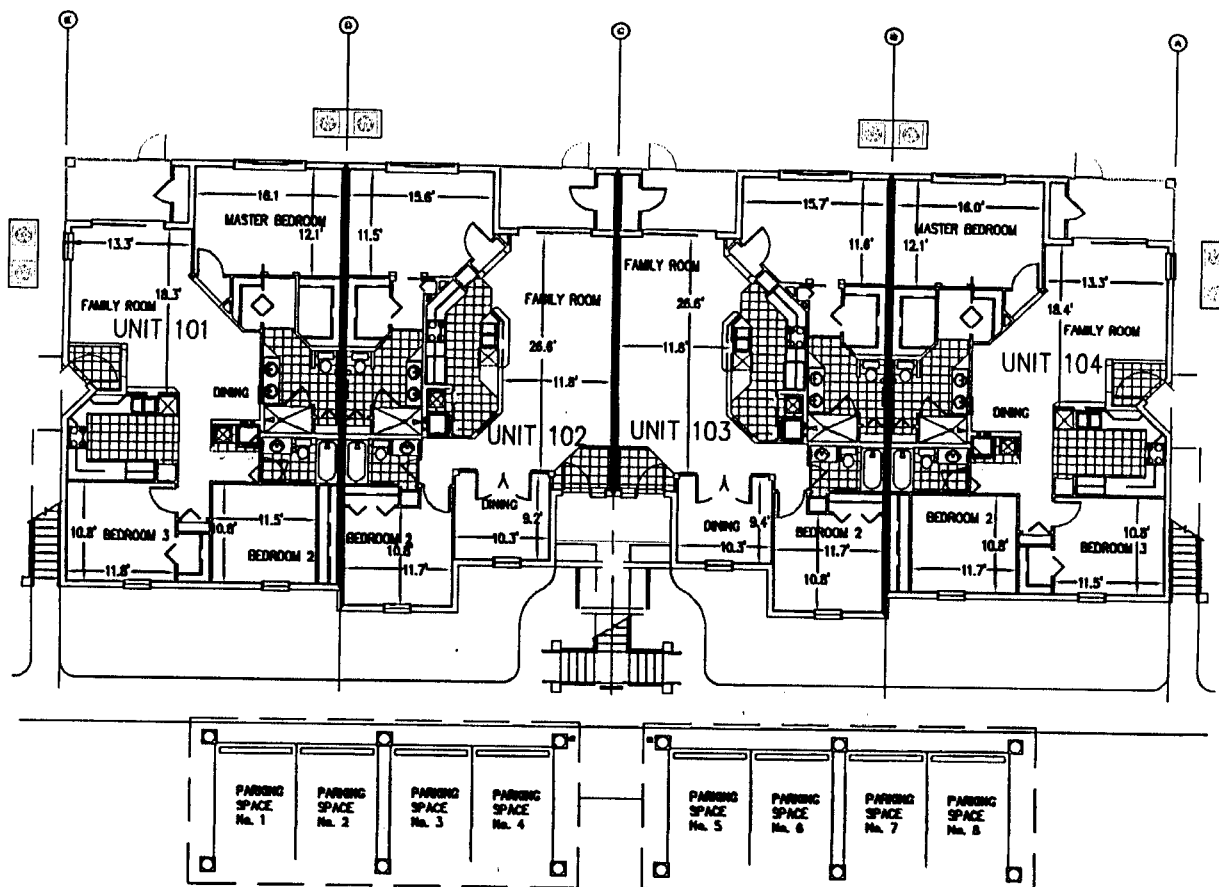
## TYPICAL SIDE VIEW PLAN PALENCIA 8 PLEX - BUILDING 13

EXHIBIT "B"

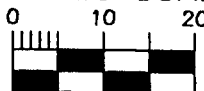


**EL JARDIN III**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'  
DATE: 08/09/05

# **FIRST FLOOR PLAN** **PALENCIA 8 PLEX - BUILDING 13**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

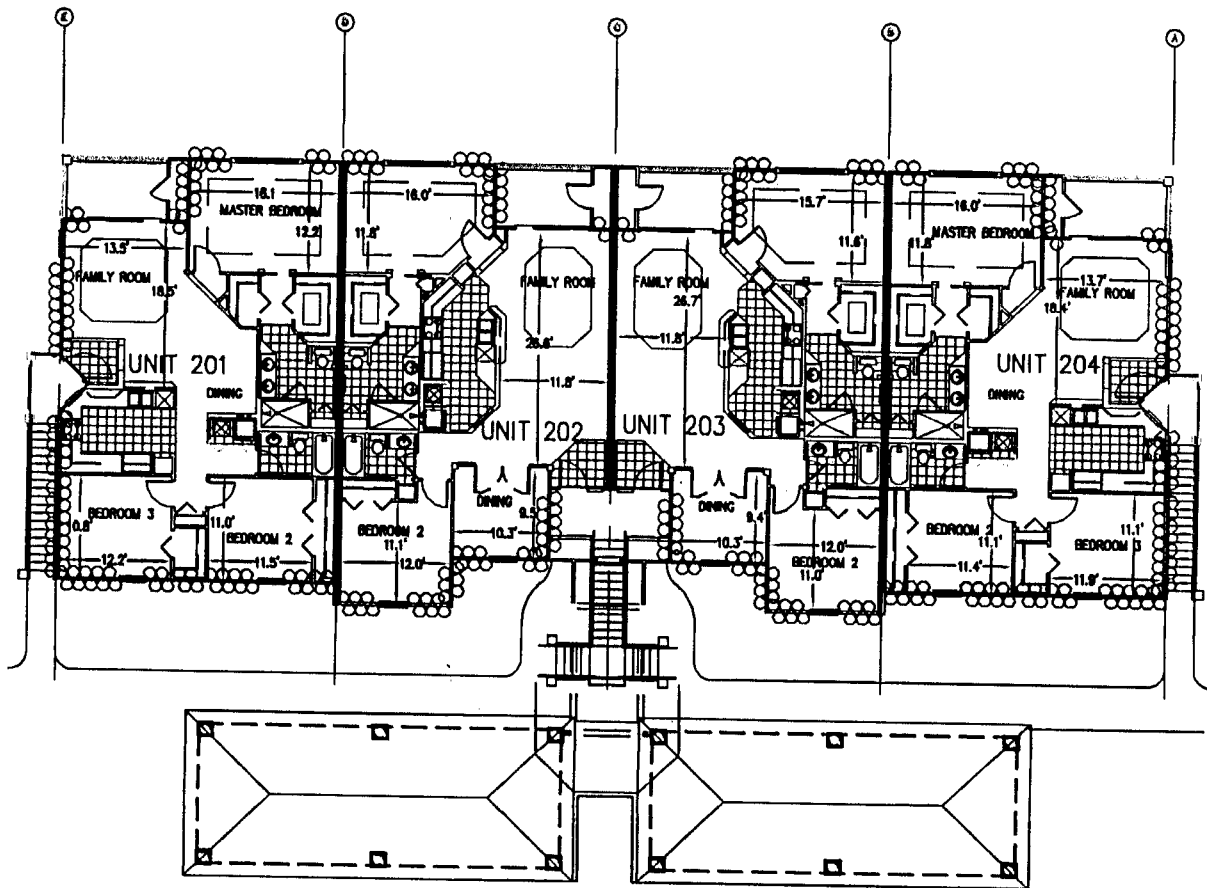
**PREPARED BY:**

**PRIVETT-NILES and ASSOCIATES, INC.**  
 SURVEYING AND MAPPING CONSULTANTS  
 LICENSED BUSINESS No. 6824  
 3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
 ST. AUGUSTINE, FLORIDA 32084  
 (904) 829-2591 FAX: (904) 829-5070

**EXHIBIT "B"**

**EL JARDIN III**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'

DATE: 07/21/05

## **SECOND FLOOR PLAN**

### **PALENCIA 8 PLEX - BUILDING 13**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

**PRIVETT-NILES and ASSOCIATES, INC.**  
 SURVEYING AND MAPPING CONSULTANTS  
 LICENSED BUSINESS No. 6824

3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
 ST. AUGUSTINE, FLORIDA 32084  
 (904) 829-2591 FAX: (904) 829-5070

**EXHIBIT "B"**

Recording Fees: \$ 69.50  
Intangible Tax: \$  
Doc. Stamps: \$

*This instrument prepared by:*  
Cheryl L. Hastings, Esq.  
GRANT, FRIDKIN, PEARSON, ATHAN & CROWN, P.A.  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108  
(239) 514-1000

**Public Records of  
St. Johns County, FL  
Clerk # 2005060046,  
O.R. 2494 PG 252-256  
07/26/2005 at 12:18 PM,  
REC. \$21.00 SUR. \$23.00**

(space above line for official use only)

**THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM FOR  
EL JARDIN II, A CONDOMINIUM**

**THIS AMENDMENT** is made this 22 day of July 2005, by Crosswinds at Palencia, LLC, a Florida limited liability company ("Developer").

**RECITALS:**

A. Developer has submitted certain real property to the condominium form of ownership as more particularly described in that certain Declaration of Condominium (the "Declaration") for **EL JARDIN II, A CONDOMINIUM** (the "Condominium"), dated January 11, 2005, recorded at Official Records Book 2385, Page 0140, *et seq.*, of the Public Records of St. Johns County, Florida; as amended by that certain First Amendment to Declaration of Condominium for El Jardin II, a condominium, dated May 10, 2005, recorded at Official Records Book 2440, Pages 0948 through 0958, of the Public Records of St. Johns County, Florida; as amended by that certain Second Amendment to Declaration of Condominium for El Jardin II, a condominium, dated June 27, 2005 and recorded at Official Records Book 2470, Pages 1602 through 1608, of the Public Records of St. Johns County, Florida;

B. When the Declaration was originally recorded, the Condominium improvements had not been substantially completed; and

C. The Developer wishes to amend the Declaration pursuant to Florida Statutes, Section 718.104(4)(e) to record a Certificate of Substantial Completion for Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 9 of the Condominium, together with the related common elements, and to record graphic descriptions and a plot plan consistent with said Certificate.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the Developer hereby amends the Declaration as follows.

The Developer declares that Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 9 are substantially completed as evidenced by (i) the Certificate of Substantial Completion attached hereto as Exhibit "A;" and (ii) the plot plan and graphic descriptions attached hereto as Exhibit "B;" and Developer hereby amends the Declaration to include such Certificate, plot plan and graphic descriptions.

**IN WITNESS WHEREOF**, Developer has caused this instrument to be executed on the date first above written.

**THIS THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM FOR EL JARDIN II, A CONDOMINIUM, IS BEING RE-RECORDED TO CORRECTLY ATTACH THE FIRST FLOOR PLAN AND SECOND FLOOR PLAN (TOTAL 2 PAGES) INADVERTENTLY NOT INCLUDED AS A PART OF EXHIBIT "B."**

*Anna Walczak*

Signature of Witness #1

ANNA WALCZAK

Printed Name of Witness #1

*Christine Meade*

Signature of Witness #2

Christine Meade

Printed Name of Witness #2

**CROSSWINDS AT PALENCIA, LLC, a Florida  
limited liability company**

By: 

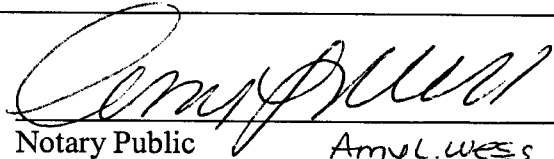
Bernard Gliberman, Managing Member

STATE OF MICHIGAN     )  
COUNTY OF WAYNE    )

*Oakland*

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this  
28 day of JUNE 2005, by Bernard Gliberman, as Managing Member of  
Crosswinds at Palencia, LLC, a Florida limited liability company, who ☒ is personally known  
to me OR \_\_\_ produced \_\_\_  
\_\_\_ as identification.

(Notary Seal)



Notary Public

*Amy L. Weiss*

NOTARY PUBLIC WAYNE CO., MI  
MY COMMISSION EXPIRES Mar 20, 2008

Printed Name of Notary Public

My Commission Expires:

**AMY L. WEISS**  
**NOTARY PUBLIC WAYNE CO., MI**  
**MY COMMISSION EXPIRES Mar 20, 2008**  
*Acting in oakland*

**JOINDER AND CONSENT**

The undersigned, being the owner and holder of a mortgage recorded at Official Records Book 2198, Page 0267, of the Public Records of St. Johns County, Florida, which encumbers the land described on Exhibit "A" of the Declaration of Condominium for El Jardin II, a Condominium, hereby joins in and consents to the Third Amendment to Declaration of Condominium for El Jardin II, a Condominium, to which this instrument is attached.

Signed, Sealed and Delivered in the Presence of:

Witnesses:

Ohio Savings Bank, a Federal Savings Bank

Lisa Procher  
Witness #1

Lisa Procher  
Printed Name of Witness #1

Debra L. Wood  
Witness #2

Debra L. Wood  
Printed Name of Witness #2

By: [Signature]  
Craig Ridinger, as Vice President

STATE OF FLORIDA       )  
COUNTY OF SEMINOLE   )

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 28th day of JUNE 2005, by Craig Ridinger, as Vice President of Ohio Savings Bank, a Federal Savings Bank, who is personally known to me or who produced as identification.

(SEAL)



DEBRA L. WOOD  
MY COMMISSION # DD 113546  
EXPIRES: May 13, 2006  
Bonded Thru Budget Notary Services

Debra L. Wood

Notary Public

Debra L. Wood  
Printed Name of Notary

My Commission Expires: 5/13/06

r:\data\wd\_real\crosswinds\palencia\eljardin-ii\amendment to declaration3.doc

**PRIVETT-NILES & ASSOCIATES, INC.**  
**SURVEYING & MAPPING CONSULTANTS**  
3000 N. PONCE DELEON BLVD., SUITE D  
ST. AUGUSTINE, FL 32084  
TELEPHONE: 904-829-2591  
FACSIMILE: 904-829-5070

**EL JARDIN II,  
A CONDOMINIUM,  
BUILDING 9**

**SURVEYOR'S CERTIFICATE OF SUBSTANTIAL COMPLETION**

THE UNDERSIGNED LAND SURVEYOR HEREBY CERTIFIES THAT THE CONSTRUCTION OF THE IMPROVEMENTS COMPRISING EL JARDIN II, A CONDOMINIUM, BUILDING 9, IS SUBSTANTIALLY COMPLETE SO THAT THE ATTACHED GRAPHIC DESCRIPTION OF THE IMPROVEMENTS TOGETHER WITH THE PROVISIONS OF THE DECLARATION OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY, IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND SO THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS. ALL PLANNED IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO LANDSCAPING, UTILITIES SERVICES, ACCESS TO BUILDING 9, AND CONDOMINIUM COMMON ELEMENT FACILITIES AS SET FORTH IN THE DECLARATION OF CONDOMINIUM HAVE BEEN SUBSTANTIALLY COMPLETED.

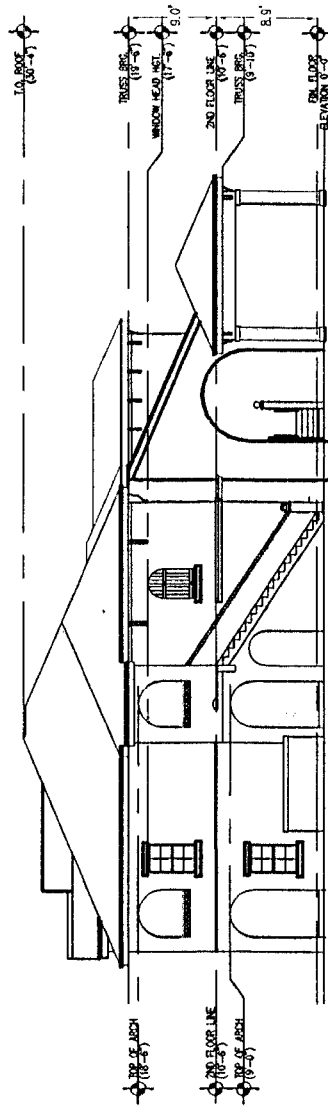


ALBERT D. BRADSHAW, STATE OF FLORIDA (L.S.#5257)  
PRIVETT-NILES & ASSOCIATES, INC. (L.B.#6824)

EXHIBIT "A"

MAP TO SHOW CONDOMINIUM SURVEY OF:

# EL JARDIN II



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'  
DATE: 06/22/05

PREPARED BY:

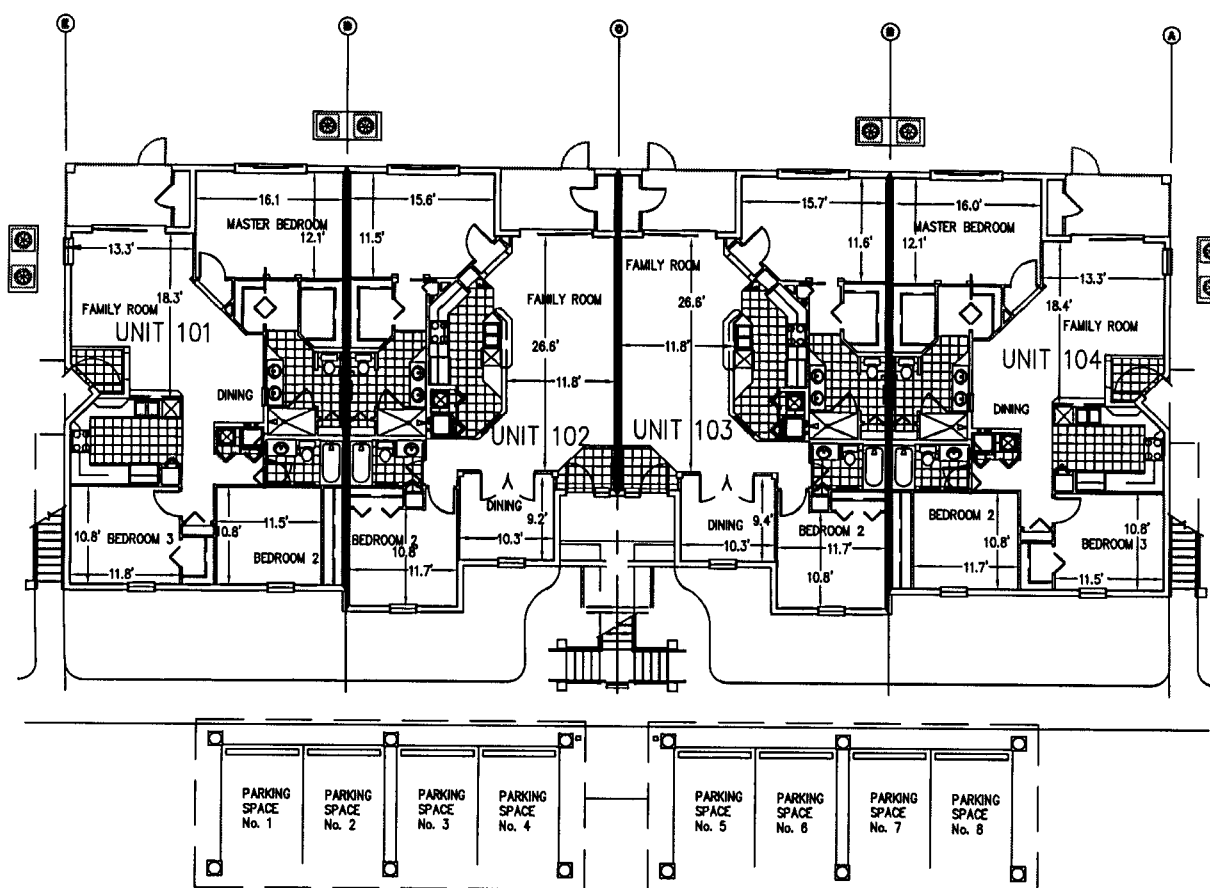
PRIVETT-NILES & ASSOC., INC.  
SURVEYORS, MAPPERS AND LAND PLANNERS  
3000 N. PONCE DE LEON BLVD.  
ST. AUGUSTINE, FLORIDA, 32084  
(904) 829-2591 LB No.6824

## TYPICAL SIDE VIEW PLAN PALENCIA 8 PLEX - BUILDINGS 4, 5, 7, 8 & 9

EXHIBIT "B"

**EL JARDIN II**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'

DATE: 07/21/05

## **FIRST FLOOR PLAN**

### **PALENCIA 8 PLEX - BUILDING 9**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

**PRIVETT-NILES and ASSOCIATES, INC.**  
 SURVEYING AND MAPPING CONSULTANTS  
 LICENSED BUSINESS No. 6824

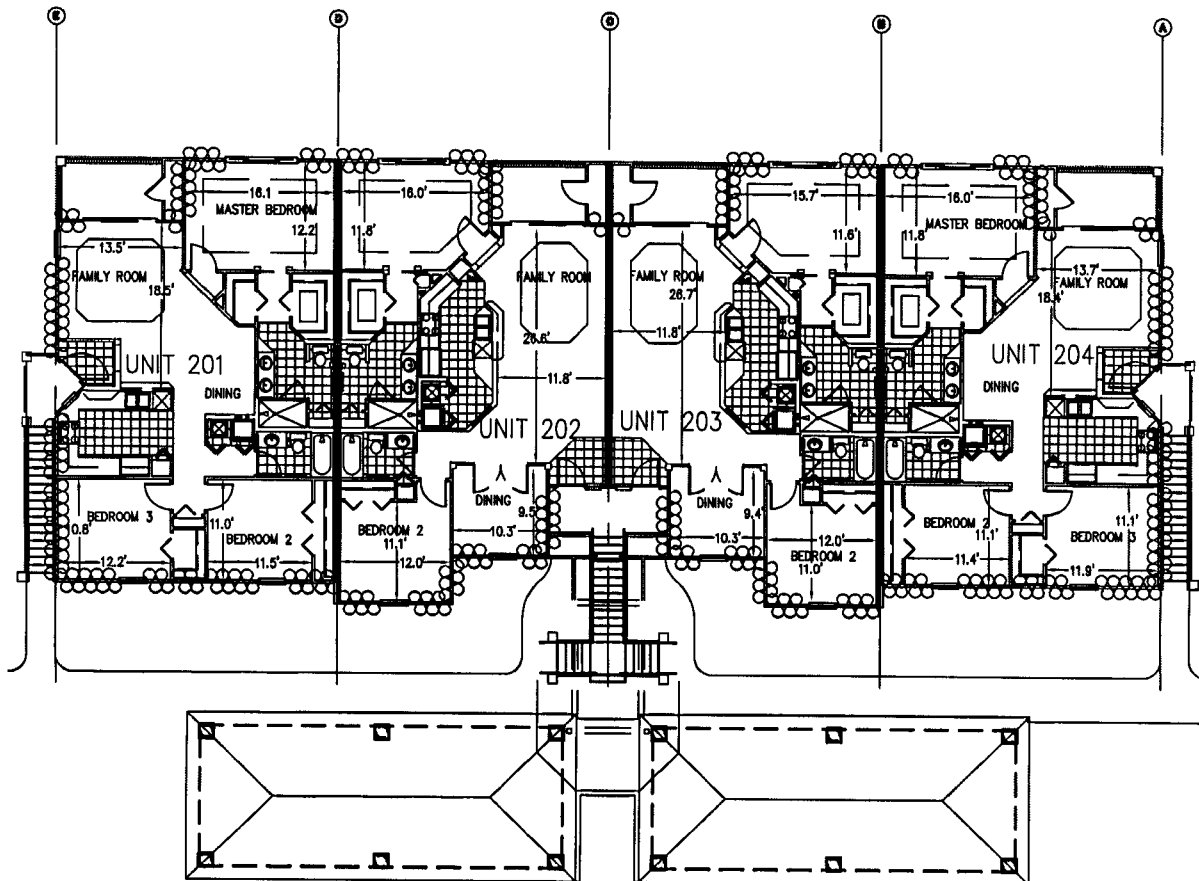
3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
 ST. AUGUSTINE, FLORIDA 32084  
 (904) 829-2591 FAX: (904) 829-5070

**EXHIBIT "B"**



**EL JARDIN II**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'  
DATE: 02/10/05

## SECOND FLOOR PLAN PALENCIA 8 PLEX - BUILDING 9

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

**PRIVETT-NILES and ASSOCIATES, INC.**  
SURVEYING AND MAPPING CONSULTANTS  
LICENSED BUSINESS No. 6824

3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
ST. AUGUSTINE, FLORIDA 32084  
(904) 829-2591 FAX: (904) 829-5070

**EXHIBIT "B"**

2  
***This instrument prepared by:***

Cheryl L. Hastings, Esq.  
GRANT, FRIDKIN, PEARSON, ATHAN & CROWN, P.A.  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108  
(239) 514-1000

(space above line for official use only)

**SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM FOR  
EL JARDIN II, A CONDOMINIUM**

**THIS AMENDMENT** is made this 27<sup>th</sup> day of June 2005, by Crosswinds at Palencia, LLC, a Florida limited liability company ("Developer").

**RECITALS:**

A. Developer has submitted certain real property to the condominium form of ownership as more particularly described in that certain Declaration of Condominium (the "Declaration") for **EL JARDIN II, A CONDOMINIUM** (the "Condominium"), dated January 11, 2005, recorded at Official Records Book 2385, Page 0140, *et seq.*, of the Public Records of St. Johns County, Florida; as amended by that certain First Amendment to Declaration of Condominium for El Jardin II, a condominium, dated May 10, 2005, recorded at Official Records Book 2440, Page 0948, of the Public Records of St. Johns County, Florida;

B. When the Declaration was originally recorded, the Condominium improvements had not been substantially completed; and

C. The Developer wishes to amend the Declaration pursuant to Florida Statutes, Section 718.104(4)(e) to record a Certificate of Substantial Completion for Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 8 of the Condominium, together with the related common elements, and to record graphic descriptions and a plot plan consistent with said Certificate.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the Developer hereby amends the Declaration as follows.

The Developer declares that Units 101, 102, 103, 104, 201, 202, 203 and 204 of Building 8 are substantially completed as evidenced by (i) the Certificate of Substantial Completion attached hereto as Exhibit "A;" and (ii) the plot plan and graphic descriptions attached hereto as Exhibit "B;" and Developer hereby amends the Declaration to include such Certificate, plot plan and graphic descriptions.

**IN WITNESS WHEREOF**, Developer has caused this instrument to be executed on the date first above written.

Kathy Owens  
Signature of Witness #1

KATHY OWENS  
Printed Name of Witness #1

Ronke Gubionshi  
Signature of Witness #2

Ronke Gubionshi  
Printed Name of Witness #2

**CROSSWINDS AT PALENCIA, LLC, a Florida  
limited liability company**

By: [Signature]  
Bernard Glieberman, Managing Member

STATE OF MICHIGAN  
COUNTY OF ~~WAYNE~~ Oakland

14th I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this  
day of June 2005, by Bernard Glieberman, as Managing Member of Crosswinds at  
Palencia, LLC, a Florida limited liability company, who ☒ is personally known to me OR  
produced \_\_\_\_\_ as  
identification.

(Notary Seal)

[Signature]  
Notary Public

AMY L WESS  
Printed Name of Notary Public  
My Commission Expires:

AMY L WESS  
NOTARY PUBLIC WAYNE CO., MI  
MY COMMISSION EXPIRES Mar 20, 2006  
Acting in Oakland

# JOINDER AND CONSENT

The undersigned, being the owner and holder of a mortgage recorded at Official Records Book 2198, Page 0267, of the Public Records of St. Johns County, Florida, which encumbers the land described on Exhibit "A" of the Declaration of Condominium for El Jardin II, a Condominium, hereby joins in and consents to the ~~Second~~ Amendment to Declaration of Condominium for El Jardin II, a Condominium, to which this instrument is attached.

Signed, Sealed and Delivered in the Presence of:

Witnesses:

Ohio Savings Bank, a Federal Savings Bank

Lisa Procher  
Witness #1  
Lisa Procher  
Printed Name of Witness #1

By: [Signature]  
Craig Ridinger, as Vice President

Jennifer Preston  
Witness #2  
Jennifer Preston  
Printed Name of Witness #2

STATE OF FLORIDA     )  
COUNTY OF SEMINOLE    )

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 4 day of June 2005, by Craig Ridinger, as Vice President of Ohio Savings Bank, a Federal Savings Bank, who is personally known to me or who produced \_\_\_\_\_ as identification.

(SEAL)



JENNIFER B. PRESTON  
MY COMMISSION # DD 103281  
EXPIRES: May 10, 2008  
Bonded Thru Budget Notary Services

Jennifer B. Preston  
Notary Public  
Jennifer B. Preston  
Printed Name of Notary  
My Commission Expires: 5/10/06

r:\data\wd\_real\crosswinds\palencia\eljardin-ii\amendment to declaration2.doc

**PRIVETT-NILES & ASSOCIATES, INC.**  
**SURVEYING & MAPPING CONSULTANTS**  
3000 N. PONCE DELEON BLVD., SUITE D  
ST. AUGUSTINE, FL 32084  
TELEPHONE: 904-829-2591  
FACSIMILE: 904-829-5070

**EL JARDIN II,  
A CONDOMINIUM,  
BUILDING 8**

**SURVEYOR'S CERTIFICATE OF SUBSTANTIAL COMPLETION**

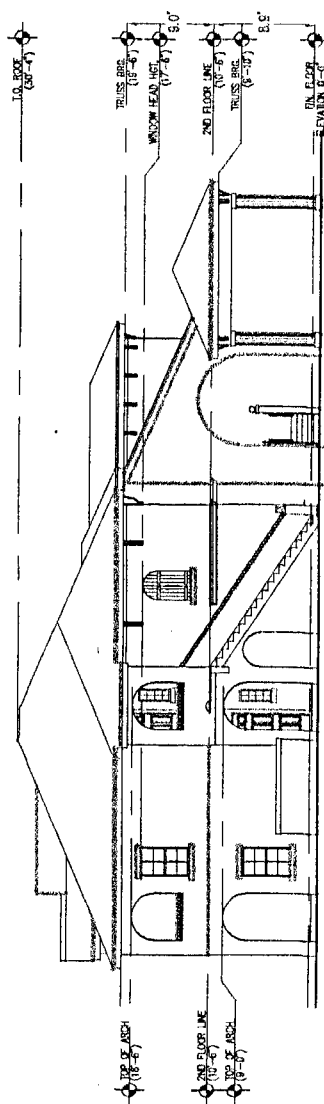
THE UNDERSIGNED LAND SURVEYOR HEREBY CERTIFIES THAT THE CONSTRUCTION OF THE IMPROVEMENTS EL JARDIN II, A CONDOMINIUM, BUILDING 8, IS SUBSTANTIALLY COMPLETE SO THAT THE ATTACHED GRAPHIC DESCRIPTION OF THE IMPROVEMENTS TOGETHER WITH THE PROVISIONS OF THE DECLARATION OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY, IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND SO THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS. ALL PLANNED IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO LANDSCAPING, UTILITIES SERVICES, ACCESS TO BUILDING 8, AND CONDOMINIUM COMMON ELEMENT FACILITIES AS SET FORTH IN THE DECLARATION OF CONDOMINIUM HAVE BEEN SUBSTANTIALLY COMPLETED.

  
ALBERT D. BRADSHAW, STATE OF FLORIDA (L.S.#5257)  
PRIVETT-NILES & ASSOCIATES, INC. (L.B.#6824)

01/23/05  
DATE

**EXHIBIT "A"**

# EL JARDIN II



**EXHIBIT "B"**

GRAPHIC SCALE



1 inch = 20 feet

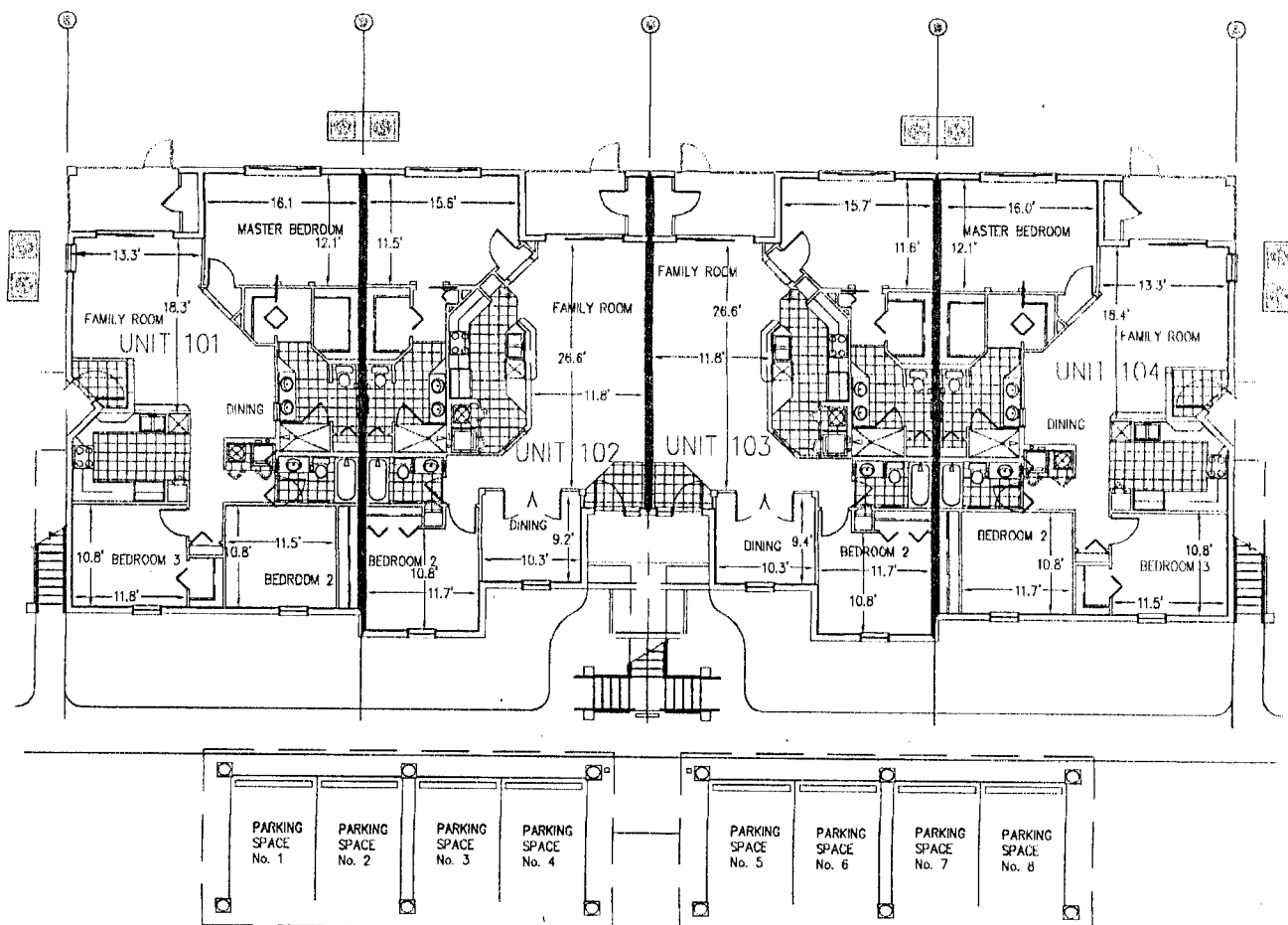
SCALE: 1"=20'  
DATE: 06/22/05

PREPARED BY:  
PRIVETT-NILES & ASSOC., INC.  
SURVEYORS, MAPPERS AND LAND PLANNERS  
3000 N. PONCE DE LEON BLVD.  
ST. AUGUSTINE, FLORIDA, 32084  
(904) 829-2591 LB No.6824

**TYPICAL SIDE VIEW PLAN**  
**PALENCIA 8 PLEX - BUILDINGS 4, 5, 7, 8 & 9**

**EL JARDIN II**

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'

DATE: 06/22/05

# **FIRST FLOOR PLAN**

## **PALENCIA 8 PLEX - BUILDING 8**

**NOTES:**

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**PREPARED BY:**

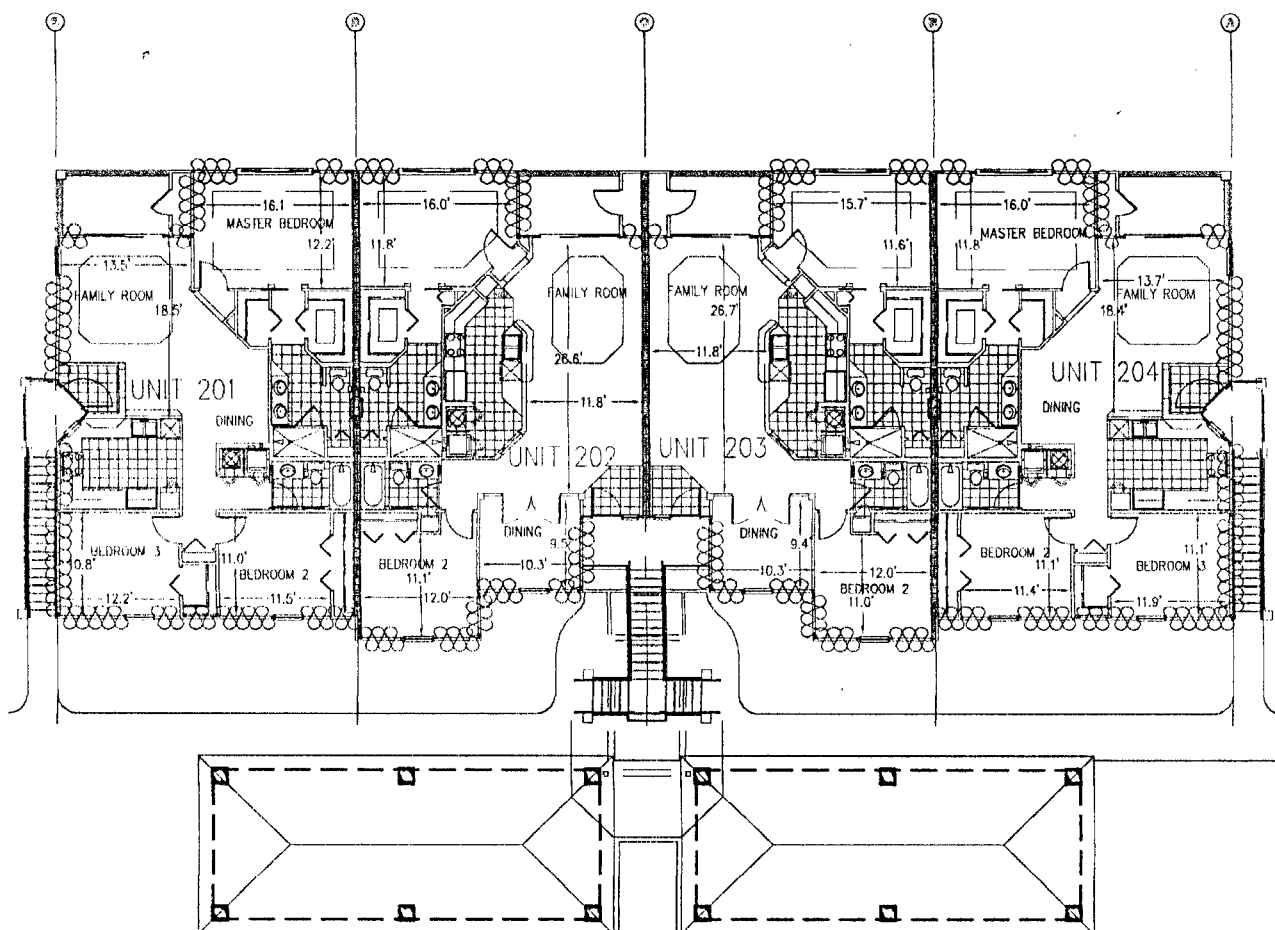
**PRIVETT-NILES and ASSOCIATES, INC.**  
 SURVEYING AND MAPPING CONSULTANTS  
 LICENSED BUSINESS No. 6824

3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
 ST. AUGUSTINE, FLORIDA 32084  
 (904) 829-2591 FAX: (904) 829-5070

**EXHIBIT "B"**

# EL JARDIN II

A CONDOMINIUM:



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'

DATE: 06/22/05

## SECOND FLOOR PLAN PALENCIA 8 PLEX - BUILDING 8

### NOTES:

- 1) ARCHITECTURAL DESIGN PROVIDED BY BSB DESIGN.
- 2) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF AND PROVIDED BY THE ARCHITECTURAL PLANS.
- 3) DROP CEILINGS & CATHEDRAL CEILINGS HAVE NOT BEEN SHOWN. REFER TO THE DECLARATION OF CONDOMINIUM FOR A DESCRIPTION OF VERTICAL UNIT BOUNDARIES.
- 4) ALL IMPROVEMENTS ARE PROPOSED AS OF THE DATE OF THIS DRAWING, UNLESS OTHERWISE NOTED.
- 5) PROPOSED IMPROVEMENTS ARE SUBJECT TO NORMAL CONSTRUCTION TOLERANCES.

**EXHIBIT "B"**

### PREPARED BY:

**PRIVETT-NILES and ASSOCIATES, INC.**  
SURVEYING AND MAPPING CONSULTANTS  
LICENSED BUSINESS No. 6824

3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
ST. AUGUSTINE, FLORIDA 32084  
(904) 829-2591 FAX: (904) 829-5070



①  
50  
  
*This instrument prepared by:*

Cheryl L. Hastings, Esq.  
GRANT, FRIDKIN, PEARSON, ATHAN & CROWN, P.A.  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108  
(239) 514-1000

Recording Fees: \$ 516.00

Intangible Tax: \$ \_\_\_\_\_

Doc. Stamps: \$ \_\_\_\_\_

(space above line for official use only)

**MASTER DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS, RESERVATIONS AND EASEMENTS FOR  
AVILA AT PALENCIA**

THIS MASTER DECLARATION is made this 15th day of December 2004, by  
CROSSWINDS AT PALENCIA, LLC, a Florida limited liability company (the "Developer").

**BACKGROUND**

A. Developer is the owner of a parcel of land located in St. Johns County, Florida, legally described on Exhibit "1" hereto (the "Property") on which Developer presently plans, but has not committed, and does not hereby commit itself, to develop residential living community, together with other amenities and facilities for the common use and enjoyment of the Owners (as hereinafter defined) of all Units (as hereinafter defined) pursuant to a general plan of development, such development on the Property to be known as "Avila at Palencia;" and

B. In order to (i) insure that such general plan of development is adhered to; (ii) establish certain continuing relationships in the form of mutual rights and obligations between Developer and the persons who acquire ownership of Units (as hereinafter defined) developed in Avila at Palencia by Developer, and their respective successors, with respect to use, enjoyment and maintenance of certain areas and facilities within Avila at Palencia, and (iii) protect, preserve, and enhance the value of the Avila at Palencia, Developer has determined that this Declaration, establishing certain easements, servitudes, restrictions, and conditions in the form of covenants running with the land shall be binding upon, enforceable against and inure to the benefit of all such present and future owners of property developed within Avila at Palencia and shall run with title to the land hereby and hereafter subjected to it.

NOW, THEREFORE, Developer hereby declares that title to the Property, and to all Units (as hereinafter defined) now and hereafter existing thereon shall be held, sold, conveyed, encumbered, used and occupied subject to the terms and conditions of this Declaration as covenants running with the land enforceable as aforesaid.

## ARTICLE I

### DEFINITIONS

Section 1. The following terms when used in this Declaration shall have the following meanings:

(a) “Articles” means the Articles of Incorporation of the Association (as hereinafter defined). A copy is attached as Exhibit “2.”

(b) “Association” shall mean and refer to the Avila at Palencia Master Association, Inc., a non-profit Florida corporation, whose purpose is to administer the Common Property (as hereinafter defined) in accordance with the provisions of this Declaration and the governing documents of the Association.

(c) “Board of Directors” or “Board” means the representative body which is responsible for the administration of the Association’s affairs, and is the same body referred to in the Condominium Act as the “Board of Administration.”

(d) “Building” means a separate detached structure in the usual sense.

(e) “Bylaws” means the Bylaws of the Association. A copy is attached as Exhibit “3.”

(f) “Common Assessment” shall mean the charge against each Owner (as hereinafter defined) and his or her Unit (as hereinafter defined), representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Common Property.

(g) “Common Expense” shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacements of the Common Property (as hereinafter defined), including unpaid Special Assessments (as hereinafter defined), including those costs not paid by the Owner (as hereinafter defined) responsible for payment; the costs of any and all commonly metered utilities, cable or master television charges, and other commonly metered charges for the Common Property; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening and other services benefiting the Common Property, and any recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen’s compensation insurance and other insurance covering the Common Property; the costs of bonding of the members of the management body; taxes paid by the Association, including real property taxes for the Common Property; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Property, or portions thereof; and the costs of any other expenses incurred by, the Association for any reason whatsoever in connection with the Common Property for the benefit of all of the Owners.

- (h) “Common Property” shall mean and refer to those portions of the Property which are intended to be devoted to the common use and enjoyment of the Owners (as hereinafter defined) of Units (as hereinafter defined).
- (i) “Developer” means, as aforesaid, and its successors and assigns who acquire title to any portion of Avila at Palencia for the purpose of development so long as Crosswinds at Palencia, LLC, a Florida limited liability company, assigns its rights hereunder to such persons by express assignment or by operation of law.
- (j) “First Mortgagee” shall mean and refer to an Institutional Lender (as hereinafter defined) which holds a first mortgage encumbering any Unit (as hereinafter defined) and which has notified the Association in writing that it holds same.
- (k) “Institutional Lender” shall mean and refer to a commercial or savings bank, savings and loan association, mortgage company, life insurance company, pension fund, business trust or governmental agency or corporation, including, but not limited to, a real estate investment trust, or any assignee of a loan made by any such lender, or any private or governmental institution which has insured the loan of the lender or any combination of the foregoing entities.
- (l) “Lake” shall mean and refer to any body of water designated in a site plan or plot plan as a “Lake” or that actually functions as a water body.
- (m) “Land Use Documents” shall mean this Declaration, the Articles and Bylaws.
- (n) “Member” shall mean and refer to an Owner (as hereinafter defined) whom is a member of the Association as provided in Article III hereof. The Association has Class “A” and Class “B” Members as defined in its Articles of Incorporation.
- (o) “Notice” shall mean and refer to:
- (i) Written notice delivered personally or mailed to the last known address of the intended recipient, in the manner set forth herein;
  - (ii) Notice published at least once each week for two (2) consecutive weeks in a newspaper having general circulation in St. Johns County, Florida; or
  - (iii) Notice given in any other manner provided in the Bylaws of the Association.
- (p) “Open Space” shall mean and refer to those portions of the Property so designated in any supplemental declaration pursuant hereto which constitute open area, clear from the ground upward, devoid of residential buildings, accessory structures and parking area; except, however, those buildings used exclusively for recreational purposes.

(q) “Owner” shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Unit (as hereinafter defined) or to any Unit developed by Developer upon any portion of the Property subject hereto but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any holder of a mortgage encumbering a Unit unless and until such holder has acquired title thereto pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

(r) “Restricted Common Property” shall mean any portion of the Common Property (such as, but not limited to, automobile parking spaces), designed for the exclusive use of particular Owners, as are, from time to time, designated by amendment or supplement to the Declaration.

(s) “Roads” shall mean those private streets, roads, terraces, drives, cul-de-sacs, courts and avenues, including the entire right-of-way, as from time to time are improved and exist within any portion of the Property subjected hereto.

(t) “Property Owners Declaration” means the Declaration of Covenants and Restrictions for Palencia, as recorded in the Public Records of St. Johns County, Florida at O.R. Book 1666, Page 807, *et seq.*, and all recorded exhibits thereto, as they have been amended and may be amended from time to time and to which the Declaration of Condominium is subject. Provision is made in the Property Owners Declaration for establishment of the Palencia Property Owners Association of St. Johns County, Inc. (the “Property Owners Association”).

(u) “Special Assessments” shall mean a charge against a particular Owner and his or her Unit (as hereinafter defined), directly attributable to the Owner, equal to the cost incurred by the Association for capital expenses of for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

(v) “Sub-Association” shall mean and refer to any corporation so identified in a supplemental declaration filed by the Developer, or a designated successor, as an association formed for the purpose of administering and maintaining all or any portion of the Property.

(w) “Supplemental Declaration” Any declaration subsequently filed by Developer making reference to this Declaration.

(x) “Unimproved Living Unit” shall mean and refer to a Unit (as hereinafter defined) owned by, or located on land owned by the Developer, for which a certificate of occupancy has not been issued by the appropriate governmental authority or which has not been conveyed by the Developer to a Class “A” Member of the Association.

(y) “Unit” shall mean and refer to any portion of a Building situated upon the Property designed and intended for use and occupancy as a residence by a single family, including a unit in a condominium submitted on the Property. The Developer may also designate land as a Unit by a Supplemental Declaration.

## **ARTICLE II**

### **OWNER'S PROPERTY RIGHTS**

**Section 1. Owner's Easements of Enjoyment.** Every Owner of a Unit shall have a right and easement of ingress and egress and of use and enjoyment in, to and over the Common Property which shall be appurtenant to and pass with title to it, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owner using the Common Property.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Property and to limit such use as necessary in a reasonable and non-discriminatory manner.

(c) The right of the Association in accordance with its Articles and Bylaws, and this Declaration, to borrow money for the purpose of improving the Common Property and, subject to the provisions of Article V of this Declaration, to mortgage, pledge, or hypothecate any or all of the real or personal property, respectively owned by each, as security for money borrowed or debts incurred, provided that the Developer consents to same so long as it remains a Member. Provided further that the rights of any such mortgagee shall be subordinated to the use and enjoyment rights of the Owners herein.

(d) The right of the Association to suspend the voting rights and right to use the Common Property (except to the extent needed as a means of ingress and egress) of an Owner for any period during which any assessment or dues against or due from his or her Unit remains unpaid and delinquent, and for a period not to exceed ninety (90) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Property, shall be made only by the Board of Directors of the Association, after notice and an opportunity for a hearing as provided in the Bylaws of the Association.

(e) Subject to the provisions of Article V of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless Members entitled to cast two-thirds (2/3<sup>rd</sup>s) of the voting power of each class of Members in the Association agree to such dedication, release, alienation or transfer, and with the consent thereto of the Developer so long as it remains a Member.

(f) The right of the Developer (and its sales agents, customers and representatives) to the non-exclusive use of the Common Property and the facilities, without charge, for sales, leasing, display, access, ingress, egress and exhibit purposes to sell and for lease and market any Unit within Avila at Palencia.

(g) The right and obligation of the Association to designate particular automobile parking spaces per and other facilities located on the Common Property as Restricted Common Property to be used exclusively by the Owner of a particular designated Unit as an appurtenance thereto.

(h) The right of the Property Owners Association access in, on, over and upon those portions of the Common Property as may be reasonably necessary for the purpose of access to and maintenance of the common area of Palencia, including the surface water or stormwater management system.

Section 2. Delegation of Use. Any Owner may extend or delegate, as the case may be, in accordance with the Bylaws, his or her right of enjoyment to the Common Property and facilities to the members of his or her family, or to his or her subject to reasonable regulation by the Board.

Section 3. Easements for Parking. Temporary guest or recreational parking shall be permitted within the Common Property only within spaces and areas clearly marked for this purpose. The Association, through its officers, committees and agents, is hereby empowered to establish parking regulations and to enforce these parking regulations by all means lawful for such enforcement on Roads and other parts of the Common Property, including the removal of any violating vehicle by those so empowered.

Section 4. Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Property reserved herein, there shall be, and Developer hereby reserves and covenants for itself with respect to all portions of the Property, whether or not presently subjected to this Declaration and for and on behalf of all future Owners within Avila at Palencia, that Developer and each and every Owner shall have a non-exclusive easement appurtenant, to such property as each owns, for pedestrian and vehicular traffic over all Roads within the Common Property, subject to the parking provisions set forth in Section 3 of Article II hereof.

Section 5. Easements for Public Service Use. In addition to the foregoing easements over the Common Property, there shall be, and Developer hereby reserves and covenants for itself and all future Owners within Avila at Palencia, easements and the right to grant same for public services, including, but not limited to, utilities and the right of the police to enter upon any part of the Common Property for the purpose of enforcing the law.

Section 6. Waiver of Use. No Owner may exempt him or herself from personal liability for Common or Special Assessments (collectively the "Assessments") duly levied by the Association, or release the Unit owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Property or by abandonment of his or her Unit.

Section 7. Title to the Common Property. When title to all Units that will be developed by Developer within Avila at Palencia, has been conveyed by Developer to purchasers thereof, or sooner at the option of the Developer, the Developer shall convey to the Association the fee simple title to the Common Property and the Association shall each accept such conveyance. The Developer, and thereafter the Association, shall hold title to the Common Property for the

benefit of those persons entitled to use same under the provisions hereof. Developer may mortgage the Common Property to finance the original development and construction thereof, provided that (i) the lender recognizes the rights of the Owners hereunder, (ii) except as hereafter provided the Common Property shall be free of mortgages at the time of conveyance to the Association, and (iii) except as hereafter provided, the Association shall be personally liable for payment of same.

### **ARTICLE III**

#### **MEMBERSHIP IN THE ASSOCIATION**

Every Owner of a Unit and the Developer shall be a Member of the Association. Membership in the Association shall not be assignable, except to the successor-in-interest of the Owner's Unit and every membership of an Owner in the Association shall be appurtenant to and inseparable from ownership of its Unit, as the case may be.

### **ARTICLE IV**

#### **VOTING RIGHTS**

There shall be such classes of Members in the Association as are from time to time established by the Articles or Bylaws. The voting rights of such Members shall be such, and votes shall be cast, as set forth in said documents.

Notwithstanding anything to the contrary in any of the aforesaid documents, Developer shall have the right to appoint a majority of the respective Board of Directors of the Association until the first to occur of the following events: (i) the occurrence of such events as requires turnover of control to take place under Florida Statutes Chapter 720 (2002); or (ii) at any time that Developer voluntarily permits, or takes action which will permit, Members other than itself to elect a majority. The occurrence of the foregoing is hereafter called "Turnover."

## **ARTICLE V**

### **DUTIES AND POWERS OF ASSOCIATION**

**Section 1. Board Authority.** The Association acting through its Board of Directors, shall have such powers and duties with respect to the Common Property as are provided for in its Articles, Bylaws and in this Declaration.

**Section 2. Indemnification of Officers, Directors and Others.** The Association shall indemnify every officer, Director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding including settlement of any suit or proceeding, if approved by the then Board of Directors to which he or she may be a party by reason of being or having been an officer, Director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this section and Florida law.

The officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association, except to the extent that such officers or Directors may also be Members of the Association. The Association shall indemnify and forever hold each such officer, Director, and committee member harmless from any and all liability to others on account of any such contract commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, Director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.

## **ARTICLE VI**

### **COVENANT FOR ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Developer, for all Units now or hereafter owned by it within Avila at Palencia and subjected to this Declaration, hereby covenants, and each successor Owner of any Unit 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 Association (i) annual Common Assessments for Common Expenses and (ii) Special Assessments, such Assessments to be established and collected as hereinafter provided. Such Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge and secured by a continuing lien upon the Unit against which such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessments fell due. Subject to provisions of this Declaration protecting First Mortgagees, the personal obligation for delinquent Assessments shall pass to and be assumed by the successors-in-title of such Owner.



Section 2. Purpose of Assessments. The Common Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and the Common Property and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Property and the Units situated upon the Property, including, but not limited to, the payment of insurance and taxes on the Common Property, if any are assessed, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Special Assessments shall be used for the stated purpose for which they are levied.

Section 3. Date of Commencement of Common Assessments; Due Dates; Assessment Period. The Common Assessment shall accrue in respect to any Unit, subject to this Declaration, on the date of conveyance of such Unit by the Developer to the first Owner thereof (the "Commencement Date") and shall thereafter be due on the first day of every "Assessment Period" as such term is defined in the Bylaws of the Association.

Section 4. Basis and Maximum Amount of Common Assessments. From the date of recordation of this Declaration in the public records until the earlier of (i) the date that Developer ceases to be in control of the Board, or (ii) the end of the fourth (4<sup>th</sup>) full fiscal quarter after the date of such recordation, the initial Common Assessments for all Class "A" Members of the Association, as defined in the Articles and Bylaws, shall be established by the Developer. Except as hereinafter provided, no Assessment shall be payable by Developer. During the foregoing period the Developer shall not pay any Common Assessments or Special Assessments, but the Developer shall, each year of operation based on the Association's budget, pay the difference between the sum of Assessments collected from Class "A" Members and the amount actually required to operate the Association based on its adopted budget. The Developer hereby guarantees to Owners of each Unit that quarterly Common Assessments due from the Unit will not exceed the sum of \$593.45, inclusive of reserves. Notwithstanding the foregoing, the Developer may at any time commence paying Assessments as to any Units that it owns and thereby automatically terminate its obligation to fund deficits and its guarantee.

The Board, in accordance with the requirements for a change of Common Assessments, as provided in this Article VI, may change the budget and level of Common Assessments at any annual meeting of the Board. For each twelve (12) month period (the "Assessment Year"), the Common Assessments may be adjusted by vote of the Board as set forth in Section 9 of this Article.

Section 5. Special Assessments. Other than as provided in Section 9, in addition to the Common Assessments authorized by Section 1 hereof, the Board 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 capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association. Any such assessment which in one (1) Assessment Year exceeds \$25,000.00 shall be subject to the approval of a majority of the Owners other than Developer. The due date of any Special

Assessment under this Article shall be fixed in a resolution authorizing such assessment. The Developer shall not be obligated to pay a Special Assessment levied on any Unit owned by it.

Section 6. Damage to Common Property by Owners. Any of the foregoing maintenance, repairs or replacements within the Common Property which arises out of or is caused by the willful or negligent act of the Owner, the Owner's family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against his or her Unit.

Section 7. Notice and Quorum for any Action Authorized Under Section 5. Written notice of any meeting of the Members called for the purpose of taking any action provided under Section 5, above, shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Class A Members and the Class B Members in person or by proxy entitled to cast fifty percent (50%) of all votes of each class of 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 twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceeding meeting.

Section 8. Rate of Assessment. Assessments provided for in this Declaration shall be allocated and assessed among the Units within Avila at Palencia on an equal basis so that each Unit contributes the same share toward Assessments as do all others. The Assessments shall be apportioned among all Class A Owners of Units based on the total number of such Units, which are from time to time subject to these restrictions. Initially, assessments will be calculated based upon an assumed total of two hundred ninety eight (298) Units within the Property.

Section 9. Date of Commencement of Common Assessments, Due Date. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Directors shall fix the amount of the annual Common Assessment against all Units subject to assessment at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. 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 or agent of the Association, setting forth whether the Assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of the Assessments against any Unit shall be binding upon the Association as of the date of its issuance.

The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause a copy of each such statement to be distributed to each Member, and to each First Mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the Bylaws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association a written, itemized budget of the expenses to be incurred by the

Association during such year in performing its functions under this Declaration, which may include reasonable provision for contingencies and deposits into the Common Property reserve fund.

The Association may designate any Sub-Association within Avila at Palencia to collect from the Owners that are subject to its jurisdiction, the assessments levied hereunder in respect to the Unit therein, and in doing so may bill the entire amount due from all Units therein to its Sub-Association.

At the end of any fiscal year of the Association, the Board may determine that all excess funds remaining in the Association's operating account, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, if prior to dissolution of the Association that Association has not obtained tax exempt status from both the federal and state government, then upon such dissolution of the Association, any amount remaining in any reserve fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 10. Exempt Property. Common Expenses shall only be assessed against Units which are subject to assessment under the provisions hereof, and all other portions of Avila at Palencia shall be exempt therefrom.

Section 11. Ownership. Assessments collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his or her Unit. No Owner has the right to withdraw or receive distribution of his or her share of any surplus, except as otherwise provided herein or by law.

Section 12. No Waiver or Excuse from Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Property, by abandonment of the Unit for which the Assessments are made, or by interruption in the availability of the Common Property for any reason whatsoever. No Owner may be excused from payment of his or her share of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as provided in Sections 4 and 5 of this Article, as to the Developer, and in Article XIV, as to First Mortgagees. Nothing herein shall be construed to prevent the Association from compromising or settling a claim for past due Assessments for less than full payment, if the Board determines that such action is in the best interests of the Association.

## ARTICLE VII

### EFFECT OF NON-PAYMENT OF ASSESSMENTS REMEDIES OF THE ASSOCIATION

Section 1. Effect of Non-Payment of Assessments; Remedies of the Association. Any

installment of a Common Assessment or Special Assessment not paid within ten (10) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) 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 Unit owned by the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his or her Unit. If any installment of any assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each First Mortgagee of such Unit which has requested a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent, (ii) the action required to cure the default, (iii) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the particular assessment for the then current fiscal year and sale of the Unit pursuant to foreclosure of the lien securing the unpaid assessment. The notice shall further inform the Owner of his or her right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 2. Notice of Claim of Lien. No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner, and a copy thereof has been recorded by the Association in the office of the Clerk of the Circuit Court of St. Johns County, Florida; said notice of claim of lien must recite a good and sufficient legal description of any such Unit, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such notice of claim of lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure Sale. The assessment lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through duly authorized agents, shall have the power to bid on any Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers thereof shall record an appropriate release of lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed Fifty and No/100 Dollars (\$50.00) to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board or by the President of the Association stating the indebtedness secured by the liens upon any Unit created hereunder shall be conclusive upon the Association and the Owners' as to the amount of

such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee.

Section 5. Cumulative Remedies. The assessment liens and the right to foreclose and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of the Lien to Mortgages. The lien securing the Assessments provided for herein shall be subordinate to the lien of any First Mortgage (meaning any recorded mortgage with first priority or seniority over all other mortgages) made in good faith and for value and recorded prior to the date on which a notice of claim, pursuant to such lien, is recorded. The sale or transfer of any Unit shall not affect the Assessment lien. However, the sale or transfer of any Unit pursuant to the foreclosure or deed in lieu thereof of a First Mortgage, shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Unit for any installments of Assessments thereafter becoming due or from the lien thereof. Liens securing all Assessments under this Declaration and liens for assessments of Sub-Associations' operating community developed by Developer within Avila at Palencia shall be of equal dignity.

## ARTICLE VIII

### MAINTENANCE AND REPAIR OBLIGATIONS

Section 1. Maintenance of Units, Phases and Sub-Association Common Property. Each Owner shall maintain his or her Unit and all improvements comprising the Unit in a manner consistent with this Declaration, and all applicable covenants unless such maintenance responsibility is otherwise assumed by, or assigned to, the Association or a Sub-Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

A Sub-Association shall maintain its own common property and any other property for which it has maintenance responsibility in a manner consistent with its governing documents, this Declaration and all applicable covenants.

Section 2. Maintenance of Sub-Association Common Property. The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Sub-Association, in addition to that designated by the Declaration or by any Supplemental Declaration, either by agreement with the Sub-Association or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with this Declaration. All costs of maintenance pursuant to this paragraph shall be assessed as a Special Assessment only against the Unit within the Sub-Association to which the services are provided. The provision of services in accordance with this section shall not constitute discrimination or against a class.

Section 3. Responsibility for Repair and Replacement. Unless otherwise specifically provided in this Declaration or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary, to maintain the property to a level consistent with this Declaration.

By virtue of taking title to any Unit, each Owner covenants and agrees with all other Owners, and with the Association, to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Sub-Association in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do, hereunder).

Each Owner further covenants and agrees that in the event of damage to, or destruction of, structures on, or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs that are not covered by insurance proceeds.

The requirements of this section shall apply to any Sub-Association responsible for its own common property in the same manner as if the Sub-Association were an Owner and the its own common property were a Unit. Additional recorded covenants applicable to any Sub-Association may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Unit with such Sub-Association and for clearing and maintaining the Unit in the event the structures are not rebuilt or reconstructed.

Section 4. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in this Article, it shall be the duty of the Owners and Sub-Associations in Avila at Palencia at their sole cost and expense, subject to the provisions of this Declaration, to maintain, repair, replace and restore areas subject to their exclusive control, in a neat, sanitary and attractive condition consistent with the quality of the original construction and standards adopted by the Board, from time to time. In the event that any such Owners shall permit any improvement or land, which it is their responsibility to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration or any standards adopted by the Board, then the Association shall have the right, but not the duty, upon fifteen (15) days prior written notice to the appropriate Sub-Association or to such Owners to correct such conditions and to enter upon such property to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Sub-Association or Owners. Said cost shall be a Special Assessment and shall create a lien upon all the Units in said Sub-Association, or particular affected portions therein, enforceable in the same manner as other assessments as set forth in this Declaration. Such Sub-Association or such Owners shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts payable by all Units in the affected Sub-Association as Special Assessments.

Section 5. Maintenance Obligations of Association. Subject to the provisions of Section 4 of this Article, the Association shall maintain, or provide for the maintenance of all of the Common Property and all improvements thereon, in good order and repair, including recreational

facilities, the interior and exterior of any Buildings thereon, and any and all utility facilities, Lakes, improvements, and Buildings on the Common Property. In addition to improvement maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Property or located on any Sub-Association common property. The Association shall further maintain, reconstruct, replace and refinish any Roads and any paved surface in the Common Property or Sub-Association common property. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

Section 6. Exterior Appearance and Design. The Owners in any Building which has suffered damage may apply for approval for reconstruction, rebuilding or repair of the improvements therein to the Board of the Association. Application for such approval shall be made in writing together with drawings and elevations showing the proposed reconstruction and the end result thereof. The Board shall grant such approval only if upon completion of the work the exterior appearance and design will be substantially the same as that which existed prior to the date of the casualty. Failure of the Board to act within thirty (30) days after receipt of such request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof.

Section 7. Time Limitation. The Owners of Units located in any damaged Building, and the Board of the Association shall be obligated to proceed with all due diligence hereunder, and, assuming the availability of funds, the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

Section 8. Reconstruction. If all or a portion of any Building or other improvements located on the Property are damaged or destroyed by casualty, they shall be repaired and restored unless in accordance with the conditions of this Declaration it is provided, or a decision is made, not to repair or reconstruct them.

In the event the improvements are to be reconstructed, it shall be done and carried out in accord with the original plans and specification for the improvements, and in accord with the general style, architecture and colors utilized and existing with the remainder of Avila at Palencia at the time as determined by the Board. Construction and reconstruction shall occur as soon as it is commercially reasonable to do so following the casualty and, in any event, debris resulting from the casualty will be promptly removed at the expense of the Owner(s) of the damaged improvements. In the event that the Owner(s) of such damaged improvements fail to remove such debris and rubble and/or, having commenced reconstruction, fail to complete it, then the Association, based on the decision of the Board, shall have the power and authority to enter on to the Unit or common property that has sustained such damage to remove such debris and rubble, and/or to complete said construction, and shall have the right, and is hereby granted, to have access to all available insurance proceeds and assessments levied by such owners to pay for the costs thereof to complete such work. The Association may, in such cases, levy a Special Assessment against the Owner(s) of such affected Units to pay for all reasonable costs of such

removal and work. The Association must give written notice to the Owner(s) against whom it is to be exercised within thirty (30) days after the date that it desires to exercise the right.

Section 9. Right To Purchase. In the event of a casualty, whereby the improvements are not to be reconstructed, then in that event the Association has the right to purchase the interest in the Property of the Owner(s) that do not desire to reconstruct the improvements. The purchase price will be the fair market value of the affected Unit as a whole. To exercise this right the Association must give written notice to the Owner(s) against whom it is to be exercised within thirty (30) days after the date that the Association has determined to exercise the right. The Owner(s) and the Association will then have a period of sixty (60) days thereafter in which to attempt to reach agreement, through the assistance of such professionals as each may wish to engage on the fair market value for the affected Unit. If they are unable to do so within that period of time, then each party will appoint an MAI qualified appraiser who has experience in appraising residential properties in Florida, and ideally in St. Johns County, Florida to act for it. Each party will provide the appraisal to the Owner party within sixty (60) days following the date it is determined that it is necessary to do so. If the two (2) appraisals vary by not more than ten percent (10%) of the higher of the two (2), then they shall be averaged and the fair market value will be deemed to be the average. If they vary by more than such ten percent (10%) then the two (2) appraisers will be asked to select and agree upon a third appraiser who shall make an appraisal of the affected Unit. The three (3) appraisals will then be averaged and the average deemed to be the fair market value. Closing on the purchase must take place not later than thirty (30) days after the date the fair market value is arrived at, with the purchase price being paid in cash upon conveyance. All mortgages and other liens and encumbrances on the interest of the Owner(s) conveying their interests, will be paid and discharged at the time of conveyance and closing from the cash proceeds of sale. Customary terms and conditions will govern cost allocations prorations.

## ARTICLE IX

### USE RESTRICTIONS

The Property, and additional lands which may become subject to this Declaration by Supplemental Declaration, shall be held, used and enjoyed subject to the following limitations and restrictions, and further subject to the exemption of Developer in Section 16 hereof.

Section 1. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property without the prior written consent of the Board, except signs, regardless of size, used by Developer, its successors or assigns, for advertising during the construction and sale period and identification signage.

Section 2. Roads. All Roads and paved surfaces shall be maintained in the style originally established by the Developer.

Section 3. Common Property and Restricted Common Property. The Common Property and Restricted Common Property shall be used only for the purposes for which they are intended to be used in the furnishing of services and facilities for the enjoyment of the Owners.



Section 4. Trash Containers. All trash and trash containers and contents thereof shall be stored out of plain view of a passerby.

Section 5. Exterior Antennae. No exterior radio, television or other electronic device antennae shall be permitted on the exterior of any Unit without the prior written approval of the Association.

Section 6. Parking. Automobile parking spaces may be used only for parking vehicles that are in operating condition and for no other purposes. The Board may establish rules and regulations limiting vehicles, types, sizes and numbers and restricting the use, parking and location of commercial vehicles, trucks and, if decided by the Board, prohibiting recreation vehicles and trailers. Parking spaces that are designated as Restricted Common Property, shall each be assigned to a separate Owner or Sub-Association by the Board.

Section 7. Additional Temporary or Permanent Structures. No structure of a temporary or permanent character, including, but not limited to, basements, tents, shacks, garages, barns, or other out buildings shall be used or erected on any of the Common Property without the prior approval of the Association and the Property Owners Association.

Section 8. Pets. No animals of any kind shall be kept under any circumstances in a Unit or allowed upon the Property, except by prior written consent of and upon such terms and conditions as shall be imposed by the Developer or the Board of Directors of the Association.

If consent is given, whether by the Developer or by the Board of Directors of the Association, the consent may be withdrawn at any time by the Board of Directors at a duly called meeting of the Board if the Board determines, in its sole discretion, that the pet has become a nuisance to the Common Property or to the Owners or that any rules and regulations regarding pets are not being fully obeyed. If consent is withdrawn by the Board, the Owner shall immediately remove the pet from the Property. Consent shall automatically terminate upon death or other disposition of a pet for which consent was granted.

All Owners shall identify and register their pet with the Association. Pets shall never be allowed to run freely upon any of the Common Property. Any Owner maintaining a pet on Common Property shall be fully responsible for, and shall bear the expense of, any damage to persons or property resulting therefrom. Any such damage shall be determined by the Board of Directors of the Association and collected by the Association.

Section 9. Alteration and Improvement of Unit. The prior, express written consent of the Association and the Property Owners Association is required in order to enclose, paint or otherwise decorate or substantially change the appearance of any Unit or any portions of the exterior of any of the Buildings that may be constructed on the Properties.

Section 10. Developer. Until the Developer has sold and conveyed title to all of the Units within the Property which it plans to develop, the Developer may use any Unit it owns and

the Common Property to facilitate such sales, including, but not limited to, the maintenance of a sales office and model apartments and the display of signs.

Section 11. Lakes. No motorboats shall be permitted to use any Lake which may now or hereafter be located on the Common Property. No structures may be erected on any Lake except with written permission from the Association and the Property Owners Association.

Section 12. Additional Rules and Regulations. The Developer, until it conveys the Common Property, and thereafter the Board of Directors of the Association, may establish such additional rules and regulations as may be deemed for the best interests of the Association and its Members for purposes of enforcing the provisions of this Article IX.

Section 13. Exterior Improvements; Landscaping. No Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of any Buildings (including, but not limited to, awnings, antennae, signs, storm shutters, screens, furniture, fixtures and equipment), or to structures of any parking areas without the prior written consent of the Association and the Property Owners Association. Notwithstanding the foregoing, an Owner of a Unit located in a residential condominium submitted on the Property shall be permitted to display one (1) portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, to display in a respectful way one (1) portable, removable official flag, pursuant to the Condominium Act.

Section 14. Nuisances. No nuisances shall be allowed upon the Property, nor any use or practice which is the source of annoyance to residents or which interferes with the proper use of the Common Property. All parts of the Property shall be kept in clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. No use shall be made of any Unit or of the Property which would increase the rate of insurance upon the Property.

Section 15. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Property shall be the same as is elsewhere herein specified with respect to other maintenance, repair and replacement.

Section 16. Developer Exemption. Developer or its successors or assigns will undertake the work of constructing Units and improvements. The completion of that work and the sale, rental and other disposal of Units is essential to the establishment and proper economic function of Avila at Palencia. As used in this section and its sub-paragraphs, the words "its successors or assigns" specifically do not include purchasers of completed Units. In order that said work may be completed and Avila at Palencia established as a fully occupied community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including, but not limited to, the alteration of such construction plans and designs as Developer deems advisable in the course of development (all models or sketches showing plans for future development of Avila at Palencia may be modified by the Developer at any time and from time to time, without notice).

(b) Prevent Developer, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any property, owned or controlled by Developer, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business or of completing said work and establishing Avila at Palencia as a residential community and disposing of the same by sale, lease or otherwise.

(c) Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from conducting on any property, owned or controlled by Developer, or its successors or assigns, its or their business of developing, grading and constructing improvements in Avila at Palencia as a residential community and of disposing of Units therein by sale, lease or otherwise.

(d) Prevent Developer, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be constructed as part of the Common Property.

(e) Prevent Developer, its successors or assigns or its or their contractors or subcontractors, from maintaining such sign or signs on any property owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Units.

Section 17. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted on Avila at Palencia, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on or around the residential buildings or Common Property.

## ARTICLE X

### COMPLIANCE AND ENFORCEMENT

Every Owner and occupant of a Unit shall comply with this Declaration and its exhibits and rules and regulations adopted by the Board, from time to time. The Board may impose sanctions for violations of such documents in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest or invitee of a Unit violates the applicable

documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(b) suspending any person's right to use any portion of the Common Property; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from any Unit;

(c) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(d) exercising self-help or taking action to abate any violation of the applicable documents in a non-emergency situation;

(e) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of this Declaration and to restore the Unit to its previous condition. Upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the structure or improvement that is in violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. The cost of such removal and restoration may be assessed against the Unit, and the Owner, as a Special Assessment;

(f) precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the applicable documents from continuing or performing any further activities in the properties, without incurring liability to any person therefor;

(g) levying specific assessments to cover costs incurred by the Association to bring a Unit into compliance with the applicable documents;

(h) taking the following enforcement sanctions to ensure compliance with the applicable documents without the necessity of compliance with the procedures set forth in the Bylaws;

(i) exercising self-help in any emergency situation, including, but not limited to, removing dangerous pets and towing of vehicles that are in violation of applicable rules and regulations with regard to parking; and

(j) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation in the public records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Special Assessment. If a Sub-Association fails

to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Special Assessment against all Units within such neighborhood. Except in an emergency situation, the Association shall provide the Owners of any Sub-Association reasonable notice and an opportunity to cure the problem prior to entering a dwelling.

All remedies set forth in the applicable documents shall be cumulative of any remedies available at law or in equity. The Association shall also have the authority, but not the obligation, to enforce any provision contained in the governing documents of any Sub-Association. The Sub-Association shall have the primary responsibility to enforce its governing documents, and the Association's rights hereunder shall be exercised only after the Sub-Association has failed or refused to fulfill its obligations. In any action to enforce the governing documents of a Sub-Association, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) that although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (iv) that is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

## **ARTICLE XI**

### **DESTRUCTION OR DAMAGE TO COMMON PROPERTY**

Damage to or destruction of all or any portion of the Common Property shall be handled in the following manner, notwithstanding any provision in this Declaration to be contrary:

(a) If in the event of damage or destruction to the Common Property or any portion thereof, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Property to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within Ten Thousand and No/100 Dollars (\$10,000.00) or less of being sufficient to effect total restoration to the Common Property, then the Association shall cause the Common Property to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost

shall be levied as a Special Assessment equally against each of the Owners, in accordance with the provisions of this Declaration.

(c) If the insurance proceeds are insufficient by more than Seventy-Five Thousand and No/100 Dollars (\$75,000.00) to effect total restoration to the Common Property, then by written consent or vote of a majority of the Class A Members of the Association and the Class B Members, they shall determine whether (i) to rebuild and restore in substantially the same manner as the improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Special Assessments against all Units, or (ii) subject to the provisions of this Declaration and the Property Owners Declaration, to not rebuild and to distribute the available insurance proceeds equally to the Owners and Mortgagees of the Units as their interests may appear.

(d) Each Owner shall be liable to the Association for any damage to the Common Property not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his or her family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to levy a Special Assessment against any such Owner, equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Unit, the liability of such owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Unit and may be collected as provided herein for the collection of Common Assessments.

## ARTICLE XII

### SUPPLEMENTAL ASSOCIATION POWERS

Section 1. Powers of the Association Relating to Phases and Sub-Associations. The Association shall have the power, but not the obligation, to veto any action taken or contemplated to be taken by any Sub-Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with this Declaration. The Association also shall have the power to require specific action to be taken by any Sub-Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditure be made therefore.

A Sub-Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Sub-Association fails to comply, the Association shall have the right to effect such action on behalf of the Sub-Association and levy a Special Assessment to cover the costs, as well as an administrative charge and sanctions.

Section 2. Provision of Services. The Association shall be authorized, but not obligated, to enter into, in the Board's discretion, contracts or agreements with other entities, including

Developer, to provide services to and facilities for the Members of the Association and their guests, lessees, and invitees and to charge use and service fees for such services and facilities. By way of example, some services and facilities which might be offered include pest control service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The cost of such services and facilities may be included as a common expense if offered in bulk to all Members.

Section 3. Relations with Other Entities. The Association may enter into agreements with tax exempt organizations and other entities for the benefit of the Common Property and Owners, as well as the larger community surrounding the Property. The purpose of and funding for such agreements may include, but are not limited to:

- (a) programs and activities which serve to promote a sense of community, such as recreational leagues, cultural programs, education programs, festivals, holiday celebrations and activities, a community network and recycling programs; and
- (b) social services and community outreach programs and other charitable causes.

Funding for such activities shall be provided for by Common Assessments and included as a part of the annual adopted budget of the Association.

### ARTICLE XIII

#### INSURANCE

Section 1. Units. By virtue of taking title, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Sub-Association in which the Unit is located carries such insurance.

Section 2. Common Property. The Association shall keep all buildings, improvements, and fixtures of the Common Property insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Property shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Property facilities, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of this Declaration and the Property Owners Declaration. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may, subject to the provision of this Declaration, make a Special Assessment against all Units to cover the additional

cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Units, in accordance with the provisions of this Declaration.

Section 4. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, any management company, Developer, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 5. Liability and Other Insurance. The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurances and malicious mischief, in such limits as it shall deem desirable (public liability coverage shall be in an amount not less than \$1,000,000.00 for bodily injury, including death of persons and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain workmen's compensation insurance, and other liability insurance as it may deem desirable, insuring all Owners and the Association, Board of Directors and any management company, from liability in connection with the Common Property, the premiums for which are Common Expenses included in the Common Assessments made against the Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and any management company thereof against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

Section 6. Waiver By Insurer. Whenever obtainable, insurance policies maintained by the Association shall provide for the following: (a) that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee as that term is herein defined; (b) waive the insurer's right of subrogation against the Association and against the Members individually and as a group; (c) the insurance is not prejudiced and the insurer may not avoid liability for a loss that is caused by an act of the Board of Directors of the Association or by a Member of the Board of Directors of the Association or by one (1) or more Members, or by any act or neglect of individual Members which is not in the control of such Members collectively; and (d) the policy is primary in the event that Members have other insurance covering the same loss.

Section 7. Sub-Association Insurance. Each Sub-Association shall maintain and pay for such insurance as is required by its own applicable documents. If any Sub-Association fails to do so then the Association may purchase insurance for it and assess the cost to the particular Sub-Association and the Units of the members who are members of the particular Sub-Association.



## ARTICLE XIV

### MORTGAGEE PROTECTION CLAUSE

The following provisions are for the benefit of First Mortgagees and to the extent these provisions conflict with any other provisions of the Declaration, these provisions shall control:

(a) Each holder of a First Mortgage encumbering any Unit, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Any holder of a First Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage or by deed in lieu of foreclosure, shall take title to such Unit free and clear of any claims of unpaid assessments or charges due to the Association against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee except to the extent a Notice of Claim therefor was filed prior to recording of said mortgage.

(c) Unless at least seventy-five percent (75%) of First Mortgagees (based upon one (1) vote for each Mortgage owned), and sixty percent (60%) of the Class A Members (other than Developer) have given their prior written approval, neither the Association nor the Owners shall:

(1) By act or omission seek to sell or transfer the Common Property and the improvements thereon which are owned by the Association.

(The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association or the Developer or the transfer of the Common Property to an unincorporated association of the Owners in accordance with the Articles of the Association shall not be deemed a transfer within the meaning of this clause.)

(2) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Unit.

(3) By act or omission, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the exterior appearance of residential buildings.

(4) Fail to maintain fire and extended coverage on insurable Common Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost) less such reasonable deductions as the Board may deem appropriate.

(5) Use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement or reconstruction of such improvements.

(6) Except as otherwise provided herein by reservation to Developer herein, amend this Declaration or the Articles or Bylaws of the Association in such a manner that the rights of any First Mortgagee will be adversely affected or the value of Units reduced.

(d) First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(e) All First Mortgagees who have registered their names with the Association shall be given (i) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws of the Association and prior to the effective date of any termination of any agreement for professional management of the Common Property following a decision of the Owners to assume self-management of the Common Property; and (ii) immediate notice following any damage to the Common Property whenever the cost of reconstruction exceeds Fifty Thousand and No/100 Dollars (\$50,000.00), and as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Common Property.

(f) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property facilities and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE XV

### ENCROACHMENTS – EASEMENTS

Section 1. Encroachments. If (a) any portion of the Common Property encroaches upon any other portion of Avila at Palencia; (b) any other portion of Avila at Palencia encroaches upon the Common Property; or (c) any encroachment shall hereafter occur as the result of (i) construction of any Building or other improvements; (ii) settling or shifting of a Building or other improvements; (iii) any alteration or repair to the Common Property or any other portion of Avila at Palencia; or (iv) any repair or restoration of any Building, or other improvements or any of the Common Property after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Building, improvements or Common Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the structure causing said encroachment shall stand.

Section 2. Pipes, Wires, Ducts, Cables, Conduits, Public Utility Lines, etc. Each portion of Avila at Palencia shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, public utility lines, and similar or related facilities located in Avila at Palencia and serving such portion thereof. Each portion of Avila at Palencia shall be subject to an easement in favor of all other portions thereof to use, maintain, repair, alter and replace the pipes, wires, ducts, vents, cables,

conduits, public utility lines and other similar or related facilities located in such portion of Avila at Palencia and serving other portions thereof.

Section 3. Easements of Support. Whenever any structure included in the Common Property adjoins any structure included in any other portion of Avila at Palencia, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

Section 4. Construction and Sales. The Developer (and its agents, employees, contractors, subcontractors and suppliers) shall have an easement of ingress and egress over and across the Common Property for construction purposes. The Developer (and its agents, employees and designees) shall have an easement to erect, maintain, repair and replace, from time to time, one (1) or more signs on the Common Property for the purposes of advertising the sale or lease of Units.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 1. Enforcement. This Declaration, the Articles and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by any Owner, the Developer, or the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(c) The failure of the Association to enforce any of the covenants contained in this Declaration relative to either or in their respective Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(d) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws, shall not affect or impair the lien or charge of any Mortgage made in good faith and for value on any Unit; provided, however, that any subsequent Owner of such Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

Section 2. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants and restrictions of this Declaration shall run with title and bind the Property hereby encumbered, and shall inure to the benefit of and be enforceable by the Association, the Developer and the Owners subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions, reservation of easements, equitable servitudes and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by the then Owners of two-thirds (2/3<sup>rds</sup>) of the Class A Members, has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development or operation of Units and the governance of a residential community and for the maintenance of the Common Property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 5. Amendments. This Declaration may be amended by (i) the affirmative vote or written consent of the Owners holding not less than fifty-one percent (51%) of the voting power of the Class "A" Membership of the Association together with the affirmative vote of the Class "B" Member (so long as the Class "B" Membership exists); or (ii) solely by the unilateral affirmative action of the Class "B" Member; provided, however, that no amendment adopted solely by the Class "B" Member shall be permitted which has a material adverse affect upon substantial rights of an Owner or First Mortgagee or the value of any part of the Property subject hereto. Nothing contained herein shall affect the right of the Developer to make such amendments or Supplemental Declarations as may otherwise be permitted herein.

Section 6. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Property to the public, or for any public use.

Section 7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of Avila at Palencia does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the

residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 9. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Developer or its agents or employees in connection with any portion of the Common Property, their physical condition, zoning, compliance with applicable laws, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be contained in documents executed by Developer from time to time.

The Developer may subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to provide services and authorizing the Association to recover its costs through neighborhood assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such Property to this Declaration or in a separate Supplemental Declaration referencing property previously subject to this Declaration. If the Property is owned by someone other than Developer, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the supplemental declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject Property in order to reflect the different character and intended use of such Property.

The Developer may without fee or charge maintain and carry on upon portions of the Common Property such facilities and activities as, in the sole opinion of the Developer, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units and sales offices. Such activities may include, without limitation, holding special events and promotional activities on portions of the Common Property. The Developer shall have easements for access to and use of the Common Property for such purposes.

Section 10. Supplemental Declarations. From time to time Developer may execute and file Supplemental Declarations hereto for the purpose of subjecting additional portions of the Properties to the effect of this Declaration and for the purpose of designating and identifying additional land as Common Property.

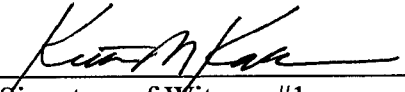
Section 11. Withdrawal and Modification. Anything herein to the contrary notwithstanding, the Developer reserves the absolute right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Properties from the provisions of this Declaration. Provided, however, the right shall not permit the removal of any land containing improvements, facilities and amenities which are needed by or were available for use by any Owners at the time of acquiring their Unit. Provided further that Developer may unilaterally modify and amend this Declaration for the

purpose of altering the boundaries and use of the Common Property so as to enlarge or reduce the size of and/or change the location of either.

Notwithstanding anything to the contrary herein, and/or in addition to the other reserved powers and rights herein, Developer reserves the right to limit the effect of this Declaration and of the scope of the Avila at Palencia project to a portion, but not all of the Property.

Developer has executed this Declaration on the date first above written.

Signed, Sealed and Delivered  
in the Presence of:

  
Signature of Witness #1


KEITH M. KALLEN  
Printed Name of Witness #1

  
Signature of Witness #2

Scott A. Day  
Printed Name of Witness #2

**CROSSWINDS AT PALENCIA, LLC, a Florida  
limited liability company**

By:

  
Bernard Gliberman, Managing Member


STATE OF MICHIGAN

COUNTY OF Wayne §§

15<sup>th</sup> I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this day of December 2004, by Bernard Gliberman, as Managing Member of Crosswinds at Palencia, LLC, a Florida limited liability company, who ☒ is personally known to me OR ☐ produced \_\_\_\_\_ as identification.

(Notary Seal)



  
Notary Public

Printed Name of Notary Public  
My Commission Expires:

**Anja J. Walthall  
Notary Public, Wayne County, MI  
My Commission Expires April 7, 2005  
Acting in Oakland County**

**JOINDER AND CONSENT**

The undersigned, being the owner and holder of a mortgage recorded in Official Records Book 2198, Page 0267, of the Public Records of St. Johns County, Florida, which encumbers the land described on Exhibit 1 in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Avila at Palencia, to which this instrument is attached, hereby joins in and consents to the declarations, covenants, restrictions, easements and other terms thereof and agrees that in the event of foreclosure of its mortgage against, or its acquisition of title to the land described on Exhibit 1 as a result of a deed in lieu of foreclosure it, and/or its successors and assigns, will observe and not disturb the rights of any owners and members who comply with the provisions of the Declaration with respect to any of the easements and shared or cross use rights declared herein with respect to the lands subject to the attached Declaration.

Executed this 13th day of December 2004.

Witnesses:

Jennifer Preston  
 Witness #1

Jennifer Preston  
 Printed Name of Witness #1

Debra L. Wood  
 Witness #2

Debra L. Wood  
 Printed Name of Witness #2

**OHIO SAVINGS BANK, a Federal Savings Bank**

By: [Signature]

Printed Name: CRAIG RIDINGER

Title: VICE PRESIDENT

**CRAIG RIDINGER  
 VICE PRESIDENT**

STATE OF FLORIDA

§§:

COUNTY OF SEMINOLE

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 13th day of December 2004, by CRAIG RIDINGER, as VICE PRESIDENT, of Ohio Savings Bank, a Federal Savings Bank, who is personally known to me or who produced \_\_\_\_\_ as identification.

(Notary Seal)



DEBRA L. WOOD  
 MY COMMISSION # DD 113546  
 EXPIRES: May 13, 2006  
 Bonded Thru Budget Notary Services

[Signature]  
 Notary Public

Debra L. Wood  
 Printed Name of Notary Public

My Commission Expires: 5/13/06

**SCHEDULE OF EXHIBITS AND ATTACHMENTS**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>
1	The Property
2	Avila at Palencia Master Association, Inc. Articles of Incorporation
3	Avila at Palencia Master Association, Inc. Bylaws



**EXHIBIT "1"**  
**THE PROPERTY**

## LEGAL DESCRIPTION:

A PORTION OF SECTION 4, TOWNSHIP 6 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF LANDS DESCRIBED AS TRACT "A", ACCORDING TO DEED RECORDED IN BOOK 1709, PAGE 178 OF THE OFFICIAL RECORDS OF SAID COUNTY; THENCE THE FOLLOWING (2) COURSES ALONG THE WESTERLY BOUNDARY OF SAID TRACT "A": COURSE (1) - NORTH 19°03'38" EAST, 219.45 FEET; COURSE (2) - NORTH 24°35'18" WEST, 137.83 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, THENCE SOUTH 58°19'53" WEST, 134.79 FEET; THENCE SOUTH 80°27'27" WEST, 31.07 FEET; THENCE NORTH 64°43'30" WEST, 132.19 FEET; THENCE NORTH 38°08'26" WEST, 171.54 FEET; THENCE IN A NORTHERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 100.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 00°32'54" WEST, 121.18 FEET; THENCE NORTH 37°50'32" WEST, 300.49 FEET; THENCE IN A NORTHWESTERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 282.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 23°10'26" WEST, 142.82 FEET; THENCE NORTH 08°30'21" WEST, 117.42 FEET; THENCE IN A NORTHWESTERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 130.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 23°30'21" WEST, 67.29 FEET; THENCE NORTH 38°30'21" WEST, 29.44 FEET; THENCE NORTH 51°29'18" EAST, 162.10 FEET; THENCE NORTH 24°29'45" WEST, 332.20 FEET; THENCE NORTH 37°50'32" WEST, 520.08 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF PALENCIA VILLAGE DRIVE, A VARIABLE WIDTH RIGHT-OF-WAY AS NOW ESTABLISHED, ACCORDING TO MAP THEREOF RECORDED IN MAP BOOK 41, PAGE 52 THROUGH 57 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE IN A NORTHEASTERLY DIRECTION, ALONG THE ARC OF A CURVE IN SAID SOUTHERLY RIGHT-OF-WAY LINE, SAID CURVE BEING CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 670.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 53°10'29" EAST, 471.30 FEET; THENCE SOUTH 57°25'02" EAST, 194.52 FEET; THENCE SOUTH 82°39'17" EAST, 52.85 FEET TO THE AFOREMENTIONED WESTERLY BOUNDARY OF TRACT "A"; THENCE THE FOLLOWING (3) COURSES ALONG SAID WESTERLY BOUNDARY: COURSE (1) - SOUTH 47°53'37" EAST, 152.74 FEET; COURSE (2) - SOUTH 12°46'26" WEST, 127.50 FEET; COURSE (3) - SOUTH 30°38'33" EAST, 427.14 FEET TO THE EASTERLY BOUNDARY OF LANDS DESCRIBED AS PARCEL "39", ACCORDING TO DEED RECORDED IN BOOK 1958, PAGE 2168 OF THE OFFICIAL RECORDS OF SAID COUNTY; THENCE THE FOLLOWING (5) COURSES ALONG SAID EASTERLY BOUNDARY, THE SAME BEING SAID WESTERLY BOUNDARY OF TRACT "A": COURSE (1) - SOUTH 25°01'09" WEST, 148.58 FEET; COURSE (2) - SOUTH 49°05'43" EAST, 73.95 FEET; COURSE (3) - SOUTH 06°25'23" EAST, 250.43 FEET; COURSE (4) - SOUTH 31°28'58" WEST, 106.22 FEET; COURSE (5) - SOUTH 10°40'07" EAST, 117.36 FEET; THENCE, CONTINUING ALONG SAID WESTERLY BOUNDARY OF TRACT "A", THE FOLLOWING (4) COURSES: COURSE (1) - SOUTH 7°08'30" EAST, 78.97 FEET; COURSE (2) - SOUTH 09°27'14" WEST, 191.15 FEET; COURSE (3) - SOUTH 18°41'45" EAST, 249.63 FEET; COURSE (4) - SOUTH 24°35'18" EAST, 73.71 FEET TO THE POINT OF BEGINNING.

THE LAND THUS DESCRIBED CONTAINS 20.34 ACRES, MORE OR LESS.

**EXHIBIT "2"**

**AVILA AT PALENCIA MASTER ASSOCIATION, INC.  
ARTICLES OF INCORPORATION**

# State of Florida



## Department of State

I certify from the records of this office that AVILA AT PALENCIA MASTER ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on December 8, 2004.

The document number of this corporation is N04000011421.

I further certify that said corporation has paid all fees due this office through December 31, 2004, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 904A00068833-120904-N04000011421-1/1, noted below.

Authentication Code: 904A00068833-120904-N04000011421-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Tenth day of December, 2004



*Glenda E. Hood*  
Glenda E. Hood  
Secretary of State

**ARTICLES OF INCORPORATION OF  
AVILA AT PALENCIA MASTER ASSOCIATION, INC.  
A CORPORATION NOT FOR PROFIT**

The undersigned, hereby makes and files these Articles as follows:

**ARTICLE I**

**NAME AND PRINCIPAL OFFICE**

The name of the corporation shall be and is AVILA AT PALENCIA MASTER ASSOCIATION, INC. For convenience the corporation shall be referred to in these Articles as the "Association." The initial principal office of the Association shall be located at c/o 600 Corporate Drive, Suite 102, Fort Lauderdale, Florida 33334.

**ARTICLE II**

**DEFINITIONS**

Unless a contrary intent is apparent, terms used in these Articles of Incorporation shall have the same meaning as set forth in the Declaration of Restrictive Covenants, Conditions, Restrictions and Easements for Avila at Palencia (the "Declaration") to be recorded in the public records of St. Johns County, Florida with respect to the land described in Exhibit "1" hereto, being known as "Avila at Palencia."

**ARTICLE III**

**PURPOSE**

This corporation is organized to establish an association of the Owners of property in Avila at Palencia. This corporation shall have the following specific purposes:

1. To provide for maintenance of areas and structures as may be placed under the jurisdiction of this corporation by means of the Declaration.
2. To regulate the use of areas and structures as may be placed under the jurisdiction of this corporation by means of the Declaration.

3. To promote the health, safety and welfare of the residents of Avila at Palencia.
4. To enforce the provisions of the Declaration, which the Association has the responsibility to enforce.
5. The purpose of this corporation will not include or permit pecuniary gain or profit nor distribution of its income to its Members, officers or Directors.

## ARTICLE IV

### POWERS AND DUTIES

This Association shall have and exercise all rights and powers conferred upon corporations under the laws of the State of Florida consistent with these Articles and the Declaration. The corporation shall also have all of the powers and authority reasonably necessary or appropriate to carry out duties imposed upon it by the Declaration, including, but not limited to, the following:

1. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as defined in the Declaration.
2. To fix, levy, collect and enforce payment by any lawful means, of all charges or assessments and assessment liens pursuant to the terms of the Declaration, to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes for governmental charges levied or imposed against the property of the corporation.
3. To acquire (by gift, purchase or lease), to own, hold, improve, insure, build upon, operate, maintain, replace and to repair, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association, and to contract improvements and to repair, remodel and demolish the same, on any property that is owned or leased by the Association.
4. To borrow money, and with the consent of fifty-one percent (51%) of each class of members, mortgage, pledge, deed and trust, or hypothecate any or all of its real or personal property, including any lien rights it may have, as security for money borrowed or debts incurred.
5. To participate in mergers and consolidations with other non-profit corporations organized for the same or similar purposes or to annex additional property and common property, provided that such mergers, consolidation or organization shall have the consent of two-thirds (2/3) of its members.
6. To make and amend reasonable regulations and Bylaws respecting the use of any

property or facilities over which the Association may have control, jurisdiction for administrative responsibilities, and to provide the penalties for the violation of any such regulation.

7. To contract for the maintenance of such facilities, and other areas in improvements as may be placed under the jurisdiction of this Association either by the Declaration or by resolution adopted by the Association's Board of Directors.

8. To employ such legal counsel, accountants and other agents or employees as may be deemed necessary for the protection and furtherance of the interest of the Association and of its Members and to carry out the purpose of the Association.

## ARTICLE V

### MEMBERSHIP

Every person or entity who is the record Owner of property in Avila at Palencia shall be a Member of this Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to, and may not be separated from ownership of the unit. Membership rights and duties shall be subject to and controlled by the Declaration, which is in the form of a covenant running with the land. The Developer, Crosswinds at Palencia, LLC, a Florida limited liability company, and/or its designated successors, shall also be a Member.

## ARTICLE VI

### VOTING RIGHTS

This Association shall have two (2) classes of voting memberships:

CLASS A: Class A Members shall be all Owners as defined in Article V with the exception of the Developer, as subsequently identified. There shall be one (1) vote appurtenant to each separately designated unit owned by a Class A Member. When more than one (1) person holds an interest in any unit, all such persons shall be members, and the vote for such unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such unit. The Bylaws may establish procedures for voting when title to a unit is held in the name of a corporation or more than one (1) person or entity.

CLASS B: There shall be one (1) Class B Member, the Developer, Crosswinds at Palencia, a Florida limited liability company, and/or its designated successors. The Class B Member shall have three hundred fifty (350) votes in the affairs of the Association.

Notwithstanding any provisions to the contrary herein, the Developer as the Class B Member, shall have the right to elect or, appoint a majority of the Board of Directors of the

Association until the occurrence, of the first to occur of the following events:

1. The occurrence of the events that require turnover of control as provided in Florida Statute Chapter 720 (2002);
2. After Developer has conveyed title to such other percentage of the units, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of units; or
3. At any earlier time that the Developer, in its sole discretion, voluntarily converts its Class B membership to Class A membership.

Upon the occurrence of the first of the foregoing events to occur, the then existing Class A Members shall be obligated to elect the Board and assume control of the Association. The Class B membership shall also cease and convert to a Class A membership at such time.

## ARTICLE VII

### DIRECTORS

The affairs of the Association shall be managed by a Board of Directors, who need not be members of the Association. The initial Board of Directors shall consist of three (3) Directors.

The number of Directors may be increased by the Bylaws, but shall never be less than three (3) Directors. The names and addresses of the persons who are to initially act in the capacity of Directors until the selection of their successors are:

Tirso San Jose  
600 Corporate Drive, Suite 102  
Fort Lauderdale, Florida 33334

Michael Zitzmann  
600 Corporate Drive, Suite 102  
Fort Lauderdale, Florida 33334

Albert Valdivia  
600 Corporate Drive, Suite 102  
Fort Lauderdale, Florida 33334

After Developer ceases to be in control of the Board of Directors there will five (5) Board of Directors elected by all Class A Members at large.

Unless contrary provisions are made by law, each Director's term of office shall be for



one (1) year, provided that all Directors shall continue in office until their successors are duly elected and installed. Directors may serve successive annual terms without limitation.

A majority of the Directors currently serving as such shall constitute a quorum at meetings of the Board. Except as herein otherwise specified, the decision of a majority of the Directors present at a meeting at which a quorum is present shall be required and shall be sufficient to authorize any action on behalf of the Board. Each Director shall be entitled to one (1) vote on every matter presented to the Board of Director.

Any meeting of the members or of the Board of Directors of the Association may be held within or outside the State of Florida.

## **ARTICLE VIII**

### **DISSOLUTION**

This Association may be dissolved with the assent given in writing and signed by the affirmative vote of not less than seventy-five percent (75%) of votes of both classes of Members of the Association. Upon dissolution of this Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be distributed in equal shares to the then existing Members.

## **ARTICLE IX**

### **INCORPORATOR**

The names and residence addresses of the subscribing incorporator to the Articles of Incorporation is:

Cheryl L. Hastings, Esq.  
Grant, Fridkin, Pearson, Athan & Crown, P.A.  
Pelican Bay Corporate Centre  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108

## **ARTICLE X**

### **INDEMNIFICATION**

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement of any proceeding

to which he or she may be a part or in which he or she may become involved by reason of his or her being or having been a Director or officer of the Association, whether or not he or she is a Director or officer at the time such expenses are incurred, except when the Director or officer is guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided, that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

## **ARTICLE XI**

### **REGISTERED OFFICE**

The address of the corporation's initial registered office is:

Grant, Fridkin, Pearson, Athan & Crown, P.A.  
Pelican Bay Corporate Centre  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108

The name of this corporation's initial registered agent at the above address is:

Cheryl L. Hastings, Esq.

## **ARTICLE XII**

### **BYLAWS**

The first Bylaws of this corporation shall be adopted by the Board of Directors and may be altered, amended or rescinded by the members in the manner provided by the Bylaws.

## **ARTICLE XIII**

### **AMENDMENTS**

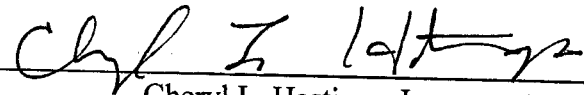
Amendments to these Articles may be made and adopted upon the following conditions:

1. A notice of the proposed amendment shall be included in the notice of the members' meeting which shall consider the amendment. The meeting may be the annual meeting or a special meeting.
2. There is an affirmative vote of two-thirds (2/3) of the votes of each class

of Members.

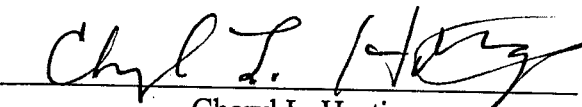
3. Any proposal to amend the class membership structure and voting to elect Directors shall require the affirmative vote of two-thirds (2/3) of the Members of any affected class.

**WHEREFORE**, the incorporator has caused these presents to be executed this 8th day of December, 2004.

  
Cheryl L. Hastings, Incorporator

**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process for the Avila at Palencia Master Association, Inc., at a place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.

  
Cheryl L. Hastings

**EXHIBIT "3"**

**AVILA AT PALENCIA MASTER ASSOCIATION, INC.  
BYLAWS**

**BYLAWS  
OF  
AVILA AT PALENCIA MASTER ASSOCIATION, INC.**

**I. IDENTITY.**

A. These are the Bylaws of AVILA AT PALENCIA MASTER ASSOCIATION, INC., a non-profit Florida corporation. The Association has been organized for the purpose of administering the operation and management of the Common Property and improvements of AVILA AT PALENCIA in accordance with the Master Declaration of Restrictive Covenants, Conditions, Reservation and Easements for Avila at Palencia (the "Declaration") to be recorded in the public records of St. Johns County, Florida, subjecting the land described in Exhibit "1" thereto to the terms thereof.

B. The provisions of these Bylaws are subject to the provisions of the Articles of Incorporation for Avila at Palencia Master Association, Inc. (the "Articles"). A copy of the Articles and a copy of these Bylaws will be annexed, as exhibits, to the Declaration which will be recorded in the public records of St. Johns County, Florida. The terms and provisions used in the Articles and Declaration shall control wherever the same may conflict herewith and bear the same meaning herein as is given to them in such documents. All capitalized terms used herein have the same meaning herein as is given to them in such documents unless otherwise defined herein.

C. All members of the Association (the "Members") and their invitees, including, without limitation, all present or future Owners and tenants of units in the various phases of Avila at Palencia or any of the facilities thereof in any manner, are subject to these Bylaws, the Articles and the Declaration.

D. The office of the Association shall be at c/o 600 Corporate Drive, Suite 102, Fort Lauderdale, Florida 33334, or at such place as may be established by resolution of the Board of Directors.

E. The fiscal year of the Association shall be the calendar year.

F. The seal of the Association shall bear the name of the Association, the word "Florida," the words "Corporation Not for Profit," and the year of incorporation.

**II. MEMBERSHIP, VOTING QUORUM, PROXIES.**

A. The qualification of Members, the manner of their admission to membership and termination of such membership, and voting by Members, shall be, as set forth in the Articles, the provisions of which are incorporated herein by reference.

B. A quorum at meetings of Members shall consist of persons present in person or by proxy entitled to cast thirty-five percent (35%) of the votes of the entire membership. The joinder of a Member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such a person for the purpose of determining a quorum.

C. The vote of the Owner(s) by more than one (1) natural person, as tenants in common, joint tenants (except a husband and wife, as tenants by the entirety), a partnership, or any other association of natural persons, or by a corporation, a trust, or any other entity shall be cast or otherwise exercised, by one (1) natural person designated by the Owner(s) of such unit as the "Primary Votes" thereof. In each instance where title to any unit is proposed to be conveyed or is otherwise to become vested in more than one (1) natural persons (except a husband and wife, as tenants by the entirety), or a corporation, a trust, or any other entity, the prospective Owner(s) shall, by written instrument signed by all persons and entities who will hold title to the unit, designate one (1) natural person as the Primary Vote. The instrument designating the Primary Vote shall be filed with the Association. The Primary Vote of the unit shall be the only person entitled to cast or exercise, in person or by proxy, the vote of the Owner(s) of such unit at any meeting of Members or in connection with any action concerning which Members of the Association shall be required or allowed to vote or otherwise act.

D. Evidence of the approval or disapproval of the Owner(s) of any unit upon any matter, whether or not the subject of an Association meeting, shall be given to the Association by the same person who would cast the vote of such Owner as if in an Association meeting.

E. Except where otherwise required under the provisions of the Articles, these Bylaws or the Declaration, or where the same may otherwise be required by law, the affirmative vote of a majority of the votes of the membership represented in person or by proxy at any meeting of the Members duly called and at which a quorum is present, shall be binding upon the Members.

F. Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote and shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting.

G. Voting rights applicable to any unit shall be as set forth in the Articles of Incorporation and Declaration.

### III. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP.

A. The annual meeting of Members shall be held, at the office of the Association or such other place in St. Johns County, Florida as may be specified in the notice of the meeting, at 2:00 P.M. on the 1st Tuesday in February of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding business day.

B. Special meetings of Members shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from Members owning a majority of the units, and must be called by such officers upon written petition calling for recall of one (1) or more Director's by at least ten percent (10%) of the Owners in Avila at Palencia.

C. Notice of all meetings of Members shall be given by the Secretary or, in the absence of the Secretary, another officer of the Association, to each Member (unless waived in writing). Each notice shall be written or printed and shall state the time and place of and purpose for which the meeting is called. Each notice shall be given to each Member not less than thirty (30) days nor more than sixty (60) days prior to the date set for the meeting, and shall be mailed by first class mail or delivered personally to each member. If delivered personally, receipt of the notice shall be signed by the Member, indicating the date received. If mailed, such notice shall be deemed properly given when deposited in the United States mail addressed to the Member at his or her post office address as it appears on the records of the Association, with postage thereon prepaid. Proof of mailing shall be given by the affidavit of the person giving the notice. Any Member, may in writing signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before, at, or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. If any meeting of Members cannot be held because a quorum is not present, or because a greater percentage of the Membership required to constitute a quorum for particular purposes is not present, wherever the latter percentage of attendance may be required as set forth in the Articles, the Bylaws or the Declaration, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present. When a meeting is adjourned to another date, time, or place and the date, time, and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken, no further notice shall be necessary.

D. At meetings of Members, the Chairman of the Board, or in his or her absence, the President, shall preside, or in the absence of both, the Members present shall select a chairman of the meeting.

E. The order of business at annual meetings of Members, and, as far as practical, at other meetings of Members, shall be:

- (1) Calling of the roll and certifying of proxies.
- (2) Proof of notice of meeting or waiver of notice.
- (3) Reading or waiver of reading of minutes of previous meeting of Members.
- (4) Reports of officers.
- (5) Reports of committees.
- (6) Appointment by Chairman of inspectors of election.
- (7) Election of Directors.
- (8) Unfinished business.
- (9) New business.
- (10) Adjournment.

#### IV. **BOARD OF DIRECTORS.**

A. The Articles control the election, number and qualification of the Board of Directors.

B. The organizational meeting of a newly elected or designated Board shall be held within a reasonable time after their election or designation, at such time and place as shall be fixed at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary; provided, that a quorum shall be present.

C. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least seven (7) days prior to the day named for such meeting, unless notice is waived. Owners shall have the right to attend all meetings of the Board, but no Owner shall have the right to speak or otherwise participate in the meetings without the permission of the Board.

D. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of one-third (1/3) of the Directors. Not less than three (3) days' notice of a special meeting shall be given to each Directors, personally or by mail, telephone or telegram, which notice shall state the time, place and purpose of the meeting.

E. Adequate notice of all meetings of the Board shall be placed conspicuously on the Common Property at least forty-eight (48) hours in advance except in an emergency. Notice of meetings of the Board may be waived only in the event of emergency where circumstances exist which pose such a danger to person or property that prompt action is required. In such event, such notice shall be given as is practical under the circumstances. Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

F. A quorum at meetings of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as may be specifically otherwise provided in the Articles, these Bylaws or the Declaration. If any meeting of the Board cannot be held because a quorum is not present, or because the greater percentage of the Directors required to constitute a quorum for particular purposes is not present, wherever the latter percentage of attendance may be required as set forth in the Articles, these Bylaws or the Declaration, the Directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. No member of the Board may vote by proxy or secret ballot at a meeting of the Board, nor may a Director abstain from voting except in cases of conflict of interest. The Board may take action in meetings by telephone conference or by written agreement as permitted by law.



G. The presiding officer of meetings of the Board shall be the Chairman of the Board, if such officer has been elected, or, if not, the President of the Association. In the absence of the presiding officer, the Directors present shall designate one (1) of their number to preside.

H. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the laws of Florida, the Articles, these Bylaws and the Declaration.

I. The first Board of Directors of the Association shall be comprised of the persons named as such in the Articles, who shall serve until their successors are designated by the Developer or elected at an annual meeting of the Members. Should any member of the first Board be unable to serve for any reason, Developer shall have the right to select and designate a successor to act and serve for the unexpired term of the Director who is unable to serve.

J. Directors who have been elected by Owners other than Developer may be removed from office with or without cause in the following manner:

(1) Upon a written petition calling for the recall or removal of one (1) or more of the members of the Board of Directors, ten percent (10%) of the Owners may call a special meeting of the Owners for that purpose.

(2) The first order of business at the meeting shall be the election of a person to preside over the meeting. The election shall be by vote of the majority of the Owners present at the meeting.

(3) If the petition calls for the recall or removal of more than one (1) member of the Board of Directors, the questions of removal shall be divided as to each recalled member of the Board of Directors upon the request of any one (1) Owner present at the meeting and eligible to vote.

(4) Any member of the Board of Directors who is the subject of the recall petition shall be given a reasonable opportunity to speak at the meeting, prior to the vote on the question of removal.

(5) The vote necessary for removal shall be a majority of all Owners, including those voting by proxy or absentee ballot.

(6) If any member or members of the Board of Directors is removed at the special meeting, the vacancy(ies) shall be filled by the Members of the class entitled to elect such Director(s). If all Directors are removed at the special meeting, an election shall be held at the special meeting to fill the vacancies for the remainder of the term or terms of office. The Members may for such purpose recess or adjourn the meeting for a period not to exceed thirty (30) days, with a call to reconvene for the purpose of the election at a specific date, time and place.

V. **ADDITIONAL PROVISIONS - MEETINGS OF MEMBERS AND DIRECTORS.**

Notwithstanding anything contained in these Bylaws to the contrary, any meeting of Members of the Board may be held at any place, within or outside the State of Florida, designated in the notice of any such meeting, or notice of which is properly waived.

VI. **OFFICERS.**

A. The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall deem advisable from time to time. The President shall be elected from the membership of the Board, but no other officer need be a Director. The same person may hold two (2) offices, the duties of which are not incompatible; provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person. The Board may from time to time elect such other officers, and designate their powers and duties, as the Board may deem necessary to properly manage the affairs of the Association. Officers may be removed from office by the Board.

B. The President shall be the chief executive officer of the Association. He or she shall have all of the powers and duties which are usually vested in the office of President of a corporation not for profit, including, but not limited, to the power to appoint committees from among the Members from time to time, as he or she may in his or her discretion determine appropriate, to assist in the conduct of the affairs of the Association. The President shall have such additional powers as the Board may designate.

C. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He or she shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

D. The Secretary shall keep the minutes of all proceedings of the Board and the Members. He or she shall attend to the giving and serving of all notices to the Members and Board, and such other notices as may be required by law. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He or she shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of a corporation not for profit and as may be required by the Board and the President. The Assistant Secretary shall perform the duties of Secretary when the Secretary is absent.

E. The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He or she shall keep the assessment rolls and accounts of the Members, shall keep the books of the Association in accordance with good accounting practices, and shall perform all other duties incident to the office of Treasurer.

F. The compensation of all officers and employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing a Director as an employee of the Association, nor preclude contracting with a Director for the management of the Condominium.

## VII. FISCAL MANAGEMENT.

The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

A. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each separate unit. Such account shall designate the name and mailing address of the Owner(s), the amount of each assessment against the Owner(s), the due date thereof, all amounts paid, and the balance due upon each assessment. For this purpose the Owner of each unit will be assessed one (1) share.

B. The Board shall adopt for, and in advance of, each calendar year, a budget showing the estimated costs of performing all of the functions of the Association for the year. Each budget shall show the total estimated expenses of the Association for that year and shall contain an itemized breakdown of the Common Expenses. Each budget shall also show the proportionate share of the total estimated expenses to be assessed against and collected from the Owner(s) of each separate unit and the due date(s) and amounts of installments thereof. Copies of the proposed budget and proposed assessments shall be transmitted to each Member on or before January 1 of the year for which the budget is made. If any budget is subsequently amended, a copy shall be furnished each affected Member. Delivery of a copy of any budget or amended budget to a Member shall not affect the liability of any Member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of the budget and assessments levied pursuant thereto. Nothing herein contained shall be construed as a limitation upon the additional assessment in the event that any budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

C. A copy of the proposed annual budget of the Association shall be mailed to the Owners of all units not less than thirty (30) days prior to the meeting of the Board at which the budget will be considered, together with a notice of the time and place of the meeting. Such meeting of the Board shall be open to such Owners. If a budget is adopted by the Board which requires assessment of the Owners in any budget year exceeding one hundred fifteen percent (115%) of such assessments for the preceding year, then upon written application of Owners of units that are responsible for at least ten percent (10%) of all assessments, a special meeting of the Owners shall be held upon not less than ten (10) days' written notice to each Owner, but within thirty (30) days of the delivery of such application of the Board or any member thereof, at which special meeting Owners (by a vote of a majority of the Class A members present and voting) may consider only and enact only a revision of the budget. Any such revision of the budget shall require a vote of not less than fifty-one percent (51%) of the whole number of votes of all Members of the Association.

The Board may in any event first propose a budget to the Owners at any such meeting of Members or by writing, and if such budget or proposed budget be approved by a majority of the whole number of votes of all Members, such budget may not thereafter be reexamined by the Owners in the manner hereinabove set forth.

D. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments in the prior budget year, there shall be excluded from the computation reasonable reserves made by the Board in respect of repair and replacement of Common Property, or in respect of anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation, assessments or betterments to the Common Property. Provided, however, that so long as Developer is in control of the Board of Directors the Board shall not impose an assessment for a budget year greater than one hundred fifteen percent (115%) of the prior budget year's assessments without approval of a majority of the whole number of votes of all Class A Members.

E. Upon adoption of budgets, the Board shall cause a written copy thereof to be delivered to each Owner. Assessments shall be made against Owners pursuant to procedures established by the Board, and in accordance with terms of the Declaration and the Articles. Owners shall be liable to pay assessments not less often than quarterly. Provided, however, that the lien or lien rights of the Association shall not be impaired by failure to comply with procedures established pursuant to these Bylaws.

F. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which all monies of the Association shall be deposited. Withdrawal of monies from such bank(s) shall be only by checks signed by such persons as are designated by the Board.

G. An accounting of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the report shall be mailed or furnished by personal delivery to each Member not later than April 1 of the year following the year for which the report is made. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications.

#### **VIII. PARLIAMENTARY RULES.**

Roberts' Rules of Order (latest edition) shall govern the conduct of Association proceedings when not in conflict with the Articles, these Bylaws or the laws of Florida.

#### **IX. AMENDMENTS TO BYLAWS.**

Amendments to these Bylaws may be proposed and adopted in the following manner:

A. Amendments to these Bylaws may be proposed by the Board, acting upon vote of a majority of the Directors, or by Members owning twenty five percent (25%) of the units subject to the Declaration whether meeting as Members or by instrument in writing signed by them.

B. Upon any amendment or amendments to these Bylaws being proposed by the Board or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or acting Chief Executive Officer in the absence of the President, who shall thereupon call a special meeting of the Members for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each Member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the Members is required as herein set forth; provided, that proposed amendments to the Bylaws may be considered and voted upon at annual meetings of the Members.

C. In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of Members of the Association. Thereupon, such amendment or amendments to these Bylaws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the public records of St. Johns County, Florida, within thirty (30) days from the date on which any amendment or amendments have been affirmatively approved by the Members.

D. At any meeting held to consider such amendment or amendments to these Bylaws, the written vote of any Member shall be recognized if such Member is not present at such meeting in person or by proxy, provided such written vote is delivered to the Secretary at or prior to such meeting.

E. Notwithstanding the foregoing provisions of this Article IX, no amendment to these Bylaws which shall abridge, amend and/or alter the right of the Developer to designate a majority of the members of each Board of Directors of the Association, as provided in the Articles, may be adopted or become effective without the prior written consent of Developer.

#### **X. RULES AND REGULATIONS.**

Rules and Regulations governing the use of the units and the Common Property and Restricted Common Property of the Association and the conduct of Owners, occupants and guests shall be adopted in the following manner:

A. **Initial Rules and Regulations.** At its first meeting the Board of Directors of the Association (all of whom shall have been designated by Developer in accordance with the Articles of Incorporation and these Bylaws) shall adopt an initial set of Rules and Regulations, which, after adoption, shall be annexed to these Bylaws in the form of an exhibit.

B. **Amendment to Rules and Regulations.** The Board of Directors may from time to time, by majority vote at a duly called meeting of the Board, modify, amend, add to, or detract from the Rules and Regulations. All changes to the Rules and Regulations made by the Board

shall be mailed by first class mail to each Owner not less than thirty (30) days prior to the effective date of the change. No modification, amendment, addition or detracting to the Rules and Regulations may be adopted by the Board if it would conflict with a provision of the Declaration.

C. **Enforcement of Rules and Regulations.** All violations of Rules and Regulations or of any provisions of the Declaration, Articles and/or Bylaws shall be reported immediately to a member of the Board of Directors, an Association officer and/or the management agent. Disagreements concerning violations, including, but not limited to, disagreements regarding the proper interpretation and effect of Rules and Regulations or other provisions of the Declaration shall be presented to and determined by the Board of Directors of the Association, whose interpretation and/or whose remedial action shall be dispositive. In the event that any person, firm or entity subject to the Rules and Regulations, or other provisions of the Declaration, fails to abide by them, as they are interpreted by the Board of Directors, they shall be liable to be fined by the Association for each such failure to comply or other violation. Such fine shall be collected by the Association and shall be an asset of the Association. If the Board of Directors of the Association deems it necessary, it may seek all available remedies and may bring action at law or in equity to enforce the Rules and Regulations, or other provisions of the Declaration including the provision herein for fines. In the event any such action is instituted, and reduced to judgment in favor of the Association, the Association shall in addition be entitled to recover its costs and attorneys' fees, at the trial level and at all levels of appeal.

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Prepared by and return to:  
I. Barry Blaxberg, Esq.  
Blaxberg, Grayson, Kukoff & Segal, P.A.  
25 SE Second Avenue, Suite 730  
Miami, Florida 33131

Public Records of  
St. Johns County, FL  
Clerk# 04-035821  
O.R. 2198 PG 311  
10:23AM 05/13/2004  
REC \$9.00 SUR \$1.50

**CONSENT AND RATIFICATION TO SUBMIT PROPERTY TO TERMS OF SUPPLEMENTAL  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR PALENCIA**

This Consent and Ratification to Submit Property to Terms of Supplemental Declaration of Covenants and Restrictions for Palencia, dated July 22, 2003 (the "Supplemental Declaration") is made effective as of May 7, 2004 by Crosswinds at Palencia, LLC ("Crosswinds").

**WHEREAS**, Crosswinds is the owner of certain real property more particularly described in the attached Exhibit "A" attached hereto (the "Property");

**WHEREAS**, Crosswinds became the owner of said Property via a Special Warranty Deed from Marshall Creek, LTD, a Florida limited partnership, dated July 22, 2003, and recorded on July 28, 2003 in Official Records Book 2006 at Page 618 of the Public Records of St. Johns County, Florida;

**WHEREAS**, the Supplemental Declaration was mistakenly recorded after the Special Warranty Deed to Crosswinds was recorded, on July 28, 2003 with the Supplemental Declaration recording, in Official Records Book 2006 at Page 639 in the Public Records of St. Johns County, Florida;



**WHEREAS**, Crosswinds, desires to subject the Property to all of the terms, conditions and provisions contained in the Supplemental Declaration.

**NOW THEREFORE**, Crosswinds declares that:


Crosswinds hereby agrees and does hereby submit and make the above-referenced Property subject to all terms and provisions of the Supplemental Declaration and ratifies the terms therein as being applicable to the Property. All of the Property and any portion thereof shall be subject to all applicable covenants, restrictions, easements, charges and liens and all other matters set forth in the Supplemental Declaration.

**IN WITNESS WHEREOF**, Crosswinds causes this instrument to be dully executed as of the date and year set forth above.

Signed, sealed and delivered  
in presence of us:

CROSSWINDS AT PALENCIA, LLC,  
a Florida limited liability company

  
By: Bernard Gliberman  
Title: Managing Member

(SEAL)

State of ARIZONA  
 County of MARICOPA

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Bernard Gliberman, as Managing Member of CROSSWINDS AT PALENCIA, LLC, to me well known to be the person described in and who executed the foregoing Bill of Sale, and he acknowledged before me that he executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at Maricopa, State of Arizona  
 day of May ~~April~~ A.D. 2004.  
County

Terri L. Garvais  
 Notary Public, State of ~~Florida~~ Arizona  
 My commission expires:

2086-4/MJJ/Dominguez/7055





(39)

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**FOR**

**PALENCIA LIVE/WORK TOWNHOMES**

**THIS DOCUMENT PREPARED BY:**

**Charles L. Gibbs, Esq.**  
**Pappas Metcalf Jenks & Miller, P.A.**  
**245 Riverside Avenue, Suite 400**  
**Jacksonville, Florida 32202**

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FOR  
PALENCIA LIVE/WORK TOWNHOMES**

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**DECLARATION  
OF  
COVENANTS AND RESTRICTIONS  
FOR  
PALENCIA LIVE/WORK TOWNHOMES**

**THIS DECLARATION** is made this 16<sup>th</sup> day of November, 2006, by **CROSSWINDS AT PALENCIA L/W, LLC**, a Florida limited liability company (the "Developer"), which declares that the real property described on Exhibit A attached hereto and made a part hereof (the "Property"), which is owned by the Developer, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens and all other matters set forth in this Declaration which shall be deemed to be covenants running with the title to the Property and shall be binding upon the Developer and all parties having or acquiring any right, title or interest in the Property or any part thereof.

**ARTICLE I  
MUTUALITY OF BENEFIT AND OBLIGATION**

Section 1.1 **Mutuality**. The covenants, restrictions, and agreements set forth in this Declaration are made for the mutual and reciprocal benefit of every Lot within the Property, and are intended to create mutual equitable servitudes upon each such Lot in favor of the other Lots, to create reciprocal rights among the respective Owners, and to create privity of contract and an estate between the grantees of each and every Lot within the Property, their heirs, successors and assigns.

Section 1.2 **Benefits and Burdens**. Every person who is an Owner does by reason of taking title to a Lot located within the Property agree to all the terms and provisions of this Declaration and shall be entitled to its benefits and subject to its burdens.

**ARTICLE II  
DEFINITIONS**

The following words, when used in this Declaration shall have the following meanings:

Section 2.1 **Association**. Palencia Live/Work Townhome Owners Association, Inc., a Florida corporation not-for-profit.

Section 2.2 **Board**. The Board of Directors of the Association.

Section 2.3 **CDD**. The Community Development District for Marshall Creek as authorized by the Board of County Commissioners of St. Johns County, Florida by Resolution No. 2000-21.

Section 2.4 **Commercial Improvement**. Any proposed or completed improvements located on, over, under or within any portion of the Property that is not a Lot, and which is intended for use and designed to accommodate public, commercial, governmental or business enterprises to

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serve residents of the Property or the public, including but not limited to, business and professional offices, facilities for the retail or wholesale sale of goods and services, warehouses, banks and other financial institutions, hotels, motels, theaters, entertainment facilities, automobile parking facilities, restaurants, convenience stores, and gasoline stations.

Section 2.5 **Common Area**. All real property (including easements, licenses and rights to use real property) and personal property located within or adjacent to the Property, if any, which is owned by the Developer or by the Association, and which the Developer has designated for the common use of the Owners by reference thereto in this Section 2.5 or by recording a Supplementary Declaration, pursuant to the terms of Section 5.3 hereof. The Common Area initially designated by the Developer shall consist of the real property (and interests therein) more particularly described on Exhibit B attached hereto and made a part hereof together with all improvements constructed therein by Developer, but not owned or maintained by a public or private utility company.

Section 2.6 **Developer**. Crosswinds at Palencia L/W, LLC and its successors and such of its assigns as to which the rights of the Developer hereunder are specifically assigned. Developer may assign all or only a portion of such rights in connection with portions of the Property. In the event of such a partial assignment, the assignee may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. Reference in this Declaration to Crosswinds at Palencia L/W, LLC as the Developer of the Property is not intended and shall not be construed, to impose upon Crosswinds at Palencia L/W, LLC any obligations, legal or otherwise, for the acts or omissions of third parties who purchase Lots within the Property from Crosswinds at Palencia L/W, LLC and develop and resell the same.

Section 2.7 **DRI**. That certain Development of Regional Impact Order approved by the Board of County Commissioners of St. Johns County, Florida by Resolution No. 98-191, as amended by Resolution No. 98-220, and as the same may be further amended from time to time.

Section 2.8 **Limited Common Area**. The Limited Common Area of a Lot shall consist of the portion of the Property between the front Lot line and the nearest edge of the paved road surface (as it may exist from time to time), together with any portion of the Property contiguous to a Lot which, as a result of the natural configuration of the Property, is primarily of benefit to such Lot. Any question concerning the boundary of a Limited Common Area shall be determined by the Board of Directors of the Association.

Section 2.9 **Live-Work Unit**. A Live-Work Unit is a combination of a Residential Dwelling Unit and a Commercial Improvement.

Section 2.10 **Lot**. Any platted Lot or any other parcel of real property located within the Property, consisting of an integrated unit of land suitable for development by construction of improvements designed for residential, office, retail, restaurant, entertainment, recreational, service, or other similar use.

Section 2.11 **Master Association**. Palencia Property Owners Association of St. Johns County, Inc. a Florida non-profit corporation, and its successors, assigns and designees.

Section 2.12 **Master Covenants**. The Declaration of Covenants and Restrictions for Palencia recorded in Official Records Book 1666, at page 803, as amended by First Amendment to Declaration of Covenants and Restrictions for Palencia recorded in Official Records Book 1845, at page 835, of the public records of St. Johns County, Florida, as amended from time to time.

Section 2.13 **Mixed Use Covenants**. The Declaration of Covenants and Restrictions for the Palencia Mixed Use Area (Village Center) as recorded in Official Records Book 2305, page 1487 of the public records of St. Johns County, Florida, as amended from time to time.

Section 2.14 **Owner**. The record owner or owners of any Lot.

Section 2.15 **Palencia**. The planned community more particularly described by the DRI and PUD.

Section 2.16 **Property or Subdivision**. The real property described on the attached Exhibit A and such additions and deletions thereto as may be made in accordance with the provisions of Sections 3.2 and 3.3 of this Declaration.

Section 2.17. **PUD**. Planned Unit Development Ordinance Numbers 98-064 and 98-220 as enacted by The Board of County Commissioners of St. Johns County, Florida, as amended from time to time.

Section 2.18 **Residential Dwelling Unit**. Any improved portion of the Property located within a Lot and intended for primary use as a residential dwelling, including without limitation, the residential portion of any Live-Work Unit.

Section 2.19 **The Work**. The initial development of all or any portion of the Property as a live-work community by the construction and installation of streets, buildings, and other improvements, and the sale, lease, or other disposition of the Property in parcels. Such term is to be broadly construed to include any and all activities, uses, structures, and improvements necessary, convenient, or desirable to accomplish such construction and disposition.

### **ARTICLE III** **PROPERTY SUBJECT TO THIS DECLARATION:** **ADDITIONS AND DELETIONS**

Section 3.1 **No Implied Extension of Covenants**. Each Owner and each tenant of any improvements constructed on any Lot, by becoming an Owner or tenant, shall be deemed to have agreed that (a) the Property described on Exhibit A and such additional property as may be annexed pursuant to Section 3.2 hereof shall be the only Property subject to this Declaration, (b) that nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as subjecting, or requiring the Developer to subject any other property now or hereafter owned by the Developer to this



Declaration, and (c) that the only manner in which additional land may be subjected to this Declaration is by the procedure set forth in Section 3.2 hereof.

Section 3.2 **Additional Lands**. Developer may, but shall not be obligated to, subject additional land to this Declaration from time to time provided only that (a) any additional land subjected to this Declaration shall be located within the development area generally known as Palencia; and (b) the Owners of property within additional lands made subject to this Declaration shall be and become subject to this Declaration, and shall be responsible for their pro rata share of common expenses for which assessments may be levied pursuant to the terms of the Master Declaration. Addition of lands to this Declaration shall be made and evidenced by filing in the public records of St. Johns County, Florida, a Supplementary Declaration executed by the Developer with respect to the lands to be added. Developer reserves the right to supplement this Declaration to add land to the scheme of this Declaration pursuant to the foregoing provisions without the consent or joinder of any Owner or mortgagee of land within the Property.

Section 3.3 **Withdrawal of Lands**. The Developer reserves the right to withdraw at any time, or from time to time, portions of the Property owned by it from the terms and effect of this Declaration, without the consent or joinder of any other party. The withdrawal of lands as aforesaid shall be made and evidenced by filing in the public records of St. Johns County, Florida, a Supplementary Declaration executed by the Developer with respect to the lands to be withdrawn.

#### **ARTICLE IV** **MEMBERSHIP AND VOTING RIGHTS**

Section 4.1 **Membership**. Every Owner of a Lot is a member of the Association. An Owner of more than one Lot is entitled to one membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by conveyance of title to that Lot whereupon the membership of the previous Owner automatically terminates. Except for the Developer, no person other than an Owner may be a member of the Association, and a membership in the Association may not be transferred or encumbered except by the transfer of title to a Lot.

Section 4.2 **Classification**. The Association has two classes of voting membership:

(a) **Class A**. So long as there is Class B membership, Class A members are all Owners except the Developer and are entitled to one vote for each Lot owned. Upon termination of Class B membership, Class A members are all Owners, including Developer so long as Developer is an Owner.

(b) **Class B**. The Class B member is the Developer and is entitled to three (3) votes for each Class A vote. The Class B membership will cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs first: (i) when the total number of votes allocated to the Class A members equals the total number of votes allocated to the Class B member; (ii) December 31, 2012; or (iii) when the Developer waives in writing the Class B votes and membership.

Section 4.3 **Co-Ownership.** If more than one person holds the record title to any Lot, all such persons are members but there may be only one vote cast with respect to such Lot. Such vote may be exercised as the co-owners determine among themselves but no split vote is permitted.

## **ARTICLE V** **COMMON AREA RIGHTS**

Section 5.1 **Conveyance of Common Area.** Developer agrees that all of the Common Area owned by Developer shall be conveyed or assigned to the Association, subject to covenants, easements, restrictions and other matters of record, before the date which is ninety (90) days following the conveyance of the last Lot owned by the Developer to any party. Upon the recordation of any deed or deeds conveying Common Area to the Association, the Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds.

Section 5.2 **Owners' Easement of Enjoyment.** Each Owner shall have a right and easement of enjoyment in and to the Common Area for its intended purpose, which shall be appurtenant to, and shall pass with, the title to the land of such Owner, subject to the following:

(a) The right of the owner of the Common Area, with the consent of the Developer (if different from such owner) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility; provided however, the Common Area may not be mortgaged or conveyed free and clear of the provisions of this Declaration without the approval of members holding two-thirds (2/3) of the total votes that are allocated to the Association's members;

(b) All provisions of this Declaration, any plat of all or any parts of the Property, governmental restrictions, including the provisions of the PUD;

(c) Reasonable rules and regulations governing use and enjoyment of the Common Area adopted by the Developer or the Association;

(d) The rights of the Developer under Section 5.3 to add to or withdraw land from the Common Area;

(e) Easements, restrictions, agreements and other matters of record.

The foregoing easement of enjoyment in favor of the Owners shall not be construed to create or imply any other easements or rights not expressly created by this Declaration, it being the intent hereof to limit the Owners' rights of use of specific portions of the Common Area to only the intended purposes of such portions of the Common Area

Section 5.3 **Right of the Developer to Designate Property as Common Area or to Withdraw Property from the Common Area.** Notwithstanding anything to the contrary contained in this Declaration, the Developer shall have the right, in its sole discretion, to designate land, easements, use rights and personal property owned by the Developer as Common Area, provided only that such land shall be located within the Property or contiguous to the Property (for purposes of

this Section 5.3, property separated only by public or private roads, water bodies, golf courses, or open space shall be deemed contiguous). For so long as the Developer shall own any Lot, the Developer may, at any time, withdraw, or cause to be withdrawn, land from the Common Area in the Developer's sole discretion. The prior sentence notwithstanding, in the event such withdrawal of Common Area shall materially and adversely affect any Lot, or materially and adversely affect access, visibility, or drainage to or from any Lot, the Developer shall not have the right to withdraw such Common Area without the consent and joinder of the Owner of the Lot which is so affected. Addition of land to and withdrawal of land from the Common Area shall be evidenced by recording a Supplementary Declaration in the public records of St. Johns County, Florida, which shall specifically reference such addition or withdrawal. Withdrawal of land from the Common Area by the Developer shall terminate any and all easements and rights of use of the Owners in such land. No land owned by the Developer shall be deemed to be Common Area unless such land is expressly referenced as such under Section 2.5 hereof, or subsequently designated as such by the Developer pursuant to Section 2.5 hereof and this Section 5.3, even if the Developer consents or acquiesces to the use of such land by the Owners. In the event any land, easements, use rights, or personal property owned by the Association shall be withdrawn from the Common Area pursuant to this Section 5.3, upon the Developer's written request, the Association shall promptly execute and deliver to the Developer any and all deeds, bills of sale, assignments or other conveyance documents as may be necessary or appropriate to effectuate the withdrawal of such Common Area.

**Section 5.4 Maintenance of Common Area.** The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Area and any improvements and landscaping (except utilities owned and maintained by public or private utility companies providing water, sewer, electrical, fire protection, cable television, telephone, or similar utilities to the Property, or any portion thereof) situated on the Common Area, if any. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this Section 5.4, shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

**Section 5.5 Easement for Maintenance Purposes.** The Developer hereby grants to the Association and its successors, assigns, agents, and contractors, a non-exclusive perpetual easement in, on, over and upon those portions of the Property as may be reasonably necessary for the purpose of maintaining the Common Area or other portions of Property to be maintained by Association, in accordance with the requirements of this Declaration. The easement granted hereby shall not be exercised by any party in a manner which unreasonably interferes with the use, occupancy, or enjoyment of any improved portion of the Property. Further, in the event that any portion of the Property shall be damaged or altered in any way as the result of the exercise of the easement rights granted hereby, such portions of the Property shall be immediately restored to the condition that existed immediately prior to such damage or alteration by the party exercising such rights.

**ARTICLE VI**  
**PROPERTY RIGHTS AND USE RESTRICTIONS**

Section 6.1 **Common DRI and PUD.** Due to the integrated nature of the Property and the lands described in the DRI and the PUD, no Owner, or any other person or entity shall construct any improvements upon the Property, nor take any action, which in the reasonable opinion of the Developer, would require a modification of the terms and provisions of the DRI and PUD, as the same may be amended from time to time, without the prior written consent of the Developer.

Section 6.2 **Compliance with Laws.** All Owners and other occupants of the Property shall at all times comply with the terms of the DRI and PUD that apply to their respective property, and all environmental, land use, marketing and consumer protection ordinances, statutes and regulations, as well as all governmental rules, regulations, statutes, and ordinances applicable to each Owner in connection with operation of improvements located within the Property.

Section 6.3 **Platting and Additional Restrictions.** The Developer shall be entitled at any time, and from time to time, to plat or replat all or any part of the Property, and to file any covenants and restrictions, or amendments to this Declaration, with respect to any portion or portions of the Property owned by the Developer, without the consent or joinder of any other party.

Section 6.4 **Live-Work Use.**

(a) Each Live-Work Unit shall be primarily used as a residential dwelling unit which shall include at a minimum, heat and air conditioning facilities, hot water, a kitchen, a bathroom, sleeping quarters, a two car garage, and related residential facilities (the "Residential Portion"). The Residential Portion of the Live-Work Units shall be located on the second and third levels of the Live-Work Unit, and may be used only for residential purposes. Upon receipt of written approval of the Association, the Residential portion may be leased to a residential tenant for a term of not less than six (6) months.

(b) A portion of each Live-Work Unit (no more than 1,200 square feet) shall be located on the ground floor only and shall be utilized for business operations subject to the restrictions set forth in subsection 6.4(c) (the "Work Portion"). No person may permanently reside in the Work Portion of the Live-Work Unit. The Work Portion may be leased, sublet, or licensed for use by a person or entity who is not the occupant of the Residential Portion.

(c) The Work Portion of each Live-Work Unit shall not be used as a bar, restaurant, or dining establishment with on site food preparation and cooking facilities (provided however, each Work Portion may be used as a café, coffee house, deli or other vendor of food and beverages that are prepared off-site); animal hospital; kennel, pet shop, or veterinary office; automobile and motorcycle sales, service, parts or supply center; civic or governmental administration facility; real estate brokerage office; dry cleaner with any dry cleaning plant or equipment (provided however, pickup and drop off of clothes shall be permitted); laundromat or coin laundry; fire or police station; U.S. Postal Service facility; warehouse; hotel; motel; theater; tattoo parlor; check cashing store; motor vehicle title loan office; entertainment arcade with mechanical or

electrical games; adult book store; adult entertainment establishment; gas station; billiard room or pool hall; religious assembly room or hall, including any church, synagogue, or mosque; dance hall; massage parlor; mortuary; or any other use that could attract high levels of pedestrian or vehicular traffic or noise. Further, for a period of twenty (20) years following the date that this Declaration shall be recorded in the public records of St. Johns County, Florida, no portion of the Property may be used for a residential real estate sales or brokerage office. The foregoing shall not prohibit the occupancy of an office within the Property by persons licensed to provide residential real estate brokerage and sales services, however, the establishment of offices from which residential real estate sales, rental or brokerage services shall be offered to the public shall be prohibited.

(d) Businesses may be operated in the Work Portion of each Live-Work Unit between the hours of 7:00 a.m. and 9:00 p.m.

(e) All employees and independent contractors who work in the Work Portion of any Live-Work Unit shall park their motor vehicles in an area designated by the Association. Parking in front of Live-Work Units is reserved for business invitees of the Live-Work Units. Residents of Live-Work Units shall park their personal motor vehicles in the garage portion of the Live-Work Unit or in such other areas as may be designated by the Association.

(f) Garages and any exterior areas of the Live-Work Units shall not be used for storage of materials, goods, or supplies that are used in connection with business operated in the Work Portion of the Live-Work Unit.

(g) Any use of the Work Portion of a Live-Work Unit shall be subject to prior written consent and approval of the Association, whether the Work Portion is utilized by the Owner of the Live-Work Unit or by a lessee of all or a portion of the Live-Work Unit. The Association shall establish application forms pursuant to which the intended Owner or lessee of the Work Portion of the Live-Work Unit shall provide, in reasonable detail, the intended use of the premises, including information concerning the intended number of employees, independent contractors or other occupants of the Work Portion of the Live-Work Unit, and which may include the applicant's consent to a background check and/or a credit check. The Association may collect a reasonable fee for reviewing such applications. Notwithstanding any approvals that may be issued by the Association, any intended uses of the Work Portion of each Live-Work Unit shall be subject to the terms and provisions of the Master Covenants and the Mixed Use Covenants and to all applicable building and zoning codes and governmental authorities having jurisdiction.

(h) The Association makes no warranties or representations to any Owners, lessees, occupants, or any other authorized users of the Live-Work Units that any portion of the Live-Work Units may be used for any particular purpose other than the Residential Portion of the Live-Work Units being used for residential uses. Owners of the Live-Work Units and lessees of any portion of the Live-Work Units hereby agree to indemnify, defend and hold the Association harmless from and against all claims, actions, demands, or damages, including but not limited to reasonable attorney's fees and costs, whether incurred in arbitration or in litigation, associated with, arising from, or relating in any way, directly or indirectly, to the ability or inability to utilize any portion of the Live-Work Units for a particular commercial, business, or professional purpose.

(i) All provisions relating to the use and occupancy of the Live-Work Units are subject to the terms and provisions of the Master Covenants and the Mixed Use Covenants, as well as all applicable building or zoning codes promulgated by any governmental authority with jurisdiction over the Property.

Section 6.5 **No Detached Buildings.** Except as constructed as part of The Work, no garages, tool or storage sheds, tents, trailers, tanks, temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the prior written consent of the Master Association.

Section 6.6 **Nuisances.** Nothing shall be done or maintained on any Lot that may be or become an annoyance or nuisance to any party. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. If a dispute or question arises as to what may be or become a nuisance, the issue shall be submitted to the Association's Board of Directors, whose decision shall be dispositive of such dispute or question. No immoral, improper or unlawful use shall be made of any portion of the Property and all valid laws, zoning ordinances and regulations of governmental agencies having jurisdiction thereof shall be complied with.

Section 6.7 **Antenna.** The installation of all aerials, antennae or satellite dishes shall be subject to the approval of the Master Association in accordance with architectural criteria imposed by the Master Association from time to time.

Section 6.8 **Lakes.** Only the Developer, the Association and the CDD shall have the right to pump or otherwise remove any water from any lake adjacent to or near to the Property for the purpose of irrigation or other use, or to place any refuse in such lake or lakes. The Developer, the Association and the CDD shall have the sole and absolute right (but no obligation) to control the water level of such lake or lakes and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in or on any such lake. No motor vehicle or vessel of any kind shall be permitted to be operated on any lake. Lots which now or may hereafter be adjacent to or include a portion of a lake (the "lake parcels") shall be maintained so that such grass, planting or other lateral support to prevent erosion of the embankment adjacent to the lake and the height, grade and contour of the embankment shall not be changed without the prior written consent of the Association. Further, all shoreline vegetation, including cattails and the like, shall be maintained and controlled by the Owner of any lake parcel pursuant to the requirements of this Section 6.8. If the Owner of any lake parcel fails to maintain the embankment or shoreline vegetation as part of its landscape maintenance obligations in accordance with the foregoing, the Association shall have the right, but no obligation, to enter upon any such lake parcel to perform such maintenance work which may be reasonably required, all at the expense of the Owner of such lake parcel. Title to any lake parcel shall not include ownership of any riparian rights associated therewith. No docks, bulkheads or other structures shall be constructed on such embankments unless and until same shall have been approved by the Association. The Association shall have the right to adopt reasonable rules and regulations from time to time in connection with use of the surface waters of any lake adjacent to or nearby the Property. The Association shall have the right to deny such use to any person who in the opinion of

the Association may create or participate in the disturbance or nuisance on any part of the surface waters of any such lake. The use of the surface waters of any such lake shall be subject to rights granted to other persons pursuant to the rules and regulations of the Association.

Section 6.9 **Trees**. No tree or shrub, the trunk of which exceeds six (6) inches in diameter one (1) foot above the ground, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Master Association.

Section 6.10 **Artificial Vegetation**. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Master Association.

Section 6.11 **Signs**. One sign per Lot shall be permitted to advertise the business conducted on the ground floor of each Live-Work Unit. No sign of any kind shall be displayed to the public view on any Lot except as may be approved as to size and design and in accordance with criteria established by the Master Association. Any sign associated with a Live-Work Unit, including any illumination associated with such sign, shall be subject to the sign criteria established pursuant to the Master Covenants and the Mixed Use Covenants.

Section 6.12 **Lighting**. No lighting shall be permitted which alters the residential character of the Subdivision.

Section 6.13 **Animals**. Dogs shall be kept under control by each Owner at all times and leashed when outside the boundaries of the Owner's Lot. Animals shall be kept for the pleasure of Owners only and not for any commercial or breeding use or purposes. If, in the discretion of the Board, any animal shall become dangerous or an annoyance or nuisance to other Owners, or destructive of wildlife or property, such animal may not thereafter be kept on a Lot. Further, in the event any group of animals shall collectively become dangerous or an annoyance or nuisance to other Owners, or destructive to wildlife or property, the Board shall have the right to require the applicable Owner to reduce the number of animals kept on the Lot, or to take such other remedial action as the Board shall specify.

Section 6.14 **Maintenance of Driveways**. Each Lot Owner shall be responsible for maintenance of the driveway serving his Lot.

Section 6.15 **Sidewalks**. Sidewalks are reserved for pedestrian use and such use shall not be blocked, impeded, or impaired in any way except for such uses, at such times, as are expressly permitted and approved by the Association. All such permitted uses or approvals shall also be subject to the terms and provisions of the Master Covenants, the Mixed Use Covenants and all applicable building and zoning codes.

Section 6.16. **Motor Vehicles and Boats** No boats, recreation vehicles or other motor vehicles, except four wheel passenger automobiles, shall be placed, parked or stored within the Property, nor shall any maintenance or repair be performed upon any boat or motor vehicle within the Property, except within a building, or otherwise screened, so as to be totally isolated from public

view. For each Residential Dwelling Unit, no more than three (3) motor vehicles of any description shall be regularly parked within the Property. Commercial vehicles shall not be parked within the Property within public view from Market Street on a regular basis; however, this restriction shall not be interpreted to preclude incidental parking for the purposes of loading or unloading such commercial vehicles. Construction trailers may be parked within the Property only with the prior written consent of the Developer and in an area designated by the Developer.

Section 6.17 **Reciprocal Easements.** There are hereby granted reciprocal appurtenant easements between adjacent Lots for (i) the maintenance, repair, and reconstruction of any roofs, exterior walls or party walls, as provided in this Declaration for the benefit of those persons, including the Association, responsible for or permitted to perform such maintenance, repair and reconstruction; (ii) lateral and subjacent support; (iii) overhanging roofs, eaves, pull-off parking spaces and sidewalks (and the use thereof for permitted parking purposes and pedestrian access respectively), and for maintenance thereof and trees, if any, installed by Developer as part of the Work, and their replacements; (iv) encroachments caused by the unwillful placement, settling, or shifting of any improvements constructed, reconstructed, or altered thereon in accordance with the provisions of this Declaration; (v) common sewer lines providing sewage collection facilities to adjacent Lots and for maintenance and repair of shared sewage lines; (vi) common utility ducts, lines, conduits, and pipes, providing utility services to adjacent Lots and for maintenance and repair of shared utility ducts, lines, conduits, and pipes; and (vii) the drainage of ground and surface waters in the manner established by Developer as part of The Work. To the extent not inconsistent with this Declaration, the general rules of law apply to the foregoing easements. The extent of such easements for maintenance, drainage, support, and overhangs is that reasonably necessary to effectuate their respective purposes of and such easements for encroachment extend to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point. There is no easement for overhangs or encroachments caused by the willful or intentional misconduct of any Owner or the Association. There are also reciprocal appurtenant easements between Lots for the installation, maintenance, repair, and replacement of any utility installations (including any television, radio cables or utility metering devices and appurtenances) servicing more than one Lot but such easements must be exercised in a reasonable manner so as not to cause any permanent, material injury to any Lot, and entry into any improvement upon a Lot is authorized only with the consent of its Owner and occupant, which consent may not be unreasonably withheld so long as such entry is at a reasonable time, in a reasonable manner, and upon reasonable prior notice whenever circumstances permit.

Section 6.18 **Side and Rear Lot Line Easements.** As the nature of townhouse development necessitates the entry onto adjacent Lots for the purpose of maintaining residences and landscaping improvements, each Owner, by acceptance of his deed, grants to each adjacent abutting Lot Owner, as to the side of each Lot and rear of interior Lots, and the Association an easement for ingress and egress over his Lot where necessary or desirable to permit the maintenance and repair of the Unit upon such adjacent Lot to the landscaping improvements upon the adjacent Lot.

Section 6.19 **All Rights and Easements Appurtenant.** The benefit of all rights and easements granted by this Article constitute a permanent appurtenance to, and pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as nonexclusive by this Article, its benefit nevertheless is exclusive to all Lots granted such benefit by this Article,



unless this Article expressly grants such benefit to additional Persons. In no event does the benefit of any such easement extend to the general public.

**Section 6.20 Utility and Drainage Easements.** The Developer reserves certain rights as provided herein for the benefit of itself and utility companies designated by Developer to service the Property, an easement over, upon and under the Property and the specific easement areas shown on the plat of the Property. The Developer shall have the unrestricted right, without the approval or joinder of any other person or entity, to designate the use and to alienate, release or otherwise assign the easements, except to the extent such easements have been dedicated to governmental authorities or public utility companies. The easements may be used to construct, maintain and operate water mains, drainage ditches, sewer lines and other suitable installations for drainage and sewage disposal, or for the installation, maintenance, transmission and use of electricity, gas, telephone, water and other utilities, provided such use of the easements shall not unreasonably interfere with continued use and occupancy of any Live-Work Unit by an Owner.

**Section 6.21 Parking Restrictions.** Unless and until the Association (with the Master Association's approval) promulgates rules and regulations expressly authorizing the parking, storage, keeping, repair, or restoration of boats, trailers, or additional vehicles, no vehicle, boat, or trailer may be parked, stored, kept, repaired, or restored anywhere within the property except functional passenger automobiles, vans, motorcycles, and trucks of one-half ton capacity or less (collectively, the "Permitted Vehicles"). No Owner or occupant of any Lot, nor any guest or invitee of the Owner or occupant of any Lot, may regularly park a Permitted Vehicle anywhere within the Property except within the driveway or the pull-off parking space constructed on Lots as a part of The Work. The foregoing shall not be deemed to prohibit guests or invitees of an Owner or occupant of a Lot from parking in the streets located on the Property while visiting such Owner or occupant, provided that normal traffic flow is not impeded. The Association may enforce the foregoing restrictions in any lawful manner, including the imposition of reasonable, uniform fines for willful or repeated violations. Nothing in this paragraph prohibits the emergency repair or servicing of Permitted Vehicles, so long as such repair or servicing is completed within 48 hours.

**Section 6.22 Front Yard Restrictions.** Within the area of each Lot between the front lot line and the exterior front wall of the building in which the Unit is located (the "Front Yard"), no fence, walls, storage areas, or structures of any type may be erected. No additional parking spaces shall be constructed, nor shall any other area used as a parking space within a Front Yard.

**Section 6.23 Rear Yard Restrictions.** The area of each lot between the rear lot line and the exterior rear wall of the building in which the Live-Work Unit is located (the "Rear Yard") is subject in all respects to the same restrictions as the Front Yard, and the following restrictions:

(a) Except fences, walls and structures constructed as part of The Work, and except a mailbox, the size, location, design and type of which has been approved by the Master Association, no fence, walls, storage areas or structures of any type may be erected in any Rear Yard, without the prior approval of the Master Association pursuant to Article X hereof.

(b) No fence, wall or hedge may exceed six (6) feet in height. No chain link, barbed wire or other forms of wire or steel fences are permitted. All fences must be constructed and painted or stained in a manner compatible with The Work, as determined in the sole discretion of the Master

Association, and must be maintained to preserve harmony with The Work and an attractive appearance from the exterior of each Lot. It is the intention of the Master Association to select one or more fence type(s) compatible with The Work and to require uniform use of these fence type(s).

Section 6.24 **Side Yard Restrictions**. The area of each Lot, if any, between the side lot line and the exterior side wall of the building in which the Unit is located and bounded by the extensions of the front and rear walls of the Unit (the "Side Yard") is subject in all respects to the same restrictions as the Rear Yard.

Section 6.25 **Rubbish**. Except for regular collection and disposal, no rubbish, trash, garbage, discarded or broken personal property, or other waste material or accumulations shall be kept, stored, or permitted anywhere within the Property, except inside the Live-Work Unit on each Lot, or in sanitary containers concealed from view, and in accordance with the Association's rules and regulations, if any.

Section 6.26 **Rules and Regulations**. The Association, acting through its Board, shall have the right to adopt and amend reasonable rules and regulations pertaining to the use and occupancy of all portions of the Property, which shall be consistent with the provisions of this Declaration. Without limiting the foregoing, the Association shall have the right to adopt specific rules and regulations pertaining to the installation and maintenance of all landscaping and natural areas which shall promote and protect aesthetic and environmental values within and in the vicinity of the Property.

Section 6.27 **Master Covenants**. The Property is subject to all terms and provisions of the Master Covenants. Among other things, the Master Covenants permit Palencia Property Owners Association of St. Johns County, Inc. (the "Master Association") to contract for bulk rate services, including without limitation, cable television, internet access, and telephone service. All expenses incurred by the Master Association in connection with any such contract shall constitute an expense which may be funded through the collection of assessments from the Owners by the Master Association pursuant to the Master Covenants. In the event of a conflict between the provisions of the Master Covenants and the provisions of this Declaration, the more restrictive provision shall control. In the event of any ambiguity between such provisions, the decision and interpretation of the Board of Directors of the Master Association shall be dispositive. In the event that the Association shall fail to enforce any provision of this Declaration, the Master Association shall have the right on not less than fifteen (15) days prior notice to the Association, to enforce such provision at the expense of the Association.

Section 6.28 **Reservation of Right to Release Restrictions**. In addition to the easement rights granted by this Declaration, in each instance where a structure has been erected, or the construction thereof is substantially advanced, in such a manner that some portion of the structure encroaches upon any Lot boundary or easement area, Developer reserves for itself the right to release the Lot from the encroachment and to grant an exception to permit the encroachment by the structure over the Lot line, or in the easement area without the consent or joinder of any person, irrespective of who owns the burdened Lot or easement area, so long as Developer, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health and safety of Owners, the value of adjacent Lots and the overall appearance of the Property. Upon

the granting of such a release to an Owner, copies of such grants shall be forwarded to adjacent Owners and shall be binding upon all subsequent Owners of each of the affected Lots.

## **ARTICLE VII**

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 7.1 **Maintenance.** The Association shall provide routine maintenance of building surfaces, roofs, gutters and landscaping for each Lot in a manner and with such frequency as is consistent with good property management, the cost of which shall be included in the Annual Assessments described in Article VIII hereof. Such maintenance shall include maintenance and care of exterior building surfaces (which shall be limited to painting, caulking, cleaning and replacement as necessary), roofs (including re-roofing as necessary), gutters, trees, shrubs, grass, and other landscaped areas lying within each Lot. Such maintenance shall not include any items not specifically mentioned herein, including, without limitation, doors, glass surfaces on doors, windows, shutters, screens and screen doors, door and window fixtures, fencing or replacement of trees, shrubs, grass or other landscaped areas. Further, the Association shall have no obligation to maintain any yard area within a Lot that is enclosed by any fence, wall or similar structure or landscaping designed to restrict access to such portion of the Lot. Except as otherwise provided in Article IX hereof, nothing contained herein shall require the Association to perform any maintenance, repair or restoration due to fire or other casualty occurring to any Unit or on any Lot.

Section 7.2 **Services.** The Association may obtain and pay for the services of any person or entity to manage its affairs to the extent it deems advisable and may contract for such other personnel as the Association determines are necessary, convenient, or desirable for the proper operation of the Property or the performance of the Association's responsibilities hereunder, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. Without limitation, the Association may obtain and pay for legal and accounting services necessary, convenient, or desirable in connection with the operation of the Property or the enforcement of this Declaration or the Association's Articles, Bylaws or rules and regulations. The Association may contract with others to furnish trash collection, insurance coverage, building maintenance, or other services or materials, to all of the Lots. Nothing herein shall be deemed to require the Association to provide such services.

Section 7.3 **Personal Property.** The Association may acquire, hold, and dispose of tangible and intangible personal property, subject to such restrictions as from time to time may be contained in the Association's Articles and Bylaws.

Section 7.4 **Rules and Regulations.** The Association from time to time may adopt, alter, amend, rescind, and enforce reasonable rules and regulations governing the use of the Lots and any Common Area, or any combination, so long as such rules and regulations are consistent with the rights and duties established by this Declaration, the Articles and Bylaws as they from time to time may be amended. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property as a residential community. The rules and regulations initially shall be promulgated by the Board of Directors and may be amended by a majority vote of the Board of Directors, provided that no rule, regulation, decision, or other action that reasonably may have the

effect of waiving, lessening, impairing, or otherwise interfering with the scope or enforcement, or both, of any restriction imposed upon the property by this Declaration shall be effective.

Section 7.5 **Implied Rights**. The Association may exercise any other right, power, or privilege given to it expressly by this Declaration, the Articles or Bylaws and every other right, power, or privilege so granted or reasonably necessary, convenient, or desirable to effectuate the exercise of any right, power, or privilege so granted.

Section 7.6 **Access by Association**. The Association has a right of entry onto the exterior of each Lot located thereon to the extent reasonably necessary to discharge its rights of exterior maintenance, or for any other purpose reasonably related to the Association's performance of any duty imposed, or exercise of any right granted, by this Declaration. Such right of entry must be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever circumstances permit. Entry into a Live-Work Unit may not be made without the consent of its Owner or occupant, except pursuant to court order or other authority granted by law except in the event of an emergency and only then to the extent necessary to prevent personal injury or property damage to the Common Area or any Live-Work Unit. No Owner shall withhold consent arbitrarily to entry by the Association for the purpose of discharging any duty or right of exterior maintenance if such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner. The Association's right of entry may be exercised by its agents, employees, contractors, and managers, and by the agents, or employees of any such contractor or manager.

Section 7.7 **Termite and Pest Protection**. The Association shall annually cause each Live-Work Unit to be inspected by a certified pest control operator for termites and other wood destroying insects, and shall maintain a termite and wood destroying insect repair and treatment bond with respect to each Unit. The Association shall provide each Owner with a copy of each annual inspection and evidence that the bond is in full force and effect. The cost of these services shall be included in the Annual Assessments described in Article VIII hereof.

## **ARTICLE VIII** **COVENANTS FOR ASSESSMENTS**

Section 8.1 **Assessments Established**. For each Lot owned within the Property, Developer covenants, and each Owner of any Lot by acceptance of a deed or other conveyance of record title to such Lot, whether or not it is so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual Assessments, as defined in Section 8.2 of this Article;
- (b) Special assessments, as defined in Section 8.4 of this Article;
- (c) Specific Assessments against any particular Lot that is established pursuant to any provisions of this Declaration; and
- (d) All excise or sales taxes, if any, that from time to time may be imposed upon all or any portion of the assessments authorized by this Declaration.

All of the foregoing, together with interest and all costs and expenses of collection, including reasonable attorneys' fees for pretrial preparation, trial and appeal, are a continuing charge on the land secured by a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, also is the personal obligation of the person who was the Owner of such Lot when such assessment fell due. Such personal obligation for delinquent assessments does not pass to an Owner's successors in title, however, unless assumed expressly in writing.

**Section 8.2 Purpose of Assessments.** The annual assessments ("Annual Assessments") levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents and occupants within the Property, including without limitation, such assessments may be used for the operation and management of the Association and all maintenance, repair and replacements authorized by this Declaration. To effectuate the foregoing, the Association shall levy an Annual Assessment and shall maintain adequate reserves to provide and be used for:

- (a) the operation, management, maintenance, repair, servicing, renewal, replacement, and improvement of the property, services, and facilities related to the use and enjoyment of the Common Area, including the payment of taxes and insurance on the Common Area and the cost of labor, equipment, materials, management, and supervision thereof;
- (b) to provide common building and landscaping maintenance, the termite bond and other services described in Article VII hereof; and
- (c) all usual and customary activities and expenses of the Association incurred in the administration of the powers and duties granted hereunder and pursuant to law.

**Section 8.3 Amount.**

(a) Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment, excluding reserves, shall be Two Hundred and No/100 Dollars (\$200.00) per Lot. Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment, including reserves, shall be Two Hundred Fifty Five and No/100 Dollars (\$255.00) per Lot. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(b) Commencing with the fiscal year beginning January 1 of the year immediately following the conveyance of the first Lot to an Owner and each year thereafter, the Board of Directors, at its annual meeting next preceding such date, and each respective January 1 thereafter, may set the amount of the maximum Annual Assessment for the following year for each Lot, provided that the maximum annual assessment may not be increased more than ten percent (10%) above the maximum Annual Assessment for the previous year unless otherwise approved by a unanimous vote of the Board of Directors.

(c) The amount of the Annual Assessment shall be fixed by the Board of Directors at least 30 days before the beginning of each fiscal year and shall be payable in one or more installments as determined by the Board of Directors without interest so long as not more than fifteen (15) days delinquent. Written notice of such assessment shall be given to every Owner; but the failure to give such notice will not invalidate any otherwise proper assessment. In the absence of

Board action to the contrary at least 30 days before the beginning of any fiscal year, the Annual Assessment then in effect will continue for such fiscal year.

Section 8.4 **Special Assessments.** In addition to the Annual Assessment, the Association may levy in any assessment year a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any purchase of additional real or personal property for the use and benefit of Owners, or construction, reconstruction, maintenance, renewal, repair, or replacement of improvements within the Property; provided that such assessment is approved the Board of Directors.

Section 8.5 **Specific Assessments.** Any and all accrued, liquidated indebtedness of any Owner to the Association arising under any provision of this Declaration, the Articles or Bylaws, including any indemnity, or by contract express or implied, or because of any act or omission of any Owner or occupant of such Owner's Lot or arising by reason of any Owner's failure to properly maintain improvements on such Owner's Lot, or failure to maintain adequate insurance as required herein, also may be assessed by the Association against such Owner's Lot after such Owner fails to pay it when due and such default continues for thirty (30) days after written notice.

Section 8.6 **Commencement of Annual Assessment.** Annual Assessments shall commence as to all Lots within the Property on the first day of the month following the recording of the first deed of a Unit from the Developer to an Owner other than Developer. The first Annual Assessment against any Lot shall be prorated according to the number of months then remaining in the fiscal year. The Association shall furnish to any interested person a certificate signed by an officer of the Association setting forth whether the Annual Assessment against a specific Lot has been paid and, if not, its unpaid balance. To defray its costs, the Association may impose a reasonable, uniform charge for issuing such certificates. A properly executed certificate of the Association as to the status of assessments on a Lot is binding on the Association as of the date of issuance. Annual Assessments and all other assessments against a Lot shall be collected monthly, quarterly or annually as determined by the Board of Directors.

Section 8.7 **Lien for Assessment.** All sums assessed to any Lot, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a lien on such Lot in favor of the Association. Such lien is subject and inferior to the lien for all sums secured by any first mortgage held by an institutional lender ("First Mortgage") encumbering such Lot. Except for liens for all sums secured by such First Mortgage, all other lienors acquiring liens on any Lot after this Declaration is recorded are deemed to consent that such liens are inferior to the lien established by this Declaration, whether or not such consent is specifically set forth in the instrument creating such lien. The recordation of this Declaration constitutes constructive notice to all subsequent purchasers and creditors, or either, of the existence of the Association's lien and its priority. The Association may, but is not required to, record a notice of lien to further evidence the lien established by this Declaration as to any Lot against which the Annual Assessment is more than thirty (30) days delinquent.

Section 8.8 **Remedies of the Association.** Any assessment not paid within thirty (30) days after its due date bears interest at the rate of eighteen (18%) per annum, not to exceed the maximum rate from time to time permitted under the laws of the State of Florida. The Association

may bring an action at law against any Owner personally obligated to pay such assessment, or foreclose its lien against such Owner's Lot. No Owner may waive or otherwise escape liability for the Association's assessments by non-use of the Common Area, or common services provided by the Association or by abandonment of such Owner's Lot. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise impairing the security of the Association's lien, or its priority.

**Section 8.9 Foreclosure.** The liens for sums assessed pursuant to this Article may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property from time to time may be foreclosed in State of Florida. In any such foreclosure, the Owner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees for pretrial preparation, trial and appeal. All such costs and expenses are secured by the lien foreclosed. Such Owner also is required to pay to the Association any assessments against the Lot that become due during the period of foreclosure, which also are secured by the lien foreclosed and shall be accounted and paid as of the date the Owner's title is divested for foreclosure. The Association has the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, or to acquire such Lot by deed or other proceeding or conveyance in lieu of foreclosure, and thereafter to hold, convey, lease, rent, encumber, use, and otherwise deal with such Lot as an owner, but for purposes of resale only. If any foreclosure sale results in a deficiency, the court having jurisdiction of the foreclosure may enter a personal judgment against the Owner or such deficiency, in its sound judicial discretion.

**Section 8.10 Homesteads.** By acceptance of a deed or other conveyance of title to any Lot, the Owner of each Lot is deemed to acknowledge conclusively that the Annual Assessment established by this Article is for the improving and maintenance of any homestead thereon and that the Association's lien has priority over any such homestead.

**Section 8.11 Subordination of Lien.** The lien for the assessments provided in this Article is subordinate to the lien of any First Mortgage. Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer pursuant to a mortgage foreclosure or any proceeding or conveyance in lieu thereof, extinguishes the assessment lien as to payment that becomes due before such sale or transfer. No such sale or transfer relieves such Lot from liability for assessment thereafter becoming due, or from the Association's lien. The Association shall report to the holder of any First Mortgage encumbering a Lot, any assessments remaining unpaid for more than 30 days and shall give such holder thirty (30) days in which to cure such delinquency before instituting foreclosure proceedings against such Lot, provided such First Mortgage holder has previously given the Association written notice of its mortgage, designating the Lot encumbered by a proper legal description and stating the address to which notices shall be given.

**Section 8.12 Capitalization of the Association.** Upon acquisition of record title to a Live-Work Unit from Developer, each Owner acquiring such Live-Work Unit shall contribute to the capital of the Association an amount equal to up to one half (1/2) of the amount of the total Annual Assessments attributable to such Live-Work Unit, as determined by the Developer (the "Capital Contributions"). This amount shall be collected at the closing of the purchase and sale of the applicable Live-Work Unit and shall be disbursed to the Association. In no event shall the Developer be obligated to contribute to the capital of the Association pursuant to this Section 8.12.

All Capital Contributions disbursed to the Association shall be accounted for separately on the books and records of the Association. During the Development Period, as such term is hereafter defined, the Capital Contributions disbursed to the Association shall be used only for repairs, replacements and deferred maintenance within the Property. Subsequent to the Development Period, such Capital Contributions may be used by the Association for any purpose authorized or contemplated by this Declaration.

Section 8.13 **Developer's Assessments**. Notwithstanding any provision of this Declaration to the contrary, during the Development Period (as defined below) the Lots and other portions of the Property owned by the Developer shall not be subject to any assessments of any description levied by the Association or to any lien for such assessments. During the Development Period, and in lieu of payment of any assessments to the Association, the Developer shall pay the balance of the actual operating expenses of the Association (excluding the cost of funding deferred maintenance and reserve accounts) remaining after the levying of and payment of assessments due from Owners other than the Developer pursuant to assessments levied by the Board of Directors pursuant to this Declaration. The Developer shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. The Development Period shall begin upon the conveyance of the first Lot in the Property to an Owner other than the Developer and shall continue until the Developer shall notify the Association that it will no longer pay for operating deficits of the Association. Upon termination of the Developer's agreement to pay operating deficits, the Developer shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as other Owners. In no event shall the Developer be obligated to pay for operating deficits of the Association after the Developer no longer owns any Lots within the Property.



## **ARTICLE IX**

### **OBLIGATIONS OF OWNERS**

Section 9.1 **Exterior Unit Maintenance.** Subject to the provisions of Section 7.1 of this Declaration, each Owner shall, at his expense, maintain, repair and replace all portions of the exterior of his Live-Work Unit that are not to be maintained by the Association pursuant to this Declaration, including without limitation, all glass surfaces and screening, electric and plumbing equipment, air conditioner and heating units, parking areas and any other equipment, structures, improvements, additions, or attachments, located on the Lot by Owner or installed by Developer as part of the Work.

The foregoing obligation includes without limitation any and all maintenance, repair, or replacement required because of the occurrence of any fire, wind, vandalism, theft, or other casualty. All maintenance and repair shall be performed by each Owner at regular intervals as shall be necessary to keep his Lot and Live-Work Unit in an attractive condition and in substantially the same condition and appearance as existed at the time of completion of The Work, subject to normal wear and tear that cannot be avoided by normal maintenance. Each Owner shall promptly perform any maintenance or repair requested to prevent any damage or loss to other Lots or Units and shall be liable to all loss or Live-Work Unit damage sustained by other Owners or the Association caused by reason of his failure to promptly perform such maintenance and repair following written notice to such Owner specifying the items of maintenance or repair. Further, each Owner shall keep such Owner's Lot and Live-Work Unit in a neat and attractive condition and shall not allow such areas to become cluttered with excessive personal property or hang banners or other object on balcony or patio areas. If any Owner refuses or fails to timely maintain, repair, or replace, as the case may be, any exterior portion of his Lot or Live-Work Unit after fifteen (15) days prior written notice from the Association specifying the required maintenance or repair items, then the Association may maintain, repair, or replace the portion of the Lot or Unit specified in the notice from the Association at such Owner's expense and the cost thereof shall be specifically assessed against such Owner's Lot as provided in Article VIII of this Declaration.

Section 9.2 **Alterations.** Following completion of the Work, an Owner may not cause or permit any alteration or modification to be made to the structural components, roof, or exterior appearance of such Owner's Live-Work Unit (except as authorized or required by this Declaration), including without limitation, the installation of window air conditioners, nor make any additions to the exterior of such Unit without the prior written approval of the Master Association, except that an Owner shall replace broken windows and doors with windows or doors of the same style and equal or greater quality as originally installed as part of The Work. Since the routine landscaping maintenance for the Lot shall be the responsibility of the Association, no material modifications shall be made to the landscaping plan established by the Developer without the prior written approval of the Master Association.

Section 9.3 **Insurance and Casualties.** The following insurance requirements and provisions for casualties shall apply to each of the Live Work Units:

(a) Each Owner shall keep such Owner's Live-Work Unit insured, to the maximum insurable replacement value, against loss or damage by fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time are customarily covered with respect to improvements similar in construction, location and use as the Live-Work Unit. Each

Owner shall provide the Association with a certificate of insurance within fifteen (15) days of the issuance of the policy and within fifteen (15) days of each renewal thereof. Failure of an Owner to carry the insurance required herein shall permit the Association, following ten (10) days notice to the Owner, to obtain the required insurance coverage and to specifically assess the Owner for the cost thereof, including a reasonable fee for placing the insurance. An Owner may join with other Owners of Live-Work Units within the same building to purchase one insurance policy covering the entire building, or may authorize the Association to purchase insurance covering his Live-Work Unit and other Live-Work Units in the Property, provided however, nothing herein shall be deemed to require the Association to provide such service.

(b) Such policies shall provide that insurance proceeds payable on account of loss of, or damage to a Live-Work Unit shall be payable solely to the Owner's mortgagee, if any, and the Owner except in the case of damage to more than one (1) contiguous Live-Work Unit(s), in which case the damage shall be adjusted with the carrier by the Association and the proceeds shall be payable to the Association, as trustee for the Owner(s) of the Live-Work Units damaged and the Owners' mortgagee(s), if any. Such insurance proceeds shall be applied to repair or restoration of the Property as hereinafter provided. All such insurance policies shall provide that coverage may not be cancelled by the carrier without first giving the Association, and each Owner's mortgagee, if any, ten (10) days written notice of cancellation. All such policies shall contain, if obtainable without an increase in cost, a waiver of the right of subrogation against any Owner, members of the Owner's family and the Association, its officers, agents and employees, as well as a waiver of the pro rata clause and no other insurance clause.

(c) In the event of damage or destruction by fire or other casualty to any portion of the Property covered by insurance payable to the Association as trustee for the Owners, the Board of Directors shall, with the concurrence of applicable holders of First Mortgages, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Property to as good condition as existed immediately prior to the casualty. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency. The Board of Directors shall obtain bids from at least two reputable contractors, and then may negotiate with any such contractor, who may be required to provide a full performance and payment bond for the repair, construction or rebuilding of such building or buildings. In the event that insurance proceeds are insufficient to pay all the costs of so repairing or rebuilding the affected buildings, the Board of Directors shall levy a special assessment for the deficiency amount against all Owners of the damaged Live-Work Units in such proportions as the Board of Directors shall deem fair and equitable. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and Owners in such proportion as the Board of Directors deem fair and equitable in the light of the damage sustained by such residences. Such payments shall be made to all such Owners and their mortgagees as their interests may appear.

(d) In the event of damage or destruction to a Live-Work Unit by fire or other casualty, the proceeds of which are payable to an Owner and any applicable mortgagee, the damaged Live-Work Unit shall be repaired or restored to its pre-existing condition as soon as reasonably practical. The affected Lot shall be promptly restored to a clean and orderly condition subsequent to any such damage or destruction.

Section 9.4 **Sanitary Sewage Line.** The Association shall be responsible for maintenance of and repair to any portion of the sanitary sewer system lying within a property Owner's Lot boundary from the Lot boundary to the Unit. In the event the damage or stoppage of any portion of the line which is the responsibility of the Association shall be the result of negligence of an Owner, the Association shall be entitled to charge the cost of such maintenance and repair against the negligent Owner and such charge shall constitute a lien against the applicable Lot which may be enforced and collected as provided in Article VIII hereof.

## **ARTICLE X** **ARCHITECTURAL CONTROL**

Section 10.1 **Architectural Review and Approval.** No landscaping, improvement or structure of any kind, including without limitation, any building, fence, wall, screen enclosure, sewer, drain, disposal system, landscape device or object, driveway or other improvement shall be commenced, erected, placed or maintained upon any Lot, or upon the Common Area, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same have been submitted to, and approved in writing by the Master Association or the Master Association's designee. All plans and specifications shall be evaluated as to visual and acoustical privacy and as to the harmony of external design and location in relation to surrounding structures, topography, existing trees and other natural vegetation and as to specific conformance with architectural criteria which may be imposed from time to time by the Master Association. It shall be the burden of each Owner to supply three (3) sets of completed plans and specifications to the Master Association and no plan or specification shall be deemed approved unless a written approval is granted by the Master Association to the Owner submitting same. The Master Association shall approve or disapprove plans and specifications properly submitted within thirty (30) days of each submission. Any change or modification to an approved plan shall not be deemed approved unless a written approval is granted by the Master Association to the Owner submitting same.

Section 10.2 **Review Procedures.** The Master Association shall have the following rights with respect to architectural review and approval conducted in accordance with this Article :

(a) To promulgate, amend, eliminate or replace architectural criteria applicable to architectural review to be conducted by the Master Association which shall be applicable to all or any portions of Palencia. Any amendment of the architectural criteria shall be consistent with the provisions of this Declaration. Notice of any amendment to the architectural criteria, which shall include a verbatim copy of such amendment, shall be delivered to each member of the Association. The delivery to each member of the Association of notice and a copy of any amendment to the architectural criteria shall not, however, constitute a condition precedent to the effectiveness or validity of such amendment. It shall not be necessary for the architectural criteria, or any amendment thereto, to be recorded.

(b) To require submission of three (3) complete sets of all plans and specifications for any improvement or structure of any kind requiring review and approval pursuant to this Article. The

Master Association may also require submission of samples of building materials proposed for use on any Lot, and may require tree surveys to show the effect of the proposed improvements on existing tree cover, and such additional information as reasonably may be necessary for the Master Association to completely evaluate the proposed structure or improvement in accordance with this Declaration and applicable architectural criteria.

(c) To approve or disapprove in accordance with the provisions of this Article, any improvements or structures of any kind, or any change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot, and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon.

(d) To adopt a schedule of reasonable fees for processing requests for architectural approval of proposed improvements. Such fees, if any, shall be payable to the Master Association, in cash, at the time that plans and specifications are submitted to the Master Association.

(e) To require each Owner to deposit a reasonable sum (the "Construction Deposit") with the Master Association to secure such Owner's compliance with the terms of this Declaration and all plans and specifications approved in accordance with this Article X.

(f) To assign to the Association, all or any portion of Master Association's rights of architectural review as reserved by this Article X.

Section 10.3 **Variance**. The Developer may authorize variances from compliance with any architectural provisions of this Declaration or applicable architectural criteria when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental considerations require same. Such a variance must be evidenced by a document signed by an authorized representative of the Master Association and no such variance shall be deemed approved or otherwise implied unless and until such written evidence shall have been delivered to the applicable Owner. If such a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variance is granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions of this Declaration or applicable architectural criteria covered by the variance, nor shall it effect in any way an Owner's obligation to comply with all governmental laws and regulations, including but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

Section 10.4 **Limited Liability**. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals as contemplated by this Article X, the Developer, and the Master Association shall not be liable to any Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the Developer or the Master Association.

## ARTICLE XI PARTY WALLS

Section 11.1 **General Rules of Law to Apply.** Each wall or fence built as a part of The Work upon the Property and placed on the dividing line between Lots is a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage caused by intentional, willful, or negligent acts or omissions apply.

Section 11.2 **Sharing of Repair and Maintenance.** The cost of reasonable repair, maintenance and replacement of a party wall and the foundation or footing supporting any party wall shall be shared by the Owners who make use of the wall or foundation in proportion to such use. In the event that any Owners should fail to refuse or perform or pay for any maintenance, repairs, or restorations as required by this Article, the adjoining party wall Owner shall have the following remedy, in addition to any other remedies provided by the laws of the State of Florida:

(a) The affected Owner may serve written demand upon the delinquent Owner, demanding that the maintenance, repairs, or restoration be made within thirty (30) days after service of the demand. The demand shall be deemed to have been served if it is hand delivered to the delinquent Owner, or mailed to the delinquent Owner at the mailing address of the Lot owned by the delinquent Owner, by certified or registered mail, postage prepaid, and deposited in the United States Mail.

(b) After expiration of the thirty (30) days following service of the demand if the delinquent Owner has failed or refused to make the demanded maintenance, repairs or restorations, the affected Owner may cause such maintenance, repairs or restorations to be made. In such event the delinquent Owner shall be indebted to the affected Owner, for the expense of the maintenance, repairs or restorations, and any damage sustained by the Unit or loss or expense incurred by the affected Owner by reason of such failure to timely maintain or restore and such affected Owner shall have a lien against the delinquent Owner's Lot for the full amount of such indebtedness, together with interest at the maximum rate allowed by the laws of the State of Florida. No lien under this provision shall be acquired until a claim of lien is recorded. The form and substance of the claim of lien shall be as similar, as practicable as that provided by the Florida Construction Lien Law. Thereafter, the rights and duties and remedies of the respective Owners shall be those as provided to an Owner and a lien claimant under the Florida Construction Lien Law, including but not limited to the rules contained in the statute for discharge of liens, duration of liens, and transfer of liens to security. No lien acquired under the provisions shall be superior to or effective against any bona fide purchaser or mortgagee who shall have acquired their interest of record prior to the recordation of a claim of lien in accordance with this provision.

Section 11.3 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty and is not repaired by the Owner as required herein, any Owner of a Lot abutting the wall may restore it; and, if other Owners thereafter make use of the wall, they shall contribute to the cost of restoration in proportion to their use, all without prejudice to the right of any such Owner to call for larger contribution from the others under any rule of law regarding liability for negligent, willful, or intentional act or omissions.

Section 11.4 **Weatherproofing**. Notwithstanding any other provision of this Article, an Owner who by his negligent, willful, or intentional act causes any other Live-Work Unit or party wall to be exposed to the elements, or to infestation by termites or other injurious agencies, shall bear the whole cost of furnishing the necessary protection against such elements or agencies and of repairing all resulting damage.

Section 11.5 **Right to Contributions Runs with Land**. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the Lots affected and shall pass to and bind each such Owner's successors in title.

Section 11.6 **Easement**. In the event that there shall be located within any party walls pipes, vents, outlets, or other structures serving one or more Lots or Live-Work Unit, the Owner of each Lot or Live-Work Unit so served shall have and enjoy a perpetual easement for the maintenance and use of any such pipe, vent, outlet or other structure.

## **ARTICLE XII** **GENERAL PROVISIONS**

### **Section 12.1 Remedies for Violations.**

12.1.1 If any Owner or other person shall violate or attempt to violate any of the covenants or restrictions herein set forth, it shall be lawful for the Association, the Master Association, the Developer or any Owner (i) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenant; or (ii) to maintain any proceeding against those so violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory injunctions requiring compliance with the provisions of this Declaration. The Army Corps of Engineers ("ACOE") and the St. Johns River Water Management District ("SJRWMD") shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System and/or jurisdictional wetlands or conservation areas subject to the control of the ACOE or SJRWMD. In the event litigation shall be brought by any party to enforce any provisions of this Declaration, the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys' fees for pre-trial preparation, trial, and appellate proceedings. The remedies in this section shall be construed as cumulative of all other remedies now or hereafter provided or made available elsewhere in this Declaration, or by law.

12.1.2 In addition to all other remedies, and to the maximum extent allowed by law, the Association may impose a fine or fines against an Owner for failure of an Owner or his guests or invitees to comply with any covenant, restriction, rule or regulation enforceable by the Association, provided the following procedures are adhered to:

(a) **Notice**: The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of the Enforcement Committee (as defined below) at which time the Owner shall present reasons why a fine should not be imposed. At least fourteen (14) days' prior notice of such meeting shall be given.

(b) Enforcement Committee: The Board of Directors shall appoint an Enforcement Committee to perform the functions given it under this Section. The Enforcement Committee shall consist of at least three (3) members who are not officers, directors or employees of the Association or the spouse, parent, child, brother or sister of such an officer, director or employee. The Enforcement Committee may impose fines only upon a majority vote thereof.

(c) Hearing: The alleged non-compliance shall be presented to the Enforcement Committee at a meeting at which it shall hear reasons why a fine should not be imposed. A written decision of the Enforcement Committee shall be submitted to the Owner by not later than twenty-one (21) days after the meeting.

(d) Amounts: The Enforcement Committee (if its findings are made against the Owner) may impose special assessments in the form of fines against the Lot owned by the Owner. A fine not to exceed the maximum amount allowed by law may be imposed for each violation. A fine may be imposed on the basis of each day of a continuing violation with a single notice and opportunity for hearing, however, no such fine shall exceed the maximum aggregate amount allowed by law for a continuing violation.

(e) Payment of Fines: Fines shall be paid not later than fourteen (14) days after notice of the imposition or assessment of the penalties.

(f) Collection of Fines: Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth elsewhere in this Declaration, which provisions include without limitation, the right of the Association to impose liens against applicable Lots and Live-Work Units.

(g) Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.

(h) Non-exclusive Remedy: The imposition of fines authorized by this section shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any fine paid by an offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

Section 12.2 Severability. Invalidation of any of the provisions of this Declaration by judgment or court order shall not affect or modify any of the other provisions, which shall remain in full force and effect.

Section 12.3 Additional Restrictions. No Owner, without the prior written consent of the Developer, may impose any additional covenants or restrictions on any part of the Property, but the Developer may include in any contract or deed hereafter made and covering all or any part of the Property, any additional covenants or restrictions applicable to the Property so covered which are not inconsistent with and which do not lower standards established by this Declaration.

Section 12.4 **Titles**. The addition of titles to the various sections of this Declaration are for convenience and identification only and the use of such titles shall not be construed to limit, enlarge, change, or otherwise modify any of the provisions hereof, each and all of which shall be construed as if not entitled.

Section 12.5 **Termination or Amendment**. The covenants, restrictions, easements and other matters set forth herein shall run with the title to the Property and be binding upon each Owner, the Developer, the Association, and their respective successors and assigns for a period of fifty (50) years, and shall be automatically renewed for successive ten (10) year periods unless terminated as herein provided. The Owners holding two-thirds (2/3) or more of the total votes of the Association may alter, amend or terminate these covenants provided, however, that so long as the Developer owns any land within the Property or owns any property contiguous to the Property, no such termination or amendment shall be effective without the written consent and joinder of the Developer. Further, until such time as the Developer shall not own any lands subject to this Declaration, the Developer shall have the unilateral right to amend this Declaration without the consent or joinder of any other party in any manner which does not materially and adversely affect the value of any Lot or other building parcel located within the Property. Notwithstanding any provision of this Section 12.5 to the contrary, any amendments to this Declaration shall require the prior written approval of the Master Association. Any such amendment to this Declaration shall be executed by the Association and Developer, if applicable, and shall be recorded in the current public records of St. Johns County, Florida. For so long as there is a Class B Membership and provided the Federal Department of Housing and Urban Development ("HUD") or the Veterans Administration ("VA") shall have insured or hold a mortgage within the Property, the following actions shall require approval of HUD and VA: annexation of additional properties, dedication of any portion of the common area and amendment of this Declaration. In the event that a request for such approval shall be submitted to HUD and VA, the request shall be deemed approved thirty (30) days after the date of submittal of the request to HUD and VA, unless HUD or VA shall expressly disapprove the request for approval.

Section 12.6 **Conflict or Ambiguity in Documents**. To the extent of any conflict, ambiguity, or inconsistency between this Declaration, the Articles, or the Bylaws, the terms of this Declaration shall control both the Articles and Bylaws.

Section 12.7 **Usage**. Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 12.8 **Effective Date**. This Declaration shall become effective upon its recordation in the public records of St. Johns County, Florida.

[SIGNATURES BEGIN ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants and Restrictions for Palencia Live/Work Townhomes to be executed under seal this 16th day of November 2006.

Signed, sealed and delivered  
in the presence of:

Tina Camargo  
(Print Name)  
Christine Healy  
Christine Healy  
(Print Name)

CROSSWINDS AT PALENCIA L/W, LLC, a  
Florida limited liability company  
By Bentley management LLC <sup>a Michigan</sup> limited liability company  
By: Keith M. Kallen  
(Print Name)  
Title: Manager

STATE OF Michigan )  
COUNTY OF Oakland )

The foregoing instrument was acknowledged before me this 16th day of November, 2006, by Keith M. Kallen, the manager of CROSSWINDS AT PALENCIA L/W, LLC, a Florida limited liability company, on behalf of the company.

Amy L. Wess  
(Print Name Amy L. Wess)  
NOTARY PUBLIC, State of MI at Large  
Commission # \_\_\_\_\_  
My Commission Expires: 3-20-08  
Personally Known ✓  
or Produced I.D. \_\_\_\_\_  
[check one of the above]

Type of Identification Produced \_\_\_\_\_

AMY L. WESS  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Mar 20, 2008  
ACTING IN COUNTY OF

Oakland

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**EXHIBIT A**

**Legal Description of the Property**

Lots 1 through 22, Marshall Creek DRI Village Center Units One and Two, according to the plat thereof recorded in Map Book 56, Pages 55 and 56 of the public records of St. Johns County, Florida.

{00108126.DOC.6}

**EXHIBIT B**

**Common Area**

No Common Area is designated as of the date of the Declaration of Covenants and Restrictions for Palencia Live/Work Townhomes to which this Exhibit B is attached.

{00108126.DOC.6}

**NON-RECOURSE CONSENT OF MORTGAGEE AND SUBORDINATION OF  
MORTGAGES, ASSIGNMENT OF RENTS AND FINANCING STATEMENTS**

WHEREAS, Declarant by a Mortgage and Security Agreement dated October 20, 2004, and filed for record on October 22, 2004, mortgaged unto Ohio Savings Bank, a federal savings bank, 1801 East Ninth Street, Cleveland, Ohio 44114 ("Mortgagee") the premises therein particularly described (the "Property") to secure the payment of the sums described therein, which mortgage was recorded in Official Records Book 2305, Page 1503, of the Public Records of St. Johns County, Florida (the "Mortgage"); and

WHEREAS, Declarant by an Assignment of Rents and Leases and Agreements Affecting Real Estate, dated October 20, 2004, and filed for record on October 22, 2004, assigned unto Mortgagee all of its right, title and interest in and to any and all agreements relating to the Property (the "Assignment"), which Assignment was recorded in Official Records Book 2305, Page 1530, of the Public Records of St. Johns County, Florida; and

WHEREAS, Declarant as Debtor executed and delivered to Mortgagee as Secured Party a UCC-1 Financing Statements which were filed for record on October 22, 2004, (the "Financing Statement"), and recorded in Official Records Book 2305, Page 1541, of the Public Records of St. Johns County, Florida;

NOW, THEREFORE, Mortgagee, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Mortgagor, the receipt of which is hereby acknowledged, hereby accepts, approves and consents to subordinate the lien, operation and effect of the Mortgages, Assignment and Financing Statements (the "Loan Documents") to the foregoing Declaration of Covenants and Restrictions for Palencia Live/Work Townhomes (the "Declaration") with the identical effect as though the Declaration had been executed, delivered and recorded prior to the filing for record of the Loan Documents, but without in any manner releasing, satisfying or discharging the Loan Documents or in any way impairing, altering or diminishing the effect of any lien, encumbrance, security interest or other interest created by or related to the Loan Documents or any rights or remedies of Mortgagee under or with respect to the Loan Documents; provided, however, Mortgagee does not assume and is not responsible for any of the obligations and liabilities of the Declarant, and none of the representations and warranties contained in the Declaration shall be deemed to have been made by Mortgagee or impose any obligation on Mortgagee, but all rights, benefits and privileges in favor of Mortgagor shall inure to the benefit of Mortgagee or a receiver or third-party purchaser in the event of foreclosure or a deed given in lieu of foreclosure in the event Mortgagee shall ever succeed to the Mortgagor's interest in the Property or any part thereof. Nothing contained herein shall in any way restrict or limit any rights, benefits and privileges in favor of Mortgagee as an "Institutional Lender" as defined in the Declaration or otherwise whether now or hereafter existing.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

{00108126.DOC.6}

Signed this 21st day of November, 2006.

Signed and Acknowledged  
in the Presence of:

OHIO SAVINGS BANK,  
a federal savings bank

Beverly Stankovic  
Name Printed: Beverly Stankovic

By: [Signature]  
Name Printed: CRAIG RIDINGER  
Title: Vice President

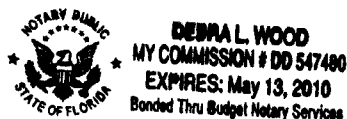
[Signature]  
Name Printed: Debra L. Wood

**CRAIG RIDINGER  
VICE PRESIDENT**

STATE OF ~~OHIO~~ FLORIDA )  
 ) ss  
COUNTY OF ~~CUYAHOGA~~ )  
 SEMINOLE

Before me, a Notary Public in and for said County and State, on this 21st day of NOVEMBER, 2006, personally appeared the above-named Ohio Savings Bank, a federal savings bank, by CRAIG RIDINGER, its Vice President, acknowledged to me that he/she did sign the foregoing instrument on behalf of said bank and that the same was his/her free act and deed, individually and as such officer. CRAIG RIDINGER is personally known to me.

(SEAL)



[Signature]  
Notary Public, State of ~~Ohio~~ FLORIDA  
Printed Name: Debra L. Wood  
My Commission Expires: 5/13/10

{00108126.DOC.6}

**CONSENT AND JOINDER OF MASTER ASSOCIATION**

**PALENCIA PROPERTY OWNERS ASSOCIATION OF ST. JOHNS COUNTY, INC.,**  
a Florida non-profit corporation ("Master Association") hereby consents to and joins in the execution of the foregoing Declaration of Covenants and Restrictions for Palencia Live/Work Townhomes to which this Consent is attached ("Declaration") to evidence its agreement with all terms of the Declaration which require actions on behalf of the Master Association.

Signed, sealed and delivered in the presence of:

Kellie M Weltzbarker  
Kellie M Weltzbarker  
(Print Name)  
Renee Shaffer  
Renee Shaffer  
(Print Name)

**PALENCIA PROPERTY OWNERS  
ASSOCIATION OF ST. JOHNS COUNTY, INC., a  
Florida non-profit corporation**

By: Walter O'Brien  
(Name Printed)

Title: President

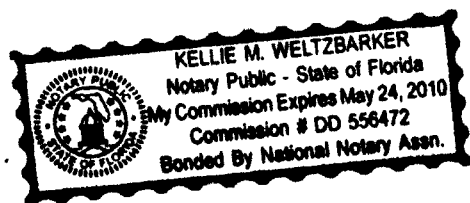


STATE OF FLORIDA )  
 )ss  
COUNTY OF St Johns )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2006, by Walter O'Shea the President of **PALENCIA PROPERTY OWNERS ASSOCIATION OF ST. JOHNS COUNTY, INC.**, a Florida non-profit corporation, on behalf of the corporation. He/She is personally known to me or has produced as identification.

Kellie M. Weltzbarker  
(Print Name Kellie M Weltzbarker)  
NOTARY PUBLIC, State of Florida at Large.  
Commission No. \_\_\_\_\_

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



{00108126.DOC.6}