

inspection and evidence that the bond is in full force and effect. The cost of these services shall be included in the Annual Assessments described in Article VII hereof.

## ARTICLE VIII COVENANTS FOR ASSESSMENTS

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

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

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

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

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



### Section 8.3 Amount.

(a) Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Seventy-Five and No/100 Dollars (\$175.00) per Lot. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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

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

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

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

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



issuance. Annual Assessments and all other assessments against a Lot shall be collected monthly, quarterly or annually as determined by the Board of Directors.

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

Section 8.8 **Remedies of the Association.** Any assessment not paid within thirty (30) days after its due date bears interest at the rate of eighteen (18%) per annum, not to exceed the maximum rate from time to time permitted under the laws of the State of Florida. The Association may bring an action at law against any Owner personally obligated to pay such assessment, or foreclose its lien against such Owner's Lot. No Owner may waive or otherwise escape liability for the Association's assessments by non-use of the Common Area, or common services provided by the Association or by abandonment of such Owner's Lot. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise impairing the security of the Association's lien, or its priority.

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

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



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

Section 8.12 **Capitalization of the Association.** Upon acquisition of record title to a Unit from Declarant, each Owner acquiring such Unit shall contribute to the capital of the Association an amount equal to up to one half (1/2) of the amount of the total Annual Assessments attributable to such Unit, as determined by the Developer (the "Capital Contributions"). This amount shall be collected at the closing of the purchase and sale of the applicable Unit and shall be disbursed to the Association. In no event shall the Developer be obligated to contribute to the capital of the Association pursuant to this Section 8.12. All Capital Contributions disbursed to the Association shall be accounted for separately on the books and records of the Association. During the Development Period, as such term is hereafter defined, the Capital Contributions disbursed to the Association shall be used only for repairs, replacements and deferred maintenance within the Property. Subsequent to the Development, such Capital Contributions may be used by the Association for any purpose authorized or contemplated by this Declaration.

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



**ARTICLE IX**  
**OBLIGATIONS OF OWNERS**

Section 9.1 **Exterior Unit Maintenance.** Subject to the provisions of Section 7.1 of this Declaration, each Owner shall, at his expense, maintain, repair and replace all portions of the exterior of his Unit that are not to be maintained by the Association pursuant to this Declaration, including without limitation, all glass surfaces and screening, electric and plumbing equipment, air conditioner and heating units, parking areas and any other equipment, structures, improvements, additions, or attachments, located on the Lot by Owner or installed by Developer as part of the Work. The foregoing obligation includes without limitation any and all maintenance, repair, or replacement required because of the occurrence of any fire, wind, vandalism, theft, or other casualty. All maintenance and repair shall be performed by each Owner at regular intervals as shall be necessary to keep his Lot and Unit in an attractive condition and in substantially the same condition and appearance as existed at the time of completion of the Work, subject to normal wear and tear that cannot be avoided by normal maintenance. Each Owner shall promptly perform any maintenance or repair requested to prevent any damage or loss to other Lots or Units and shall be liable to all loss or damage sustained by other Owners or the Association caused by reason of his failure to promptly perform such maintenance and repair following written notice to such Owner specifying the items of maintenance or repair. Further, each Owner shall keep such Owner's Lot and Unit in a neat and attractive condition and shall not allow such areas to become cluttered with excessive personal property or hang banners or other object on balcony or patio areas. If any Owner refuses or fails to timely maintain, repair, or replace, as the case may be, any exterior portion of his Lot or Unit after fifteen (15) days prior written notice from the Association specifying the required maintenance or repair items, then the Association may maintain, repair, or replace the portion of the Lot or Unit specified in the notice from the Association at such Owner's expense and the cost thereof shall be specifically assessed against such Owner's Lot as provided in Article VIII of this Declaration.

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

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

(a) Each Owner shall keep such Owner's Unit insured, to the maximum insurable replacement value, against loss or damage by fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time are customarily covered with respect to improvements similar in construction, location and use as the Unit. Each Owner shall provide the Association with a certificate of insurance within fifteen (15) days of the issuance of the policy and within fifteen (15) days of each renewal thereof. Failure of an Owner to carry the insurance required



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

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

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

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

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



negligent Owner and such charge shall constitute a lien against the applicable Lot which may be enforced and collected as provided in Article VIII hereof.

## ARTICLE X ARCHITECTURAL CONTROL

Section 10.1 **Architectural Review and Approval.** No landscaping, improvement or structure of any kind, including without limitation, any building, fence, wall, screen enclosure, sewer, drain, disposal system, landscape device or object, driveway or other improvement shall be commenced, erected, placed or maintained upon any Lot or 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 Master Association or the Master Association's designee. All plans and specifications shall be evaluated as to visual and acoustical privacy and as to the harmony of external design and location in relation to surrounding structures, topography, existing trees and other natural vegetation and as to specific conformance with architectural criteria which may be imposed from time to time by the Master Association. It shall be the burden of each Owner to supply three (3) sets of completed plans and specifications to the Master Association and no plan or specification shall be deemed approved unless a written approval is granted by the Master Association to the Owner submitting same. The Master Association shall approve or disapprove plans and specifications properly submitted within thirty (30) days of each submission. Any change or modification to an approved plan shall not be deemed approved unless a written approval is granted by the Master Association to the Owner submitting same.

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

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

(b) To require submission of three (3) complete sets of all plans and specifications for any improvement or structure of any kind requiring review and approval pursuant to this Article . The Master Association may also require submission of samples of building materials proposed for use on any Lot, and may require tree surveys to show the effect of the proposed improvements on existing tree cover, and such additional information as reasonably may be necessary for the Master Association to completely evaluate the proposed structure or improvement in accordance with this Declaration and applicable architectural criteria.



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

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

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

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

**Section 10.3 Variance.** The Developer may authorize variances from compliance with any architectural provisions of this Declaration or applicable architectural criteria when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental considerations require same. Such a variance must be evidenced by a document signed by an authorized representative of the Master 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 10.4 Limited Liability.** In connection with all reviews, acceptances, inspections, permissions, consents or required approvals as contemplated by this Article X, the Developer, and the Master Association shall not be liable to any Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the Developer or the Master Association.

## **ARTICLE XI** **PARTY WALLS**

**Section 11.1 General Rules of Law to Apply.** Each wall or fence built as a part of the Work upon the Property and placed on the dividing line between Lots is a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party



walls and liability for property damage caused by intentional, willful, or negligent acts or omissions apply.

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

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

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

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

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



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

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

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

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

12.1.1 If any Owner or other person shall violate or attempt to violate any of the covenants or restrictions herein set forth, it shall be lawful for the Association, the Master Association, the Developer or any Owner (i) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenant; or (ii) to maintain any proceeding against those so violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory injunctions requiring compliance with the provisions of this Declaration. The 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.

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

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

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



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

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

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

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

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

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

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

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

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

Section 12.5 Termination or Amendment. The covenants, restrictions, easements and other matters set forth herein shall run with the title to the Property and be binding upon each Owner,



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

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

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

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

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed under seal this 16 day of May 2003.

Signed, sealed and delivered  
in the presence of:

Beth Antzakis  
(Print Name)  
 Vicki Johnson   
 Vicki Johnson  
(Print Name)

**BRYLEN HOMES, LTD.,** a Florida limited  
partnership

By: \_\_\_\_\_

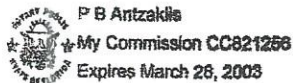
Title: \_\_\_\_\_

Bryan J. Lendry, President of  
**FIRST COAST DEVELOPMENT GROUP, INC.,**  
General Partner  
(Bryan Lendry is not a general partner)



STATE OF Florida )  
 COUNTY OF Duval )

The foregoing instrument was acknowledged before me this 16 day of May, 2003 by Brylen Lendry, the President of BRYLEN HOMES, LTD., a Florida limited partnership, on behalf of the DEVELOPMENT GROUP, INC., General Partner.



P B Antzaklis  
 (Print Name)  
 NOTARY PUBLIC, State of Florida at Large  
 Commission # \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_  
 Personally Known ✓  
 or Produced I.D. \_\_\_\_\_  
 [check one of the above]

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

Exhibit A – Property  
 Exhibit B – Common Area



**EXHIBIT A**

**Legal Description of the Property**

Lots 1 through 8, Marshall Creek DRI Village Center Unit One-Tract C-1, according to the plat thereof recorded in Map Book 45, Pages 25 and 26 of the public records of St. Johns County, Florida.



**EXHIBIT B**

**Common Area**

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



CONSENT AND JOINDER OF MORTGAGEE

**BANK OF AMERICA, N.A.** ("Mortgagee") is the holder of that certain Real Estate Mortgage ("Mortgage") recorded in Official Records Book 1937, at page 1550 of the public records of St. Johns County, Florida. Mortgagee joins in the foregoing Declaration of Covenants and Restrictions for Palencia Village Townhomes 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:

Cindy Brown  
Cindy Brown  
(Print Name)  
Karen Osborne  
Karen Osborne  
(Print Name)

**BANK OF AMERICA, N.A.**

By:

Michael Fritsch  
Senior Vice President

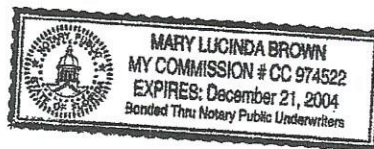


STATE OF FLORIDA       )  
                                      )ss  
COUNTY OF DUVAL     )

The foregoing instrument was acknowledged before me this 23 day of May, 2003, by Michael Fritsch, the Senior Vice President of **BANK OF AMERICA, N.A.** He is personally known to me or has produced \_\_\_\_\_ as identification.

Mary Lucinda Brown  
(Print Name)  
NOTARY PUBLIC, State of Florida at Large.  
Commission No. \_\_\_\_\_

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





CONSENT AND JOINDER OF MASTER ASSOCIATION

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

Signed, sealed and delivered in the presence of:

Geri Ressler  
GERI RESSLER  
(Print Name)  
Shannon L. Bowe  
Shannon L. Bowe  
(Print Name)

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

By:

Michael T. Harrison  
michael T. Harrison  
(Name Printed)  
Title: Senior Vice President

STATE OF Georgia )  
)ss  
COUNTY OF Cobb )

The foregoing instrument was acknowledged before me this 6 day of June, 2003, by Michael T. Harrison the Senior Vice President of PALENCIA PROPERTY OWNERS ASSOCIATION OF ST. JOHNS COUNTY, INC., a Florida non-profit corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

Margaret A. Ramirez  
(Print Name Margaret A. Ramirez)  
NOTARY PUBLIC, State of Florida at Large.  
Commission No. GA

My Commission Expires:  
Notary Public, Cobb County, Georgia  
My Commission Expires February 13, 2005

