

Prepared By:
Emerson M. Lotzia, Esq.
Lawsikia J. Hodges, Esq.
Foley & Lardner LLP
1 Independent Drive, Suite 1300
Jacksonville, Florida 32202

Return To:
Wayne A. Scheiner
Village Square at Palencia, LLC
6 Fairfield Boulevard, Suite 3
Ponte Vedra Beach, Florida 32082

DECLARATION OF COMMUNITY
COVENANTS, EASEMENTS & RESTRICTIONS
FOR
VILLAGE SQUARE AT PALENCIA

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DECLARATION OF COMMUNITY
COVENANTS, EASEMENTS & RESTRICTIONS
FOR
VILLAGE SQUARE AT PALENCIA

THIS DECLARATION OF COMMUNITY COVENANTS, EASEMENTS & RESTRICTIONS FOR VILLAGE SQUARE AT PALENCIA (this "Declaration") made the 20th day of June, 2007, by VILLAGE SQUARE AT PALENCIA, LLC, a Florida limited liability company having an office at 6 Fairfield Boulevard, Suite 3, Ponte Vedra, Florida 32082 (hereinafter collectively referenced as "Declarant").

WHEREAS, the Declarant holds title to certain real property more particularly described on **Exhibit "A"** hereto (the "Land") and on which it intends to construct a multi-story mixed use building (the "Building");

WHEREAS, it is in the mutual best interest of the owner of the Commercial Parcel and the owner of the Residential Parcel (as each are respectively defined in Sections 1.9 and 1.31 hereto), to maintain and preserve the character, quality and aesthetic standards of the Building, with particular emphasis upon the exterior design, lighting and landscaping, and the lobby, entries and common halls and public areas serving or located in the Building, the roof and exterior of the Building, and the efficient operation of the Building in which the Commercial Parcel and Residential Parcel are to be located; and

WHEREAS, the Declarant desires to set forth certain rights, easements, appurtenances, interests and benefits of the owner of the Commercial Parcel and the owner of the Residential Parcel will each have relative to each other's parcels and with respect to the Commercial Parcel and the Residential Parcel; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth, the Declarant hereby declares as follows:

ARTICLE I

DEFINITIONS

Whenever used in this Declaration and the **Exhibits** hereto the following terms shall have the meanings specified below unless the context otherwise requires:

§1.1. "**Architect**" shall mean a particular architect or architectural firm, licensed to practice in the State of Florida, who shall perform the functions of Architect called for in this Declaration, including, without limitation, in Articles VIII, X and XII hereof. The practitioner or firm who shall serve as the Architect in any instance shall be determined in accordance with §11.2 hereof.

§1.2. "Air Rights" shall mean the right to use, occupy and enjoy certain areas of airspace as more particularly described elsewhere in this Declaration and the exhibits thereto.

§1.3. "Architectural Committee" means the persons or firms appointed pursuant to §9.2 hereof.

§1.4. "Assessment" means a charge against an owner and its Parcel, as more particularly described in Article IV hereof.

§1.5. "Building" means the structural improvements within the Commercial Parcel and the Residential Parcel, combined, and more particularly including a multi-story mixed-use structure.

§1.6. "Building Plans" means the plans and specifications for the Building, as such plans and specifications may be amended from time to time to reflect changes made prior, during and subsequent to the course of construction, or to reflect a permissible alteration made pursuant to this Declaration. Upon completion of the Building, the Building Plans shall be "as-built" plans.

§1.7. "Capital Improvement Assessment" means a charge against each Owner and its Parcel, representing a portion of the costs incurred by the Commercial Owner for construction, installation or replacement in the ordinary course, of any capital improvement to or for any portion of the Shared Facilities, or any repair of such an improvement amounting to a capital expenditure under generally accepted accounting principles, which, the Commercial Owner may from time to time undertake pursuant to this instrument.

§1.8. "Commercial Owner" shall mean, prior to recordation of the condominium declaration or in the event the condominium declaration is not recorded or is terminated after recordation, the owner or owners who, in the aggregate, own all of the fee simple estate of the Commercial Parcel. In the event the condominium declaration is recorded, from the date of such recordation, "Commercial Owner" shall thereafter mean, in the aggregate, the owners of the fee simple estates in all of the individual Commercial Units located in the Commercial Parcel (including the undivided interest in Commercial Parcel common elements which is appurtenant to each such Unit). Liens on the Commercial Parcel which exist or may be imposed under this Declaration are liens on the entire Commercial Parcel and all estates therein. Obligations of the Commercial Owner hereunder shall be the several obligations of all persons, corporations, partnerships, trusts or entities who comprise the Commercial Owner but only to the extent of each Unit's pro rata share of the obligation which shall be in the same percentage as the undivided interest in the Commercial Parcel common elements appurtenant to each such Unit. Acts of the board of directors or of the president of the condominium association (the "Commercial Association") on behalf of the Commercial Association provided for in the condominium declaration shall be deemed to be the act of the Commercial Owner, and the Board of such Commercial Association or the president of such Commercial Association shall act as the Commercial Owner, in any instance where the such Board or President is authorized to act for the Commercial Unit owners on the matter in question by law or by this Declaration, the condominium declaration or the articles of incorporation or bylaws of said Commercial Association.

§1.9. "Commercial Parcel" means that portion of the real property legally described in **Exhibit "C"** attached hereto, together with all improvements now or hereafter located thereon, generally including the first two (2) floors of the Building up to the lower boundary of the Residential Parcel. In the event the commercial condominium declaration is recorded in the Public Records of St. Johns County, the term shall include the Commercial Units and the undivided interests in the common elements appurtenant thereto. The terms "unit" and "common elements" as used in this definition shall have the respective meanings given to such terms in the commercial condominium declaration.

§1.10. "Common Assessment" means the charge against each Owner and its Parcel, representing a portion of the Shared Expenses, as more particularly described in §4.2 hereof.

§1.11. "Community Development District" mean the Marshall Creek Community Development District.

§1.12. "Condominium Act" means Chapter 718 of the Florida Statutes in effect on the date a Condominium Declaration for the Residential Parcel is filed in the Public Records of St. Johns County, Florida.

§1.13. "Condominium Declaration" means the Declaration of Condominium which may be recorded by Village Square at Palencia, LLC, submitting the Residential Parcel to the provisions of the Condominium Act, (also referred to herein as the "Residential Condominium Declaration" or the "Residential Declaration"); and such Declaration of Condominium which may be recorded by Village Square at Palencia, LLC, submitting the Commercial Parcel to the provisions of the Condominium Act (also referred to herein as the "Commercial Condominium Declaration" or the "Commercial Declaration"), together with all exhibits to each respective Condominium Declaration, as such Declarations and Exhibits thereto may be amended from time to time pursuant to Article XVI hereof and the terms thereof.

§1.14. "County" means St. Johns County.

§1.15. "Creditor Owner" shall mean an Owner who has paid or advanced amounts due pursuant to this Declaration for the account of a Defaulting Owner or who has performed other obligations required to be performed by this Declaration on behalf of a Defaulting Owner, as permitted under §5.2. hereof or elsewhere in this Declaration.

§1.16. "Declarant" means, collectively, Village Square at Palencia, LLC, a Florida limited liability company, and any successor, nominee or assignee of the rights and obligations of such entity under this Declaration provided that no Owner, solely by reason of his purchasing a Parcel, shall be considered a successor or assignee of such rights and obligations unless he is specifically designated as such in an instrument executed by the Declarant. Provided, however, that any party succeeding to Declarant's interest in the Commercial Parcel through foreclosure of a mortgage lien shall have the right but not the obligation to assume the rights and obligations of the Declarant, whether or not the Declarant has executed an instrument designating such lienholder as Declarant.

§1.17. "Declaration" means this instrument as it may be amended or supplemented from time to time.

§1.18. "Defaulting Owner" shall mean any Owner who is delinquent on its obligation to pay Assessments or other amounts due and payable pursuant to the terms of this Declaration or who has failed to perform other obligations required to be performed by this Declaration.

§1.19. "Insurance Trustee" means the institution appointed pursuant to §12.1 hereof.

§1.20. "Land" shall mean the land owned by Declarant on which Declarant has caused the Building to be constructed, and which is the land described in the legal description which is attached hereto as **Exhibit "A"**.

§1.21. "Maintenance" with regard to any particular component of the Building and Land, shall include the maintenance (including, but not limited to, painting and other decorating), operation, inspection (including, but not limited to, inspection for the purpose of meter reading), testing, repair, preservation, replacement and/or cleaning (including, but not limited to, dusting, washing, mopping and vacuuming) thereof, as well as any other action commonly or customarily regarded as maintenance.

§1.22. "Manager" means the Commercial Owner and shall also mean and refer to any successor manager of the Shared Facilities pursuant to any future management agreement executed by the Commercial Owner.

§1.23. "Mortgagee" shall mean any holder of a first mortgage lien on a Parcel, or on a leasehold interest in an entire Parcel, or on a Residential Unit within the Residential Parcel, or on a Commercial Unit within the Commercial Parcel which mortgage is security for a loan advanced in good faith to finance the purchase of rights in and/or construction of the Parcel, Residential Unit, or Commercial Unit in question to refinance a loan of such nature, provided that such holder shall give notice, as prescribed in §17.3, to the parties prescribed in §17.3, that it is the holder of such mortgage prior to being considered a Mortgagee for purposes hereof.

§1.24. "Occupant" means any person or entity rightly in possession of all or part of a Parcel other than the Owner.

§1.25. "Owner(s)" means the Commercial Owner(s) or the Residential Owner(s), individually and collectively, as the context shall require.

§1.26. "Parcel(s)" means the Commercial Parcel(s) or the Residential Parcel(s), individually, as the context shall require.

§1.27. "Parking Garage" shall mean the approximately 87 car parking facility constructed as part of the Building, as further depicted by the Building Plans. The Parking Garage is part of the Commercial Parcel notwithstanding this separate definition.

§1.28. "Parking Units" shall mean those separately identified parking spaces which may be created for the purpose of vehicular parking located within and comprising a portion of the Commercial Parcel.

§1.29. "Reconstruction Assessment" means a charge against an Owner and its Parcel or Unit representing a portion of the cost incurred by the Owner for reconstructing the portion of the Building in which that Owner's Parcel, is situated or for reconstructing the Shared Facilities, arising out of an event of casualty or condemnation.

§1.30. "Residential Owner" shall mean, prior to recordation of the condominium declaration or in the event the condominium declaration is not recorded or is terminated after recordation, the owner or owners who, in the aggregate, own all of the fee simple estate of the Residential Parcel. In the event the condominium declaration is recorded, from the date of such recordation, "Residential Owner" shall thereafter mean, in the aggregate, the owners of the fee simple estates in all of the individual Residential Units located in the Residential Parcel (including the undivided interest in Residential Parcel common elements which is appurtenant to each such Unit). Liens on the Residential Parcel which exist or may be imposed under this Declaration are liens on the entire Residential Parcel and all estates therein. Obligations of the Residential Owner hereunder shall be the several obligations of all persons, corporations, partnerships, trusts or entities who comprise the Residential Owner but only to the extent of each Unit's pro rata share of the obligation which shall be in the same percentage as the undivided interest in the Residential Parcel common elements appurtenant to each such Unit. Acts of the board of directors or of the president of the condominium association (the "Residential Association") on behalf of the Residential Association provided for in the condominium declaration shall be deemed to be the act of the Residential Owner, and the Board of such association or the president of such Residential Association shall act as the Residential Owner, in any instance where the such Board or President is authorized to act for the Residential Unit owners on the matter in question by law or by this Declaration, the condominium declaration or the articles of incorporation or bylaws of said Residential Association.

§1.31. "Residential Parcel" means that portion of the real property legally described in **Exhibit "B"** attached hereto, together with all improvements including the Residential Units now or hereafter created and to be located generally within the Building. In the event the residential condominium declaration is recorded in the Public Records of St. Johns County, the term shall include the Residential Units and the undivided interests in the common elements appurtenant thereto. The terms "unit" and "common elements" as used in this definition shall have the respective meanings given to such terms in the residential condominium declaration.

§1.32. "Residential Units" means the dwelling units constructed upon the Residential Parcel, and any additions or replacements thereto, more particularly described in the Building Plans.

§1.33. "Shared Expenses" means (i) the actual and estimated cost of Maintenance of the Shared Facilities (including unpaid Assessments not paid by the Owner responsible for payment); (ii) all costs of the Commercial Owner incurred in the performance of its duties under Article III hereof; (iii) the costs of any and all commonly metered utilities and other commonly

metered charges for the Shared Facilities; (iv) the costs of management and administration of the Shared Facilities, including, but not limited to, costs incurred for the services of managers, accountants, attorneys and employees; (v) costs of providing services, personnel or equipment for the Shared Facilities; costs of all utilities, cleaning, gardening and other services benefiting the Shared Facilities; (vi) costs of comprehensive general liability insurance for the Shared Facilities, workmen's compensation insurance and other insurance covering or connected with the Shared Facilities; (vii) costs of bonding the Manager and employees, officers and directors thereof; (viii) real and personal property taxes for the Shared Facilities, if any; (ix) costs of funding any reserve funds established for replacement, deferred maintenance, repair and upgrading of the Shared Facilities and personal property thereon; and (x) costs of all other items or services incurred by the Commercial Owner, respectively, for any reason whatsoever in connection with the Shared Facilities or for the benefit of the Owners or within the parameters stated in §4.2.

§1.34. "Shared Facilities" means those portions, components, features or systems of the Building which by purpose, nature, intent or function afford benefits to or serve more than one Parcel in the Building, rather than a single Parcel exclusively, including those which are declared to be Shared Facilities in this Declaration or in any Supplemental Declaration hereafter made by Declarant. Declarant hereby declares the portions of the Building described in **Exhibit "E"** attached hereto to be Shared Facilities. The Shared Facilities need not be legally described. Non-inclusion in **Exhibit "E"** of any particular portion, component, feature or system of the Building shall not prevent the same from being considered a Shared Facility if the definition of Shared Facility is otherwise satisfied by such item as determined by Declarant in its sole and absolute discretion. Ownership of any particular Shared Facility rests with the Owner of the Parcel within which such Shared Facility is located. Each Shared Facility shall be burdened with the easements which easements are set forth in Article II or elsewhere in this Declaration in favor of the Owner not owning the Parcel in which such Shared Facility is located, but each Shared Facility and such easements therein as may be created in this Declaration shall be subject to the rights, powers and duties reserved for or granted or delegated in Article II or elsewhere in this Declaration to the Declarant or the Owner of the parcel in which such Shared Facility is located.

§1.35. "Special Assessment" means a charge against an Owner and its Parcel, directly attributable to such Owner, equal to the cost incurred in connection with the enforcement of this Declaration against such Owner for failure to duly perform its obligations hereunder, and such other charges as may be provided for in §4.3.

§1.36. "Supplemental Declaration" shall mean any declaration of covenants, restrictions and easements which may be recorded by Declarant for the purpose of supplementing or amending this Declaration or for the purpose of declaring all or any portion of the Parcels within the Building as Shared Facilities, or as Units, or for the purpose of adding additional real property to the Building, either as Parcels, Shared Facilities or Units.

§1.37. "Visible Area" means any portion of the Building curtain wall, facade, terrace, pool deck, landscaping, structures, roof, or other area of the Building visible from either Parcel, from the outside of the Building, or visible to persons utilizing the rights of ingress and egress through a given Parcel, including glass enclosed areas.

ARTICLE II

PARCELS AND EASEMENTS

§2.1. Creation of Separate Parcels. Declarant, by executing and recording this instrument, does hereby declare and establish the Commercial Parcel and the Residential Parcel as separate estates in fee simple absolute. No merger of estates or interests shall be deemed to occur in any instance in which a single person or entity has right, title or interest in or an encumbrance against the Residential Parcel and the Commercial Parcel, except where legally valid and proper affirmative action is taken to create such merger.

§2.2. Residential Parcel Easements. Residential Owner shall have the following non-exclusive easements through, across, and upon the Commercial Parcel, subject to the reasonable regulation of easements provided for in §2.5:

(a) For pedestrian and vehicular ingress and egress through the areas of the Commercial Parcel intended and designated for pedestrian or vehicular use, and for pedestrian ingress and egress through the entrance, service entrance, paths, stairways, walkways, lobbies, and elevator lobby located on the first and second floors of the Commercial Parcel that are at any point in time intended and designated for pedestrian use (including those portions of the Commercial Parcel required to afford reasonable access from each Residential Unit to the public rights of way adjoining the Building as required by §718.104(4)(m) of the Condominium Act), and for the use in common with the Commercial Owner, its tenants, invitees, and agents of such facilities and areas within Commercial Parcel for the other uses for which such facilities and/or areas are normally used in a first class building, including, without limitation, parking ramps, pedestrian paths, and stairs, which facilities and areas are shown on the Building Plans.

(b) For ingress and egress through, and use of, the Building elevator shafts and those sections of the Building service core (including service and passenger elevator shafts and cabs, pit, machine room, stairways and utility lines), which serve exclusively the Residential Parcel and for access to those areas of the Building necessary for Maintenance of the ventilating, heating and air-conditioning and telecommunications equipment of the Residential Units. Said service core and elevator shafts are shown on the Building Plans.

(c) For use of the electric service vaults and the cables and conduits therein through which electric power is supplied by a public utility to the Residential and Commercial Parcels, as well as vaults, cables and conduits for cable television, telecommunications, telephone and other technological services supplied by the Commercial Owners or a third party, all as shown on the Building Plans.

(d) For use of the domestic and fire protection water service lines, sanitary and storm sewer lines, soil lines, gas lines and sewage ejector lines, including all valves, traps and clean-out appurtenant to any such line, located in the Commercial Parcel and serving the Residential Parcels, all substantially as shown on the Building Plans.

§2.3. Commercial Parcel Easements. Commercial Owner shall have the following non-exclusive easements through, across and upon the Residential Parcel, subject to the reasonable regulation of easements provided for in §2.5:

(a) For access to, ingress and egress through, and use of the service and passenger elevator shafts within the Residential Parcel, and all facilities, fixtures and equipment within the service core or elsewhere in the Residential Parcel which serve the Commercial Parcel, including mechanical and electrical equipment rooms, elevator machine room, stairways, cooling tower, and utility lines, pipes, conduits, ducts and cables, all as shown on the Building Plans.

(b) For access through the Residential Parcel for use and Maintenance of the roof of the Building.

(c) For use of the electric service vaults and the cables and conduits therein through which electric power is supplied by the public utility to the Commercial Parcel, as well as vaults, cables and conduits for cable television, telecommunications, telephone and related services, all as shown on the Building Plans.

(d) For use of the domestic and fire protection water service lines, sanitary and storm sewer lines, soil lines, gas lines and sewage ejector lines, including all valves, traps and clean-out appurtenant to any such line, located in the Residential Parcel and serving the Commercial Parcel, all substantially as shown on the Building Plans.

§2.4. General Easements. Each Owner shall have the following additional easements from any other Owner, which easements shall be used by the Grantee in common with, and not to the exclusion of, the Grantor (and in connection with any such easement, as well as in connection with any other easement granted in this Article or this Declaration, the Owner granting such easement and the Owner granted such easement, shall be referred to as the "Grantor" and the "Grantee", respectively and such grant shall extend to Grantee's successors, nominees and assigns. For purposes hereof, Grantor's Parcel shall refer to a Parcel owned by Grantor and Grantee's Parcel shall refer to a parcel owned by Grantee):

(a) For use of all plumbing, electrical, telephone, water, heating, ventilating, air cooling, gas, fire and life safety, communication, telecommunication, mail, radio, cable television, exhaust, window washing, and other piping, lines, wires, ducts, shafts, systems, facilities and equipment, and for the use of all other facilities whatsoever, shown on the Building Plans (or located in the Parcels and indicated, but not shown, on the Building Plans) as located within the Grantor's Parcel and serving or benefiting the improvements on the Grantee's Parcel or serving or benefiting any, facility with respect to which the Grantee is granted an easement under any provision of this Declaration.

(b) For use of the Shared Facilities located within Grantor's Parcel to the extent necessary to receive the benefit of the functioning of the Shared Facilities in accordance with the intended respective purpose of each particular Shared Facility.

(c) Of support in and to all structural members, footings, exterior walls, roof and foundations shown on the Building Plans as located within the Grantor's Parcel and which are necessary for support of the improvements on the Grantee's Parcel or of any facility with respect to which the Grantee is granted an easement under any provision hereof. Nothing in this Declaration shall be construed to require Commercial Owner to erect, or permit the erection of, additional columns, bearing walls or other structures on its Parcel for the support of the Residential Parcel, beyond those as shown on the Building Plans.

(d) For the continued existence of encroachments in the event that, by reason of the construction of the Building or the subsequent settling or shifting of the Building, any part of the improvements on any other Parcel encroaches or shall hereafter encroach upon any part on the Grantor's Parcel. Such easement for the continued existence of encroachments on the Grantor's Parcel shall exist only so long as all or any part of the encroachment shall remain.

(e) For Maintenance of any Shared Facility, or for any facility located within the Grantor's Parcel, for which the Grantee has Maintenance responsibility, or for which Grantee is otherwise permitted or required to perform the Maintenance.

(f) For entry upon, and for right-of-way and ingress and egress through the Grantor's Parcel, with persons, materials and equipment, to the extent reasonably necessary in the performance of the Maintenance of any facility, whether or not located within the Grantor's Parcel, for which Grantee has Maintenance responsibility, or for which Grantee is otherwise permitted or required to perform the Maintenance.

(g) For ingress and egress through the Grantor's Parcel to the extent necessitated by an emergency involving danger to life, limb or property.

§2.5. Extent of Owners' Rights and Easements. Except as expressly provided herein to the contrary, any right and easement created by §§2.2, 2.3 and 2.4 of this Article or by any other provision of this Declaration shall be subject to the following:

- (a) The right of the Commercial Owner to reasonably limit the number of guests, invitees, Occupants, and Owners using the Shared Facilities.
- (b) The right of the Commercial Owner to establish and enforce reasonable rules and regulations pertaining to the use of the Shared Facilities, including but not limited to the right to control the hours of use of the elevators, and the right to limit access to the Building to a single entrance during non-business hours.
- (c) The right of the Commercial Owner with the written approval or written assent of the Residential Owner, to borrow money for the purpose of improving the Shared Facilities and, in furtherance thereof, to mortgage, pledge or hypothecate the Shared Facilities and Assessments therefor as security for money borrowed or debts incurred, provided that the rights of the mortgagee or secured party in any such case shall be subordinate to the rights and easements of

the Owners under this Declaration, including their rights in the Shared Facilities and the Owners' use of such rights.

- (d) The right of the Declarant, and any of Declarant's affiliates, nominees, successors and assigns to the non-exclusive use of the Shared Facilities without charge, for purposes of sales, leasing, display, exhibit, access, construction, ingress and egress.
- (e) The right or duty of the Commercial Owner to reconstruct, replace or refinish any improvement upon the Shared Facilities, subject to those conditions set forth elsewhere in this Declaration.
- (f) The right or duty of the Commercial Owner to plant and replace trees, lighting, fountains, shrubs, ground cover and other vegetation upon any portion of the Shared Facilities.
- (g) The rights and easements provided elsewhere in this Declaration.
- (h) All plats, restrictions, covenants, conditions, reservations, limitations, easements and other matters of record affecting the Shared Facilities or the Building.
- (i) Any easement granted pursuant to paragraphs (a), (b), (e) and (f) of §2.4 shall be subject to such reasonable regulations as the Declarant may impose.
- (j) Notwithstanding §2.5(c), the right of either Commercial Unit Owner, or any Residential Unit Owner, or any party purchasing either Commercial Unit or any Residential Unit and becoming the owner thereof, to mortgage, pledge or hypothecate its interest in its Unit in order to finance the purchase of or the making of improvements to the Commercial Unit or Residential Unit in question, or to refinance any loan made for such purpose, without the consent of any other party, provided that the rights of any mortgagee or secured party in such case shall be subject to the rights of the Owners under this Declaration, including their rights in the Shared Facilities.

§2.6. Delegation of Use. Any Residential Unit Owner may delegate his right of enjoyment to the Shared Facilities; in the case of a Residential Unit Owner, to those members of his family and to those Occupants and guests to whom the Residential Condominium Declaration permits such Residential Unit Owner to delegate, license or lease the use of such Unit and in the case of the Commercial Owner, to their respective Occupants, tenants, invitees and licensees, subject in all cases to reasonable regulation by the Commercial Owner and further subject to the Commercial Condominium Declaration.

§2.7. Parking. Certain parking areas are located in the Parking Garage. The referenced parking areas may consist of Limited Common Elements, as same are defined in the

Commercial Condominium Declaration. Declarant shall have the right (but not the obligation), at any time and from time to time, to grant to the owners of specific Residential Units and Commercial Units assignments of the exclusive right to use one or more parking spaces in the Parking Garage. Such assignments shall be made by the Declarant by written assignment which shall only be filed in the records of the applicable condominium association and not in the Public Records of the County. Any such assignment, unless otherwise specified by Declarant, shall vest in the Residential Unit Owner, or Commercial Unit Owner as applicable to whom the assignment was made, and its successors and assigns, the exclusive right to use the space(s) assigned in accordance with the terms of the Commercial Condominium Declaration. Except as to the spaces so assigned to Residential Unit Owners, the Declarant shall retain complete and absolute discretion to control, convey, operate, license, grant and assign spaces in the Parking Garage for the use and benefit of the Commercial Parcel. All fees collected by Declarant for use of any spaces in the Parking Garage in whatever form shall belong solely to Declarant and no association or other party shall have any claim to any portion of such fees. Parking by guests of Residential and Commercial Unit Owners shall not be permitted in the Parking Garage. Guests and invitees of Residential and Commercial Unit Owners may only park in areas outside of the Building and designated for such parking. The Commercial Owner is hereby authorized and empowered to establish rules and regulations for the Parking Garage, and may make provision for the involuntary removal of any vehicle which is in violation of such rules and regulations. Each parking space assignee or user shall be liable for any damage arising from his/her acts or omissions in connection with use of a parking space. To the extent allowed by law, the Commercial Owner may suspend an Owner's right to use the parking spaces assigned it during any period in which assessments on his Parcel or Unit are delinquent, and may suspend the right of any Residential or Commercial Unit Owner to use the spaces assigned him during any period during which payments or assessments due the applicable condominium association from such Unit Owner are delinquent.

Certain of the parking spaces have adjacent to them, storage areas which, if the right to their exclusive use is assigned by Declarant in Declarant's sole discretion, will be assigned in conjunction with such adjacent parking spaces. Once so assigned, said storage area and parking space may not be separately subsequently conveyed, assigned or transferred in any manner. The specific terms governing any conveyance assignment or transfer are more specifically set forth in the Commercial Declaration.

§2.8. Waiver of Use. No Owner may exempt himself from personal liability for Assessments or release the Parcel owned by him from the Assessments, liens and charges provided for herein, by waiver of the use and enjoyment of the Shared Facilities or by abandonment of his Parcel.

§2.9. No Affirmative Obligations. The provisions of this Article II shall not be deemed to imply, or to impose, upon the Grantor of any easement provided in this Article II, any affirmative obligation touching or concerning said easements. The only affirmative obligations touching or concerning said easements imposed upon any such Grantor are those which may be specifically set forth elsewhere in this Declaration.

ARTICLE III

POWERS AND DUTIES OF COMMERCIAL OWNER

§3.1. Powers and Duties. The Commercial Owner shall have the exclusive power and duty to utilize its best efforts to:

- (a) Perform Maintenance, deferred maintenance and replacement with respect to, repair and otherwise manage the Shared Facilities in accordance with the provisions of this Declaration.
- (b) Clean or cause the Shared Facilities to be cleaned on a regular basis and to perform or cause to be performed other standard janitorial services, as to the same.
- (c) Obtain, for the benefit of the Owners for distribution through the Shared Facilities, all commonly metered water, sanitary sewage and other utility services for the Building designed for common provision and metering services, and provide for distribution through the Building, through the Shared Facilities, of all other utilities, telecommunication and other technology services as necessary, to be metered as determined in the Building Plans.
- (d) Take whatever other actions the Commercial Owner deems advisable with respect to the Shared Facilities as may be permitted hereunder or by law.
- (e) Employ or contract with a Manager (which may be an affiliate of the Declarant) to perform all or any part of the duties and responsibilities of the Commercial Owner, and delegate its powers to committees, officers and employees.

Commercial Owner shall use its good faith efforts to provide the services described above at reasonable levels comparable with practices in other similar first class commercial/residential facilities located in St. Johns County, Florida, subject to Commercial Owner's reasonable discretion, and subject to interruption due to the need to make repairs, alterations or improvements, or due to strikes or other labor disputes, fire, flood, explosion, severe weather, civil disturbances, war, acts, proceedings or regulations of any governmental authority, rationing, interruption of transportation facilities, and any cause beyond the reasonable control of Commercial Owner. The Commercial Owner shall not in any manner, use its power to unreasonably impair or restrict the use of or access to any of the Shared Facilities, any of the Residential or Commercial Units or the property of either the Residential or Commercial Condominium, by any Residential or Commercial Owner or any of their respective tenants, guests or invitees. The obligation of the Owners to pay Assessments hereunder shall not abate in the event of any interruption of service, provided that Commercial Owner shall pursue with diligence actions required to enable restoration of service. All costs and expenses incurred by

Commercial Owner in performance of this Article shall be Shared Expenses which may thus be included in Common Assessments.

ARTICLE IV

COVENANT FOR ASSESSMENTS

§4.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Parcel or other portion of the Building now or hereafter owned by Declarant hereby covenants, and each Owner of any such Parcel or Unit therein, by acceptance, of a deed therefor whether or not it is so expressed in such deed, is hereby deemed to have covenanted, to pay the Commercial Owner: (a) Common Assessments, (b) Special Assessments, (c) Capital Improvement Assessments, and (d) Reconstruction Assessments, all such Assessments to be imposed and collected as hereinafter provided.

Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge and continuing lien upon the Parcel against which the Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person or persons or entity who was or were the Owner of the Parcel at the time when the Assessment against it fell due. Subject to the provisions hereof protecting Mortgagees, any personal obligation for delinquent Assessments shall pass to the successors-in-title to the Owner of the Parcel against which the Assessments were made and in cases in which a Parcel is owned by more than one individual or entity, shall be the joint and several obligation of each and all of those individuals or entities. Notwithstanding the foregoing, (i) the owner of a Residential Unit shall be liable for Assessments against the Residential Parcel only to the extent of such Unit's pro rata share of the Assessment against the Residential Parcel which shall be in the same percentage as the undivided interest in the common elements of the Residential Parcel appurtenant to such Residential Unit, and (ii) the owner of a Commercial Unit shall be liable for Assessments against the Commercial Parcel and only to the extent of such Unit's pro rata share of the Assessments against the Commercial Parcel which shall be in the same percentages of the undivided interests in the common elements of the Commercial Parcel appurtenant to such Commercial Unit, and (iii) the partners, officers, directors, employees or shareholders of Commercial Owner shall have no personal liability for the Assessment obligations of Commercial Owner. The Commercial Owner shall deposit all monies collected as Assessments in one or more accounts, as it may elect. Assessments shall appear as a line item on the respective budgets of the Commercial and Residential Condominium and each Association shall collect such assessments and deliver them to the Declarant hereunder, or Declarant's designee.

§4.2. Common Assessments. Common Assessments shall be levied by the Commercial Owner to pay for the Shared Expenses, to fund performance by Commercial Owner of its duties under Article III and its duties under other provisions of this Declaration which are performed for the benefit of all Owners, and to improve and maintain the Shared Facilities as provided herein. Disbursements from income received as Common Assessments shall be made by the Commercial Owner for such purposes as it deems necessary for the discharge of its responsibilities herein and to reimburse the Declarant for start-up and other prepaid expenses and

deposits which it advanced which may be classified as Shared Expenses, including but not limited to, prepaid insurance premiums, utility deposits, permits and licenses.

§4.3. Special Assessments. A Special Assessment shall be levied against an Owner for the cost of any Maintenance of the Shared Facilities or Building made necessary by the willful or negligent act of such Owner or a person for whom such Owner is responsible, to the extent insurance proceeds are insufficient to cover the damage. For the purpose of this section, the Commercial Owner shall be considered to be responsible for its employees and agent; (excluding the Manager and its employees and agents), and its Occupants, lessees, licensees and invitees, and the Residential Owner shall be considered to be responsible for owners of Residential Units and their resident family members, and its and their employees, licensees, lessees, invitees and guests, and the Commercial Owner shall be considered to be responsible for owners of Commercial Units and their Occupants, Lessees, Licensees and Invitees. A Special Assessment may also be levied against an Owner for the costs of enforcement of this Declaration against such Owner, if such Owner is in default of a covenant or provision of this Declaration, and may also be levied in any other instance authorized elsewhere in this Declaration.

§4.4. Reconstruction and Capital Improvement Assessments. In addition to the Common and Special Assessments authorized above, Reconstruction Assessments and Capital Improvement Assessment may or shall be levied as hereafter provided. Reconstruction Assessments shall be levied in such circumstances, for such purposes and amounts and in such proportions as are authorized in and determined pursuant to §§8.3(a) and 10.4 hereof or generally in Articles VIII and X of this Declaration. Capital Improvement Assessments may be levied from time to time by the Commercial Owner, in any fiscal year adopted for Assessments, to be applicable for that fiscal year only, for the purpose of funding, in whole or in part, any capital improvement to the Shared Facilities or for a new improvement which satisfies the definition of a Shared Facility, provided that if in any fiscal year Commercial Owner proposes to levy Capital Improvement Assessments in excess of Twenty-Five Thousand Dollars (\$25,000.00) for the construction or installation of any fountain, waterfall, other water feature, artistic painting, sculpture, other work of art or other aesthetic improvements in the public areas of the Building, as the same may be reasonably determined by the Commercial Owner to be necessary to improve the visual appearance of the Commercial Parcel, and which satisfies the definition of a Shared Facility, then the levying of such Capital Improvement Assessment for such fiscal year shall require the consent of the Residential Owner and Commercial Owner, at a special meeting of the Commercial Owner and the Residential Owner. No action authorized in this §4.4 shall be taken without the prior written consent of the Declarant as long as the Declarant or any affiliate of the Declarant owns any Parcel. In the event Commercial Owner sells the artwork, if any, in the public area for which Residential and Commercial Owners have been assessed a Capital Improvement Assessment, the sale must be at fair market value and the Residential and Commercial Owners shall be entitled to receive a pro rata share of any sales proceeds in proportion to amounts they had contributed to the acquisition cost of said artwork. Written notice of any meeting called for the purposes of authorizing any action under this §4.4 shall be sent to all Owners not less than thirty (30) nor more than sixty (60) days in advance of such meeting, except when necessitated by an emergency as determined by the Declarant or Commercial Owner.

§4.5. Rate and Payment of Assessments. Common Assessments, Capital Improvement Assessments, Reconstruction Assessments and Special Assessments provided for in this Article IV shall be allocated and assessed among the Parcels and the Owners thereof as follows:

- (a) The above Assessments shall be allocated among the Parcels and the Owners thereof as set forth in Article XXIII hereof and in accordance with the Allocation Categories stated in **Exhibit "D"** attached hereto. It is acknowledged that at the time of recording of this Declaration, the percentage allocations among Parcels may not be available and Declarant may, by amendment to this Declaration, establish such percentage allocations in the future. Such amendment may be executed by Declarant alone, without the necessity of joinder by any Parcel Owner or other party.
- (b) The Residential Owner shall allocate an Assessment levied upon it among the owners of the Residential Units by multiplying the amount of such Assessment by the percentage ownership of common elements appurtenant to each particular Unit under the Condominium Declaration, provided that the Residential Owner may modify the formula set forth in Article XXIII and **Exhibit "D"** in order to establish an equitable system of Assessment calculation among the Residential Unit Owners.
- (c) The Commercial Owner shall allocate the Assessment levied upon it among the Owners of the Commercial Units by multiplying the amount of such Assessment by the percentage ownership of common elements appurtenant to each particular unit under the Condominium Declaration, provided, however, that Commercial Owner may modify the formula set forth in Article XXIII and **Exhibit "D"** and referenced in Paragraph (a) above, in order to account for unforeseen changes in development plans and to maintain an equitable system of Assessment allocation among Commercial Condominium Units and Parking Units.
- (d) Special Assessments shall be allocated 100% to any Owner against whom such an Assessment is levied.

Common Assessments shall be estimated annually, in accordance with §4.6, and payable in monthly or quarterly installments as the Commercial Owner may determine, one full month or quarter, as applicable, in advance, on the dates determined by Commercial Owner of which dates Commercial Owner shall inform the Owners reasonably in advance. Adjustments to the Common Assessments made necessary by changes in the Shared Expenses shall be made during a particular fiscal year or at the beginning of a next fiscal year, as the Commercial Owner determines, but until notified of how adjustments are to be handled, Owners shall continue to pay installments at the same intervals and in the same amounts as the most recent previously due installments. Capital Improvement and Reconstruction Assessments shall be due within thirty

(30) days after notice of such an Assessment is given by the Commercial Owner, or in such monthly or quarterly installments as Commercial Owner may specify. Special Assessments shall be due within thirty (30) days after notice of such an Assessment is duly given, except as may be otherwise specifically provided in this Declaration.

If any installment of any type of Assessment is not paid when due, all scheduled or pending installments of such type of Assessment for the following twelve (12) months may be accelerated and shall be due in one lump sum, to the extent allowed by law. If a certain type of Assessment or installment thereof is defaulted upon, in addition to acceleration of all installments of such type of Assessments, all other types of Assessments, or installments may be accelerated and deemed due in one lump sum. The determination whether to accelerate Assessments or installments thereof shall be made by the Commercial Owner or Creditor Owner (whichever is applicable) in the course of enforcement of defaulted obligations pursuant to §5.4.

§4.6. Accounting and Budgeting Matters. The Commercial Owner shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures for the Shared Facilities for each fiscal year, and shall cause to be distributed a copy of each such statement to each Owner and to each Mortgagee who has filed a written request for copies of the same with the Commercial Owner. At least thirty (30) days prior to the beginning of each fiscal year, the Commercial Owner shall prepare and distribute to the Owners a written, itemized estimate (budget) of the expenses to be incurred by the Commercial Owner during such year in performing its functions under this Declaration. The first annual Common Assessment shall be adjusted according to the number of months remaining in that fiscal year. The estimate may (but need not) include reasonable reserves for repairing and replacing improvements (computed by means of a formula based upon the estimated life and estimated repair and replacement costs for each improvement) and may (but need not) include reserves for contingencies (neither such reserve shall be considered a Capital Improvement or Reconstruction Assessment). Common Assessments shall be based on such budget. The Commercial Owner may at any time, amend such budget and the Common Assessments shall be amended accordingly to the extent such budget and Assessments were inadequate and additional sums are needed. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner at least thirty (30) days prior to the effective date of the change. At the end of any fiscal year all excess funds over and above the amounts used for Shared Expenses shall be retained by the Commercial Owner and used to reduce the following year's Common Assessments.

§4.7. Declarant's Guarantee. Anything to the contrary herein notwithstanding, neither the Declarant nor any affiliate of the Declarant shall be liable for any Assessments imposed upon any Parcel of which it or they are the Owners as long as the Declarant and/or affiliates of the Declarant pay all deficits in operation of the Shared Facilities above the Assessments collectible from other Owners of Parcels at a rate which has been guaranteed to such Owners, such rate to be determined by Declarant, in its sole discretion. In calculating any such deficit, only actual current expenses (other than management fees, capital expenses and reserves) shall be counted. No Assessments shall be due from the Declarant or any affiliate of the Declarant for any Parcel until a certificate of occupancy has been issued therefor.

To the extent Declarant has paid deposits or advanced other funds by it or through its affiliates, for utility services, hookup fees or similar purposes or uses, Declarant shall receive a credit and shall be entitled to be paid by the Commercial Owner and the Residential Owner in their respective shares for such deposits or advance payments.

ARTICLE V

EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE COMMERCIAL OWNER AND CREDITOR OWNER

§5.1. Imposition of Lien. A lien is hereby imposed on each Parcel (a) for enforcement by and for the benefit of the Commercial Owner, to secure payment of all Assessments now or hereafter imposed in accordance with this Declaration, and (b) for enforcement by and for the benefit of any Creditor Owner, to secure repayment to such Creditor Owner of amounts advanced by such Creditor Owner, in the manner provided in §5.2, for the account of a Defaulting Owner. Such lien shall also secure payment to the Commercial Owner or repayment to the Creditor Owner of all late charges and interest assessed on delinquent Assessments pursuant to §4.5, reimbursement for or payment of all reasonable attorneys fees and other reasonable costs incurred by the Commercial Owner or Creditor Owner in connection with the collection of claims relating to unpaid Assessments or other amounts due and/or the enforcement of the lien and payment of all amounts for subsequent Assessments, if any, the maturity of which may have been accelerated pursuant to §5.4 in the event of a default in any payment of Assessments. If all or any portion of any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment is not paid within ten (10) days after its due date, the Owner responsible therefor will be required to pay a late charge equal to ten (10%) percent of the amount unpaid. If all or any portion of any installment of an Assessment or any other amount due hereunder is not paid within thirty (30) days after it is due, the Owner responsible therefor shall owe interest on the unpaid amount from its due date at the highest lawful rate then applicable to loans of that amount.

§5.2. Creditor Owner Advances on Behalf of Defaulting Owner. If any Owner shall fail to pay Assessments or such other amounts as may be due and payable pursuant to the terms of this Declaration (including, without limitation, late charges and interest on past due Assessments), then any other Owner may pay the same, and the Defaulting Owner shall then be indebted to the Creditor Owner for such amounts, on which interest shall accrue at the rate specified in §5.1, and the Creditor Owner shall also have the lien on the Defaulting Owner's Parcel provided for in §5.1, to secure payment of such indebtedness.

§5.3. Notice of Claim of Lien. No action shall be brought to foreclose any Assessment lien herein unless at least thirty (30) days has expired following the date a Notice of Claim of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Defaulting Owner of the Parcel, and a copy thereof has been recorded by the Commercial Owner or the Creditor Owner, whichever is applicable, in the Public Records of the County. Any such Notice of Claim of Lien must recite a sufficient legal description of the Parcel liened, the record Owner or reputed Owner thereof, the amount claimed (which may include interest and penalties on the unpaid Assessment at the rates and amounts described in §5.1, reasonable attorneys fees and expenses of collection in connection with the debt secured by the lien, and late

charges), and the name and address of the claimant. Any such Notice of Claim of Lien shall be signed and acknowledged by an officer or agent of the Commercial Owner or the Creditor Owner, whichever is applicable.

§5.4. Collection of Unpaid Assessments. If any Assessment or installment thereof is not paid within thirty (30) days after its due date, the Commercial Owner or the Creditor Owner (whichever is applicable) may mail a default notice to the Defaulting Owner and simultaneously to each Mortgagee of the Defaulting Owner's Parcel or of the Units within such Parcel who has requested a copy of such default notice, and in the event that an action for lien foreclosure is contemplated, a Notice of Claim of Lien pursuant to the preceding section shall also be sent to the Defaulting Owner and Mortgagees, if any, who have requested a copy of such notice. A single notice meeting the requirements of both the default notice and the Notice of Claim of Lien may in alternative be issued, in accordance with the same schedule and to the same persons and stated in the preceding sentence. The default notice shall specify (a) the fact that one or more Assessments or installments thereof or other amounts due hereunder are delinquent, (b) the action required to cure the default, (c) a date, not less than thirty (30) days from the date the default notice is mailed to the Defaulting Owner, by which date such defaults must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Common Assessments or installments thereof becoming due in the following twelve months, and in the acceleration of all other Assessments which shall have been levied but not yet become due and payable, and may also result in the foreclosure of the lien securing unpaid amounts.

§5.5. Creditor Owner's Remedies for Non-Payment.

(a) Enforcement of Lien. The Creditor Owner may bring an action in its name to foreclose any lien on a Parcel in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid Assessments or other amounts due with interest thereon (plus the costs and expenses mentioned in §5.1 hereof) without waiving any claim of lien, provided that in either case Creditor Owner must give the Defaulting Owner at least thirty (30) days written notice of its intentions and, in the case of a foreclosure, must file a Notice of Claim of Lien in the Public Records of the County. Upon the timely curing of any default (including the payment of fees and costs secured by the Creditor Owner's lien) for which a Notice of Claim of Lien was filed, the Defaulting Owner is entitled to have a satisfaction of lien recorded upon payment to the Creditor Owner.

(b) Attorney's Fees and Other Costs of Enforcement. Reasonable attorneys' fees incurred by the Commercial Owner or Creditor Owner, whichever is applicable, incident to the collection of unpaid Assessments or other amounts due or the enforcement of any lien provided for by §5.1 (including attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Commercial Owner or Creditor Owner, whichever is applicable, or its agent for taxes and payments on account of superior liens or encumbrances that may be required to be advanced by the Commercial Owner or Creditor Owner, whichever is applicable, or its agent in order to preserve and protect its lien, shall be payable by the Defaulting Owner and secured by the lien of Commercial Owner or Creditor Owner, whichever is applicable.

§5.6. Curing of Default. Upon the timely curing of any default for which a Notice of Claim of Lien was filed by the Commercial Owner or Creditor Owner, whichever is applicable, an officer thereof shall record an appropriate Release of Lien upon payment by the Defaulting Owner of a fee, to be determined by the Commercial Owner or Creditor Owner, whichever is applicable, to cover the cost of preparing and recording the release. A certificate executed by and acknowledged by any authorized officer or agent of the Commercial Owner or Creditor Owner, whichever is applicable, stating the amount of the indebtedness secured by the lien upon any Parcel created hereunder shall be conclusive as to the amount of such indebtedness as of the date of the certificate with respect to all persons, other than the Owner of the subject Parcel, who rely on it in good faith. Such a certificate shall be furnished to any Owner upon request at a reasonable fee.

§5.7. Cumulative Remedies. The liens and the rights of foreclosure and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Commercial Owner or Creditor Owner or other Owners and their assigns may have hereunder and under law, including a suit to recover a money judgment.

§5.8. Subordination of the Lien to Mortgages. The lien to secure payment of Assessments provided for in §5.1 shall be subordinate to the lien of the first mortgage of any Mortgagee, if such lien was created in good faith and for value and was recorded prior to the date on which the Notice of Claim of Lien is recorded (a "First Mortgage"). The sale or transfer of any Parcel shall not affect the Assessment lien. However, the sale or transfer of any Parcel pursuant to foreclosure of such First Mortgage or deed in lieu thereof (if such First Mortgage was recorded prior, to the recording of a Notice of Claim of Lien) shall extinguish the lien of such Assessments as to installments which become due prior to such sale or transfer. However, no sale or transfer shall relieve such Parcel from liability for any installments of Assessments thereafter becoming due or from the lien thereof. All amounts not collected by reason of such foreclosure or deed in lieu shall be deemed a Common Assessment and shall be collectible as such from all Parcels, including the Parcel which is the subject of the foreclosure or deed in lieu thereof. Liens for Assessments under this Article V, shall be superior to liens for assessments of any Condominium Association established with respect to any Parcel in the Building.

§5.9. Each Claim Separate. Each claim of any party arising under this Declaration shall be separate and distinct, and no defense, set-off or counterclaim arising against the enforcement of any lien or other claim of any party hereto shall thereby be or become a defense, setoff or counterclaim against the enforcement of any other lien or claim.

ARTICLE VI

OPERATION AND MAINTENANCE

§6.1. Compliance with Laws and Insurance Requirements. Each Owner shall comply with all laws, rules, orders, ordinances, regulations and requirements (hereafter in this §6.1 collectively referred to as "laws" and each of which is individually referred to as a "law") now or hereafter enacted or promulgated, of the United States, the State of Florida, the County, the City, the Community Development District and of any other governmental authority or agency thereof now or hereafter having jurisdiction, and also of any recognized insurance rating

organization and of any other body or board concurrently or successively exercising similar functions, and of any other lawful authority having jurisdiction relating to the ownership, Maintenance or use of the Parcel owned by such Owner, and of any Shared Facility, within another Parcel for which such Owner has Maintenance responsibility, if noncompliance with such law would subject any other Owner to liability or criminal prosecution, or would jeopardize the full force or effect of the certificates of occupancy for the Building, or portions thereof, or would result in the imposition of a lien against the Parcel of any other Owner or would cause termination of or would increase the rate of premiums on any public liability insurance policy maintained by the Commercial Owner or on any casualty insurance policy maintained by such Owner or any other Owner. The provisions of this section shall not be deemed to relieve any Owner of the obligation to perform any Maintenance for which such Owner has the responsibility.

§6.2. Mechanic's and Other Liens. An Owner shall, within sixty (60) days after the filing of any mechanic's, materialman's or other lien, bond off or otherwise remove of record any mechanic's, materialman's or other lien affecting the Parcel of any other Owner, arising by reason of any work or materials ordered by such Owner or by reason of any act taken or suffered or omitted by such Owner. Removal of record of such lien may be accomplished by any means provided in Florida Mechanics Lien Law or a successor statute thereto.

§6.3. Disturbances. No Owner shall permit any noxious odor, noise or vibration which under the circumstances is unreasonable to emanate from the Parcel owned by such Owner (except for a noxious odor, noise or vibration caused by a Shared Facility within such Parcel for which another Owner has the Maintenance responsibility) which will damage or disturb the occupancy of any other Parcel or the enjoyment of any Shared Facility.

The Owner who is to bear the Maintenance responsibility for any Shared Facility located within another Parcel, shall utilize its best efforts to not permit and to correct any noxious odor, noise or vibration which under the circumstances is unreasonable to emanate from such Shared Facility which will damage or disturb the occupancy of the Parcel of any other Owner or the enjoyment of any Shared Facility serving any other Owner.

All activities by or on behalf of any Owner in the use and occupancy of such Owner's Parcel, including, without limitation, Maintenance shall be performed, insofar as possible, in a manner which minimizes interference with the use of any other Parcel.

§6.4. Maintenance of Parcels. Subject to §6.5, each Owner shall be responsible for the Maintenance of all portions of its Parcel as well as the fixture and equipment in its Parcel that serve only its Parcel (including but not limited to heating, ventilating and air conditioning equipment, plumbing fixtures and connections thereto, and electric panels, outlets and wiring). Each Owner shall also be responsible for the Maintenance of all facilities serving its Parcel exclusively which are located within the Parcel of another Owner.

§6.5. Maintenance of Shared Facilities. The Commercial Owner shall be responsible for the Maintenance of all portions of the Building not required to be maintained by the respective Owners. This responsibility shall specifically include Maintenance of the Shared Facilities.

§6.6. Requirements. All Maintenance in the Building shall be performed in a good workmanlike manner, by employees of the Commercial Owner or Manager, or (in the case of Maintenance which is not the responsibility of Commercial Owner, and the performance of which has not been allocated to Commercial Owner or the Manager) by licensed bonded contractors approved by Commercial Owner which contractors shall carry public liability insurance and employer liability insurance in amounts satisfactory to Commercial Owner and such worker's compensation insurance as required by law.

ARTICLE VII

INSURANCE

§7.1. Casualty Insurance. The Commercial Owner shall keep all Parcels, all facilities serving all Parcels exclusively but located outside of the boundaries of its Parcel, and all Shared Facilities within all Parcels insured against loss or damage by fire, water, lightning, windstorm, hail, explosion, riot, damage from aircraft, collapse, and smoke damage, and such other risks, casualties and hazards as may from time to time be carried by prudent owners of similar buildings in the County, with all risk, extended coverage, vandalism and malicious mischief endorsements in an amount equal to the full replacement value thereof excluding the cost of excavation and of foundations. The cost of such insurance procured by Commercial Owner shall be a Shared Expense, allocated pursuant to **Exhibit "D"** hereto.

The insurance policies shall provide that all monies for losses payable thereunder shall be paid to the Insurance Trustee provided for in §12.1. Such policies shall name as parties insured, as their interests may appear, (i) Residential Owner, (ii) Commercial Owner (iii) at the request of any Owner, the lessee or mortgagee of all or any portion of the Parcel owned by such Owner, (v) at the request of any such lessee, any holder of a leasehold mortgage which is a lien upon the lease held by such lessee; and (vi) at the request of the board of directors of the Village Square at Palencia Condominium Association or the Village Square at Palencia Non-Residential Condominium Association. At the request of any Owner, such policies shall contain standard mortgagee clauses in favor of any mortgagee of all or any portion of the Parcel owned by such Owner and/or any holder of a mortgage on a leasehold interest in all or any portion of such Parcel, as their interests may appear, provided that the cost of adding any standard mortgagee clause shall be borne by the Owner requesting such addition. Nevertheless, all monies payable under such policies shall be payable in accordance with the provisions of this Declaration. Each such policy shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy. Each such policy shall contain waivers of subrogation for the benefit of all Owners and waivers of any defense based on co-insurance or other insurance, and shall provide that such policies may not be cancelled or modified without at least thirty (30) days' prior written notice to all of the named insureds and mortgagees. Commercial Owner and any Mortgagee of the Commercial Parcel shall have the right to approve the amount of any proposed settlement of any claim under the insurance to be carried by the Commercial Owner or Residential Owner under this §7.1, and, at their election to conduct the negotiations leading to such settlement subject to the right of Commercial Owner or Residential Owner to approve any such settlement, which approval shall not be unreasonably withheld.

§7.2. Liability Insurance. The Commercial Owner shall maintain (a) comprehensive general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Shared Facilities, and on, in or about the streets, sidewalks and passage-ways adjoining the Building for which the Commercial Owner has the Maintenance responsibility, and (b) worker's compensation and employers' liability insurance to the extent required by law. Said insurance shall be in at least such amounts as from time to time are carried by prudent owners of commercial or condominium apartment buildings in the County. The expense of such general liability insurance and other coverages required by this §7.2 shall be a Shared Expense. In no event, however, shall the comprehensive general liability insurance required by clause (a) above afford protection for a combined single limit of less than One Million Dollars (\$1,000,000.00) in respect to any occurrence and of less than One Million Dollars (\$1,000,000.00) in respect to property damage, nor shall the amount of workmen's compensation and employers' liability insurance required under clause (b) above be less than the amount required by applicable laws or regulations. The policies effecting such comprehensive general liability insurance shall name as insured parties, as their interests may appear, (i) the Manager, (ii) each of the Owners, (iii) at the request of any Owner, any lessee of all or any portion of the Parcel owned by such Owner, (iv) any mortgagee in possession of any portion of the Building, (v) any leasehold mortgagee in possession of any portion of the Building demised to a lessee who is named as a party insured or additional insured, (vi) at the request of any Owner, the managing agent of the Parcel owned by such Owner; (vii) at the request of any Owner, the partners, directors, officers and/or employees of such Owner; and (viii) at the request of the board of directors of any association governing a Parcel, the directors and officers of such association. Each such policy, to the extent obtainable, shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy and each such policy shall contain waivers of subrogation (except in the case of workmen's compensation and employer's liability policies) for the benefit of all Owners, and waivers of any defense based on coinsurance or other insurance, and shall provide that such policies may not be cancelled or modified without at least thirty (30) days' prior written notice to all of the insureds and mortgagees.

§7.3. Insurance Policies. Thirty (30) days prior to the expiration of any policy of insurance from time to time maintained pursuant to §7.1, the Commercial Owner shall effect the renewal or replacement of such policy.

The form, amount and coverage, and every other matter relating to the insurance required to be maintained under this Article VII including the insurance company or broker which is to issue or place such insurance, shall be subject to review and approval by the Commercial Owner or by an insurance consultant appointed by the Commercial Owner. The fees of any such insurance consultant shall be a Shared Expense.

Thirty (30) days prior to the expiration of any policy of insurance from time to time maintained pursuant to the provisions of §§7.1 and 7.2, the Commercial Owner shall deliver copies of binders for the renewal policies to all other Owners who are required to be covered thereby to be followed within 30 days by copies of the renewal policy, or in the case of Commercial Owner, relevant pages from any blanket insurance policies which it may maintain indicating renewal of the required coverage in question under such blanket policy.

§7.4. Insurance for Condominium Unit Owners. In the event of the recording of the Condominium Declaration, the owners of the Residential Units in the Residential Parcel and the owners of the Commercial Units in the Commercial Parcel shall be permitted to carry insurance for their own benefit, provided, that all policies for such insurance shall contain waivers of subrogation for the benefit of all Owners, and, further, provided, that the liability of the carriers issuing the insurance obtained pursuant to §§7.1 and 7.2, shall not be affected or diminished by reason of any such insurance carried by the owners of the individual Residential or Commercial Units.

ARTICLE VIII

DAMAGE TO THE STRUCTURE

§8.1. Repair and Restoration.

(a) Mandatory Repair and Restoration by Residential Owner in Occurrences Involving No Damage Affecting Commercial Parcel or Shared Facilities. If any portion of the Residential Parcel is damaged by fire or other casualty and there is no damage to any facility serving the Commercial Parcel and there is no damage to any Shared Facilities, then the portion of the Residential Parcel so damaged (except for furniture, furnishings and fixtures in the Residential Units contained in the Residential Parcel) shall be repaired and restored as promptly as is reasonable by the Residential Owner in accordance with the then existing Building Plans (with such changes as are permitted by §9.1). The Residential Owner, in accordance with the provisions of this Article VIII, shall be entitled to withdraw any insurance proceeds held by the Insurance Trustee by reason of such damage, for application to the cost and expense of such repair and restoration.

(b) Mandatory Repair and Restoration by Commercial Owner in Occurrences Involving No Damage Affecting Residential Parcel or Shared Facilities. If any portion of the Commercial Parcel is damaged by fire or other casualty, and there is no damage to any facility serving the Residential Parcel or the Commercial Parcel, or to any improvements located in any Residential Units or to any Shared Facilities, then the portion of the Commercial Parcel so damaged shall be repaired and restored by the Commercial Owner in accordance with the then existing Building Plans (with such changes as are permitted by §9.1). The Commercial Owner shall, in accordance with the provisions of this Article VIII, be entitled to withdraw any insurance proceeds held by the Insurance Trustee by reason of such damage for application to the cost and expense of such repair and restoration.

(c) Mandatory Repair and Restoration of Damage Affecting More Than One Parcel and/or Shared Facilities. If any portion of the Building is damaged, and if the provisions of the preceding paragraphs of this §8.1 are not applicable, then the repair and restoration of such damage (i) to any Shared Facility, Visible Areas, facility located in one Parcel but serving another Parcel or portions of the Residential Parcel or Commercial Parcel insured under policies maintained pursuant to §7.1 hereof shall be performed by the Commercial Owner on behalf of all the Owners; (ii) to any portions of a Parcel other than those areas described in item (i) shall be performed by the Owner of the damaged Parcel. The Commercial Owner shall, in accordance with the provisions of this Article VIII be entitled to withdraw any insurance proceeds held with

regard to either Parcel by the Insurance Trustee by reason of such damage for application to the cost and expense of such repair and restoration.

(d) Self-Help. If at any time any Owner (hereinafter in this paragraph the "Non-Performing Owner") shall not be proceeding diligently with any work of repair and restoration required of it hereby, then any other Owner who would be benefited by such repair and restoration shall give written notice to the Non-Performing Owner specifying the respect in which such repair and restoration is not proceeding diligently. If, upon expiration of thirty (30) days after the giving of notice, the work of repair and restoration is not proceeding diligently, then, subject to the Non-Performing Owner's right to dispute as set forth below, the Owner giving notice may perform such repair and restoration in accordance with the then existing Building Plans (thereby releasing the Non-Performing Owner from any liability for the quality of such repair or restoration performed by said other Owner) and may take all appropriate steps to carry out the same, including, without limitation, entry onto the Parcel of any Owner to the extent necessary to perform such repair and restoration. The Owner performing such repair and restoration shall, in accordance with Article VIII, be entitled to withdraw any insurance proceeds held by the Insurance Trustee by reason of such damage, for application to the cost and expense of such repair and restoration. If at any time the Owners disagree as to whether the work of repair and restoration is proceeding diligently, then such dispute shall be settled by arbitration in accordance with Article XIV, and the Owner giving notice shall not perform such repair and restoration until the dispute shall have been settled. Any Owner who is diligently negotiating in good faith the settlement of any insurance claim under a policy held by it pursuant to Article VII, which is required to fund repair of a casualty insured by the policy in question, shall not be regarded as failing to proceed diligently with any repair or restoration required of it.

(e) Optional Repair and Restoration. Notwithstanding subsections (a) and (b) above, if any portion of a particular Parcel is damaged by fire or other casualty and there is no damage to any facility serving another Parcel, or to a Visible Area or to a Shared Facility, then the portion so damaged may be repaired and restored by the Owner of such damaged Parcel. However, such Owner shall have no obligation to cause such repair and restoration to be performed. Whether or not such Owner shall elect to perform such repair and restoration, the Owner shall be entitled to withdraw any insurance proceeds held by the Insurance Trustee by reason of such damage.

§8.2. Repair and Restoration Procedures. The plans and specifications for any repair or restoration to be performed under §8.1 shall be prepared by the Architect designated in accordance with §12.1. Unless the Owners shall otherwise agree, plans and specifications for any repair or restoration shall be developed consistent with the then existing Building Plans. The Architect shall assist the Owner responsible for performing the repair or restoration in question in obtaining bids thereof or from responsible contractors. Such contractor shall be chosen in the manner provided in Article XI hereof. The contractor shall work under the administration of the Architect and the Owner responsible under §8.1 for causing such repair and restoration to be performed. The Architect for a given repair or restoration is hereby authorized and directed to deliver such certifications and instructions as may be required by Article XII to the Insurance Trustee, from time to time as such repair and restoration progress, to obtain disbursement for application to the cost and expense of such repair and restoration of (a) the insurance proceeds and (b) any other monies for such repair or restoration, which may have been deposited with the

Insurance Trustee pursuant to §8.3. All instructions to the Insurance Trustee shall be made available by the Architect at reasonable times for inspection by any Owner who will benefit from the repair or restoration being made.

§8.3. Application of Insurance Proceeds and Other Funds to Repair and Restoration.

(a) Insufficient Insurance Proceeds. All insurance proceeds paid in connection with a casualty shall be used to their full extent to fund restoration and repair hereunder. If the cost and expense of performing any repair and restoration provided for in §8.1 shall exceed the amount of insurance proceeds paid under policies maintained by the Owners by reason of the damage being repaired and restored, then such excess cost and expense shall be borne (subject to §8.3(b)) by the Owners in proportion to the cost and expense of repairing and restoring the improvements within each of their respective Parcels. For the purpose of determining such proportions, the cost and expense of repairing and restoring any Shared Facility shall be allocated by the Architect to the Owners in the proportion which shall be determined pursuant to Article XXIII and §2 of **Exhibit "D"**. In any such instance of repair or restoration which is to be performed pursuant to §8.1, if the Architect's estimate of the cost and expense of performing such repair or restoration (or, if a fixed cost construction contract shall have been executed providing for the performance of such repair and restoration, then the fixed costs so provided for, plus all other expenses estimated by the Architect) exceeds the amount of insurance proceeds paid by reason of the damage which shall have necessitated such repair and restoration, then the Commercial Owner shall impose a Reconstruction Assessment upon each Owner for its proportionate share of the amount of such excess cost and expense which shall be borne as provided above in this §8.3(a), whereupon each Owner shall so deposit with the Insurance Trustee the amount of such Owner's Reconstruction Assessment. If any Owner (hereinafter referred to in this sentence as the "Defaulting Owner") shall fail to pay, or, as the case may be, deposit, the Defaulting Owner's Reconstruction Assessment in accordance with this paragraph, then the Defaulting Owner's obligation may be enforced and the lien on the Defaulting Owner's Parcel securing payment of Assessments may be foreclosed, in accordance with Article V hereof.

(b) Limitations on Repair or Restoration of the Residential Parcel. In the event that the Residential Condominium Declaration is recorded, and if following such recordation, a casualty occurs, and (i) the Residential Parcel is totally destroyed or Substantially Damaged, as hereinafter defined in §8.3(d), and seventy-five percent (75%) of the voting interests of the unit owners (within the meaning of the Condominium Act) in the Residential Parcel, duly and promptly resolve not to proceed with repair or restoration or (ii) the Residential Parcel is not totally Destroyed or Substantially Damaged but more than eighty percent (80%) of the voting interests of the unit owners (within the meaning of the Condominium Act) in the Residential Parcel duly and promptly elect not to pay for repair or restoration, then the Building, if the Commercial Owner so elects shall be restored as provided in §8.1, but the liability of the unit owners constituting the Residential Owner for the costs of such repair or restoration shall be limited to the extent of the proceeds of insurance maintained pursuant to §7.1 hereof. Any deficit in the funds needed to fully repair and restore the Building in the manner provided for in §8.1 which is due to such election of Residential Owner shall be compensated for by a commensurate decrease in the amount of repair and restoration to be done to the Residential Parcel, or Commercial Owner shall have the option but not the obligation to pay any such deficit.

Commercial Owner shall have the option but not the obligation to purchase the Residential Parcel pursuant to §24.1 in the event of an election by the unit owners as and for the Residential Owner under this paragraph. In the event Commercial Owner elects to make such purchase, the proceeds paid to the Insurance Trustee from the casualty insurance policies of Residential Owner and Commercial Owner shall first be utilized to fund the purchase price and closing costs of such purchase of the Residential Parcel by Commercial Owner, and any funds thereafter remaining shall be disbursed by the Insurance Trustee to the Commercial Owner, or its mortgagee(s), as their interests may appear, for utilization in the repair of the Building or for such other purposes as Commercial Owner and/or such mortgagee(s) may reasonably determine.

(c) Excess Repair and Restoration Funds. Upon completion of the repair and restoration in accordance with this Article of any damage to the Building, any insurance proceeds and any construction Assessments paid to the Insurance Trustee by reason of such damage in excess of the cost and expense of performing such repair and restoration shall be refunded to the Owners in the respective proportions by which each Owner contributed funds to the funds held by the Insurance Trustee, attributing to each Owner as its contribution the proceeds paid into the Insurance Trustee fund by the insurer under any insurance policy maintained by such Owner, plus any Reconstruction Assessment paid by such Owner for such repair and restoration.

(d) Substantial Damage. For the purpose of §8.2 and generally in this Declaration, Substantial Damage to a Parcel shall be defined as follows: (i) If greater than or equal to 50% of the replacement value of such Parcel is destroyed by such a casualty or loss occurring during the period commencing with the initial recordation of this Declaration and terminating thirty (30) years thereafter ("Initial Period"); (ii) If greater than or equal to 35% of the replacement value of such Parcel is destroyed by a casualty or loss occurring at any time during the period commencing with the end of the Initial Period and terminating ten (10) years thereafter ("Second Period"); (iii) If an amount greater than or equal to 25% of the replacement value of such Parcel is destroyed by a casualty or loss occurring at any time during the period commencing with the end of the Second Period.

§8.4. Limitations on Repair or Restoration by the Commercial Owner. In the event that any casualty or loss results in Substantial Damage to the Commercial Parcel, the Commercial Owner shall have the option not to proceed with repair or restoration of the Commercial Parcel, as well the option not to proceed with any concurrently required repairs to the Residential Parcel, notwithstanding any obligation the Commercial Owner might otherwise have to make such repairs under §8.1(b), (d) and/or (e). The Commercial Owner shall elect whether to exercise such option on or before the ninetieth (90th) day following the date such casualty or loss occurred, and shall deliver written notice to the Residential Owner, Commercial Owner and the Insurance Trustee of any election by it to exercise such option. In the event the Commercial Owner does exercise such option, the Commercial Owner shall be deemed concurrently to have exercised the option to purchase the Residential Parcel granted it under §24.1. In such event, the proceeds paid to the Insurance Trustee from the casualty insurance policies of Residential Owner on the Residential Parcel and Commercial Owner on the Commercial Parcel as a result of the casualty or loss occurrence in question shall first be utilized to fund the purchase price and closing costs of Commercial Owner's purchase of the Residential Parcel in accordance with Article XXIV, and any funds thereafter remaining shall be disbursed

by the Insurance Trustee to the Commercial Owner, or its mortgagee(s), as their interests may appear, for utilization in demolition of the Building or such other purposes as Commercial Owner and/or such mortgagee(s) may reasonably determine.

§8.5. Legal Variances. If, to perform any repair or restoration provided for in §8.1, it shall be necessary to obtain a variance, special permit or exception to or change in zoning or other laws ("Variance") in order to repair or restore the Building to its condition as described in the Building Plans immediately prior to such damage, and if the Owner responsible for carrying to such repair and restoration believes it is possible to obtain the Variance, and so notifies the other Owner in writing, then the Owners shall cooperate to obtain the Variance. If architectural and/or legal services shall be necessary to obtain the Variance, then the Owner responsible for carrying out such repair and restoration shall retain an architect and/or attorney to perform such services. The legal and architectural fees and all other costs and expenses of applying for obtaining the Variance, shall be considered as a part of the cost and expense of carrying out the repair and restoration. There shall be no obligation to commence any repair or restoration if a Variance is sought in accordance with this Section, while such Variance is being diligently sought.

If any repair or restoration to be performed pursuant to §8.1 hereof cannot be carried out in compliance with the law, and if the Variance is not obtained pursuant to the immediately preceding paragraph within six (6) months of the date of the casualty, then necessary adjustments shall be made in the plans and specifications for such repair and restoration so that the Building, as repaired and restored, shall comply with law. However, no substantial reduction in the floor area contained within the Commercial Parcel or serving the Commercial Parcel and no substantial reduction in the floor area contained within the Residential Parcel or serving the Residential Parcel, shall be made without the consent of the Owner who shall be affected by such reduction. If said Owner shall be unwilling to so consent, and if it shall not be feasible to make such adjustments without substantially reducing said floor areas, then such repair and restoration shall not be performed pursuant to §8.1. Subject to the provisions of the following paragraph, any insurance proceeds, less costs and expenses paid or incurred in applying for the Variance, shall be paid out by the Insurance Trustee to the Owners proportion to the amount such proceeds shall have been paid by the insurers for damage to improvements within the respective Parcels of each of the Owners.

If, pursuant to the immediately preceding paragraph, repair and restoration is not to be performed pursuant to §8.1, then the improvements within each Parcel shall be demolished, or repaired and restored, as the Owner of each Parcel shall elect, to such extent, if any, as may be necessary to comply with all laws, rules, orders, ordinances, regulations and requirements of any government or municipality or any agency thereof having jurisdiction. Such demolition, or repair and restoration, shall be mandatory and shall be performed by the Owner of the damaged Parcel, who shall be entitled to withdraw any insurance proceeds held by the Insurance Trustee by reason of such damage. The cost and expense of such demolition, repair and restoration shall be allocated among the Owners in proportion with the cost and expense of repairing and restoring the improvements within each of their respective Parcels, except that for the purpose of determining such proportions, the cost and expense of repairing or restoring any Shared Facility located within one Parcel alone, shall be allocated to the Owners in the proportions which shall be determined pursuant to Article XXIII. Notwithstanding the foregoing, in the event that

pursuant to this §8.3 repair or restoration is not to be performed as to a particular Parcel, the Owner of such Parcel shall not demolish Visible Areas or such portion of such Parcel which shall serve as support for the other Parcel or any portions which contain facilities or areas which serve the other Parcel unless such demolition shall be necessary to comply with applicable law or unless such Parcel is to be demolished. Also notwithstanding the foregoing, in the event that pursuant to this §8.5, (a) if repair and restoration is not to be performed as to the Residential Parcel, then Commercial Owner shall have the option but not the obligation to purchase the Residential Parcel pursuant to §24.1 and (b) if repair and restoration is not to be performed as to the Commercial Parcel the Commercial Owner shall have the option to purchase, and the Residential Owner shall have the option to require the Commercial Owner to purchase, the Residential Parcel in accordance with §24.1. In the event a purchase of the Residential Parcel or the Commercial Parcel, as the case may be, is to be made under the preceding sentence, the proceeds paid to the Insurance Trustee from the casualty insurance policies of Residential Owner or Commercial Owner, as the case may be, shall first be utilized to fund the purchase price and closing costs of such purchase of the Residential Parcel or Commercial Parcel, as the case may be, by the Commercial Owner, and any funds remaining thereafter shall be disbursed by the Insurance Trustee to the Commercial Owner, or its mortgagees, as their interests may appear, for utilization in the repair of the Building or for such other purposes as Commercial Owner and/or such mortgagee(s) may reasonably determine.

§8.6. Disputes. If any dispute shall arise pursuant to the provisions of this Article then the dispute shall be settled by arbitration in accordance with Article XIV hereof, but the arbitrators shall have no power or authority to vary the provisions of this Article VIII without the consent of each Owner.

§8.7. Amendment. Notwithstanding anything to the contrary contained elsewhere in this Declaration, in any declaration of condominium encumbering the Residential Parcel and/or the Commercial Parcel, for so long as Commercial Owner owns any unit in either of the condominiums on the foregoing parcels, no amendment of Articles VII or VIII hereof shall be effective without the written consent and joinder of the Commercial Owner.

ARTICLE IX

ALTERATIONS; ARCHITECTURAL CONTROL

§9.1. Alterations. Subject to the provisions of **Exhibit "D"** with respect to cost-sharing of Shared Facilities, to the provisions of Article XXIII, to the limitations contained in the this Article, and to the provisions of any declaration of condominium that may be recorded with respect to any Parcel, any Owner may at any time at such Owner's sole cost and expense make alterations to the improvements within such Owner's Parcel or Unit, as the case may be. In connection with such alterations the Owner may relocate any use right, including but not limited to, easement, right-of-way, or license within such Parcel granted to any other Owner pursuant to Article II, provided, however, that such alterations shall not, without such other Owner's consent, diminish the benefits afforded to such other Owner by such easement or interrupt such other Owner's use of such easement. The Residential Owner shall not alter any Shared Facility in the Residential Parcel or Commercial Parcel without the consent of the Commercial Owner. Commercial Owner agrees that no alteration to the lobby, entries, public areas or elevators

serving the Residential Parcel, shall be made without Residential Owner's consent, which consent shall not be unreasonably withheld or delayed provided that the alteration shall be consistent with the character and quality of a first class commercial/residential building. Residential Owner agrees that it shall not make, nor permit to be made any alteration of the Residential Parcel or the units therein which shall necessitate the erection of additional columns, bearing walls, or other structures upon the Commercial Parcel for the support of the Residential Parcel. Residential Owner and Commercial Owner further agree that no alteration to the Visible Areas of the Building shall be made without the consent of both of them.

If at any time any Owner proposes to make any such alterations, and if such alterations will change the location of, reduce the area of, or otherwise affect, any use right, including, but not limited to easement, right-of-way or license granted to another Owner pursuant to Article II, or such alteration is of the type for which the consent of the other Owner is required under the preceding paragraph, then, before commencing such alterations, the Owner who proposes to make such alterations shall give to such other Owners a copy of the plans and specifications showing the proposed alterations. If such other Owners shall not, within thirty (30) days after delivery of said plans and specifications, give the Owner who proposes to make such alterations a written notice objecting to the proposed alterations, then, subject to the other restrictions set forth in this Article, the proposed alterations may be made by the Owner who proposes same, provided that alterations actually made are shown on the plans and specifications furnished to such other Owner. If the other Owner shall give a written notice objecting to the proposed alterations, and if the Owner who proposes to make such alterations and the other Owner objecting thereto do not resolve their differences within fifteen (15) days after the giving of such notice, then the Owner who proposes to make such alterations shall not commence the same until the dispute has been settled by arbitration in accordance with Article XIV.

Any Owner making alterations shall comply with all laws, rules, orders, ordinances, regulations and requirements of any government or municipality or any agency thereof having jurisdiction and shall, within thirty (30) days after demand by any other Owner, discharge, by the filing of a bond or otherwise, any mechanic's, materialman's or other lien asserted against the Parcel of such other Owner by reason of the making of such alterations. Any Owner making an alteration shall provide to the Commercial Owner a complete set of as-built plans with respect to the work performed within thirty (30) days of substantial completion of said work. For purposes hereof, "substantial completion" shall be determined in accordance with the applicable building or land use code of the County. An Owner shall, to the extent reasonably practicable, make alterations in such a manner as to minimize any noise or vibration or odor which would disturb an occupant or occupants of a Parcel owned by any other Owner.

Any such alterations shall be made at the cost of the Owner performing the same; provided, however, if the same are performed by the Commercial Owner to a Shared Facility or as a capital improvement to the Building as a whole, then such alterations shall be paid for through Common Assessments or a Capital Improvement Assessment, as may be applicable.

Upon completion of any alteration pursuant to this §9.1, the Building Plans shall be amended to reflect such alteration "as-built".

§9.2. Composition. An Architectural Committee shall be formed by the Declarant and shall consist of five (5) members, who initially shall be persons designated by the Declarant (hereinafter, the "Architectural Committee"). Each of those persons shall hold office until Declarant no longer owns any portion of the Residential Parcel (or sooner at the Declarant's option) unless the Declarant removes him and replaces him with a new appointee before that time. Thereafter, three (3) members of the Architectural Committee shall be appointed by the Commercial Owner, one (1) member by the Declarant, and one (1) member by the Residential Owner. The president of the residential condominium association shall be the member for the Residential Parcel when no appointment otherwise has been made by the Residential Owner. The president of the commercial condominium association shall be one of the members for the Commercial Owner when no appointment otherwise has been made by the Commercial Owner. Each member shall hold office until such time as he resigns or is removed, as provided herein. Members of the Architectural Committee appointed by an Owner may be removed by such Owner at any time without cause.

§9.3. Review of Proposed Construction. Subject to §9.10 and such rights of approval granted in §9.1 or elsewhere in this Declaration, and subject to requirements if any, for approval by the Palencia Property Owners Association (the "POA") pursuant to that certain Declaration of Covenants and Restrictions for Palencia dated October 15, 2001 and recorded in Official Records Book 1666, Page 803 of the Public Records of St. Johns County, as amended, modified or supplemented, (the "POA Declaration"), no improvement or alteration as provided for in this Article, or reconstruction, repair, demolition or the like as provided for in Articles VIII and X, (including landscaping) shall be performed, erected or installed on or in the Building, nor any subdivision, platting or replatting of any Parcel shall be made, unless and until, in any such case, the plans drawn to scale and specifications showing the nature, kind, shape, height, size, aesthetics, materials and location of the same have been submitted to, and approved in writing, by the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it considers that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance and functionality of the Building as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Architectural Committee may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The Architectural Committee may require such detail in plans and specifications submitted for its review as it considers proper, including, without limitation, floor plans, surveys, elevation drawings and descriptions or samples of materials and colors. Until receipt by it of required plans and specifications and other requested information as necessary, the Architectural Committee may postpone review of any proposal submitted for approval. The Architectural Committee shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and a proposal that is not rejected within such thirty (30) day period shall be deemed approved. Notwithstanding any provisions in this Article IX to the contrary, the approval of the Architectural Committee shall not be required for any additions, changes or alterations if the additions, changes or alterations are not in a Visible Area or a Shared Facility or do not affect the structural integrity of the Building.

§9.4. Meetings of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate a representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of Variances pursuant to §9.9. In the absence of such a designation, the vote of any three (3) members of the Architectural Committee, after at least seven days' prior notice of a vote to all members, shall constitute an act of the Architectural Committee. After Declarant no longer owns any of the Residential Parcel, one of the members of the committee appointed by the Commercial Owner shall be designated to receive notice of alterations, and to schedule and give notice to the members of Committee meetings and votes.

§9.5. No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

§9.6. Compensation of Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than, reimbursement for third party expenses incurred by them on behalf of the Architectural Committee in the performance of their duties hereunder. The Architectural Committee may retain an architect or engineer to advise it in its deliberations, to review plans and specifications submitted and to inspect work for which approval is required. The Architectural Committee may impose a fee upon an Applicant/Owner to defray the costs and fees of the architect or engineer in reviewing the Applicant's plans and specifications and inspecting the work.

§9.7. Inspection of Work. The inspection of work and correction of defects therein, if any, shall proceed as follows:

- (a) Notice of Completion. Upon the completion of any work for which approved plans are required under this Article, the applicant (who may be an Owner or an appropriate condominium association) for such approval ("Applicant") shall give the Architectural Committee written notice of the completion.
- (b) Inspection. Within thirty (30) days thereafter, the Architectural Committee or its authorized representative may inspect the work. If the Architectural Committee finds that the work was not done in substantial compliance with the approved plans, it shall notify the Applicant in writing of the noncompliance within thirty (30) days thereafter, specifying the particulars of noncompliance.
- (c) Non-Compliance. Any Applicant who receives notice of a non-compliance as provided in §9.7(b) of this Article shall remedy the noncompliance within thirty (30) days of being notified, and, if he

fails to, the Architectural Committee shall notify the Owners in writing of the failure, its nature and the estimated cost of correcting or removing it. If the Applicant does not comply within said thirty (30) days, then any Owner at its option, may either remove the non-complying improvement or remedy the non-compliance, and in either case the Applicant shall reimburse the such Owner, upon demand, for all expenses incurred in connection with such Owner's action. If the Applicant fails to promptly reimburse such Owner its expenses, such Owner shall levy a Special Assessment against the Applicant and its Parcel for reimbursement.

- (d) Effect of Committee's Failure to Notify Applicant. If for any reason the Architectural Committee fails to notify the Applicant of any non-compliance within thirty (30) days after its receipt of a written notice of completion from the Applicant, the Improvements shall be deemed to be in accordance with the plans approved by the Architectural Committee.

§9.8. Non-Liability of Committee Members. Neither the Architectural Committee, any of its members, nor its authorized representative, shall be liable to any condominium association, any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties' hereunder, unless the loss, damage or injury is due to the willful misconduct or bad faith of one of its members (in which case only the culpable member shall have any liability). The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition on the basis of aesthetic considerations and the overall benefit or detriment which would result to the Building. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, landscaping, color schemes, finishes and materials and similar features. It shall not, however, be responsible for reviewing any plan or design from the standpoint of structural safety or conformance with building or other codes.

§9.9. Variances. The Architectural Committee may authorize a Variance from compliance with any of the architectural provisions of this Declaration when circumstances such as natural obstructions, hardship, or aesthetic or environmental considerations dictate a Variance. Any such Variance must be evidenced in a writing signed by at least two (2) members of the Architectural Committee. No violation of the Declaration shall be deemed to have occurred with respect to a matter for which the Variance was granted. The granting of such a Variance shall not, however, operate to waive any of the restrictions in this Declaration for any purpose except as to the particular Parcel and particular provisions hereof covered by the Variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Parcel covered by the Variance, including, but not limited to, zoning ordinances and set-back lines or requirements imposed by any governmental or municipal authority, nor the Owner's obligation to seek approval by another Owner as set forth in §9.1.

§9.10. Declarant's Exemption. The provisions of this Article IX shall not apply to the Declarant and to any and all construction, alterations, additions or other work planned or performed by Declarant or any affiliate of the Declarant.

ARTICLE X

CONDEMNATION

§10.1. Payment to Insurance Trustee. Any awards for damage, direct and consequential, resulting from the taking, other than a temporary taking, by the exercise of the power of eminent domain, by any sovereign, municipality or other public or private authority, of all or any part of the Building or the easements or other appurtenances thereto shall be paid to the Insurance Trustee provided for in §12.1.

§10.2. Allocation of Awards. The awards received by the Insurance Trustee pursuant to §10.1 shall be allocated by the Architect among the Owners in that proportion which the damage to each Owner's Parcel and to all easements and other appurtenances thereto shall bear to the damage to all of the Parcels and the easements and other appurtenances thereto, taking into account the allocation provided for in Article XXIII and **Exhibit "D"**, and the award shall be distributed by the Insurance Trustee to the respective Owners (or to any lessee or mortgagee to whom any Owner's rights to such award are assigned pursuant to §17.3) in accordance with such allocation, subject, however, to the provisions of §§10.4 and 10.5. If the damages to each Owner's Parcel and the easements and other appurtenances thereto shall have been determined by a court of law or equity in connection with the taking proceeding, then, subject to any right of appeal, such determination shall be conclusive as to the proportions of the total award to be allocated to each of the Owners pursuant to this §10.2, in lieu of application of the preceding sentence. Notwithstanding the foregoing, all condemnation proceeds allocated to either Owner shall first be paid to the Insurance Trustee, for utilization pursuant to §10.4 in funding repair and restoration, and if §§10.3 and 10.4 shall control the timing and amount of any subsequent distribution to the Owners.

§10.3. Repair and Restoration Following Condemnation. If the taking authority shall take a portion of the improvements within only one Parcel and if such taking does not include any facilities within such Parcel which serve or benefit the Owner of another Parcel or any Shared Facilities, then, subject to the provisions of §10.5, the repair and restoration of such improvements shall be performed by the Owner of such improvements, and such Owner shall be entitled to withdraw, for application to the cost of said repair and restoration, in accordance with the provisions of Article VIII, that portion (which may be 100%) of any condemnation award or awards paid to the Insurance Trustee by reason of such taking which shall have been allocated to the Owner of such improvements pursuant to §10.2.

In the event of a taking, if the provisions of the preceding paragraph shall not be applicable, then, subject to the provisions of §10.5, the repair and restoration of any damage to the Building occasioned by such taking shall be performed by the Commercial Owner on behalf of all of the Owners. The plans and specifications for such repairs ,and restoration shall be prepared by the Architect. Such plans and specifications shall provide for such changes in the Building as shall be required by reason of such taking. After completing the preparation of such

plans and specifications, the Architect shall furnish to each Owner a set of such plans and specifications, and shall assist the Commercial Owner in obtaining bids for such repair and restoration from responsible contractors. On the basis of such bids the Architect shall furnish each Owner with an estimate of the portions of the cost and expense of such repair and restoration which are to be borne by each of the Owners, respectively, in accordance with the allocation provided for in §10.4. Such contractor shall be selected in the manner provided in Article XI hereof. The contractor shall work under the administration of the Architect and Commercial Owner. The Commercial Owner is hereby authorized, empowered and directed to instruct the Insurance Trustee from time to time as such repair and restoration progress, to disburse in accordance with the Architects certificate issued pursuant to §12.2 the condemnation award or awards paid to the Insurance Trustee pursuant to §10.1 by reason of the taking and any other moneys deposited with the Insurance Trustee pursuant to §10.4, for application to the cost and expense of such repair and restoration. Each such instruction given by the Commercial Owner to the Insurance Trustee to disburse funds for such cost and expense shall be accompanied by a statement of the Architect setting forth the portion of such cost and expense which is to be borne by each of the respective Owner's pursuant to the allocation provided for in §10.4. The Insurance Trustee shall charge each Owner's portion of such cost and expense against the portion of the condemnation award or awards allocated to such Owner pursuant to §10.2.

§10.4. Allocation of Costs of Repair and Restoration. All condemnation awards paid to the Insurance Trustee shall first be used to fund all repair and restoration to be performed under §10.3. To the extent the condemnation awards paid into the Insurance Trustee are insufficient to fully fund any repair and restoration to be performed under §10.3, or if there are no such awards, the cost and expense of performing the repair and restoration provided for in §10.3 shall be borne by the respective Owners in that proportion which the cost and expense of repairing and restoring the improvements within the Parcel of each Owner, respectively, shall bear to the entire cost and expense of such repair and restoration, except that the cost and expense of repairing and restoring any Shared Facility located within the Parcel shall be allocated to the Owners pursuant to Article XXIII.

If the condemnation awards paid to the Insurance Trustee exceed 120% of the estimate of the cost of the repair and restoration determined by the Architect pursuant to §10.3, then the Insurance Trustee shall distribute to the Owners, in advance of performance of restoration and repair, and surplus awards in excess of 120% of the estimated cost of repair and restoration, such surplus to be distributed to the Owner in the respective proportions determined under §10.2 to be their respective shares of the condemnation awards. The sum retained by the Insurance Trustee shall be held and disbursed in accordance herewith to fund restoration and repair. If the cost of repair and restoration as determined by the Architect exceeds the amount of the condemnation awards paid to the Insurance Trustee, then a Reconstruction Assessment shall be payable by the Owners for the difference, which amount shall be deposited with the Insurance Trustee, the proportionate responsibility of each Owner for such amount being determined as provided in the second sentence of the first paragraph of this §10.4. If any Owner (the "Defaulting Owner") shall fail to pay the Defaulting Owner's Reconstruction Assessment in accordance with this paragraph, then the Defaulting Owner's obligation may be enforced and the lien on the Defaulting Owner's Parcel securing payment of the Assessment may be foreclosed, in accordance with Article V hereof.

Upon completion of any repair and restoration of the Building in accordance with this Article, any condemnation awards and Reconstruction Assessments paid to the Insurance Trustee which remain after payment of the cost and expense of performing such repair and restoration shall be refunded to the Owners in the respective proportions by which each Owner contributed funds to the funds held by the Insurance Trustee, attributing to each Owner as its contribution any condemnation award amount paid into the Insurance Trustee fund and allocated to such Owner under §10.2, plus any Reconstruction Assessment paid by such Owner for such repair and restoration.

§10.5. Limitations on Repair or Restoration of Residential Parcel and Commercial Parcel.

(a) In the event that the Residential Condominium Declaration is recorded, and if following such recording, a Condemnation occurs, and (a) there is a total condemnation or Substantial Taking, as hereinafter defined in §10.6(d), of the Residential Parcel and seventy-five percent (75%) of the voting interests of the unit owners (within the meaning of the Condominium Act), duly and promptly resolve not to proceed with repair or restoration or (b) there is no Substantial Taking of the Residential Parcel, but more than eighty percent (80%) of the voting interests of the unit owners (within the meaning of the Condominium Act) duly and promptly elect not to pay for repair or restoration, then the Building, if the Commercial Owner so elects shall be restored as provided in §10.3, but the liability of the unit owners constituting the Residential Owner or the costs of such repair or restoration shall be limited to the extent of the proceeds of condemnation for the Residential Parcel pursuant to §10.2 hereof. Any deficit in the funds needed to repair and restore the Building in the manner provided for in §10.3 which is due to such election of Residential Owner shall be compensated for by a commensurate decrease in the amount of repair and restoration to be done to the Residential Parcel, or the Commercial Owner shall have the option but not the obligation to pay any such deficit. Commercial Owner shall have the option but not the obligation to purchase the Residential Parcel pursuant to §24.1 in the event of an election by the unit owners as and for the Residential Owner under this paragraph. In the event Commercial Owner elects to make such purchase, the proceeds paid to the Insurance Trustee from the proceeds of condemnation of the Residential Parcel shall first be utilized to fund the purchase price and closing costs of such purchase of the Residential Parcel by Commercial Owner, and any funds thereafter remaining shall be disbursed by the Insurance Trustee to the Commercial Owner, or its mortgagee(s), as their interests may appear, for utilization in the repair of the Building or for such other purposes as Commercial Owner and/or such mortgagee(s) may reasonably determine.

(b) In the event that the Commercial Condominium Declaration is recorded, and if following such recording, a Condemnation occurs, and (a) there is a total condemnation or Substantial Taking, as hereinafter defined in §10.6(d), of the Commercial Parcel and seventy-five percent (75%) of the voting interests of the unit owners (within the meaning of the Condominium Act), duly and promptly resolve not to proceed with repair or restoration or (b) there is no Substantial Taking of the Commercial Parcel, but more than eighty percent (80%) of the voting interests of the unit owners (within the meaning of the Condominium Act) duly and promptly elect not to pay for repair or restoration, then the Building, if the Commercial Owner so elects shall be restored as provided in §10.3, but the liability of the unit owners constituting the Commercial Owner or the costs of such repair or restoration shall be limited to the extent of the

proceeds of condemnation for the Commercial Parcel pursuant to §10.2 hereof. Any deficit in the funds needed to repair and restore the Building in the manner provided for in §10.3 which is due to such election of Commercial Owner shall be compensated for by a commensurate decrease in the amount of repair and restoration to be done to the Commercial Parcel, or the Commercial Owner shall have the option but not the obligation to pay any such deficit. Commercial Owner shall have the option but not the obligation to purchase the Commercial Parcel pursuant to §24.1 in the event of an election by the unit owners as and for the Commercial Owner under this paragraph. In the event Commercial Owner elects to make such purchase, the proceeds paid to the Insurance Trustee from the proceeds of condemnation of the Commercial Parcel shall first be utilized to fund the purchase price and closing costs of such purchase of the Commercial Parcel by Commercial Owner, and any funds thereafter remaining shall be disbursed by the Insurance Trustee to the Commercial Owner, or its mortgagee(s), as their interests may appear, for utilization in the repair of the Building or for such other purposes as Commercial Owner and/or such mortgagee(s) may reasonably determine.

§10.6. Substantial Taking. For the purpose of §10.5 and generally in this Declaration, Substantial Taking of a Parcel shall be defined as follows: (i) If greater than or equal to 50% of the replacement value of such Parcel is destroyed by such a condemnation occurring during the period commencing with the initial recordation of this Declaration and terminating thirty (30) years thereafter ("Initial Period"); (ii) If greater than or equal to 35% of the replacement value of such Parcel is destroyed by a condemnation occurring at any time during the period commencing with the end of the Initial Period and terminating ten (10) years thereafter ("Second Period"); (iii) If an amount greater than or equal to 25% of the replacement value of such Parcel is destroyed by a condemnation occurring at any time during the period commencing with the end of the Second Period.

§10.7. Temporary Taking. In the event of a taking of the temporary use of any space, the respective Owners shall be entitled to receive directly from the taking authority any award or awards for such taking of space within their respective Parcels or within any easement or appurtenance, according to the law then applicable.

§10.8. Disputes. If any dispute shall arise pursuant to this Article X, such dispute shall be settled by arbitration in accordance with Article XIV, but the arbitrators shall have no power or authority to vary the provisions of this Article X without the consent of each Owner.

ARTICLE XI

SELECTION OF CONTRACTORS OR THE ARCHITECT, ENGINEERS

§11.1. Selection of Contractors. When any repair, restoration, reconstruction, demolition, removal of debris or filling required to be performed pursuant to §8.1 or §10.3 is to be funded with funds attributable to the insurance policies, condemnation awards and/or Reconstruction Assessments of a single Owner, such Owner may choose the contractor who shall perform such work, provided that the Architectural Committee shall have the right to approve any such contractor chosen by Residential Owner or Commercial Owner, as the case may be, which approval shall not be unreasonably withheld or delayed. In each event wherein a contractor is needed to perform any repair, restoration, demolition, removal of debris or filling

required to be performed pursuant to §8.1 or §10.3, and such work is to be funded under the terms of this Declaration with funds attributable to the insurance policies, condemnation awards and/or Reconstruction Assessment of more than one Owner, then the Commercial Owner shall invite all of the contractors nominated by itself and by the Residential Owner to submit bids for the work to be performed. The Residential Owner may nominate more than one, but not more than two, contractors. The terms of bidding shall require that all bids be for either a fixed cost or a guaranteed maximum price and submitted at a particular place or places by a specified time and date. The Commercial Owner shall allow the contractors a reasonable time, following the announcement of the invitation to bid, to review any plans and specifications and to prepare estimates. The conditions of bidding shall require, unless such requirement is waived by the Commercial Owner, that the successful contractor post a performance bond and a labor and material payment bond, issued by a company authorized to engage in the business of issuing such bonds in the State of Florida, in an amount equal to the amount of such contract. The bond shall name the Commercial Owner and any such condominium association, and the holder or holders of the first mortgage upon each Parcel or upon the leasehold interest of such lessee, as joint and individual obligees, shall provide that all amounts which may be payable to the obligees thereunder shall be paid to the Insurance Trustee, and shall be conditioned on the completion of and payment for the work to be performed. Unless any such condominium association on whose behalf such work is to be performed otherwise instructs the Commercial Owner in writing, the Commercial Owner shall select the lowest bidding responsive and responsible contractor, and shall, in the name of and for the account of the Owners to be benefited by the work to be performed, enter into a construction contract with such contractor providing for the completion of and payment for such work. In lieu of the foregoing bidding procedure, the Owners, in any contractor selection in which they are jointly interested, may at their option designate, without pursuing such procedure, such contractor as they may mutually agree upon.

§11.2. Selection of the Architect. The Architect, Dennis M. Williams, P.C., or such other Architect selected by Commercial Owner or Declarant, shall be the preparer of the Building Plans, unless, either due to the aforementioned firm no longer being in practice or to a choice not to utilize such firm by persons herein empowered to make such choice, another practitioner or firm is chosen as hereafter provided. In all instances where no affirmative action to the contrary is taken by persons so authorized as hereafter provided in this §11.2, the Architect shall be as specified in the preceding sentence. The Commercial Owner shall have the power to appoint an Architect for purposes of any repair, restoration reconstruction, and the like, under this Declaration concerning only the Commercial Parcel or a Shared Facility. The Residential Owner shall have the power to appoint an Architect for purposes of any repair, restoration reconstruction, and the like, under this Declaration concerning only the Residential Parcel provided that no Shared Facility shall be a part of any such repair, restoration or reconstruction. In all other cases of repair or restoration, the Commercial Owner shall have the right to select an Architect, and shall give written notice of such choice to the Residential Owner, who shall then have a period of ten (10) days from the receipt of such notice to indicate whether it consents to the selection of such Architect, which consent shall not be unreasonably withheld. If Residential Owner does not respond within such ten days, it shall be deemed to have consented to the appointment of such Architect.

ARTICLE XII

DISBURSEMENT OF FUNDS BY INSURANCE TRUSTEE

§12.1. Insurance Trustee. The Insurance Trustee shall be a bank or trust company authorized to do business in the State of Florida. The bank or trust company named by the Commercial Owner in a written notice given to the other Owner or Owners, shall act as Insurance Trustee. The Insurance Trustee may retain free of trust, from the monies held by it, the Insurance Trustee's reasonable fees and expenses for acting as Insurance Trustee.

The Insurance Trustee shall have no obligation to pay interest on any monies held by it unless the Insurance Trustee shall have given an express written undertaking by Commercial Owner to do so. However, if the monies on deposit are not held in an interest bearing account pursuant to agreement among the Insurance Trustee and the Commercial Owner, then the Insurance Trustee, within thirty (30) days after request from any Owner given to the Insurance Trustee and to the other Owners, shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and of the most practicable maturities, not in excess of one year, except insofar as it would, in the good faith judgment of the Insurance Trustee, be impracticable to invest in such securities by reason of any disbursement of such monies which the Insurance Trustee expects to make shortly thereafter, and the Insurance Trustee shall hold such securities in trust hereunder. Any interest paid or received by the Insurance Trustee on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Insurance Trustee. Unless the Insurance Trustee shall have undertaken to pay interest thereon, monies received by the Insurance Trustee pursuant to any of the provisions of this Declaration shall not be mingled with the Insurance Trustee's own funds and shall be held by the Insurance Trustee in trust for the use and purposes herein provided.

The Insurance Trustee shall have the authority and duty to disburse funds held by it pursuant to this Declaration in the manner, to the persons, and at the times provided in this Declaration. The Insurance Trustee shall not be liable or accountable for any action taken or suffered by the Insurance Trustee, or for any disbursement of monies by the Insurance Trustee, in good faith in reliance on advice of legal counsel. The Insurance Trustee shall have no affirmative obligation to make a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award, unless the Insurance Trustee shall have given an express written undertaking to do so, which shall otherwise be the obligation of the Owners.

The Insurance Trustee may rely conclusively on any Architect's certificate furnished to the Insurance Trustee in accordance with the provisions of §12.2 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate.

§12.2. Architect's Certificate. In any instance when, pursuant to any provision of this Declaration, the Insurance Trustee shall be required to disburse insurance proceeds, condemnation awards or other funds for application to the cost of repair, restoration and/or demolition, the Insurance Trustee shall not be required to make disbursements more often than at thirty (30) day intervals, and each request for disbursement shall be made in writing at least five

(5) days in advance. Each request for disbursement shall be accompanied by a certificate of the Architect, dated not more than ten (10) days prior to the request for disbursement, setting forth the following:

- (i) That the sum then requested to be disbursed either has been paid by or on behalf of an Owner or Owners (in which case the certificate shall name such Owner or Owners) or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished, or agreed to render or furnish, certain services, equipment, and materials and the principal subdivisions or categories thereof and that respective amounts so paid or due to each person in respect thereof and stating the progress of the work up to the date of the certificate;
- (ii) That the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the work actually accomplished up to the date of such certificate plus the cost of materials supplied and actually stored on-site (which materials shall be adequately insured against fire, theft and other casualties for the benefit of all Owners);
- (iii) That no part of the cost of the services and materials described in the foregoing paragraph (i) which is being counted as a basis for the then pending application has been the basis of the withdrawal of any funds in any previous application; and
- (iv) That following the making of the requested advance, the funds remaining with the Insurance Trustee shall be sufficient to complete the repair and restoration based upon the Architect's estimate of such cost to complete.

Upon compliance with the foregoing provisions of this §12.2, the Insurance Trustee shall, out of the moneys held by the insurance Trustee, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate the respective amounts stated in the certificate to be due them.

§12.3. No Reliance by Contractors. No contractor, subcontractor, mechanic, materialman, laborers or any other person whatsoever, other than the Owners and any mortgagee or lessee to whom an Owner's rights shall have been assigned as permitted in §17.3, shall have any interest in or rights to or lien upon any funds held by the Insurance Trustee. The Owners and pursuant to such assignment any such mortgagees and lessees by agreement among themselves, may at any time provide for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, mechanic, materialman, laborer or any other person whatsoever. If at any time the Owners, and such mortgagees and lessees, if any, shall jointly instruct the Insurance Trustee with regard to the disbursement of any funds held by the Insurance Trustee, then the Insurance Trustee shall disburse said funds in accordance with said instructions. The Insurance Trustee shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

ARTICLE XIII

FORCE MAJEURE

§13.1. Force Majeure. An Owner (hereafter in this §13.1 referred to as a “Non-Performing Owner”) shall not be deemed to be in default in the performance of any obligation of such Non-Performing Owner under this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be directly caused by fire or other unavoidable casualty, national emergency, laws, governmental or municipal restrictions, enemy action, civil commotion, strikes, inability to obtain labor or materials (except where due to the economic inability of such Non-Performing Owner for reasons other than the failure of the Insurance Trustee to disburse funds), war or national defense preemptions, acts of God or other similar causes beyond the control of such Non-Performing Owner. Within fifteen (15) days after the giving of any written notice by another Owner (hereafter in this §13.1 referred to as the “Other Owner”) to the Non-Performing Owner describing the non-performance by such Non-Performing Owner of any such obligation, the Non-Performing Owner shall notify the Other Owner in writing of the existence and nature of any such cause for non-performance which is beyond the control of the Non-Performing Owner, and the steps, if any, which the Non-Performing Owner shall have taken to eliminate the cause for non-performance. Thereafter, the Non-Performing Owner shall from time to time on written request of the Other Owner keep the Other Owner fully informed in writing of all further developments concerning such cause for nonperformance and the efforts, if any, being made by the Non-Performing Owner to end the cause for non-performance.

ARTICLE XIV

ARBITRATION

§14.1. Notice to Arbitrate. If a dispute shall arise between or among any of the Owners, and if, pursuant to any provision of this Declaration, the dispute is to be settled by arbitration, then any Owner may serve upon the other Owner or Owners involved in the dispute a written notice demanding that the dispute be arbitrated pursuant to this Article XIV.

§14.2. Appointment of Arbitrators and Procedure. The arbitrators shall be appointed pursuant to the then applicable rules of the American Arbitration Association, or any organization successor thereto, and the proceeding shall follow said rules and shall take place in St. Johns County. Judgment upon the determination rendered by the arbitrators may be entered in any court having jurisdiction thereof. The fees and expenses of the arbitrators shall be divided equally between or among such Owners. If any Owner shall fail to pay its share of any fees or expenses of the arbitrators it shall be deemed to be a “Defaulting Owner”, and any other Owner or Owners may pay the same and become a Creditor Owner. The Defaulting Owner shall upon demand reimburse the Creditor Owner for such payment (failure to so do permitting the Creditor Owner to levy a Special Assessment on the Defaulting Owner and its Parcel therefor). If in connection with any arbitration it shall be necessary to determine the value of any Parcel or portion thereof, the arbitrators who shall be selected shall be disinterested persons of recognized competence in the field of real estate appraisal.

ARTICLE XV

ESTOPPEL CERTIFICATES

§15.1. Estoppel Certificates. Each Owner agrees, within thirty (30) days after written request by any other Owner, to execute and deliver to such Owner or to any existing or prospective purchaser, mortgagee or lessee designated by such Owner, a certificate in recordable form stating to the best of its knowledge: (a) whether or not there is any existing default hereunder by any Owner in the payment of any sum of money owing to the Owner execution; such certificates; (b) whether or not there is any existing default by any Owner with respect to which a notice of default has been given or received by the Owner executing such certificate and if there is any such default, specifying the nature and extent thereof; (c) whether or not there are any sums (either than those arising within the previous forty-five (45) days out of the normal course of operation of the Building) which the Owner executing such certificate is entitled to receive or demand from any other Owner hereunder, and if there is any such sum, specifying the nature and extent thereof; (d) whether or not the Commercial Owner has performed or caused to be performed, or is then performing or causing to be performed, any Maintenance or other work not in the normal course of operation of the Building, the cost of which the Commercial Owner is or may be entitled to charge in whole or in part to any Owner but as not yet charged to such other Owner, and if there be any such Maintenance or other work, specifying the nature and extent thereof; (e) whether or not there are any set-offs, defenses or counterclaims then being asserted or otherwise known against enforcement of any obligations hereunder which are to be performed by the Owner executing such certificate, and, if so, the nature and extent thereof; (f) whether or not any Owner has given any notice to the Owner executing such certificate making a demand or claim hereunder which has not yet been discharged or otherwise resolved, or given any notice of a dispute to be settled or resolved by arbitration in accordance with the provisions of Article XIV, and if so, a copy of any such notice shall be delivered with the certificate; (g) whether or not there is any pending dispute involving the Owner executing such certificate which has been submitted for arbitration hereunder, and if so, specifying the nature of the dispute; (h) whether or not the arbitrators have made any ruling or decision involving the Owner executing such certificate within the ninety (90) days preceding the date of such certificate, and if so, identifying such ruling or decision; and (i) whether or not the Owner executing such certificate has made any then outstanding assignment of rights, privileges, easements or rights of entry pursuant to §17.3 or otherwise, and if so, identifying such assignment. In the event of the recording of the Condominium Declaration, any such certificates which are required of Residential Owner with respect to the Residential Parcel or of a Commercial Owner with respect to the Commercial Parcel shall be given by the president or vice president of the Condominium Association, and such certificate shall be regarded as that of the Residential Owner or Commercial Owner, as the case may be.

In addition to the estoppel certificates delivered pursuant to the foregoing paragraph, Residential Owner and Commercial Owner shall each deliver to an Owner, within thirty (30) days after written request therefor (but not more often than twice in each calendar year), a certificate setting forth the names of the owners of record (as shown by the Public Records of St. Johns County), of all units in the Residential Parcel and the Commercial Parcel, respectively, at the time of the giving of such certificate, as well as the names of the directors and the officers of the Condominium Associations.

ARTICLE XVI

NOTICES

§16.1. Giving of Notice. Any notice, demand, election or other communication (hereafter in this Article XVI collectively referred to as “notices” and singly referred to as a “notice”) which any Owner or other party hereto shall desire or be required to give pursuant to the provisions of this Declaration shall be sent by U.S. mail and the giving of such notice shall be deemed complete at the time the same is deposited in the United States mail, with postage, prepaid, enclosed in a sealed envelope addressed to the person intended to be given such notice at the address herein provided. Alternatively, notice may be given by personal delivery through the use of an overnight delivery service (e.g., Federal Express, UPS, DHL). Notices to any Owner shall be sent to such Owner addressed as follows or to such other address as may be designated by such Owner from time to time in a notice given pursuant to this §16.1:

- If to Declarant:

Village Square at Palencia, LLC
6 Fairfield Boulevard, Suite 3
Ponte Vedra Beach, FL 32082
Attn: President
- With a copy to:

Foley & Lardner LLP
One Independent Drive, Suite 1300
Jacksonville, FL 32202
Attention: Charles V. Hedrick, Esq.
- If to Residential Owner:

Village Square at Palencia, LLC
Residential Condominium Association, Inc.
6 Fairfield Boulevard, Suite 3
Ponte Vedra Beach, FL 32082
Attn: President
- If to Commercial Owner:

Village Square at Palencia, LLC
Non-Residential Condominium Association, Inc.
6 Fairfield Boulevard, Suite 3
Ponte Vedra Beach, FL 32082
Attn: President

Any Owner who has previously complied with the notice provisions may from time to time by written notice to the other Owners, designate a different address which shall be substituted for that specified above.

Copies of notices to any lessee or holder of a mortgage entitled to receive such copies pursuant to §17.3 shall be addressed to such lessee or holder at the address or addresses, designated by such lessee or holder or to such other address or addresses, as such lessee or holder

may thereafter from time to time designate by written notice given pursuant to the provisions of this Article XVI.

If at any time and from time to time any person, corporation, or other entity shall succeed in whole or in part to the interest or estate of any Owner, then such person, corporation, or other entity shall not be entitled to receive any notice hereunder, and any notice given (or deemed to have been given) to the prior Owner of such interest or estate shall be deemed to have been given to such person, corporation or other entity, unless and until the party giving such notice shall be given written notice of the change of ownership by which such person, corporation or other entity shall have acquired such interest or estate. Nothing herein contained shall be construed to preclude personal service of any notice, demand, request or other communication in the same manner that personal service of a summons or other legal process may be made.

§16.2. Multiple Ownership. If at any time the interest or estate of any Owner hereto shall be owned by more than one person, corporation or other entity (hereafter in this paragraph collectively referred to as "said Owners"), then, said Owners shall give to such other Owner a written notice, executed and acknowledged by all of said Owners, which shall (a) designate one person, corporation or other entity having an address in the State of Florida to whom shall be given, as agent for all of said Owners, all notices thereafter given to said Owners hereunder and (b) designate such person, corporation or other entity as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder. Thereafter, until such designation is revoked by written notice given by all of said Owners or their successors in interest, any notice, and any summons, complaint or other legal process or any notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this §16.2 collectively referred to as "legal process") given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of said Owners at the same time that such notice or legal process is given to, or served upon, such agent. If said Owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom any legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of said Owners as agent for all of said Owners and such notice or. legal process shall be deemed to have been given to, or served upon, each and every one of said Owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of such Owners shall be deemed to have appointed each of the other Owners as agent for the receipt of notices and the service of legal process as aforesaid.

Notwithstanding the foregoing provisions of this §16.2, to the extent permitted by law, in the event of the recording of the Condominium Declaration notices to the Residential Owner and all of its constituent unit owners shall be served upon the President of the Condominium Association for the Residential Parcel and such President shall be the agent for service of process of the Residential Owner and its constituent unit owners. Further, upon the recording of the Condominium Declaration for the Commercial Parcel, notices to the Commercial Owner and all of its constituent unit owners be served upon the President of the Commercial Condominium Association for the Commercial Parcel and such President shall be

the agent for service of process for the Commercial Owner and its constituent unit owners. Legal process served upon such agent shall be effective service upon the Residential Owner or Commercial Owner, respectively, and their constituent unit owners as though served individually on each and all such persons. Said President of each respective Condominium Association may be empowered to give notice and/or serve process on behalf of its constituent owners and any or all unit owners for any purposes under this Declaration, which notice shall be binding upon each such Owner and/or the unit owners in whose behalf it shall have been given.

ARTICLE XVII

HEIRS, SUCCESSORS AND ASSIGNS

§17.1. Provisions Run with the Land. This Declaration is a covenant running with the land and is intended to and shall run with the real property benefited and burdened hereby, and shall bind and inure to the benefit of the parties hereto and their successors in title.

§17.2. Easements Benefit Tenants, etc. Subject to the provisions of §2.5, any easement or right of entry herein granted to any Owner shall be for the benefit not only of such Owner but also for the benefit of any tenants, lessees, mortgagees, licensees, employees, guests, invitees, agents and contractors of such Owner whom such Owner shall permit to use such easement or right of entry.

§17.3. Assignment of Rights to Lessees, Mortgagees. Any Owner may, without the necessity of conveying title to such Owner's Parcel or Unit, assign or otherwise transfer to any lessee of the entire Parcel or Unit, or to the holder of a recorded mortgage covering the entire Parcel or Unit, all or any of the rights, privileges, easements and rights of entry herein given to such Owner (including, without limitation, any right to make any election, to exercise any option or discretion, to give any notice, to perform any work of demolition, restoration, repair, replacement or rebuilding, to receive moneys from the Insurance Trustee other than the moneys required for restoration, repair or reconstruction of the Building, Parcel or Unit and to receive any and all other moneys payable to such Owner). Any such lessee may in turn assign or otherwise transfer all or any of such rights, privileges, easements and rights of entry to the holder of a first mortgage covering the leasehold estate of such lessee, and any such lessee or holder may exercise any such right, privilege, easement or right of entry so assigned or otherwise transferred to it to the same extent as if in each instance this Declaration specifically granted such right, privilege, easement or right of entry to such lessee or holder. No other Owner (or the Insurance Trustee or any other person having any rights hereunder) shall be bound to recognize any assignment, lease, mortgage or other transfer referred to in this §17.3, or the exercise or accrual of any rights pursuant to such assignment, lease, mortgage or other transfer, or to recognize any holder of a first mortgage as a Mortgagee hereunder, until such other Owner and the Insurance Trustee are given written notice, in the manner provided in Article XVI for the giving of notice, of such assignment, lease, mortgage or other transfer, which notice shall then be imputed to any other person having rights hereunder. Said notice shall be accompanied by a certified copy of the instrument effecting such assignment or other transfer. Any Owner, the Insurance Trustee, mortgagee or lessee who is given written notice as aforesaid of such assignment or other transfer, and any successor, personal representative, heir or assign of such Owner or such other person, shall thereafter, simultaneously with the giving of any "notice" (as

that term is defined in the first sentence of Article XVI) under this Declaration to such assignor or transferor, give to such lessee or holder a copy of such notice pursuant to said Article XVIII. No such notice shall be effective against such lessee or holder unless a copy thereof is given to such lessee or holder as aforesaid.

Any such lessee or holder to whom rights, privileges, easements or rights of entry are assigned or otherwise transferred pursuant to this §17.3 shall, within ten (10) days after written request made by any Owner (but not more than twice during each calendar year), execute, acknowledge and deliver to such Owner, or to any existing or prospective purchaser, mortgagee or lessee designated by such Owner, an estoppel certificate in recordable form containing the statements called for in §15.1 except that the words "the Owner executing such certificate", wherever the same appear in §15.1, shall be deemed instead to refer to the lessee or holder executing such estoppel certificate. In the event of the recording of the condominium declaration, any owner of a unit in the Residential Parcel or Commercial Parcel, respectively, may assign or otherwise transfer its rights in the manner described in this §17.3 with respect to its portion of the Residential Parcel or Commercial Parcel, respectively. To be considered a Mortgagee of the Residential Parcel or of a Residential Unit, or Commercial Parcel or of a Commercial Unit, for purposes of this Declaration, the holder of such a first mortgage shall give notice as prescribed in the preceding paragraph. In addition to giving notice as prescribed in this §17.3, the holder of a first mortgage lien as to any Parcel or any unit in the Residential or Commercial Parcel shall also satisfy the definition of Mortgagee included in Article I, in order to be considered a Mortgagee under this Declaration.

§17.4. Certain Imputations and Stipulations Concerning Notice under Article XVII. If pursuant to §17.3, notice of the identity of a particular lessee of an entire Parcel or holder of a recorded mortgage on a Parcel or a unit in the Residential or Commercial Parcel is given to the Owner of the other Parcel and/or the Insurance Trustee, as those parties are then identified and constituted, knowledge of such notice and its contents shall be imputed without further action to the successors and assigns of such Owner and Insurance Trustee. Knowledge of such notice shall likewise continue to be imputed to the persons to whom knowledge of notices to other Owner and Insurance Trustee is imputed under §17.3, regardless of any succession or assignment among the other Owner and Insurance Trustee and/or among such person to whom knowledge of notices is imputed under §17.3.

ARTICLE XVIII

CERTAIN RESTRICTIONS AND OBLIGATIONS WITH RESPECT TO THE NAME "VILLAGE SQUARE AT PALENCIA"

§18.1. Name of Residential and Commercial Parcels. All Commercial Owners and Residential Owners, their tenants, successors, assigns, guests and invitees hereby acknowledge the Declarant's exclusive right to use the name "Village Square of Palencia" to refer to the building containing the Residential Parcel, Commercial Parcel, Residential or Commercial Condominium Units or any other property or business located therein. No Residential Owner or Commercial Owner shall alter such name, or refer to the Residential Parcel or Commercial Parcel with any other name, without the prior written consent of the Commercial Owner, which consent may be withheld in the sole discretion of the Commercial Owner.

ARTICLE XIX

SEVERABILITY

§19.1. Severability. If any provision of this Declaration is prohibited by or is unenforceable under any applicable law, such provision shall be severed without invalidating the remaining provisions of this Declaration. To the full extent permitted by law the remaining provisions of this Declaration shall be deemed to be a valid and binding agreement in accordance with its terms.

ARTICLE XX

REMEDIES

§20.1. Remedies. The remedies provided in this Declaration shall not be exclusive and, in the event of a breach of any of the terms, covenants and conditions hereof, the Owners shall be entitled to pursue any remedies available at law or in equity, including specific performance, in addition to or in lieu of any of the remedies provided herein.

ARTICLE XXI

MISCELLANEOUS

§21.1. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

§21.2. Gender. The use of any gender in this Declaration shall be deemed to include all other genders and the use of the singular shall be deemed to include the plural, and vice versa, unless the context otherwise requires.

§21.3. Amendments.

(a) Amendments by Associations.. This Declaration may be amended by the members of the Residential Association and the Commercial Association, as follows: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the members of each of the respective Boards of Directors of the Residential Association and Commercial Association or by not less than one-third (1/3) of the Unit Owners in each such Association. Except as otherwise specifically provided in this Declaration, approvals of proposed amendments must be by an affirmative vote representing not less than two-thirds (2/3) of all Voting Interests in the Residential Association and the Commercial Association together with the consent of the Declarant for so long as Declarant owns any unit in either condominium. Directors and members not present in person or by proxy at the respective meetings considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary of each such Association at or prior to the applicable meeting.

Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this Declaration, no amendment of the percentage allocations among the Parcels as described in Article IV of this Declaration as well as in **Exhibit D** hereto, may be made without the affirmative vote representing not less than three quarters (3/4) of all Voting Interests in the Residential Condominium, together with three quarters (3/4) of all Voting Interests in the Commercial Condominium, and the consent of Declarant for so long as Declarant owns any unit in either condominium. Members of each such condominium association not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary of each such Association at or prior to the meeting.

(b) Declarant. Except as expressly provided otherwise elsewhere in this Declaration, the Declaration may be amended by the Declarant alone, without requiring the consent of any other party, to effect any change whatsoever. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant, without the prior written consent of the Declarant in each instance.

(c) Execution and Recording. An amendment, other than amendments made by the Declarant alone pursuant to the Condominium Act or this Declaration, shall be evidenced by a certificate of each of the Residential and Commercial Associations, executed either by the President or Vice President of each such Association or a majority of the members of the respective Boards of Directors, which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificates are properly recorded in the Public Records of St. Johns County.

§21.4. Governing Law. This Declaration shall be governed, construed, applied and enforced in accordance with the laws of Florida including matters affecting title to all real property described herein.

§21.5. Further Assurances. From time to time after the date hereof each party hereto shall furnish, execute and acknowledge, without charge, such other instruments, documents, materials and information as the other parties hereto may reasonably request in order to confirm to such parties the benefits contemplated hereby.

§21.6. Exculpation. Notwithstanding anything herein to the contrary, the representations, covenants, undertakings and agreements made in the Declaration by Declarant and/or Commercial Owner are not made and intended as personal representations, covenants, undertakings or agreements by the Declarant or the Commercial Owner or for the purpose or with the intention of binding either the Declarant or the Commercial Owner personally, but are made and intended for the purpose of binding the property of the Declarant or Commercial Owner. This Declaration is executed and delivered by the general partner of Declarant not personally but as general partner, solely in the exercise of the powers conferred upon it as general partner. No personal liability is assumed by nor shall at any time be asserted or enforceable against the Declarant or Commercial Owner or general partner thereof on account of any representation, covenant, undertaking or agreement of the Declarant or Commercial Owner

contained in this Declaration either expressed or implied. All such personal liability, if any, is expressly waived and released by the Owners and by all persons claiming by, through or under the Owners.

§21.7. Limitation on Powers. Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty of the Commercial Owner as the same pertains to any condominium located within the Building which would cause the Commercial Owner to be subject to Chapter 718, Florida Statutes, shall at the option of Commercial Owner be null, void and of no effect to the extent, but only to the extent, that such existence or exercise is finally determined to subject the Commercial Owner or Commercial Parcel to the provisions of said Chapter 718. It is the intent of this provision that the Commercial Owner not be deemed to be a residential condominium association nor residential condominium developer, and that the fee interest of Commercial Owner in the Shared Facilities located in the Commercial Parcel (or any other portion of the Commercial Parcel) not be deemed to be common elements of any such condominium, within the meaning of applicable laws or administrative rules for any purpose.

§21.8. Limitations of Alterations, Use or Occupancy. The Declarant, for each Parcel or other portion of the Building, now or hereafter owned by Declarant, hereby covenants, and each Owner of any Parcel by acceptance, of a deed therefor, whether or not it is so expressed in such deed, is hereby deemed to have covenanted, that it shall not make any alteration of its Parcel or the Building or make any change in use or occupancy of its Parcel or undertake any expansion of its Parcel which would cause the Building or any part thereof, alone or in the aggregate, to be deemed to be a “development of regional impact” as such term is defined by the Florida Statute without obtaining the prior written consent of the other Owners.

ARTICLE XXII

MEANING OF RESIDENTIAL OWNER

§22.1. Meaning of Residential Owner. In the event of the recording of the Residential Condominium Declaration, wherever in this Declaration the consent or approval of Residential Owner is required or provided for, and no other means by which such consent or approval shall be given is specified, the same shall be deemed to have been given if the President of the condominium association for the Residential Parcel created by the Residential Condominium Declaration and acting on behalf of such association shall have given such consent or approval.

ARTICLE XXIII

STANDARD OF ALLOCATION

§23.1. Standard of Allocation-Repair and Restoration. Whenever, pursuant to this Declaration, it shall be necessary to determine the proportion of any Assessment hereunder which is to be borne by each Owner, the following shall apply:

(a) The proportion to be borne by the Owner of any Parcel shall be determined in the manner provided in **Exhibit "D"** as same is established by Declarant at the time of recording this Declaration or subsequent thereto, by amendment of this Declaration.

(b) In the event that any new facilities, not presently called for or shown in the Building Plans, shall hereafter be constructed pursuant to this Declaration and such new facility meets the definition of a Shared Facility, Assessments pertaining to such facility, shall be allocated as determined by agreement of the owners, or, if the Owners shall fail to agree, by arbitration in accordance with the provisions of Article XIV.

ARTICLE XXIV

DECLARANT AND COMMERCIAL OWNER PURCHASE OR OPTION TO PURCHASE THE RESIDENTIAL PARCEL OR UNITS IN CERTAIN CIRCUMSTANCES

§24.1. Purchase of Residential Parcel in Certain Instances of Casualty of Condemnation.

(a) Declarant and Commercial Owner Options. Declarant and Commercial Owner, respectively, shall each have and are hereby granted the right and option to purchase the entire Residential Parcel in the following instances: (i) in the event that the Residential Unit Owners acting as and for the Residential Owner make an election as provided for in §8.3(b) not to pay for repair or restoration in the event of casualty; (ii) in the event of an election by the Residential Owner under §8.5 not to proceed with the repair and restoration of the Residential Parcel in the circumstances described therein; (iii) in the event that the Residential Unit Owners acting as and for the Residential Owner make an election as provided for in §10.5(a) not to pay for repair or restoration in the event of a condemnation; or (iv) in the event of an election by Commercial Owner under §10.5(b) not to proceed with the repairs and restorations described therein. By making the election described in §10.5(b) the Commercial Owner shall be deemed to have automatically exercised its option described in (iv) of the first sentence. Subject to §10.5, the first option shall belong to Declarant. If not exercised by Declarant within five (5) days of receipt of notice or unless earlier expressly waived, the option shall belong to Commercial Owner, as provided herein.

(b) Residential Owner Right. The Residential Owner shall have and is hereby granted the right and option to require the Commercial Owner to purchase the entire Residential Parcel in the event of an election by the Commercial Owner under §8.4 or §10.5 not to proceed with the repair and restoration of the Commercial Parcel described therein.

(c) Purchase Price. The purchase price for the Residential Parcel in any sale arising from the circumstances described in items (i), (ii) or (iii) of subsection (a) of this §24.1 shall be the higher of: (1) replacement value of the Residential Parcel, which shall be presumed to be equivalent to the amount of insurance carried on the Residential Parcel pursuant to §7.1, or (2) actual insurance proceeds paid under the insurance policy carried for the Residential Parcel under §7.1 or the amount of the condemnation. Said purchase price shall be distributed among

the Residential Unit Owners in the same percentages such Unit Owners respectively own of the common elements of the condominium established in the Residential Parcel.

The purchase price in any transaction arising from the circumstances described in item (ii) or (v) of subsection (a) of this §24.1 or in subsection (b) of this §24.1 shall be the fair market value the Residential Parcel would have if it and the Commercial Parcel were to be fully repaired and restored. Such fair market value shall be the average of three appraisals of such value made by three disinterested appraisers of recognized competence in the field of real estate appraisal, who shall be selected one each by Commercial Owner and Residential Owner, which two so selected shall select the third.

To fund the purchase price and closing costs for any purchase of the Residential Parcel under this section, the Commercial Owner or Declarant, as the case may be, shall be entitled to draw upon and utilize any and all funds paid to the Insurance Trustee, including proceeds from the insurance policies on the Parcels maintained under §7.1 or condemnation awards, and any funds thereafter remaining with the Insurance Trustee shall be payable to Commercial Owner, or Declarant, as the case may be, or its mortgagee(s), as their interests may appear, for utilization in repair, restoration or demolition of the Building or for such other purposes as such parties as their interest appear may reasonably determine.

§24.2. Right of First Refusal to Purchase Residential Units. After the recording of the condominium Declaration, if at any time an owner of a Residential Unit intends to sell a Residential Unit owned by such person (hereafter referred to as a "Residential Unit Owner") to a third party pursuant to a bona fide offer received from such third party, the Declarant and Commercial Owner, respectively, shall each have the prior right to purchase the Unit in question, on the terms hereinafter set forth. In any such situation in which a Residential Unit Owner shall intend to sell a Unit to a third party pursuant to a bona fide offer, the Residential Unit Owner shall first be obligated to give notice to the Commercial Owner and Declarant of its intention to sell such Unit, and of the terms and conditions of the offer pursuant to which it proposes to make such sale, not less than thirty (30) days prior to the date such proposed sale would take place. Declarant and Commercial Owner shall then have fifteen (15) days from the date of its actual receipt of such notice to exercise, by giving written notice to the Residential Unit Owner, their prior right to purchase the Unit in question on the same terms and conditions as set forth in the notice received from the Residential Unit Owner. If Commercial Owner or Declarant elect to exercise their respective prior right to purchase the Unit in question, the transaction shall close on the date specified pursuant to §24.3, not later than thirty (30) days from the date of Declarant or Commercial Owner's notice of such election, on the terms and conditions stated in the Residential Unit Owner's notice. The priority right of first refusal shall belong to Declarant. In the event of exercise of the right of first refusal by both Declarant and Commercial Owner, Declarant's right shall take priority over Commercial Owner. In the event neither the Declarant or Commercial Owner does give said written notice of intent to exercise its rights within said fifteen (15) days, Declarant and Commercial Owner shall be deemed to have waived their rights under this section as to the particular transaction of which the Residential Unit Owner gave notice and the Declarant or Commercial Owner shall deliver, upon written request from the Residential Unit Owner, a certificate, in recordable form, evidencing such waiver. The rights granted to Declarant and Commercial Owner, respectively, under this section are ongoing and recurrent rights, which shall be observed in each instance of a proposed sale of any Residential

Unit or Units, whether or not Declarant or Commercial Owner has ever previously declined to exercise its rights hereunder in any instance concerning the proposed sale of a Unit as to which a subsequent sale is proposed, and whether or not a Residential Unit Owner has completed any prior noticed transaction of a Residential Unit for which a subsequent sale is proposed.

§24.3. Closing. In the event Declarant or Commercial Owner elects or is required to purchase the Residential Parcel pursuant to §24.1, the closing of title for §24.1(c) purchase shall occur no later than ninety (90) days after a final determination of the purchase price pursuant to §24.1(c). The closing of title for any purchase of a Residential Unit or Units by Declarant or Commercial Owner pursuant to §24.2 shall take place on the date designated by Owner, but not later than thirty (30) days from the date of Declarant or Commercial Owner's notice of election to purchase. At the closing Declarant or Commercial Owner, as the case may be, shall pay the purchase price and all owners of each Residential Unit to be conveyed shall execute and deliver to the purchasing party a General Warranty Deed for such Residential Unit conveying said Residential Unit to the Commercial Owner or Declarant. The purchase price shall be adjusted at closing for any taxes, insurance premiums, or utility deposits, such adjustments to be allocated between the parties in accordance, with the allocations then customary in the County, as may be varied in the case of a sale pursuant to §24.2 by specific terms accepted by Commercial Owner or Declarant, as the case may be.

§24.4. Disputes. All disputes under this Article XXIV shall be settled by arbitration in accordance with the provisions of Article XIV, provided, that the arbitrators shall not vary the terms of this Article.

**[The remainder of this page is blank intentionally;
the signature page(s) follow.]**

IN WITNESS WHEREOF, this Declaration has been duly executed and delivered by the Declarant on the day and year first above written.

Witness:

VILLAGE SQUARE AT PALENCIA, LLC, a Florida limited liability company, formerly known as Village Walk at Palencia, LLC

Marisa A. Ravert
Signature of Witness
MARISA A. RAVERT
Print Name of Witness
H. Allen Samuels
Signature of Witness
H. Allen Samuels
Print Name of Witness

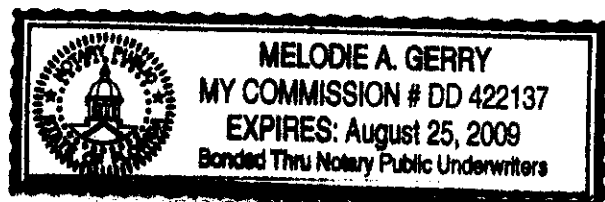
By: VWP, Inc., a Florida corporation
Its Managing Member

By: Wayne A. Scheiner
Printed Name: Wayne A. Scheiner

Title: Senior Vice President

STATE OF FLORIDA)
COUNTY OF St. Johns) ss.

The foregoing instrument was acknowledged before me this 10th day of May, 2007 by Wayne A. Scheiner as Senior Vice President of VWP, Inc., a Florida corporation, as Managing Member of Village Square at Palencia, LLC, a Florida limited liability company, formerly known as Village Walk at Palencia, LLC, on behalf of the limited liability company.



(Notary Seal)

Melodie A. Gerry
Notary Public, State of Florida
Commission Number: DD 422137
My Commission Expires: 08/25/09

MORTGAGEE'S CONSENT AND JOINDER

This Consent and Joinder of Mortgagee is made this 19th day of June, 2007, by SunTrust Bank, a Georgia banking corporation, having a mailing address of 76 South Laura Street, Jacksonville, Florida 32202 ("Mortgagee"):

WITNESSETH:

For good and valuable consideration in hand paid, the Mortgagee, as owner and holder of the following described documents (the "Loan Documents"):

1. Mortgage, Security Agreement and Financing Statement recorded in Official Records Book 2428, Page 1948, as amended;

of the Public Records of St. Johns County, Florida, securing all of the real property described therein, hereby consents to and joins in the making of the Declaration of Community Covenants, Easements and Restrictions for Village Square at Palencia. Provided always, nevertheless, that nothing herein contained shall in anyway impair, alter or diminish the effect, lien or encumbrance of the Loan Documents on the remaining part of said mortgaged premises, or any of the rights and remedies of the Mortgagee or any subsequent holder thereof, nor shall anything herein contained by construed as an assumption by Mortgagee of any obligations of the grantor of the foregoing Declaration.

IN WITNESS WHEREOF, the Mortgagee has hereunto caused these presents to be executed on the day and year first above written.

SUNTRUST BANK,
a Georgia banking corporation

Sign Name [Signature]
Print Name Timothy E. May
Sign Name [Signature]
Print Name Annette C. Gooding

By: [Signature]
Name: STEVEN T. KELLEY
Title: VICE PRESIDENT

STATE OF FLORIDA)
COUNTY OF Duval)

The foregoing instrument was acknowledged before me this 19th day of June, 2007, by Steven T. Kelley, as Vice President of SunTrust Bank, a Georgia banking corporation, on behalf of the banking corporation, who is personally known to me or who has produced FL Drivers License as identification.

(Notary Seal)  **ANNETTE C. GOODING**
Commission DD 650434
Expires March 14, 2011
Bonded Thru Troy Fain Insurance 800-385-7019

[Signature]
Notary Public, State of Florida
Commission Number: _____
My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION

TRACT "G", AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28 THROUGH 30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

TOGETHER WITH:

PARCEL 1

A PORTION OF A 30.00 FOOT ALLEY FOR ACCESS AND UTILITY EASEMENT, AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO-A, AS RECORDED IN MAP BOOK 51, PAGES 17 AND 18 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF COMMENCEMENT BEGIN AT THE MOST SOUTHERLY CORNER OF TRACT "G", AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28-30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT "G" THE FOLLOWING TWO COURSES, COURSE NUMBER ONE NORTH 44°59'56" WEST, A DISTANCE OF 29.06 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 85.00 FEET; COURSE NUMBER TWO ALONG AND AROUND SAID CURVE HAVING A RADIUS OF 85.00 FEET, CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 33°09'01" WEST, A DISTANCE OF 34.91 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WESTERLY BOUNDARY LINE NORTH 44°59'42" WEST, A DISTANCE OF 0.98 FEET; THENCE NORTH 45°00'18" EAST, A DISTANCE OF 0.44 FEET TO A POINT ON A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 85.00 FEET; THENCE ALONG AND AROUND SAID CURVE HAVING A RADIUS OF 85.00 FEET, BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 20°56'20" EAST, A DISTANCE OF 1.07 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

PARCEL 2

A PORTION OF MARKET STREET, A VARIABLE WIDTH RIGHT OF WAY AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT ONE, AS RECORDED IN MAP BOOK 43, PAGES 74-75 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF COMMENCEMENT BEGIN AT THE MOST SOUTHERLY CORNER OF TRACT "G", AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28-30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE ALONG THE SOUTHERLY BOUNDARY LINE OF SAID TRACT "G" THE FOLLOWING TWO COURSES, COURSE NUMBER ONE NORTH 45°00'00" EAST, A DISTANCE OF 7.07 FEET; COURSE NUMBER TWO NORTH 90°00'00" EAST, A DISTANCE OF 20.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 90°00'00" EAST, A DISTANCE OF 2.82 FEET; THENCE SOUTH 45°00'18" WEST, DEPARTING SAID SOUTHERLY BOUNDARY LINE, A DISTANCE OF 1.99 FEET; THENCE NORTH 44°59'42" WEST, A DISTANCE OF 1.99 FEET, TO THE POINT OF BEGINNING.

TOGETHER WITH:

PARCEL 3

A PORTION OF MARKET STREET AND CENTRAL STREET, BOTH A VARIABLE WIDTH RIGHT OF WAY AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT ONE, AS RECORDED IN MAP BOOK 43, PAGES 74-75 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF COMMENCEMENT BEGIN AT THE WESTERLY TERMINUS OF SAID CENTRAL STREET WHERE IT INTERSECTS THE EASTERLY BOUNDARY LINE OF TRACT "G", AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28-30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE SOUTH 45°00'00" EAST, ALONG SAID SOUTHWESTERLY RIGHT OF WAY OF SAID CENTRAL STREET, A DISTANCE OF 15.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 11.02 FEET, TO THE POINT OF BEGINNING; THENCE SOUTH 44°59'42" EAST, A DISTANCE OF 8.82 FEET; THENCE SOUTH 45°00'18" WEST, A DISTANCE OF 8.81 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 12.47 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

PARCEL 4

A PORTION OF TRACT "H" AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28-30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF COMMENCEMENT BEGIN AT THE WESTERLY TERMINUS OF SAID CENTRAL STREET WHERE IT INTERSECTS THE EASTERLY BOUNDARY LINE OF TRACT "G", AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28-30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 11.01 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 90°00'00" WEST, A DISTANCE OF 7.80 FEET; THENCE NORTH 45°00'00" WEST, A DISTANCE OF 83.13 FEET; THENCE NORTH 45°00'18" EAST, A DISTANCE OF 5.53 FEET; THENCE SOUTH 44°59'42" EAST, A DISTANCE OF 8.60 FEET; THENCE NORTH 45°00'18" EAST, A DISTANCE OF 7.30 FEET; THENCE SOUTH 44°59'42" EAST, A DISTANCE OF 5.30 FEET; THENCE SOUTH 45°00'18" WEST, A DISTANCE OF 2.70 FEET; THENCE SOUTH 44°59'42" EAST, A DISTANCE OF 8.80 FEET; THENCE NORTH 45°00'18" EAST, A DISTANCE OF 3.70 FEET; THENCE SOUTH 44°59'42" EAST, A DISTANCE OF 14.60 FEET; THENCE SOUTH 45°00'18" WEST, A DISTANCE OF 8.30 FEET; THENCE SOUTH 44°59'42" EAST, A DISTANCE OF 51.35 FEET, TO THE POINT OF BEGINNING.

TOGETHER WITH:

PARCEL 5

A PORTION OF TRACT "H" AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28-30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF COMMENCEMENT BEGIN AT THE WESTERLY TERMINUS OF SAID CENTRAL STREET WHERE IT INTERSECTS THE EASTERLY BOUNDARY LINE OF TRACT "G", AS SHOWN ON MAP OF MARSHALL CREEK DRI VILLAGE CENTER UNIT TWO, AS RECORDED IN MAP BOOK 49, PAGES 28-30 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE CONTINUE NORTH 90°00'00" WEST, A DISTANCE OF 18.81 FEET; THENCE NORTH 45°00'00" WEST, A DISTANCE OF 78.20 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 6.97 FEET; THENCE NORTH 45°00'18" EAST, A DISTANCE OF 4.93 FEET; THENCE SOUTH 45°00'00" EAST, A DISTANCE OF 4.93 FEET, TO THE POINT OF BEGINNING.

EXHIBIT “B”

RESIDENTIAL PARCEL

(see attached page)

Village Square at Palencia, a Condominium
Legal Description of Residential Airspace

That portion of the airspace lying between Elevation 50.0 feet as shown on Exhibit B to the Residential Declaration and the roof of the Building (as defined herein).

LESS AND EXCEPT THEREFROM, the Shared Facilities, (as defined herein).

(All elevations and dimensions are approximate and subject to change)

EXHIBIT “C”
COMMERCIAL PARCEL
(see attached page)

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Village Square at Palencia, a Condominium
Non-Residential Condominium Legal Description of Airspace

That portion of the airspace lying between Elevations 26.5 feet and 50.0 feet as shown Exhibit B to the Residential Declaration, and bounded by the vertical planes of the exterior walls of the Building (as defined herein).

LESS AND EXCEPT THEREFROM, the Shared Facilities, (as defined herein).

(All elevations and dimensions are approximate and subject to change)

EXHIBIT “D”

ALLOCATIONS

TO BE DETERMINED IN AMENDMENT TO BE FILED PER
SECTION 4.5 OF DECLARATION

1. Allocation of Common Assessments. As provided in §4.2 of the foregoing Declaration, Common Assessments shall include all Shared Expenses, costs and expenses of Commercial Owner in the performance of its duties under Article III of the Declaration or under other provisions of the Declaration, and all costs and expenses of improving and maintaining the Shared Facilities. All Common Assessments which are levied under the Declaration shall be allocated at a rate of 65.49% to the Residential Owner, 35.41% to the Commercial Owner, including without limitation, the following:

Category	Percentage Allocation to Residential Owner	Percentage Allocation to Commercial Owner
(a) Any and all cleaning-related expenses, other than window washing.	65.49%	35.41%
(b) Cost of washing exterior windows and skylights.	65.49%	35.41%
(c) Any and all electrical costs, including operation and maintenance of equipment.	65.49%	35.41%
(d) Any and all heating, ventilating and air conditioning costs, including operation and Maintenance of equipment.	65.49%	35.41%
(e) Any and all elevator costs, including operation and Maintenance of equipment.	65.49%	35.41%
(f) Any and all general administrative overhead expenses (not including fees) for the Building (for example, office supplies and general payroll expense).	65.49%	35.41%
(g) Any and all operating costs, including general repair and Maintenance, of the parking garage entrances, ramps and sidewalks.	65.49%	35.41%
(h) Any and all operating taxes assessed against the Shared Facilities by any governmental entity, including real and personal property taxes.	65.49%	35.41%

2. Allocation of Cost of Repair and Reconstruction and of Reconstruction Assessments. The costs of repairing and reconstructing Shared Facilities and the Reconstruction Assessments therefor shall be allocated as provided in §10.4 of the Declaration, provided that the cost included in any Reconstruction Assessment for reconstructing or repairing any Shared Facility shall be allocated 65.49% to the Residential Owner, 35.41% to the Commercial Owner.

3. Allocation of Capital Improvements Assessments. Capital Improvement Assessments shall be allocated 65.49% to the Residential Owner, 35.41% to the Commercial Owner.

4. Special Assessments. Special Assessments shall be allocated 100% to any Owner against whom such an Assessment is levied.

EXHIBIT "E"**DESCRIPTION OF
THE
SHARED FACILITIES**

The Shared Facilities consist of all portions, features, systems or components of either the Commercial Parcel or the Residential Parcel which meet the definition of Shared Facilities contained in the foregoing Declaration of Community Covenants, Easements & Restrictions for Village Square at Palencia, and specifically include, but are not limited to, the following:

(a) All foundations, caissons, pilings, structural columns, joists, girders, beams, supports, load bearing walls, and all structural components which provide load-bearing capabilities to the Building and the air rights in which such Building is located;

(b) The Land, and all sidewalks, plazas, lawn, landscaping, plantings, paving materials, driveways, fountains, seating and benches for public use, sprinklers and sprinkler systems, signage for the Building (except as to signage concerning only specific occupants of the Commercial Parcel), outdoor lighting facilities, awnings, canopies and all other exterior improvements on or contiguous to the Land which serve or benefit the Building;

(c) Those entry points to the Commercial Parcel and all ramps, both vehicular and pedestrian, structural components, paving, fixtures, equipment, utilities, lighting, striping and signage contained therein;

(d) Those portions of the first and second floors of the Building, excluding any areas therein specifically part of the Commercial Parcel, and, the demising partitions of and any tenant improvements contained in any such areas, and specifically including, without limitation, (i) all areas therein open for pedestrian and public passage and use, and all lighting, plantings, planters, vegetation, fountains, water features, seats, benches, railings, mats and other fixtures and equipment therein, (ii) Building entry desk and console, and mailroom facilities and mail drop station, (iii) loading dock and service/passenger elevator corridor, (iv) elevator lobby area, (v) trash handling and disposal facilities, including trash rooms, trash chutes, dumpsters, and compactors, (vi) Building engineer's office and management office, (vii) electrical and telephone distribution rooms, (viii) mechanical equipment room, and (ix) plumbing and fire pump rooms and fire command center;

(e) All exterior walls and surfaces of the Building, including glass or like material curtain walls and windows, and framing therefor, except and excluding any of such glass or like material curtain walls, windows and framing therefore, which are designated as being part of the units in the Residential or Commercial Parcel;

(f) The roofs, skylights, aircraft warning lights, antennae and roof structures above the upper boundary of the Residential Parcel, and above the Commercial Parcel, but the equipment on such roof structures shall not be a Shared Facility except for such equipment which serves all Parcels of the Building;

(g) The complete elevator shafts for all passenger elevators and the service passenger elevator and the elevator cabs, doors, equipment and related controls for such shafts, and the enclosing walls of such shafts, excluding any elevators and elevator shafts located wholly within the Residential Parcel;

(h) Solid waste and garbage storage and disposal areas and equipment which processes or handles solid waste and garbage generated by each Parcel or in public areas;

(i) Any electrical, telephone, cable television, and heating, ventilating and air-conditioning ("HVAC") rooms which are of service to or benefit all Parcels;

(j) All utility services, lines, pipes, wires, vents, flues, chimneys, ducts, raceways, cables, conduits, antennae, utility lines and installations located in any Parcel (from and including the point of tap-in to the distribution lines of the provider of the utility in question, and also including all sewer and drainage pipes), pertaining to any utility whatsoever (including, without limitation, electric, telephone, water, sewer, and cable television), and also all pass-card systems equipment, but excluding such of the foregoing items which serve only the Residential Parcel or a particular Residential Unit therein, or only the Commercial Parcel or a particular Commercial Unit therein.

(k) All electrical lines and equipment located in any Parcel, including incoming lines, service and equipment (from and including the point of tap-in to the distribution lines of the electric utility company), main switchgear and distribution panel boards, conduits, wires, feeders, meters, transformers and panel boards, excluding, however, all such items serving only the Commercial Parcel or a particular demised space therein or only the Residential Parcel or a particular Residential Unit therein.

(l) All plumbing fixtures and equipment for distribution of hot and cold water located in any Parcel (from and including the point of connection with the County water distribution and disposal systems, and including pipes, mains, pumps, valves, spigots, tanks, pressure reducers, meters and water heaters), excluding, however, all such items serving only the Residential Parcel or a particular Residential Unit therein and all such items serving only the Commercial Parcel or a particular Commercial Unit therein.

(m) All equipment associated with the fire protection, life safety, and monitoring systems in the Building (including pumps, alarms, loudspeakers and address systems, flow indicators, switcher, valves, sprinklers, hoses, and monitor cameras and viewer screen), excluding, however, all such items serving only the Residential Parcel or a particular Residential Unit located therein, and all such items serving only the Commercial Parcel or a particular Commercial Unit therein.

(n) All heating, ventilating and air-conditioning equipment, including garage and general ventilation fans, ducts, air-handling equipment, heating coils and air compressors, piping, ducts and valves, excluding, however, all such items serving only the Residential Parcel or a particular Residential Unit therein and all such items serving only the Commercial Parcel or a particular Commercial Unit therein.

(o) All fire egress stairways in the Building.

If any component or item of equipment in a Parcel serves an area of such Parcel which area is a Shared Facility (e.g. equipment for provision of electricity, water or air-conditioning to an area which is a Shared Facility), such component or item of equipment shall not be deemed to serve only the Parcel in which it is located.