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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 13th 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 _____

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.

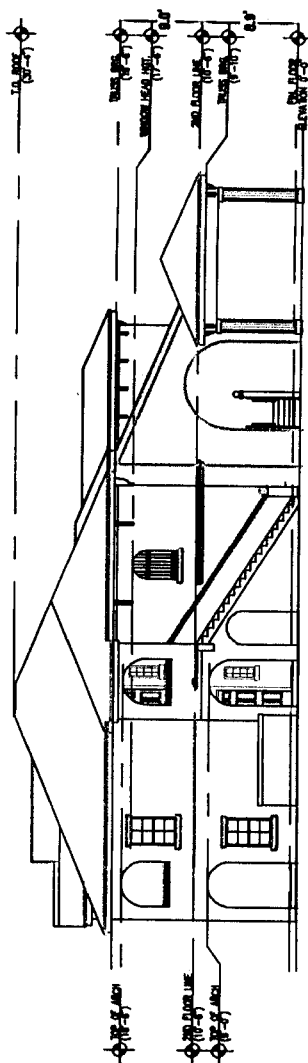


ALBERT D. BRADSHAW, STATE OF FLORIDA (L.S.#5257)
PRIVETT-NILES & ASSOCIATES, INC. (L.B.#6824)

EXHIBIT "A"

MAP TO SHOW CONDOMINIUM SURVEY OF:

EL JARDIN III



GRAPHIC SCALE



1 inch = 20 feet

SCALE: 1"=20'

DATE: 07/21/05

PREPARED BY:

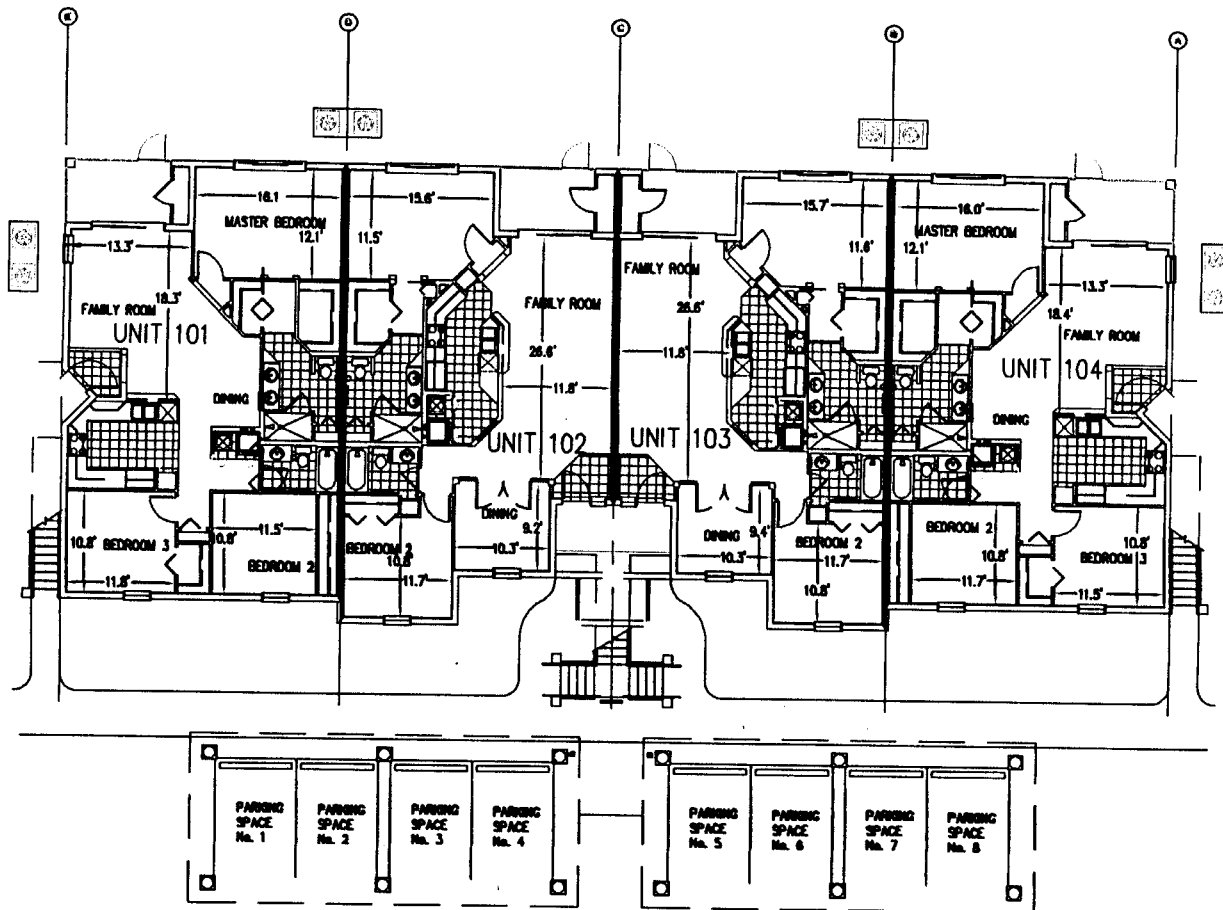
PRIVETT-NILES & ASSOC., INC.
SURVEYORS, MAPPERS AND LAND PLANNERS
3000 N. PONCE DE LEON BLVD.
ST. AUGUSTINE, FLORIDA, 32084
(904) 829-2591 LB No.6824

TYPICAL SIDE VIEW PLAN
PALENCIA 8 PLEX - BUILDING 13

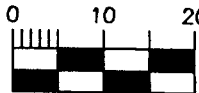
EXHIBIT "B"

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:

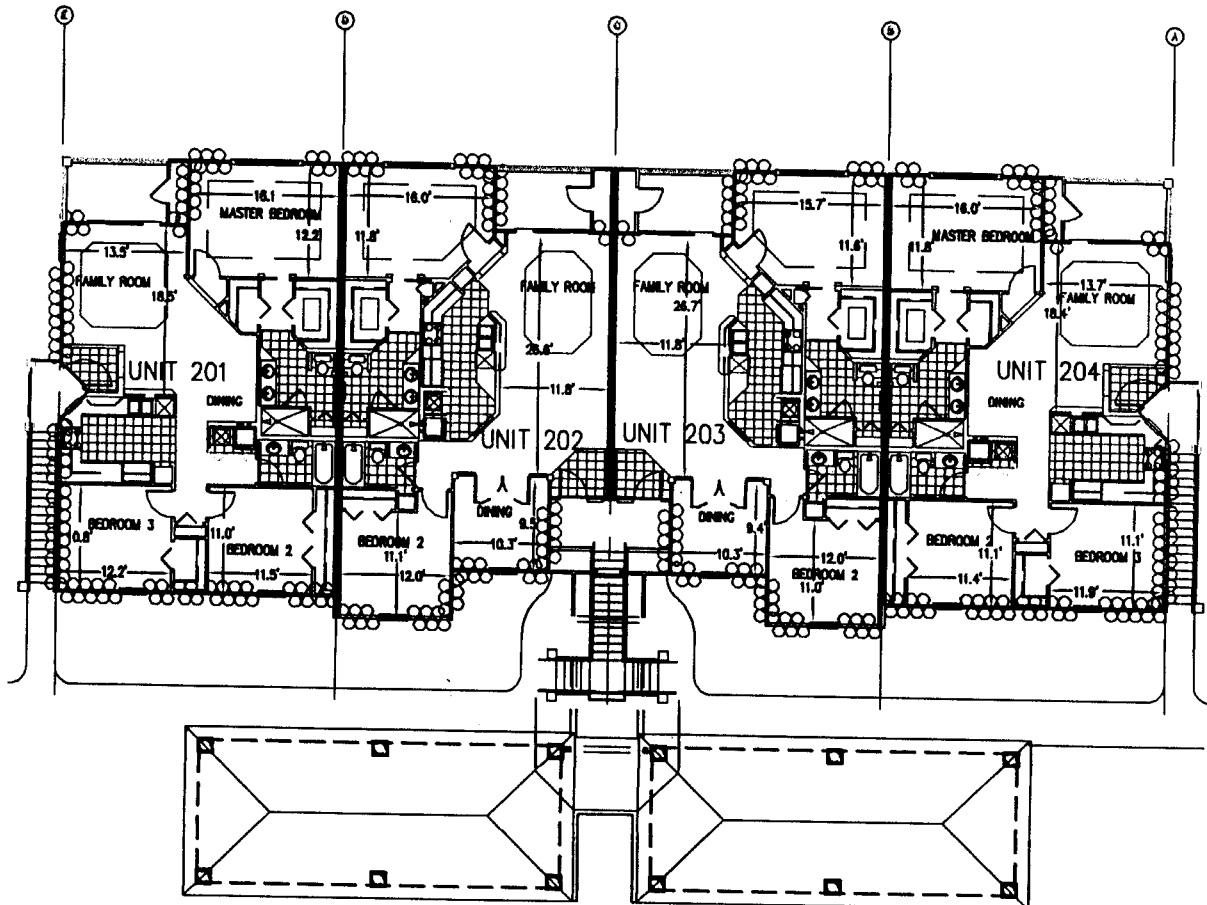
PRIVETT-NILES and ASSOCIATES, INC.
SURVEYING AND MAPPING CONSULTANTS
LICENSED BUSINESS No. 6624

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) 829-2581 FAX: (904) 829-5070

EXHIBIT "B"

4
2
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

Karen Murphy
Terri Harris

 (SEAL)
By: Bernard Gliberman
Title: Managing Member

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 this
 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



1
3
2764
PREPARED BY AND RETURN TO:

THOMAS M. JENKS, ESQ.
PAPPAS METCALF JENKS & MILLER, P.A.
245 RIVERSIDE AVENUE, SUITE 400
JACKSONVILLE, FL 32207

FIVE MINUTE RECORDING

Public Records of
St. Johns County, FL
Clerk# 03-075608
O.R. 2066 PG 87
08:56AM 10/13/2003
REC \$13.00 SUR \$2.00

**SECOND AMENDMENT TO DECLARATION OF COVENANTS AND
RESTRICTIONS FOR PALENCIA**

**THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS AND
RESTRICTIONS** ("Second Amendment") is made effective October 7, 2003, by
MARSHALL CREEK, LTD., a Florida limited partnership (the "Developer").

RECITALS:

A. The Developer has previously executed and recorded 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, both of the public records of St. Johns County, Florida (together "the Declaration").

B. The Developer desires to amend the Declaration as more particularly described below, and this Second Amendment is made pursuant to the reserved rights of the Developer set forth in Section 10.7 of the Declaration. The amendment to the Declaration effected hereby does not materially and adversely affect the value of any Lot or other building parcel located within the Property.

NOW THEREFORE, the Developer hereby amends the Declaration as follows:

1. The Developer confirms that the above stated recitals are true and correct. All capitalized terms contained in this Second Amendment shall have the same meanings as such terms are defined in the Declaration.

2. A new Section 5.9 of the Declaration is hereby added as follows:

Section 5.9 **Notice of Transfer**. Prior to the conveyance or transfer of any Lot, Building Site or other portion of the Property, the Owner thereof shall obtain from the Association, a written statement of any and all assessments, costs, or other charges owed to the Association by such Owner with respect to such portion of the Property. All such assessments, costs and other charges shall be paid simultaneous with the closing of such Owner's conveyance or transfer of such portion of the Property, and in the event that the same shall not be paid, both the Owner and the Owner's grantee shall be jointly and severally responsible for the payment of same, and such portion of the Property shall be subject to the Association's lien for such unpaid sums as more particularly set forth in Article V of this Declaration. Following the closing of any such conveyance or transfer, the new Owner shall, within fifteen (15) days of the effective date

of such conveyance or transfer, notify the Association of the name and mailing address of the new Owner.

3. Except as specifically amended hereby, all of the terms and provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this Second Amendment to Declaration of Covenants and Restrictions for Palencia to be executed as of the date and year first above written.

Signed, sealed and delivered
in the presence of:

MARSHALL CREEK, LTD., a Florida limited
partnership

By: Hines/Marshall Creek, Ltd., a Florida
limited partnership, its sole general partner

By: Hines Management, L.L.C., a Delaware
limited liability company, its sole general
partner

By: Hines Interests Limited Partnership, a
Delaware limited partnership, its sole
member

By: Hines Holdings, Inc., a Texas corporation,
its sole general partner

By: Michael T. Harrison
(Print Name) MLT

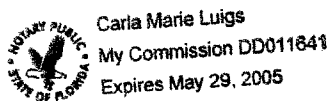
Title: Sr. Vice President

Vicki R. Hamilton
Vicki R. Hamilton
(Print Name)
Carla Luigs
Carla Luigs
(Print Name)

STATE OF Florida
COUNTY OF St. Johns ^{SS}

The foregoing instrument was acknowledged before me this 7th day of October, 2003, by Michelle T. Harrison, the Senior Vice President of Hines Holdings, Inc., a Texas corporation (the "Company"), as general partner of Hines Interests Limited Partnership, a Delaware limited partnership ("HILP"), which in turn is the sole member of Hines Management, L.L.C., a Delaware limited liability company (the "LLC"), which in turn is the sole general partner of Hines/Marshall Creek, Ltd., a Florida limited partnership (the "GP"), which in turn is the sole general partner of Marshall Creek, Ltd. on behalf of the Company, HILP, the LLC, the GP and the Partnership.

Carla Marie Luigs
(Print Name Carla Marie Luigs)
NOTARY PUBLIC



State of Florida at Large
Commission # DD011641
My Commission Expires: May 29, 2005
Personally Known ✓
or Produced I.D. _____
[check one of the above]

Type of Identification Produced _____

THIS DOCUMENT PREPARED
BY AND RETURN TO:

THOMAS M. JENKS, ESQ.
PAPPAS METCALF JENKS & MILLER, P.A.
245 RIVERSIDE AVENUE - SUITE 400
JACKSONVILLE, FLORIDA 32202-4907

Public Records of
St. Johns County, FL
Clerk# 03-052918
O.R. 2006 PG 639
11:38AM 07/28/2003
REC \$13.00 SUR \$2.00

SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS
FOR PALENCIA

THIS SUPPLEMENTAL DECLARATION is made effective July 22, 2003 by **MARSHALL CREEK, LTD.**, a Florida limited partnership (the "Developer").

WITNESSETH:

WHEREAS, the Developer is the owner of certain real property more particularly described on the attached Exhibit A (the "Property"); and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Palencia has been recorded in Official Records Book 1666, at page 803, and amended in Official Records Book 1845, at page 835 of the public records of St. Johns County, Florida, (together, the "Declaration"); and

WHEREAS, the Developer desires to subject the Property to all of the terms, conditions and provision contained in the Declaration as provided for under the terms of Section 3.2 of the Declaration.

NOW THEREFORE, the Developer hereby declares that:

1. All capitalized terms contained in this Supplemental Declaration shall have the same meanings as such terms are defined by the Declaration.
2. All of the Property and any portion thereof shall be held, transferred, sold and conveyed and occupied subject to all covenants, restrictions, easements, charges and liens and all other matters as set forth in the Declaration as amended from time to time. In the event of conflict between the Declaration and this Supplemental Declaration, this Supplemental Declaration shall control.
3. Except as specifically supplemented hereby, the Declaration shall remain in full force and effect as originally executed and recorded.
4. This Supplemental Declaration shall become effective upon its recordation in the public records of St. Johns County, Florida.

IN WITNESS WHEREOF, the Developer has caused this instrument to be duly executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

MARSHALL CREEK, LTD., a Florida limited
partnership

By: Hines/Marshall Creek, Ltd., a Florida
limited partnership, its sole general
partner

By: Hines Management, L.L.C., a
Delaware limited liability company, its
sole general partner

By: Hines Interests Limited Partnership, a
Delaware limited partnership, its sole
member

By: Hines Holdings, Inc., a Texas
corporation, its sole general partner

By: Michael T. Harrison (initials)

Michael T. Harrison
Senior Vice President

Date: July 1, 2003

Walter B'Shea
Name Printed: Walter B'Shea

Carla Luigs
Name Printed: Carla Luigs

STATE OF Florida
COUNTY OF St. Johns

The foregoing instrument was acknowledged before me this 1st day of July, 2003, by Michael T. Harrison, the Senior Vice President of Hines Holdings, Inc., a Texas corporation (the "Company"), as general partner of Hines Interests Limited Partnership, a Delaware limited partnership ("HILP"), which in turn is the sole member of Hines Management, L.L.C., a Delaware limited liability company (the "LLC"), which in turn is the sole general partner of Hines/Marshall Creek, Ltd., a Florida limited partnership (the "GP"), which in turn is the sole general partner of Marshall Creek, Ltd., a Florida limited partnership, on behalf of the Company, HILP, the LLC, the GP and the Partnership.



Carla Marie Luigs
My Commission DD011641
Expires May 29, 2005

Carla Marie Luigs
Name Printed: Carla Marie Luigs

NOTARY PUBLIC, State of Florida

Commission # DD011641

My Commission Expires: May 29, 2005

Personally Known ✓

or Produced I.D. _____

[check one of the above]

Type of Identification Produced _____

EXHIBIT A

OR2006PG 641

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 32°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.

Prepared by and Return to:

Thomas M. Jenks, Esq.
Pappas Metcalf Jenks & Miller, P.A.
200 W. Forsyth Street, Suite 1400
Jacksonville, FL 32202

Public Records of
St. Johns County, FL
Clerk# 02-066108
O.R. 1845 PG 835
12:12PM 11/12/2002
REC \$21.00 SUR \$3.00

**FIRST AMENDMENT
TO
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
PALENCIA**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR PALENCIA is made this 7th day of NOVEMBER, 2002 by **MARSHALL CREEK, LTD.**, a Florida limited liability company, (the "Developer").

RECITALS:

A. The Developer has previously executed and recorded the Declaration of Covenants and Restrictions for Palencia recorded in Official Records Book 1666 at Page 803 of the public records of St. Johns County, Florida (the "Declaration").

B. The Developer desires to amend the Declaration as more particularly described below and this First Amendment is made pursuant to the reserved rights of the Developer set forth in Section 10.7 of the Declaration. The amendment to the Declaration described hereby does not materially and adversely affect the value of any Lot or other building parcel located within the Property.

NOW THEREFORE, the Association hereby amends the Declaration as follows:

1. The Developer confirms that the above-stated recitals are true and correct. All capitalized terms contained in this First Amendment shall have the same meanings as such terms are defined in the Declaration.

2. A new Section 5.8 of the Declaration is hereby added as follows:

Section 5.8. Bulk Rate Service Agreements. As a common service to the Owners, the Association may enter into contracts ("Common Service Contracts"), including bulk rate service agreements, with providers ("Service Providers") of cable television, internet access, telephone and similar utilities for the construction, management, maintenance, modification and operation of such systems and utilities ("Common Systems"). All expenses incurred by the Association in connection with any Common Service Contract or Common System shall constitute an expense which may be

funded through the collection of assessments pursuant to this Article V; provided however, if particular or additional services or benefits are provided to particular Lots or building parcels, the benefitted Owner shall pay the Service Provider directly for such services, or the Association may assess such costs as an Area Assessment pursuant to Section 5.4 hereof. The terms of any Common Service Contract may obligate individual Owners to execute subscription agreements or other contracts directly with the applicable Service Providers, or alternatively, the Association may execute Common Service Contracts on behalf of all Owners. All such agreements or other contracts may contain terms and conditions relating to the use and access of the systems described therein which, if violated by the Owner or any other person, may result in services to the applicable Lot or building parcel being terminated by the Service Provider or the Association. The termination of service for such a violation shall not relieve the applicable Owner of the continuing obligation to pay that portion of assessments or other Association charges pertaining the applicable Common Service Contract or Common Systems. The Association shall have no obligation to utilize any particular Service Provider and all Common Service Agreements shall contain such terms and provisions as the Association shall reasonably deem appropriate in its sole discretion.

3. A new Section 5.9 of Declaration is hereby added as follows:

Section 5.9 Disclaimers as to Bulk Services. With respect to any Common Systems that are provided pursuant to Section 5.8 hereof, all Owners and occupants of any portions of the Property are hereby notified as follows:

- (a) All Service Providers and the Common Systems provided by them may be subject to federal, state or local regulations, laws and ordinances. Such regulations, laws and ordinances may have a significant impact on certain aspects of the Common Systems including, but without limitation, the fees charged, the method of delivery and the relative rights and responsibilities of the Common System users and Service Providers. The impact of all such regulations, laws and ordinances are beyond the control of the Developer and the Association, and accordingly, neither the Developer nor the Association shall have any responsibility to any Owner therefor.
- (b) Each Owner acknowledges and agrees that the Developer and the Association, by virtue of their respective contractual relationships with Service Providers, may gain access to information relating to the individual use of the Common Systems by Owners including account and content information. In recognition of this fact, each Owner waives any privacy rights that such Owner may have in any such information, as well as any claims relating thereto against the Developer, the Association or their respective affiliates, successors, assigns, constituent members or related parties. Further, each Owner acknowledges and agrees that the acquisition of such information by the Developer or the Association shall not create any duty on the part of the Developer, the Association or any other party to act in any manner with respect to such information.

- (c) Neither the Developer nor the Association nor any of their respective affiliates, successors, assigns, constituent members or related parties shall be liable to any Owner or other party for any direct, indirect, incidental, special, punitive, consequential or other damages, losses, allegations, claims, suits or other proceedings, expenses, liabilities or costs (including attorneys' fees), including without limitation, loss of profits, earnings, business opportunities, data, inaccuracy of data, cost of procurement of substitute goods or services or personal injury (including death) resulting from, arising out of or in connection with, directly or indirectly, any Owner's or other party's use of any Common System services provided pursuant to a Common Service Contract, including without limitation (i) any contention that the use of a Common System by an Owner or other party infringes on the copyright, trademark, patent, trade secret, confidentiality, privacy or other intellectual property or contractual right of any party; (ii) mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, non-deliveries, mis-deliveries, transmission or any failure of performance of the Common System; (iii) acts or occurrences beyond the reasonable control of applicable Service Providers, including without limitation, fire, lightening, explosion, power surge or failure, wars, acts of God, any law, order, regulation or requirement of any governmental or legal body or representative thereof; (iv) the content of services available on the internet or otherwise through any Common System, including the accuracy, quality and confidentiality of information obtained through third parties through such Common System; or (v) the activities of other internet users in accessing or monitoring any Owners' or other parties' personal computers or use thereof.
- (d) Neither the Developer nor the Association nor their respective affiliates, successors, assigns, constituent members or related parties shall be responsible for any damages, including the loss or damage of destruction of property, personal injury (including death), lost data, lost profits or lost opportunities, resulting from any interruption or termination of any services provided to Owners by any Common System. Each Owner acknowledges that all such services are subject to periodic interruption from time to time.

4. Except as specifically amended hereby, all of the terms and provisions of the Declaration shall remain in full force and effect as originally executed.

OR1845PG 838

IN WITNESS WHEREOF, the Developer has caused this First Amendment to Declaration of Covenants and Restrictions for Palencia to be executed on the day and year first above written.

Signed, sealed and delivered
in the presence of:

MARSHALL CREEK, LTD., a Florida limited
partnership

By: Hines/Marshall Creek, Ltd., a Florida limited
partnership, its sole general partner

By: Hines Management, L.L.C., a Delaware
limited liability company, its sole general
partner

By: Hines Interests Limited Partnership, a
Delaware limited partnership, its sole member

By: Hines Holdings, Inc., a Texas corporation, its
sole general partner

By: Michael T. Harrison
Michael T. Harrison

Title: Senior Vice President

Date: November 7th, 2002

Carla Marie Luigs
Name Printed: Carla Marie Luigs

Vicki R. Hamilton
Name Printed: VICKI R. HAMILTON

STATE OF Florida)
COUNTY OF St. Johns)

OR1845PG 839

The foregoing instrument was acknowledged before me this 7th day of November, 2002, by Michael T. Harrison, the Senior Vice President of Hines Holdings, Inc., a Texas corporation (the "Company"), as general partner of Hines Interests Limited Partnership, a Delaware limited partnership ("HILP"), which in turn is the sole member of Hines Management, L.L.C., a Delaware limited liability company (the "LLC"), which in turn is the sole general partner of Hines/Marshall Creek, L.P., a Florida limited partnership (the "GP"), which in turn is the sole general partner of Marshall Creek, Ltd. on behalf of the Company, HILP, the LLC, the GP and the Partnership.



Carla Marie Luigs
My Commission DD011641
Expires May 29, 2005

Carla Marie Luigs
(Print Name Carla Marie Luigs)
NOTARY PUBLIC, State of Florida
Commission # DD011641
My Commission Expires: May 29, 2005
Personally Known ☒
or Produced I.D. _____
[check one of the above]
Type of Identification Produced _____

Public Records of
St. Johns County, FL
Clerk# 01-055069
O.R. 1666 PG 803
12:11PM 10/23/2001
REC \$113.00 SUR \$14.50

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

PALENCIA

**THIS DOCUMENT PREPARED BY:
AND RETURN TO :**

**Thomas M. Jenks, Esq.
Pappas Metcalf Jenks & Miller, P.A.
200 West Forsyth Street
Suite 1400
Jacksonville, Florida 32202-4327**

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FOR
PALENCIA

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DECLARATION
OF
COVENANTS AND RESTRICTIONS
FOR
PALENCIA

THIS DECLARATION is made this 15 day of OCTOBER, 2001, by **MARSHALL CREEK, LTD.**, a Florida limited partnership (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 parcel within the Property, and are intended to create mutual equitable servitudes upon each such parcel in favor of the other parcels, to create reciprocal rights among the respective Owners, and to create privity of contract and an estate between the grantees of each and every parcel 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 land 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**. The Palencia Property Owners Association of St. Johns County, Inc., a Florida corporation not-for-profit and its successors and assigns. This is the Declaration to which the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of the Association make reference.

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

Section 2.3 **Building Site**. Each separate parcel of land within the Property, other than the Lots, as hereafter conveyed or designated by the Developer, consisting of an integral unit of land suitable for development by construction of improvements designed for office, retail, wholesale, hotel, motel, restaurant, warehouse, entertainment, recreational, service, industrial, multi-family, or

other similar use. No Building Site shall include any portion of the Common Area or any other portion of the Property owned by the Association or the CDD.

Section 2.4 **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 2.5 **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 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 2.6 **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 2.6, or by recording a Supplementary Declaration, pursuant to the terms of Section 4.3 hereof. The Common Area initially designated by the Developer shall consist of the real property (and interests therein) more particularly described on Exhibit D 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 2.7 **Developer.** Marshall Creek, Ltd. 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 Marshall Creek, Ltd. as the Developer of the Property is not intended and shall not be construed, to impose upon Marshall Creek, Ltd. any obligations, legal or otherwise, for the acts or omissions of third parties who purchase Lots or parcels within the Property from Marshall Creek, Ltd. and develop and resell the same.

Section 2.8 **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 2.9 **Lot.** Each platted lot located within the Property which is designated by the Developer by recorded covenant or deed restriction, for single family residential use. No Lot shall include any portion of the Common Area or any other portion of the Property owned by the Association or the CDD.

Section 2.10 **Multi-family Improvements.** Any proposed or completed improvements located within the Property intended and designed for use as two or more attached residential dwelling units including without limitation, any condominium units, townhomes, apartment units, cooperative apartments, or duplex units, regardless of whether such Multi-family Improvements shall be owned individually or collectively by one or more Owners.

Section 2.11 **Owner.** The record owner or owners of any Lot or Building Site.

Section 2.12 **Property or Palencia.** 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 2.13 **PUD.** Planned Unit Development Ordinance Number 98-64 and 98-220, as enacted by the Board of County Commissioners of St. Johns County, Florida, as the same may be amended from time to time.

Section 2.14 **Residential Dwelling Unit.** Any improved portion of the Property located within a Lot or Building Site and intended for use as a residential dwelling, including without limitation, any detached residential dwellings, condominium units, townhouse units, apartment units, duplexes or other attached residential dwellings. The term Residential Dwelling Unit shall not, however, mean or refer to (i) any hotel or motel room which is not declared to the condominium form of ownership, or otherwise subject to separate ownership; or (ii) any timeshare condominium unit.

Section 2.15 **Subassociation.** Any residential or commercial property owners or condominium association (other than the Association) formed as a Florida non-profit corporation whose members are comprised of Owners. Further, in the event any group of Owners shall be members of more than one residential or commercial property owners or condominium association which would otherwise qualify as a Subassociation, the Association's Board of Directors in its sole discretion shall designate only one such property owners association which shall be deemed a Subassociation for purposes of this Declaration.

Section 2.16 **Surface Water or Stormwater Management System.** A system which is designed and constructed or implemented within the Property to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C. or regulations of similar import. For purposes of this Declaration, the Surface Water or Stormwater Management System shall be deemed to be a part of the Common Area.

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 or Building Site, 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. Without limiting the generality of the foregoing, no real property owned in fee simple by Genesis, Ltd., a Florida limited partnership, shall be subject to any provision of this Declaration, unless and until Genesis, Ltd. shall join in a Supplementary Declaration executed by the Developer pursuant to Section 3.2 hereof.

Section 3.2 **Additional Lands.** Developer may, but shall not be obligated to, subject additional land to this Declaration (or to the assessment provisions of this Declaration) from time to time provided only that (a) any additional land subjected to this Declaration (or its assessment provisions) shall be substantially contiguous to the Property then subject to this Declaration (for purposes of this Section 3.2, property which may be reasonably integrated into the overall development of the Property shall be deemed substantially contiguous), 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 Article V of this 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 (or its assessment provisions) 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.** With the consent and joinder of Owners holding a majority of the votes in the Association, the Developer may, but shall have no obligation to, withdraw at any time, or from time to time, portions of the Property from the terms and effect of this Declaration. Upon the Developer's request, the consent and joinder of each and every Owner to such withdrawal shall not be unreasonably withheld. 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
COMMON AREA RIGHTS

Section 4.1 **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, on or before the date which is one hundred twenty (120) days after the Developer shall no longer own any Lot or Building Site, and the Association shall accept such conveyance or assignment. 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 4.2 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;

(b) The right of the owner of the Common Area, with the consent of the Developer (if different from such owner), to make all or any part of the Common Area available for public use, provided that such use shall not unreasonably interfere with the use and enjoyment of such Common Area by the Owners.

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

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

(e) The rights of the Developer under Section 4.3 to add to or withdraw land from the Common Area;

(f) 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. For example, the creation of each Owner's right to drain such Owner's property into the portions of the Common Area included within the Surface Water or Stormwater Management System, does not create any right of access by any Owner to such portions of the Common Area over any other Owner's property or other privately owned portions of the Property.

Section 4.3 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 substantially contiguous to the Property (for purposes of this Section 4.3, property which may be reasonably integrated into the overall

development of the Property shall be deemed substantially contiguous). For so long as the Developer shall own any Lot or Building Parcel, 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 access, availability of utilities, or drainage to or from any Lot or Building Parcel, the Developer shall not have the right to withdraw such Common Area without the consent and joinder of the Owner of the Lot or Building Parcel, 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 but shall not otherwise withdraw such land from the provisions of this Declaration unless such withdrawal shall comply with the requirements of Section 3.3 hereof. No land owned by the Developer shall be deemed to be Common Area unless such land is expressly referenced as such under Section 2.6 hereof, or subsequently designated as such by the Developer pursuant to Section 2.6 hereof and this Section 4.3, 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 4.3, 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 4.4 Maintenance of Common Area and Compliance with Applicable Permits.

(a) 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. The Association shall maintain the Common Area in accordance with all permit requirements and conditions contained in applicable dredge and fill, consumptive use, surface water permits, or any other applicable permits issued by the United States Army Corps of Engineers ("ACOE"), Florida Department of Environmental Protection ("FDEP"), St. Johns River Water Management District ("SJRWMD"), or St. Johns County, Florida, and in accordance with the DRI and the PUD. Notwithstanding any provision of this Declaration to the contrary, the CDD and the Association shall be responsible for the maintenance, operation and repair of specific portions of the Surface Water or Stormwater Management System, as more particularly set forth in the applicable permits for the construction and operation thereof. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance of other surface water, or stormwater management capabilities as permitted by the SJRWMD. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved by the SJRWMD. 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 4.4, shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

(b) In the event that the CDD shall for any reason fail to maintain the portions of the Surface Water or Stormwater Management System for which it is responsible, or any other portion of the Property or other property or improvements located in the vicinity of the Property, as required by law or this Declaration, the Association shall have the right to perform such maintenance on behalf of the CDD upon not less than fifteen (15) days prior written notice to the CDD. Any and all costs and expenses incurred by the Association in performing such maintenance on behalf of the CDD, shall be recoverable by the Association in accordance with applicable law.

Section 4.5 Easement for Maintenance Purposes. The Developer hereby reserves for itself, the Association, the CDD and their respective agents, employees, contractors, successors and assigns an easement for access in, on, over and upon those portions of the Property as may be reasonably necessary for the purpose of access to and maintenance of the Common Area, including the Surface Water or Stormwater Management System, or other portions of Property to be maintained by Association or the CDD, in accordance with the requirements of this Declaration or as provided by law. The easement reserved 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 reserved 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 V **COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot or Building Site within the Property hereby covenants, and by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual and special assessments established and levied pursuant to the terms of this Declaration. All such assessments, together with interest thereon from the due date at the highest lawful rate and costs of collection thereof (including reasonable attorneys' fees), shall be a charge and continuing lien upon each Lot and Building Site against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner may avoid liability for the assessments by waiver of rights to use, or by non-use of, the Common Areas or by abandonment.

Section 5.2 Purpose of Assessments.

(a) The annual assessments levied by the Association against all Owners shall be used for the purposes of operational expenses, management and accounting fees, taxes, insurance, utility charges and other expenses relating to the Common Area, to fund the obligations of the Association set forth in Section 4.4 hereof, to provide common services to the Owners, and for all other purposes reasonably contemplated by this Declaration, the Articles, the Bylaws, or any cost sharing or similar agreement to which the Association is or may become a party. Further, such annual assessments may be levied to fund reasonable reserves for deferred maintenance of, or non-recurring expenses related to, the Common Area, including the Surface Water or Stormwater

Management System. To the extent that such maintenance shall not be provided by the CDD, the maintenance responsibilities of the Association payable through assessment of the Owners shall specifically include, but not be limited to, the perpetual maintenance of all or any portion of the Surface Water or Stormwater Management System permitted by the St. Johns River Water Management District Permit No. 4-109-0216-ERP, as amended from time to time, including all operation, sampling, testing, monitoring and maintenance requirements as specified by said permit. Assessments collected by the Association to fund reserves shall be separately accounted for, it being the requirement of this Declaration that such funds shall be used exclusively for deferred maintenance of, or non-recurring expenses related to, the Common Area.

(b) At the option of the Board of Directors, annual assessments levied by the Association may also be used to fund contributions to a Transportation Demand Management Association ("TDMA"), or similar organization, formed pursuant to the requirements of the DRI.

(c) The Board of Directors may levy special assessments for any purpose relating to permissible or required activities of the Association pursuant to this Declaration, the Articles, or any cost sharing or similar agreement to which the Association is or may become a party. Special assessments shall be allocated among the Owners as provided in Section 5.3 hereof.

Section 5.3 Calculation and Collection of Assessments. Annual assessments shall be established by the Board of Directors based upon an annual budget. Each Owner's pro rata share of the total annual assessment or any special assessment shall be based upon the following calculations:

(a) Owners of Lots and Building Sites shall pay a pro rata share of annual and special assessments based upon assessment equivalents allocated among the Owners as provided in subparagraph (b) hereof (the "Assessment Equivalents"). Except as hereafter provided, the annual assessment amount allocated to each Assessment Equivalent is hereby established to be, and shall not exceed, One Hundred Twenty Dollars (\$120.00) per Assessment Equivalent. From and after December 31, 2001, such amount may be decreased, or increased by an amount not to exceed ten percent (10%) of the prior annual assessment amount per Assessment Equivalent, such annual increases to be cumulative and self-operative. Further, by a vote of not less than three-fifths of the members of the Board of Directors, the foregoing assessment amount per Assessment Equivalent may be increased above the ten percent (10%) limitation set forth in this Section 5.3. For purposes of determining the amount of any increase in annual assessments, the amount of any special assessment or Area Assessments (as such term is defined in Section 5.4 hereof) shall not be taken into account. The total amount of each special assessment shall be divided by the total Assessment Equivalents attributable to Property as of the date of authorization of such special assessment by the Board of Directors for purposes of determining the portion of the special assessment allocable to each Lot or Building Site.

(b) The share of the total annual assessment and any special assessments imposed by the Board of Directors, pursuant to this Declaration shall be allocated among the Owners of the Lots and Building Sites as follows:

(i) The Owners of Lots shall pay annual and special assessments based upon one (1) Assessment Equivalent for each Lot owned by such Owners.

(ii) Owners of Building Sites upon which improvements other than Residential Dwelling Units are constructed shall pay annual and special assessments based upon one (1) Assessment Equivalent for each two thousand five hundred (2,500) square feet of heated and air conditioned space located within completed improvements constructed upon such Owners' Building Sites, rounded to the nearest two thousand five hundred (2,500) square feet. Building Sites with improvements located thereon or approved for construction which are comprised of less than two thousand five hundred (2,500) or less square feet of heated and air conditioned space shall be allocated one (1) Assessment Equivalent each. Owners of Building Sites on which Residential Dwelling Units are constructed shall pay annual and special assessments based upon one (1) Assessment Equivalent for each Residential Dwelling Unit constructed upon such Owners' Building Sites.

(c) The assessment obligations of each Owner other than the Developer shall commence upon the recordation of this Declaration in the current public records of St. Johns County, Florida. Annual assessments shall be collectable in advance on a periodic basis established by the Board of Directors from time to time, which periodic basis shall not be less frequent than semi-annually. Special assessments shall be collectable in advance in the manner established by the Board of Directors at the time such special assessments are authorized.

(d) Assessments payable by Owners who are members of a Subassociation, shall be collected from such Owners by the Subassociation and remitted by the Subassociation to the Association. Assessments payable by Owners of Lots or Building Sites who are not members of a Subassociation, shall be remitted directly to the Association by such Owners. Notwithstanding the collection of assessments due the Association by any Subassociation, nothing contained herein shall affect the Association's right to directly enforce each Owner's individual obligation to pay assessments to the Association pursuant to this Declaration.

Section 5.4 Area Assessments. The Board of Directors may establish and levy annual and special assessments to fund specific services authorized by the Board from time to time, including without limitation the cost of security services, which shall benefit only specific portions of the Property (the "Area Assessments"). The Area Assessments shall be levied against only those portions of the Property that receive the benefit of such services and shall be allocated among only the Owners of those Lots and Building Sites located within such portions of the Property, based upon the allocations established by Section 5.3 hereof. The boundaries of the portions of the Property that are deemed to receive the benefit of the Area Assessments authorized by this Section 5.4 shall be determined by the Board in its sole discretion.

Section 5.5 Effect of Non-Payment of Assessment: Lien, Personal Obligation, and Remedies of Association. The lien of the Association shall be effective from and after recording in the public records of St. Johns County, Florida, a claim of lien stating the description of the Lot or Building Site encumbered thereby, the name of the Owner, the amount and the due date. Such

claim of lien shall include assessments which are due and payable when the claim of lien is recorded as well as assessments which may accrue thereafter, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record, and the affected Owner shall pay the cost of such satisfaction. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date at the highest lawful rate, and the Association may at any time thereafter bring an action to enforce the lien authorized hereby by appropriate foreclosure proceedings and/or a suit on the personal obligation against the Owner. In the event the Association shall fail to bring such an action for collection of such delinquent assessment within thirty (30) days following receipt of written notice from any Owner demanding that such proceedings be commenced, such Owner shall be authorized to institute such proceedings on behalf of the Association. There shall be added to the amount of such delinquent assessment the costs of collection incurred by the Association, or such Owner, which shall specifically include without limitation reasonable attorneys' fees for trial and appeal. Upon receipt of a written request therefor from any Owner, the Association shall provide such Owner with a written statement of all assessments and other charges due or to become due from such Owner to the Association, which shall be binding on the Association through the date indicated on the Association's written statement.

Section 5.6 Subordination of Lien to Mortgages. The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any bona fide mortgage which is perfected by recording prior to the recording of the claim of lien for any such unpaid assessments. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of the Lot or Building Site by deed in lieu of foreclosure, pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure of such mortgage. The total amount of assessment which remains unpaid as a result of a mortgagee obtaining title to the Lot or Building Site shall be added to the Association's total budget and shall be paid by all Owners including the mortgagee on a pro rata basis. No such sale or other transfer shall relieve any Lot or Building Site from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. A written statement of the Association that its lien is subordinate to a mortgage shall be dispositive of any question of subordination.

Section 5.7 Developer's Assessments. Notwithstanding any provision of this Declaration to the contrary, during the Development Period (as defined below) the Lots, Building Sites, and other portions of the Property owned by the Developer shall not be subject to any annual or special assessments 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 or Building Site 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 and Buildings Sites 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 or Building Sites within the Property.

ARTICLE VI

UTILITY PROVISIONS

Section 6.1 **Water System.** The central water supply system provided for the service of the Property shall be used as sole source of potable water for all water spigots and outlets located within or on all buildings and improvements located within the Property. Each Owner shall pay water meter charges of the supplier thereof and shall maintain and repair all portions of the water lines which are located within, or which serve, the portions of the Property owned by such Owners. No individual potable water supply system or well for consumptive or irrigation purposes shall be permitted on any Lot or Building Site without the prior written consent of the Association.

Section 6.2 **Sewage System.** The central sewage system provided for the service of the Property shall be used as the sole sewage system for all buildings and improvements located within the Property. Each Owner shall maintain and repair all portions of the sewer lines located within, or which serve, the portions of the Property owned by such Owner, and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal services made by the operator thereof. No sewage shall be discharged onto the open ground or into any wetland, lake, pond, park, ravine, drainage ditch or canal or roadway and no septic tank or drain field shall be placed or allowed within the Property.

Section 6.3 **Solid Waste Recycling.** Each Owner shall participate in any available solid waste recycling program instituted by the Developer, St. Johns County, Florida, or the solid waste collection provider. Solid waste collection receptacle pads constructed within the Property shall be designed so as to include space for recycling bins compatible with the applicable recycling program collection equipment.

Section 6.4 **Utility Services.** It shall be the responsibility of each Owner to make direct arrangements with the suppliers of electricity, water, sewer, and any other utility services for service to the portions of the Property owned by such Owner.

ARTICLE VII

USE RESTRICTIONS AND RIGHTS AND EASEMENTS

RESERVED BY DEVELOPER

Section 7.1 **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 sole opinion of the Developer, would result in 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 7.2 Compliance with Laws. All Owners and other occupants of the Property shall at all times comply with the terms of the DRI and PUD, and all environmental, land use, marketing and consumer protection ordinances, statutes and regulations applicable to the Property or to any improvements constructed thereon, 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 7.3 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 7.4 Reservation of Right to Release Restrictions. If a building or other improvement has been or is proposed to be erected within the Property in such a manner as to constitute a violation of, variance from, or encroachment into, the covenants and restrictions set forth in, or easements granted or reserved by, this Declaration, the Developer shall have the right to waive or release the violation, variance or encroachment without the consent or joinder of any person so long as the Developer, in the exercise of its sole discretion, determines in good faith that such waiver or release will not materially and adversely affect the health and safety of Owners, the value of adjacent portions of the Property, and the overall appearance of the Property.

Section 7.5 Easements for Ingress, Egress, Utilities and Drainage. The Developer reserves for itself, its successors, assigns and designees, a right-of-way and perpetual, nonexclusive easement for ingress and egress and to erect, maintain and use utilities, electric, telephone and street lighting poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains, gas, sewer, water lines, drainage ways and structures, or other public conveniences or utilities, on, in and over, (i) any portion of the Common Area; and (ii) any area designated as an easement, private street or right-of-way area on any plat of all or any portion of the Property.

Section 7.6 Drainage Flow. Drainage flow shall not be obstructed or diverted from drainage easements. The Developer or the Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to be necessary to maintain reasonable aesthetic standards relative to the Property and surrounding properties. These easements include the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other reasonable action necessary to install utilities and to maintain reasonable aesthetic standards, but shall not include the right to disturb any permanent improvements erected upon a Lot or Building Site which are not located within the specific easement area designated on the plat or otherwise reserved in this Declaration. Notwithstanding any provision of this Section 7.6 to the contrary, neither the Developer nor the Association shall take any action which shall alter the Surface Water or Stormwater Management System beyond maintenance in its original condition without the prior written approval of the SJRWMD.

Section 7.7 Future Easements. Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights of way on any portions of the Property owned by Developer. In addition, Developer hereby expressly reserves the right to grant

easements and rights-of-way over, under and through the Common Area so long as Developer shall own any portion of the Property. The easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with the enjoyment of the Common Area.

Section 7.8 Additional Easements. The Developer reserves for itself, and its successors and assigns, a perpetual, exclusive easement for the installation, maintenance and operation of cables for the transmission of cable television, radio, or other electronic communications of any form, for propane or natural gas pipes, mains and related equipment, or for any improvements used in connection with providing cellular telephone service on, in, and over (i) any area designated as an easement, private street, or right of way on any plat of all or any portion of the Property, and (ii) any portion of the Common Area. All cables located within the Property shall be installed and maintained underground. For purposes of this Section 7.8, the term "cables" shall include without limitation, all wire, coaxial, fiber optic, or other cable types intended for the transmission of electronic communications.

Section 7.9 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.

ARTICLE VIII **ARCHITECTURAL CONTROL**

Section 8.1 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 Building Site, 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 Developer or the Developer'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 Developer. It shall be the burden of each Owner to supply two (2) sets of completed plans and specifications to the Developer and no plan or specification shall be deemed approved unless a written approval is granted by the Developer to the Owner submitting same. The Developer 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 Developer to the Owner submitting same.

Section 8.2 **Review Procedures.** The Developer shall have the following rights with respect to architectural review and approval conducted in accordance with this Article VIII:

(a) To promulgate, amend, eliminate or replace architectural criteria applicable to architectural review to be conducted by the Developer 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 two (2) complete sets of all plans and specifications for any improvement or structure of any kind requiring review and approval pursuant to this Article VIII. The Developer 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 Developer 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 VIII, 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 Association, in cash, at the time that plans and specifications are submitted to the Developer.

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

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

Section 8.3 **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 Developer 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 or Building Site 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 8.4 Assignment. The Developer reserves the right to assign its reserved rights under this Article VIII to the Association, who upon such assignment shall automatically assume all of the Developer's obligations under this Article VIII. Upon such assignment, the Association shall be authorized to form an Architectural Review Board ("ARB"), who shall serve at the pleasure of the Association's Board of Directors. The ARB shall thereafter be authorized to exercise all rights of architectural control authorized by this Article VIII.

Section 8.5 Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Developer as contemplated by this Article VIII, the Developer, the ARB and the 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, the ARB or the Association.

ARTICLE IX

NOTICE OF PERMIT REQUIREMENTS

Section 9.1 Jurisdictional Areas and Permits. THE PROPERTY HAS BEEN OR WILL BE DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF PERMIT NUMBER 199800 984 (IP-ME) ISSUED BY THE ACOE AND PERMIT NUMBER 4-109-0216-ERP, ISSUED BY THE SJRWMD (THE "PERMITS"), AS SUCH PERMITS MAY BE AMENDED FROM TIME TO TIME. THE PERMITS ARE OR WILL BE OWNED BY THE CDD AND/OR THE ASSOCIATION AND THE CDD AND THE ASSOCIATION HAVE THE OBLIGATION TO ASSURE THAT ALL TERMS AND CONDITIONS THEREOF ARE ENFORCED. THE CDD AND THE ASSOCIATION SHALL HAVE THE RIGHT TO BRING AN ACTION, AT LAW OR IN EQUITY, AGAINST ANY OWNER VIOLATING ANY PROVISION OF THE PERMITS.

FURTHER, ANY OWNER OWNING A LOT OR BUILDING SITE WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS OR CONSERVATION AREAS AS ESTABLISHED BY THE ACOE OR SJRWMD OR BY ANY APPLICABLE CONSERVATION EASEMENT SHALL BY ACCEPTANCE OF TITLE TO THE LOT OR BUILDING SITE, BE DEEMED TO HAVE ASSUMED THE OBLIGATION TO COMPLY WITH THE REQUIREMENTS OF THE PERMITS AS THE SAME RELATE TO SUCH OWNER'S LOT OR BUILDING SITE AND SHALL AGREE TO MAINTAIN SUCH JURISDICTIONAL WETLANDS AND CONSERVATION AREAS IN THE CONDITION REQUIRED UNDER THE PERMITS. IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF THE PERMITS AND FOR ANY REASON THE DEVELOPER, THE CDD OR THE ASSOCIATION

IS CITED THEREFORE, THE OWNER AGREES TO INDEMNIFY AND HOLD THE DEVELOPER, THE CDD AND THE ASSOCIATION HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION ALL COST AND ATTORNEYS' FEES, AS WELL AS ALL COSTS OF CURING SUCH VIOLATION. NO PERSON SHALL ALTER THE DRAINAGE FLOW OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM OR ANY PORTION OF THE JURISDICTIONAL WETLANDS OR CONSERVATION AREAS, INCLUDING WITHOUT LIMITATION, ANY BUFFER AREAS, SWALES, TREATMENT BERMS OR SWALES, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE SJRWMD OR ACOE, AS APPLICABLE.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 Ground Leased Land. Where all or any part of a Lot or Building Site has been leased by the Owner of the fee simple title to the site under a ground lease having an original term of not less than ten years, then so long as such ground lease shall remain in effect, all references in these covenants to "Owner" shall be deemed to refer to the lessee under the ground lease, and any lien arising under the provisions of Article V shall attach only to the interest in the Lot or Building Site of the lessee under the ground lease. The Association's reasonable identification of any party deemed to be an "Owner" pursuant to this Section 10.1 shall be dispositive.

Section 10.2 Developer's Reserved Rights Re: Easements. Notwithstanding any provision of this Declaration to the contrary, the Developer shall have the right to specifically define or amend the boundaries or extent of any easement, license, or use right reserved or granted pursuant to the terms hereof. At any time, the Developer shall have the right to execute and record an instrument which shall specifically define or amend the boundary and extent of any such easement, license or use right, or the Developer may specifically define or amend such boundaries by the designation thereof on one or more recorded plats of portions of the Property. The Developer's determination of the boundary and extent of any easement, license or use right reserved or granted pursuant to this Declaration in accordance with this Section 10.2, shall be dispositive for all purposes; provided nothing contained in this Section 10.2 shall authorize the Developer to take any action that would have a material and adverse effect on any improved portion of the Property.

Section 10.3 Remedies for Violations.

10.3.1 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 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 ACOE and the 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.

Section 10.3.2 Fines. 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.

(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 10.4 **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 10.5 **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 10.6 **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 10.7 **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, 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. Any amendment to this Declaration which alters any provision relating to the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portion of the Common Areas, must have the prior written approval of the SJRWMD. Any amendment to this Declaration which amends the responsibilities or obligations of the parties with respect to the ACOE Permit, must have prior written approval of ACOE. Any 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.

Section 10.8 **Assignment of Permit Responsibilities and Indemnification.** In connection with the platting and development of the Property, the Developer assumed certain obligations in connection with the ACOE Permit. The Developer hereby assigns to the Association, and the Association shall be solely responsible for, all of the Developer's obligations and responsibilities for compliance with the ACOE Permit. The Association shall indemnify, defend and hold the

Developer harmless from all suits, enforcement actions, damages, liability and expenses in connection with any violation of the ACOE Permit occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licensees.

Section 10.9 **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 10.10 **Usage.** Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 10.11 **Effective Date.** This Declaration shall become effective upon its recordation in the public records of St. Johns County, Florida.

Section 10.12 **Disclaimers as to Water Bodies.** NEITHER THE DEVELOPER, THE ASSOCIATION, THE CDD, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY ADJACENT TO OR WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES AND NATURAL AREAS WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR OTHER PORTION OF THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR LAKE BOTTOMS LOCATED THEREIN.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed under seal this 1st day of October, 2001.

Signed, sealed and delivered
in the presence of:

MARSHALL CREEK, LTD., a Florida limited
partnership

By: Hines/Marshall Creek, Ltd., a Florida limited
partnership, its sole general partner

By: Hines Management, L.L.C., a Delaware
limited liability company, its sole general
partner

By: Hines Interests Limited Partnership, a
Delaware limited partnership, its sole member

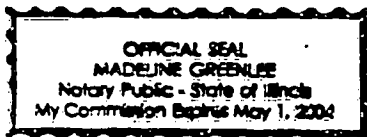
By: Hines Holdings, Inc., a Texas corporation, its
sole general partner

Carlene
Name Printed: CAROLINE PALMER
brook
Name Printed: Loren J. Brock

By: [Signature]
Name Printed: C. Kevin Shanahan (MCA)
Title: Exec. Vice President

STATE OF Illinois }
COUNTY OF Cook }

The foregoing instrument was acknowledged before me this 15 day of October, 2001, by C. Kevin Shamahan, the Executive Vice President of Hines Holdings, Inc., a Texas corporation (the "Company"), as general partner of Hines Interests Limited Partnership, a Delaware limited partnership ("HILP"), which in turn is the sole member of Hines Management, L.L.C., a Delaware limited liability company (the "LLC"), which in turn is the sole general partners of Hines/Marshall Creek, Ltd., a Florida limited partnership (the "GP"), which in turn is the sole general partner of Marshall Creek, Ltd. on behalf of the Company, HILP, the LLC, the GP and the Partnership.



Madeline Greenlee
(Print Name Madeline Greenlee)
NOTARY PUBLIC, State of Florida at Large
Commission # 418197
My Commission Expires: 5/1/04
Personally Known X
or Produced I.D. _____
[check one of the above]

Type of Identification Produced

EXHIBIT A**Legal Description of the Property**

Marshall Creek DRI Unit One according to the plat thereof recorded in Map Book 41, Pages 52 through 57, Marshall Creek DRI Unit A-One according to the plat thereof recorded in Map Book 41, Pages 98 through 103, Marshall Creek DRI Unit B-One according to the plat thereof recorded in Map Book 42, Pages 6 through 8, and Marshall Creek DRI Unit C-One according to the plat thereof recorded in Map Book 42, Pages 1 through 3, all of the public records of St. Johns County, Florida.

EXHIBIT B

Common Area

No Common Area is designated by the Developer as of the date of this Declaration. The Developer reserves the right to designate Common Area in the future pursuant to Section 4.3 of this Declaration.

CONSENT AND JOINDER OF MORTGAGEE

CNB NATIONAL BANK ("Mortgagee") is the holder of that certain Real Estate Mortgage ("Mortgage") recorded in Official Records Book 1634, at page 1350 of the public records of St. Johns County, Florida. Mortgagee joins in the foregoing Declaration of Covenants and Restrictions for Palencia to which this Consent is attached ("Declaration") to evidence its consent and joinder to the provisions of the Declaration and its agreement that its security interest as evidenced by the Mortgage shall be subordinated thereto.

Signed, sealed and
delivered in the
presence of:

CNB NATIONAL BANK

Diane Yunkes
Kate O'Sullivan

By:
Its:

John R. Lamb

SENIOR VICE PRESIDENT

STATE OF FLORIDA)
)ss
COUNTY OF DUVAL)

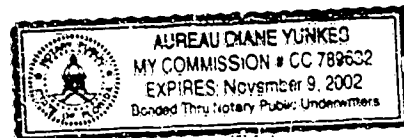
The foregoing instrument was acknowledged before me this 10 day of October, 2001, by JOHN R. LAMB, the SENIOR VICE PRESIDENT of CNB NATIONAL BANK, a NATIONAL BANK, on behalf of the Bank. (He/She is personally known to me or has produced N/A as identification.

Aureau Diane Yunkes
(Print Name AUREAU DIANE YUNKES)
NOTARY PUBLIC, State of Florida

at Large.

Commission No. CC 789632

My Commission Expires:



①
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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 ($2/3^{\text{rds}}$) 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 (4th) 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 appriaser who shall make an appriaisal 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 ($2/3^{\text{rds}}$) 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.

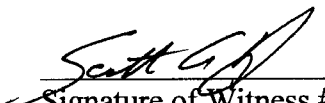
Notwithstanding anything to the contrary herein, and/or in addition to the other reserved powers and rights herein, Developer reserves the right to limit the effect of this Declaration and of the scope of the Avila at Palencia project to a portion, but not all of the Property.

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 Glieberman, Managing Member

STATE OF MICHIGAN

§§
COUNTY OF Wayne

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 15th day of December 2004, 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)




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

EXHIBIT NO.	DESCRIPTION
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 72°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:

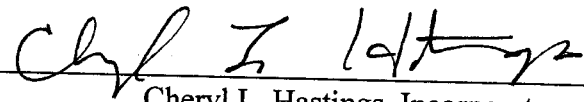
1. A notice of the proposed amendment shall be included in the notice of the members' meeting which shall consider the amendment. The meeting may be the annual meeting or a special meeting.

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.

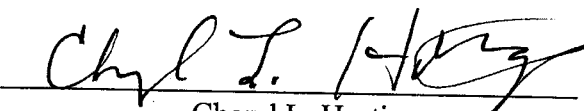

Cheryl L. Hastings

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 detraction 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.