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Public Records of
St. Johns County, FL
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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
PALENCIA RESIDENTIAL LOTS

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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**DECLARATION
OF
COVENANTS AND RESTRICTIONS
FOR
PALENCIA RESIDENTIAL LOTS**

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**. Palencia Property Owners Association, Inc., a Florida corporation not-for-profit.

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

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

Section 2.4 **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 2.5 **Limited Common Area.** The Limited Common Area of a Lot shall consist of the portion of the Property between the front Lot line and the nearest edge of the paved road surface (as it may exist from time to time) and between the rear Lot line and the nearest shore line of any lake contiguous to or within forty (40) feet of the Lot, within the area bounded by the extension of the side Lot lines, together with any portion of the Property contiguous to a Lot which, as a result of the natural configuration of the Property, is primarily of benefit to such Lot. Any question concerning the boundary of a limited common area shall be determined by the Board of Directors of the Association.

Section 2.6 **Lot.** Any platted Lot or any other parcel of real property located within the Property, on which one or more residential dwellings have been or could be constructed.

Section 2.7 **Master Covenants.** The Declaration of Covenants and Restrictions for Palencia recorded in Official Records Book ____ at page ____ of the current public records of St. Johns County, Florida, as the same may be amended from time to time.

Section 2.8 **Owner.** The record owner or owners of any Lot.

Section 2.9 **Property or Subdivision.** The real property described on the attached Exhibit A and such additions and deletions thereto as may be made in accordance with the provisions of Sections 3.2 and 3.3 of this Declaration.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION:
ADDITIONS AND DELETIONS

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

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

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

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

ARTICLE IV **EXTERIOR MAINTENANCE ASSESSMENT**

Section 4.1 **Exterior Maintenance**. The Association may provide maintenance upon any Lot or Limited Common Area requiring same, when necessary in the opinion of the Association's Board of Directors to preserve the beauty, quality, or value of any or all portions of the Property. Such maintenance shall include but not be limited to painting, roof repair and replacement, repair of gutters, downspouts, and exterior building surfaces, and yard clean-up and yard maintenance. Each affected Owner shall have five (5) days within which to perform the required maintenance after being notified in writing by the Association that such maintenance is necessary before the Association undertakes the maintenance.

Section 4.2 **Assessments of Costs**. The cost of any maintenance undertaken by the Association under the provisions of Section 4.1 shall be assessed against each Lot upon which such maintenance is performed or, in opinion of the Board, benefitting from same. Exterior maintenance assessments shall not be considered a part of the annual or special assessments imposed upon the Property pursuant to Article VI of the Master Declaration. Any exterior maintenance assessment shall be a lien upon each Lot assessed and the personal obligation of the Owner of each such Lot and shall become due and payable in all respects, together with interest, attorneys fees, and costs of collection, as provided for in Section 5.5, and shall be subordinate to mortgage liens to the extent provided by the Master Declaration.

Section 4.3 **Access.** For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after the notice to the Owner provided under Section 4.1, to enter upon any Lot at reasonable hours on any day except Sunday. In the case of emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practically affordable.

ARTICLE V
USE RESTRICTIONS AND RIGHTS AND
EASEMENTS RESERVED BY DEVELOPER

Section 5.1 **Residential Use.** The Lots subject to this Declaration may be used for residential dwellings and associated uses, and for such other purposes as may be permitted under this Section 5.1. Such Lots may be used for model homes during the development and sale of Lots within the Property or Palencia generally, and commercial uses shall be limited to those uses that are (i) permissible under the PUD (as such term is defined in the Master Covenants); and (ii) expressly authorized in writing by the Developer, in its sole discretion. No Lot shall be divided, subdivided or reduced in size without the prior written consent of the Developer. Assessments for common expenses attributable to any Lot which may be subdivided pursuant to this Section 5.1 shall be reallocated by the Developer, in its sole discretion, at the time written consent for such subdivision is given by the Developer.

Section 5.2 **Lot Coverage and Living Area.** The maximum ground area to be occupied by residential buildings and structures to be constructed upon the Lots and the minimum square footage of heated and air conditioned space within single family residences to be constructed thereon shall be as stated in the architectural criteria adopted by the Developer or the Association as applicable, pursuant to the terms of the Master Covenants.

Section 5.3 **No Detached Buildings.** No garages, tool or storage sheds, tents, trailers, tanks, temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the prior written consent of the Developer.

Section 5.4 **Setbacks.** The building setbacks applicable to the Lots and the method of measurement thereof shall be as stated in the architectural criteria adopted by the Developer or the Association, as applicable, pursuant to the terms of the Master Declaration.

Section 5.5 **Landscaping.** Landscaping shall be installed on each Lot as stated hereafter.

5.5.1 A detailed landscaping plan for each Lot and Limited Common Area appurtenant thereto must be submitted to and approved by the Developer at the time of initial construction of a residence on such Lot. All plant material shall be of Florida Grade Number One or better. Maximum utilization of existing trees and shrubs, and natural landscaping techniques shall be encouraged. Seeding with St. Augustine, Bermuda or Paspalum grass varieties only will be required on all yards. No seeding and/or sprigging shall be permitted. An underground automatic

sprinkler system of sufficient size and capacity to irrigate all sodded and landscaped areas must be installed and maintained in good working order on all Lots. All Lots and appurtenant Limited Common Areas that are not landscaped or left in a natural wooded state shall be sodded and irrigated to the paved roadway and/or lake's edge where such Lot abuts a roadway and/or lake.

5.5.2 A minimum of fifty percent (50%) of all shrub material used in landscaping each Lot shall be drought resistant or native to the Southeastern Atlantic coastal plain. Preservation of existing, native plants shall be encouraged.

5.5.3 Subsequent to approval by the Developer of landscaping plans submitted pursuant to Section 5.5.1 above, the Owner shall be obligated to complete the landscaping of his Lot and Limited Common Area in accordance with such plans and Section 5.5.1 above, within fifteen (15) days following the issuance of a Certificate of Occupancy for the residence constructed on the Lot by the Building Department of St. Johns County, Florida, or other governmental authority having jurisdiction. In the event the landscaping is not completed as provided herein, the Developer shall have the right to enter the Lot and complete said landscaping in accordance with the approved plans, in the same manner as exterior maintenance may be performed by the Association pursuant to Article V of this Declaration. The Developer shall be entitled to a lien against the Lot in an amount equal to one hundred ten percent (110%) of the cost to complete landscaping on such Lot and Limited Common Area, which sum may be collected in the same manner as assessments are collected pursuant to Article VI of the Master Declaration.

Section 5.6 **Motor Vehicles and Boats.** No boats, recreation vehicles or other motor vehicles, except four wheel passenger automobiles, shall be placed, parked or stored upon any Lot, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a building, or otherwise screened, so as to be totally isolated from public view. Commercial vehicles shall not be parked within the Property within public view on a regular basis. Construction trailers may be parked only with the prior written consent of the Developer and in an area designated by the Developer.

Section 5.7 **Nuisances.** Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to any party. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. If a dispute or question arises as to what may be or become a nuisance, the issue shall be submitted to the Association's Board of Directors, whose decision shall be dispositive of such dispute or question. No immoral, improper or unlawful use shall be made of any portion of the Property and all valid laws, zoning ordinances and regulations of governmental agencies having jurisdiction thereof shall be complied with.

Section 5.8 **Antenna.** The installation of all aerials, antennae or satellite dishes shall be subject to the approval of the Developer in accordance with architectural criteria imposed by the Developer or the Association from time to time.

Section 5.9 Lakes. Only the Developer, the Association and the CDD shall have the right to pump or otherwise remove any water from any lake adjacent to or near to the Subdivision for the purpose of irrigation or other use, or to place any refuse in such lake or lakes. The Developer, the Association and the CDD shall have the sole and absolute right (but no obligation) to control the water level of such lake or lakes and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in or on any such lake. No gas or diesel driven boat shall be permitted to be operated on any lake. Lots which now or may hereafter be adjacent to or include a portion of a lake (the "lake parcels") shall be maintained so that such grass, planting or other lateral support to prevent erosion of the embankment adjacent to the lake and the height, grade and contour of the embankment shall not be changed without the prior written consent of the Association. Further, all shoreline vegetation, including cattails and the like, shall be maintained and controlled by the Owner of any lake parcel pursuant to the requirements of Section 5.16 hereof. If the Owner of any lake parcel fails to maintain the embankment or shoreline vegetation as part of its landscape maintenance obligations in accordance with the foregoing, the Association shall have the right, but no obligation, to enter upon any such lake parcel to perform such maintenance work which may be reasonably required, all at the expense of the Owner of such lake parcel pursuant to the provisions of Article V of this Declaration. Title to any lake parcel shall not include ownership of any riparian rights associated therewith. No docks, bulkheads or other structures shall be constructed on such embankments unless and until same shall have been approved by the Developer. The Association shall have the right to adopt reasonable rules and regulations from time to time in connection with use of the surface waters of any lake adjacent to or nearby the Subdivision. The Association shall have the right to deny such use to any person who in the opinion of the Association may create or participate in the disturbance or nuisance on any part of the surface waters of any such lake. The use of the surface waters of any such lake shall be subject to rights granted to other persons pursuant to the rules and regulations of the Association.

Section 5.10 Insurance and Casualty Damages. Each Owner shall be required to obtain and maintain in force and effect a policy of fire and other casualty insurance with coverage adequate to cover the full replacement cost of the dwelling and other improvements located on the Owner's Lot. In the event of damage or destruction by fire or other casualty to the improvements on any Lot, the Owner shall commence reconstruction of the improvements within six (6) months from date of casualty and shall repair or rebuild such damaged or destroyed improvements in a good workmanlike manner, within a reasonable time not to exceed one year and in accordance with the provisions of this Declaration. The improvements shall be reconstructed in accordance with the original plans and specifications including color scheme, placement on Lot and materials. All debris must be removed immediately and the Lot shall be restored to an orderly condition within a reasonable time not to exceed sixty (60) days from the date of such damage or destruction.

Section 5.11 Trees. No tree or shrub, the trunk of which exceeds six (6) inches in diameter one (1) foot above the ground, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Developer.

Section 5.12 **Artificial Vegetation.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Developer.

Section 5.13 **Signs.** No sign of any kind shall be displayed to the public view on any Lot except as may be approved as to size and design and in accordance with criteria established by the Developer.

Section 5.14 **Lighting.** No lighting shall be permitted which alters the residential character of the Subdivision.

Section 5.15 **Animals.** Dogs shall be kept under control by each Owner at all times and leashed when outside the boundaries of the Owner's Lot. Animals shall be kept for the pleasure of Owners only and not for any commercial or breeding use or purposes. If, in the discretion of the Board, any animal shall become dangerous or an annoyance or nuisance to other Owners, or destructive of wildlife or property, such animal may not thereafter be kept on a Lot. Further, in the event any group of animals shall collectively become dangerous or an annoyance or nuisance to other Owners, or destructive to wildlife or property, the Board shall have the right to require the applicable Owner to reduce the number of animals kept on the Lot, or to take such other remedial action as the Board shall specify.

Section 5.16 **Maintenance of Lots and Limited Common Areas.** No weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Lot or Limited Common Area, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere within the Property. All Lots and all portions of the Property and any improvements placed thereon, shall at all times be maintained in a neat and attractive condition and landscaping shall be maintained in a neat, attractive and orderly manner, including maintenance of grass, plants, plant beds, trees, turf, proper irrigation and lake edge maintenance, all in a manner with such frequency as is consistent with good property management. In order to implement effective control, the Association, its agents and assigns, shall have the right to enter upon any Lot for the purpose of mowing, pruning, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of the Board distracts from the overall beauty and safety of the property in accordance with the provisions of Article V hereof. During construction upon any Lot, any and all vehicles involved in the construction or delivery of materials and supplies to the site shall enter and exit the site only over the driveway or driveway subsurface and shall not park on any roadway or any Property other than the Lot on which construction is proceeding. During construction of the dwelling or other improvements, the Owner will be required to maintain his Lot in a clean condition, providing for trash and rubbish receptacles and disposal. Construction debris shall not be permitted to remain upon any Lot.

Section 5.17 **Fences.** Except as approved by the Developer pursuant to the Master Declaration, no fence, wall or other barrier shall be constructed upon any Lot or any other portion of the Property.

Section 5.18 Maintenance of Driveways. Each Lot Owner shall be responsible for maintenance of the driveway serving his Lot.

ARTICLE VI GENERAL PROVISIONS

Section 6.1 Remedies for Violations. All of the provisions of this Declaration shall be enforceable in the manner provided by Article X of the Master Declaration, which Article is hereby incorporated by reference herein.

Section 6.2 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 6.3 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 6.4 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 6.5 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. 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.

Section 6.6 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 6.7 **Usage.** Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 6.8 **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 15 day of October 2001.

Signed, sealed and delivered in the presence of:

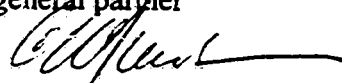

MARSHALL CREEK, LTD., a Florida limited partnership

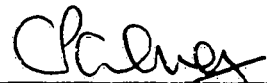
By: Hines/Marshall Creek, Ltd., a Florida limited partnership, its sole general partner


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

By: 
C. Kevin Shannahan 
Executive Vice President


Name Printed: CAROLINE PALMER

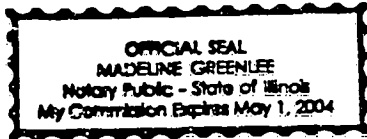

Name Printed: KAREN T. BROCK

Date: 12 October, 2001

STATE OF Illinois }

COUNTY OF Cook }

The foregoing instrument was acknowledged before me this 15 day of October, 2001, by C. Kevin Shannahan, 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 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.



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 - Property

EXHIBIT A

Legal Description of the Property

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.

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 Residential Lots 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
John R. Lamb

By: John R. Lamb
Its: 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 SR. 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: _____



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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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Exhibit A - Property

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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 DR 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

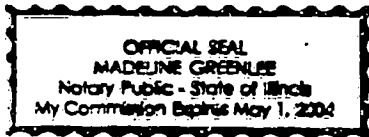
Caroline Palmer
Name Printed: CAROLINE PALMER

Loren J. Brock
Name Printed: Loren J. Brock

By: *C. Kevin Shanahan*
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
Notary Public

By: [Signature]
Its: 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 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:

