

**AMENDED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS OF
PALMCREEK ESTATES, UNIT NO. 1, UNIT NO. 2, AND UNIT NO. 3**
**

WHEREAS Big Lake Partners, LLC, a Kentucky Limited Liability Company, d/b/a PalmCreek Developers, LLC, hereinafter referred to as Declarant, is the developer of a phased residential development known as PalmCreek, located in Okeechobee County, Florida; and

WHEREAS Declarant recorded Declaration of Covenants, Conditions, Restrictions and Easements of PalmCreek Estates for Unit No. 1 in Official Record Book 399 at Page 1225 and for Unit No. 2 in Official Record Book 400 at Page 1814, and for Unit No. 3 in Official Record Book 436 at Page 1109, all of the Public Records of Okeechobee County, Florida; and

WHEREAS in the initial Declaration of Covenants, Conditions, Restrictions and Easements of PalmCreek Estates for Unit No. 1, Unit No. 2, and for Unit No. 3, the Declarant reserved the right to amend said Declarations; and

WHEREAS Declarant recorded Amended Declaration of Covenants, Conditions, Restrictions and Easements of PalmCreek Estates, Unit No. 1 and Unit No. 2 in Official Record Book 403 at Page 1974, both of the Public Records of Okeechobee County, Florida; and

WHEREAS For the purpose of enhancing and protecting the attractiveness and value of the Property, as hereinafter defined, the Declarant has determined that the existing Amended Declaration of Covenants, Conditions, Restrictions and Easements of PalmCreek Estates for Unit No. 1, Unit No. 2, and Unit No. 3 should be further amended.

NOW THEREFORE Declarant hereby declares that all of the real property described in paragraph 1.20, below, and each part thereof shall be held, sold and conveyed only subject to the following Amended Covenants, Conditions Restrictions and Easements, which shall constitute covenants that shall run with the and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

TABLE OF CONTENTS

I. DEFINITIONS	
1.2 "Association"	6
1.3 "Articles"	6
1.4 "By-Laws"	6
1.5 "Common Area"	6
1.6 "Declarant" or "Developer"	6
1.7 "Declarant Control Period"	6
1.8 "Directors" or "Board"	6
1.9 "Institutional Lender"	6
1.10 "Lot", "Home", "Residence" and "Unit"	6
1.11 "Maintenance"	7
1.12 "Member"	7
1.13 "Mortgage"	7
1.14 "Mortgagee"	7
1.15 "Nonresidential Property"	7
1.16 "Operating Expenses"	7
1.17 "Owner"	7
1.18 "PalmCreek Documents"	7
1.19 "Plat" or "Plats"	7
1.20 "Property"	7
1.21 "Recreation Areas"	8
1.22 "Residential Property"	8
1.23 "Subdivision"	8

II. LAND USE AND EASEMENTS	
2.1 Use Classifications of Property	8
a. Residential Property	8
b. Recreation Areas	8
c. Drives	8
d. Lake	9
2.2 Rules and Regulations	9
2.3 Conveyance of Common Areas	10
2.4 Association Property	10
2.5 Wetland Preserve Areas	11
2.6 Declarant's Right of Use	11
2.7 Dedications	11
2.8 Disputes as to Use	12
2.9 Additional Easements	12
a. Easements for Pedestrian and Vehicular Traffic	12
b. Perpetual Nonexclusive Easement in Common Areas	12

c.	Service and Utility Easements	13
d.	Encroachments	13
e.	Maintenance Easement	13
f.	Sale and Development Easement	13

III. PROPERTY RIGHTS USE AND MAINTENANCE OF PALMCREEK

3.1	Property Rights	14
a.	Owner's Easements	14
b.	Partition	14
c.	Riparian Rights	14
3.2	Use and Maintenance of PalmCreek	14
a.	Owners' Covenants for Use and Maintenance	14
b.	Required Maintenance by Association	14
c.	Optional Maintenance by Association	15
d.	Limitation on Association's Liability	15

IV. ENVIRONMENTAL ISSUES

4.1	Operating Entity	15
4.2	Lake Maintenance Easement	16

V. PRESERVATION OF PROPERTY VALUES

5.1	Single Family	16
5.2	Business	16
5.3	Nuisances	16
5.4	Removal of Sod and Shrubbery, Alteration of Drainage, Etc	16
5.5	Artificial Vegetation	16
5.6	Fences	16
5.7	Sprinklers	17
5.8	Post Light	17
5.9	Signs	17
5.10	Garbage	17
5.11	Radio Equipment	17
5.12	Temporary Buildings	17
5.13	Docks, Waterfront Construction and Boat Usage	17
5.14	Garages	18
5.15	Detached Buildings	18
5.16	Repairs	18
5.17	Casualty Damage	18
5.18	Exterior and Yard Condition	18
5.19	Vehicles. Vehicles and Boats	18
5.20	Sub-subdividing	19
5.21	Increase in Insurance Rates	19
5.22	Animals and Pets	19
5.23	Light Intrusion	19

5.24	Outside Storage of Personal Property	19
5.25	Window Treatments	19
5.26	Weeds, Underbrush	19
5.27	Aesthetic Compatibility	20
5.28	Underground Utilities	20
5.29	Yard Area	20
5.30	Air Conditioning Units	20
5.31	Outside Clothes Drying	20
5.32	Flag Poles	20
5.33	Lakes and Canals	20
5.34	North Canal	20
	a. Boat Size	20
	b. Boat Speed	21
	c. Weir Structure	21
	d. Boat Basins	21
	e. Boat Docks and Seawalls	21
	f. Boat Mooring	21
5.35	Waiver	21
5.36	Exceptions	22

VI. ARCHITECTURAL CRITERIA

6.1	Architectural Review Board	22
	Requirement of ARB Approval	22
6.3	Method of Obtaining ARB Approval	23
6.4	Approval or Disapproval by the ARB	23
6.5	No Liability	23
6.6	Compliance With Governmental and Other Requirements	24

VII. HOMEOWNERS ASSOCIATION

7.1	Membership	24
7.2	Board of Directors	24

VIII. ASSESSMENTS

8.1	Affirmative Covenant to Pay Operating Expenses	24
8.2	Establishment of Liens	24
8.3	Collection of Assessments	24
8.4	Collection by Declarant	25
8.5	Rights of Declarant and Institutional Lender	25

IX. METHOD OF DETERMINING ASSESSMENTS

9.1	Regular Assessments	26
9.2	Special Assessments	26
9.3	North Canal Assessments	27
9.4	Shortfalls Due to Nonpayment	27
9.5	Initial Contribution For Working Capital	27

9.6	Declarant's Contribution	27
X.	PALM CREEK OPERATING EXPENSES	
10.1	Taxes	28
10.2	Utility Charges	28
10.3	Insurance Premiums	29
a.	Property Insurance	29
b.	Liability Insurance	29
c.	Fidelity Bond	29
10.4	Reconstruction Improvement Costs	29
a.	Repair Obligation and Insurance	29
b.	Special Assessments for Deficiency	30
10.5	Maintenance, Repair and Replacement Costs	30
10.6	Administrative and Operational Expenses	31
10.7	Costs of Compliance with Laws	31
10.8	Indemnification Costs	31
10.9	Failure or Refusal of Contributing Unit Owners to pay Assessments	32
10.10	Extraordinary Items	32
10.11	Reserves	32
10.12	Miscellaneous Expenses	32
XI.	ENFORCEMENT	
11.1	Non-Monetary Defaults	32
11.2	Collection Expenses	32
11.3	Negligence	33
11.4	Responsibility of an Owner for Tenants and Guests	33
11.5	Right of Association to Evict Tenants and Guests	33
11.6	No Waiver	34
11.7	Rights Cumulative	34
11.8	Enforcement By or Against Other Persons	34
XII.	DEVELOPMENT	
12.1	Declarant's Activities	34
XIII.	MISCELLANEOUS PROVISIONS	
13.1	Lawful Use of Property	35
13.2	Incorporation of PalmCreek Documents	35
13.3	Rental Restriction	35
13.4	Notices	35
13.5	Exemption	36
13.6	Lien Holders	36
13.7	Conflict With Articles or By-Laws	36
13.8	Captions Headings and Title	36
13.9	Context	36
13.10	Attorney's Fees	36

13.11	Severability	37
13.12	Subordination	37
13.13	Amendment and Modification	37
13.14	Term of Declaration	38
13.15	Dissolution of Association	38
13.16	Inapplicability of Condominium Act	39
13.17	Termination of Liability of the Developer	39
13.18	Authority of Association and Delegation	39
13.19	Assignment of Declarant's Rights	39
13.20	Performance or Association's Duties by Declarant	39
13.21	Lawsuits Brought by the Association	39
13.22	Modification of Development Plan	40
13.23	Third Party Beneficiaries	40
13.24	Phasing	40

I. DEFINITIONS

- 1.1 "Architectural Review Board" or "ARB" means the Architectural Review Board established by the Board pursuant to this Declaration.
- 1.2 "Association" shall mean and refer to the PalmCreek Estates Homeowners Association, Inc. a Florida Corporation, its successors and assigns.
- 1.3 "Articles" means the Articles of Incorporation of the Association.
- 1.4 "By-Laws" means the By-Laws of the Association.
- 1.5 "Common Area" shall mean the portions of the Property to be owned by the Association for the common use and enjoyment of the Owners.
- 1.6 "Declarant" or "Developer" shall mean the undersigned, its successors and assigns, excluding mortgage holders and subsequent purchasers of lots unless the reserved development rights of the Declarant are specifically transferred in writing.
- 1.7 "Declarant Control Period" shall be the period of time within which the Declarant shall have the right to appoint all members of the Board of Directors, approve all officers of the Association, and amend this Declaration and the PalmCreek Documents. This period expires when ninety percent (90%) of all Lots owned by Declarant have been sold to third party users of the Lots and closed.
- 1.8 "Directors" or "Board" means the Board of Directors of the Association.
- 1.9 "Institutional Lender" means any company or entity holding a mortgage encumbering any of the Property, which in the ordinary course of business makes, purchases, guarantees, or insures real estate mortgage loans, and which company or entity is not owned or controlled

by the Owner of the Property encumbered. An institutional Lender may include a bank, savings and loan association, insurance company, real estate or a mortgage investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, an agency of the United States or any other governmental authority, or any other similar type of lender generally recognized as an institutional-type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Declarant, whether or not such holder would otherwise be considered an Institutional Lender.

- 1.10 **"Lot", "Home", "Residence" and "Unit"** are used herein interchangeably and shall not be distinguished in any interpretation and shall mean any plot of land that is subject to individual ownership shown on the recorded subdivision plats of the various phased units of PalmCreek Estates which comprise or will comprise a portion of the Property.
- 1.11 **"Maintenance"** shall mean the act of reasonable care in keeping buildings, lawns, lighting, landscaping, paved and concrete areas and other related improvements and fixtures of any portion of the Property, in a condition as comparable to its original condition as possible, normal wear and tear excepted.
- 1.12 **"Member"** shall mean any person or entity who holds membership in the Association.
- 1.13 **"Mortgage"** shall mean a legal instrument given as security for a loan and which constitutes a lien on any real property comprising a portion of the Property.
- 1.14 **"Mortgagee"** shall mean a holder of a mortgage.
- 1.15 **"Nonresidential Property"** means the portions of the Property that are designated in this Declaration or the Plat to be used or maintained for purposes other than having Dwelling Units constructed on them and, where the context so requires, any improvements contained on them.
- 1.16 **"Operating Expenses"** means the expenses for which Owners are liable to the Association as described in this Declaration and in any of the other PalmCreek Documents, including, without limitation, the costs and expenses incurred or to be incurred by the Association in administering, operating maintaining, repairing, reconstructing and replacing the Association Property.
- 1.17 **"Owner"** shall mean the record owner, whether it is one or more persons or entities, of a fee simple title to any lot that is a part of the Subdivision. This includes contract sellers, but shall not include those holding title merely as security for the performance of an obligation.
- 1.18 **"PalmCreek Documents"** means in the aggregate this Declaration, the Articles, the By-Laws and all of the instruments and documents referred to in them, as amended from time to time, including, without limitation, any rules and regulations of the Association.
- 1.19 **"Plat" or "Plats"** means the Plats of PalmCreek as described in paragraph 1.20 and recorded

or to be recorded in the Public Records of Okeechobee County, Florida as well as any and all future phased units which by their terms join and are subject to the PalmCreek Documents.

1.20 **"Property"** shall mean the real property comprising:

The Plat of PalmCreek Estates Unit No. 1 according to the plat thereof as recorded in Plat Book 6, Pages 83-84, public records of Okeechobee County, Florida and

The Plat of PalmCreek Estates Unit No. 2 according to the plat thereof as recorded in Plat Book 6, Pages 85-86, public records of Okeechobee County, Florida. and

The Plat of PalmCreek Estates Unit No. 3 according to the plat thereof as recorded in Plat Book 6, Pages 90-91, public records of Okeechobee County, Florida.

Together with any additional platted phased units of PalmCreek Estates that are included by joinder into this Declaration of Covenants, Conditions, Restrictions and Easements.

1.21 **"Recreation Areas"** means all portions of the Property outside of the Lots and designated or dedicated as a Recreation Area in this Declaration, on the Plat, or in the PalmCreek Documents.

1.22 **"Residential Property"** means all portions of the Property designated as such in this Declaration or the Plat and upon which Dwelling Units may be constructed.

1.23 **"Subdivision"** means the Plats of PalmCreek as described in paragraph 1.20 and recorded or to be recorded in the Public Records of Okeechobee County, Florida as well as any and all future phased units which by their terms join and are subject to the PalmCreek Documents.

II. LAND USE AND EASEMENTS

2.1 Use Classifications of Property

- a. **Residential Property.** Residential Property shall be for residential use only. Except for facilities related to construction, development, and sales activities permitted on the Property, there may be constructed on Residential Property only Dwelling Units and improvements associated with residential purposes, such as, but not limited to, streets, drives, driveways, parking spaces, lawn areas, fences, swimming pools, and other customary amenities as an appurtenance to Dwelling Units. No commercial or business occupations may be carried on in the Property except for the construction, development, sale or lease of the Property or portions of it, or other property owned by Declarant, including but not limited to, Dwelling Units, and except for home occupations permitted by the Okeechobee County Code and approved by the Board, and except for direct accessory services to the Residential Property, such as utilities, Dwelling Unit or Lot maintenance, and other such services.

- b. **Recreation Areas.** Recreation Areas shall only be used for recreational purposes.

Recreational purposes include, but are not limited to, customary use of parks, swimming pools, lakes, cabana pavilions, and any other open spaces or facilities utilized or intended for use for recreational or social purposes and amenities associated with them, such as, but not limited to, drives, driveways, sidewalks and parking facilities. The foregoing recitation of recreational purposes is illustrative only and shall not constitute a representation that any of such recreational facilities or amenities shall exist or be provided in PalmCreek. The permitted recreational purposes for which a particular Recreation Area may be utilized, may be limited by any specific provisions of this Declaration or the Plat applicable to the particular Recreation Area. Each Owner is granted an irrevocable nonexclusive right of use in the Recreation Areas (the "Recreation Area Use Right"), which shall be appurtenant to and run with title to a lot. Any portion of the Property designated or designed to be used solely for recreational purposes, but the use of which is limited to only certain, and not all, of the Owners, if any, shall not be deemed a Recreation Area and expenses with respect to it shall not be Recreation Area Expenses nor part of the Operating Expenses.

Except as otherwise permitted by this Declaration, the Recreation Areas shall be for the sole and exclusive use of the Owners and residents of PalmCreek and their guests, and shall be subject to the rules and regulations of the Association.

- c. **Drives.** "Drives" are the portions of PalmCreek designated, or dedicated for use as, private drives or roads and in the plats as Tract "A" comprising the Property and shall be used, kept and maintained as private drives for the use of the Association, the Declarant and the Owners and their family members, guests, lessees and invitees; provided that there is granted and reserved to the County, the State of Florida and the United States of America (collectively the "Governmental Authorities") a nonexclusive easement for ingress and egress over and across the Drives for all activities of the Governmental Authorities in providing all governmental services including, but not limited to, police and fire protection, garbage collection, mail delivery, building inspections, and like services (collectively "Governmental Purposes"). The easements granted to the Governmental Authorities for Governmental Purposes shall inure to the benefit of and run exclusively to such Governmental Authorities and no other persons or entities shall have any rights, claims or interests by reason of or arising under the easements granted in favor of the Governmental Authorities. Should a Dwelling Unit encroach upon a Drive, the encroachment shall not be violation of this provision. The Drives are subject to easements, which are granted and imposed upon the Drives in favor of the County, the Association and the designees of the Association for the construction, operation and maintenance of underground utility and drainage facilities. The Association has the right, but not the obligation, to construct and operate gatehouses on or about the Drives. No representation is made that any limited access devices, gates or gatehouses will be constructed, or that if constructed, that any such devices, gates or gatehouses will be operational, staffed on a part or full time basis, or a guarantee of the safety of persons within the Property.

- d. **Lake.** The Lake (Tract B as shown on the Plats, less lots 118 and 119 of Unit 3)

which is that portion of the Property, both within the Common Area and adjacent to certain Lots, together with such other lakes, canals and waterways designated as, or dedicated for use as a part of the permitted surface water management system of the multi-unit development of PalmCreek, which are all collectively referred to as the "Lake" unless specifically otherwise indicated herein. The Lake shall be used, kept and maintained in accordance with all applicable rules and regulations of the South Florida Water Management District, or its successors, and in conformity with any conservation easements established pursuant to the surface water management permit and not for residential, commercial or industrial purposes of any kind. No improvements of any type shall be erected, constructed or allowed to exist without the prior written approval of the Association.

- 2.2 **Rules and Regulations.** The administration, management, operation and maintenance of the Recreation Area, the Drives, the Lake and the North Canal shall be the responsibility of the Association. The Association, by its Board, shall have the right to promulgate and impose rules and regulations and thereafter to modify, alter, amend, rescind and augment any of them (the "Rules") with respect to the use, operation and enjoyment of the:

- a. recreation Areas and any improvements located on them, including, but not limited to, establishing hours and manner of operation and establishing requirements as to dress and decorum;
- b. the Drives, the Lake; and
- c. the other portions of PalmCreek provided however no rules promulgated shall be in conflict with the provisions of this Declaration.

2.3 **Conveyance of Common Areas.**

- a. Declarant agrees that it shall convey to the Association fee simple title to the Recreation Areas, the Drives, the Lake, subject to
 - i. the terms and provisions of this Declaration,
 - ii. real estate taxes as of the date of conveyance,
 - iii. all applicable zoning ordinances,
 - iv. such facts as an accurate survey would show,
 - v. all covenants, easements, restrictions and reservations of record or common to the subdivision, and
 - vi. all mortgages and encumbrances of record.
- b. Declarant shall cause the mortgagees either to subordinate the mortgage to, or join in, the dedication of the Recreation Areas for recreational purposes, subject to such terms and conditions of the dedication as the mortgagees reasonably may require. Declarant shall have the right to convey portions or all of the Recreation Areas, the Drives, and the Lake at such time or times as Developer shall determine, provided that the conveyance of all of them shall be completed no later than ninety (90) days after termination of the Declarant Control Period as defined in the Articles, except that

those portions of the Property, if any which become Recreation Areas, Drives, or Lake subsequent to termination of the Declarant Control Period shall be conveyed by Developer within ninety (90) days after the property becomes a Recreation Area, Drive, or Lake.

- c. Except as otherwise provided in this paragraph, after a Recreation Area or other Common Area, or any portions of them, becomes vested in the Association, neither the Area vested in the Association nor the improvements on it shall be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered without first obtaining the written approval of all institutional Mortgagees (as shown by the Public Records of the County). The prohibition of the preceding sentence shall not prohibit or restrict the Association from granting such easements as are reasonably necessary or appropriate for the development of the Recreation Areas and Common Areas and their use in a manner consistent with the provisions of this Declaration and the Plat, nor prohibit or restrict the Association from encumbering the Recreation Areas or Common Areas for the sole purpose of securing loans for their improvement.

2.4 Association Property. All of the Association Property shall be owned and held by the Association, its successors and assigns, in accordance with and subject to the terms and provisions of the applicable dedication or conveyance of it and subject to other PalmCreek Documents. The Association Property includes, without limitation, the Recreation Areas, the Drives, the Lake and Common Areas owned by the Association, all buildings and improvements constructed on them, including walkways, if any, all fixtures, apparatus and equipment installed on, and any personal property used in connection with, them, and all equipment and apparatus used in connection with the irrigation and sprinkler systems, including the sprinkler system installed in each lot.

2.5 Wetland Preserve Areas. It is acknowledged that various portions of the Property may consist of special preserve areas, including all wetland preserve areas, the Lake and portions of the North Canal. The Association is specifically required to maintain wetland preserve areas in conformance with all controlling governmental requirements. No physical alteration or destruction of such wetlands preserve areas shall be made. Furthermore, if Declarant enters into any agreement for the maintenance of any wetland preserve areas relating to the Property, Declarant shall have the right to assign its duties and obligations with respect to such areas to the Association, and the Association will be obligated to accept such assignment. The Association shall indemnify and hold Declarant harmless from and against any liability that Declarant may have as a result of the Association's failure to properly maintain any wetland preserve areas, as herein provided.

2.6 Declarant's Right of Use. Notwithstanding anything to the contrary contained in this Declaration and in recognition of the fact that Declarant will have a continuing and substantial interest in the development and administration of PalmCreek, the Declarant reserves for itself and its successors and assigns the right to the use of all Recreation and other Common Areas, and all other portions of the Property the title to which had not been conveyed by Declarant, in conjunction with and as part of its program of sale, constructing and developing within

PalmCreek, without any cost to Declarant for such rights and privileges. Without limiting the foregoing, Declarant may also use any model Dwelling Units constructed on the Property in connection with the sale of improvements located on or outside the Property. The rights and privileges of Declarant set forth in this subparagraph shall terminate when Declarant or its assigns no longer owns any portion of the Property or upon such earlier date as Declarant shall notify the Association in writing of Declarant's election to relinquish these rights and privileges of use.

- 2.7 **Dedications.** The Declarant reserves the right to dedicate, grant or convey any portion of the Property owned by it, or any interest or easement therein, to any governmental or quasi-governmental agency or private or public utility company, and shall also have the right to direct the Association to likewise dedicate, grant or convey any Common Area, or any interest or easement in any Common Area, whereupon the Association shall execute such documents as will be necessary to effectuate such dedication. This right of Declarant shall terminate when Declarant no longer has any interest in any portion of the Property, and thereafter the right shall be vested within the Association. Any Property, or any interest or easement therein, which is dedicated, granted or conveyed pursuant to this paragraph shall not be subject to the covenants and restrictions contained within this Declaration, unless the instrument dedicating, granting, or conveying such Property, interest, or easement specifically provides otherwise.
- 2.8 **Disputes as to Use.** In the event there is any dispute as to whether the use of the Property or any portion of it complies with the covenants and restrictions contained in this Declaration, the dispute shall be referred to the Board, and a determination rendered by the Board with respect to the dispute shall be final and binding on all parties concerned; provided however, any use by Declarant in accordance with this Declaration shall be deemed a use which complies with this Declaration and shall not be subject to a determination to the contrary by the Board.
- 2.9 **Additional Easements.** In addition to any other easements provided for in these Articles or elsewhere in the PalmCreek Documents, each of the following easements are hereby created, which shall run with the land and, notwithstanding any of the other provisions of this Declaration, may not be amended or revoked in such a way as to unreasonably interfere with their proper and intended uses and purposes, and each shall survive the termination of this Declaration:
- a. **Easements for Pedestrian and Vehicular Traffic.** Easements for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the Property and be intended for such purpose; and for pedestrian and vehicular traffic and parking over, through, across and upon such portion of the Property as may from time to time be paved and intended for such purposes. Such Easements being for the use and benefit of the Owners and the residents of the Property and their guests, invitees, and mortgagees.
 - b. **Perpetual Nonexclusive Easement in Common Areas.** The Common Areas shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive

appurtenant easement in favor of all Owners and residents of the Property from time to time, and their guests and invitees, for all proper and normal purposes and for the furnishing or services and facilities for which such areas are reasonably intended.

- c. **Service and Utility Easements.** Easements in favor of Declarant, the Association, the PalmCreek Property Owners' Association, and all governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, and mail carrier companies, and their agents and employees, over and across all roads existing from time to time with the Property, and over, under, on and across the Property, as may be reasonably required to permit the foregoing, to provide their respective authorized services to and for the maintenance, repair and providing of such services, equipment and fixtures in order to adequately serve the Property including, but not limited to, electricity, telephones, sewer, water, lightning, irrigation, drainage, television antenna and cable television facilities and electronic security. An Owner shall do nothing on his Lot, which interferes with or impairs the services using these easements. No trees or shrubs may be placed on the drainage easements. The Board or its designee shall have a right of access to each Lot and Unit to inspect, maintain, repair or replace the service facilities contained under the Lot and to remove any improvements interfering with or impairing the services or easement herein reserved; provided such right of access shall not unreasonably interfere with the Owner's permitted use of the Lot and, except in the event of an emergency, entry into any Unit shall be made with reasonable notice to the Owner.
- d. **Encroachments.** If any portion of the Common Areas encroaches upon any lot; if any improvements (including any Unit) encroaches upon any Lot or upon any portion of the Common Areas; or if any encroachment shall hereafter occur as a result of
- i. construction or reconstruction of any improvements;
 - ii. settling or shifting of any improvement;
 - iii. any addition, alteration or repair to the Common Areas made by or with the consent of the Association;
 - iv. any repair or restoration of any improvements (or any portion thereof) on any Lot or Common Areas after damage by fire or other casualty or any taking be condemnation or eminent domain proceedings of all or any portion of the Lot or Common Areas; or
 - v. any non-purposeful or non-negligent act of an Owner except as may be authorized by the Board,
- then in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.
- e. **Maintenance Easement.** The Developer reserves for the benefit of the Association a non-exclusive easement over each Lot for the purpose of the performance of the Association's responsibility under Article V for the maintenance and replacement of certain portions of each Lot.
- f. **Sale and Development Easement.** Declarant reserves and shall have an easement over, upon, across and under the Property as may be reasonably required in

connection with the development, construction, lease or sale and promotion of any Lot or Dwelling Unit within the Property or within any other property owned by Declarant.

III. PROPERTY RIGHTS USE AND MAINTENANCE OF PALMCREEK

3.1 Property Rights.

- a. **Owner's Easements.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas together with a non-exclusive easement of ingress and egress over the Drives within PalmCreek which shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of the PalmCreek Documents.
- b. **Partition.** There shall be no judicial partition of any Common Area, nor shall the Association, any Owner or any other person acquiring any interest in PalmCreek or any part of it, seek judicial partition of it.
- c. **Riparian Rights.** No lot owner shall be deemed to have any riparian rights in a water body adjacent to their lot including without limitation, the Lake and North Canal. Such rights, if any, shall inure to the benefit of the Association.

3.2 Use and Maintenance of PalmCreek

- a. **Owners' Covenants for Use and Maintenance.**
 - i. Each Owner, by acceptance of a Deed or other instrument of conveyance conveying a Lot within PalmCreek, whether or not it shall be so expressed in the deed or instrument, covenants and agrees that the Lot shall be used, held, maintained and conveyed solely in accordance with the covenants, reservations, easements, restrictions and lien rights as are or may be set forth in the PalmCreek Documents.
 - ii. Each Owner shall, at his sole cost and keep the exterior of his Dwelling Unit and his Lot, in a neat, clean and aesthetically pleasing and proper condition and good repair. All buildings and other improvements shall be maintained in accordance with all applicable governmental requirements and in a first class condition and in good working order so as to preserve the beauty, quality, and value of all property. Painting or other maintenance shall be periodically perfected by Owner as reasonably required. An Owner shall not permit any excessive and/or unsightly mildew, rust deposits, dirt, or deterioration to accumulate on any building or improvement. The Board or the Architectural Review Board may adopt rules to enforce these provisions.
- b. **Required Maintenance by Association.** The Association shall maintain, repair, replace and reconstruct the Association Property. The Association shall also maintain
 - i. the lawns and landscaping as originally installed or replaced by the Developer or the Association, but not including any upgrades even if approved by the

- ii. Association, on each Lot, all fences on each Lot, except: fences built by Owners with ARB approval, and lateral fences connected to Dwelling Units. The Association shall have the right of entry by its agents, employees, contractors, and sub-contractors at reasonable hours upon each Lot for the purpose of performing this maintenance. Further, the Association shall have the right to remove and/or replace trees, shrubs and other plantings on the landscaping area. In no event shall the Association be liable for any damage to any landscaping upgrades incurred in the course of the Association's performance of its obligations under this paragraph.

c. **Optional Maintenance by Association.**

- i. In the event that any Owner fails to maintain his Dwelling Unit and Lot or otherwise provide any maintenance required under the PalmCreek Documents (the "Defaulting Owner"), the Association shall have the right, though not the obligation, upon thirty (30) days' written notice to the Defaulting Owner, or less in the case of emergencies, to enter the property of the Defaulting Owner for the purpose of performing the maintenance and/or repairs described in the notice. The cost of performing the maintenance and/or repairs and the expense of collection (including, but not limited to, court costs and reasonable attorneys' fees for the services of the Association's attorneys through and including all appeals and whether or not suit is instituted) shall be assessed against the Defaulting Owner and shall become a lien upon the Lot and Dwelling Unit of the Defaulting Owner. The lien shall be effective only upon recording in the Public Records of the County of a written statement claiming the lien on behalf of the Association and setting forth the amount due, which shall bear interest from the date of the statement at the highest rate allowed by law. The Association shall have all rights and remedies with respect to the enforcement and collection of the lien as the Association would have with respect to liens for Assessments as provided for in this Declaration. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a satisfaction of it in recordable form.
- ii. The Association shall further have the right, though not the obligation, to provide any other maintenance on the Property, or on other property not subject to this Declaration, that is authorized by a majority of Members of the Association to preserve the beauty, quality and value of PalmCreek. This maintenance shall be made only upon prior notice to the affected Owners and shall be undertaken at the sole expense of the Association.

- d. **Limitation on Association's Liability.** The Association and its directors, officers, agents, and employees, shall not be liable to any Owner or other party in the performance of its responsibilities, or in the exercise of its powers, with respect to the maintenance of PalmCreek, except for gross negligence or willful misconduct.

IV. ENVIRONMENTAL ISSUES

- 4.1 **Operating Entity.** The Association shall accept the designation of "Responsible Operating Entity" as defined by the Florida Administrative Code, for compliance with any conditions of the surface water management permit issued to allow the creation of the various phased units of the Subdivision.
- 4.2 **Lake Maintenance Easement.** No activity shall occur within the Lake Maintenance Easements as shown on the various plats comprising the subdivision or within the North Canal that would impact the Lake, North Canal or inhibit the continued compliance of the subdivision with all surface water management permits issued by the applicable regulatory agencies. Any fencing shall be upland of the maintenance easement.

V. PRESERVATION OF PROPERTY VALUES

In order to preserve the values and amenities of PalmCreek, the following provisions shall be applicable to the Property:

- 5.1 **Single Family.** Each lot or unit shall be used as a residence for a single-family occupancy only and for no other purpose.
- 5.2 **Business.** No business shall be conducted in any residence unless it is considered to be a Home Occupation as defined by The Okeechobee County Ordinance and has the written approval of the Association.
- 5.3 **Nuisances.** No Owner shall cause or permit any unreasonable or obnoxious noises or odors and no nuisance or immoral or illegal activities shall be permitted or maintained on any Property. It is intended, however, that the noises or odors which are the reasonably expected result of the uses of the Property that are specifically permitted or contemplated by this Declaration shall not be deemed unreasonable, obnoxious or a nuisance.
- 5.4 **Removal of Sod and Shrubbery, Alteration of Drainage, Etc...** Except for the Declarant's acts and activities in the development of Palm Creek, no sod, topsoil, muck, trees or shrubbery shall be removed from the Property or any Lot and no change in the condition of the soil or the level of the land of the Property or any Lot shall be made which results in any adverse change in the flow or drainage or surface water of or within Palm Creek, without the prior written consent of the ARB or the Board. In particular, no Owner shall adversely affect the drainage to or from any contiguous Lot and no Owner shall change or alter the sprinkler system on his Lot without the prior written consent of the ARB.
- 5.5 **Artificial Vegetation.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot.
- 5.6 **Fences. Fences and Walls.** No fence or privacy wall may be constructed on a Lot without the prior approval of the ARB. If any Owner desires to construct a fence or privacy wall on his Lot, the Owner shall submit a plan to the ARB showing the proposed location of the fence or privacy wall upon the Lot and confirming that the type of fence will be consistent with the fences of adjoining Lots. Any fence must extend to the rear property line as well as to each

adjoining lot line if there is not a fence already constructed on the adjoining lot. Any Owner constructing a fence shall connect to and utilize the adjoining fences and by this provision, grants permission for the adjoining Owners to likewise connect and utilize the fence being constructed. No fence or privacy wall may be constructed on the portion of any Lot between the front of the Lot and the front of the Unit constructed upon the Lot, and any fence or privacy wall constructed upon a Lot must be located in strict conformance with the plan approved by the ARB. Any fence that has not been approved is subject to be removed at the lot owner's expense.

- 5.7 **Sprinklers.** Each Residential Unit shall have and maintain a permanent sprinkler system designed to provide adequate water to maintain the lawn and landscaped areas of the Lot. The system shall be controlled by a time clock that is accessible from the exterior of the house and available to the lawn maintenance crews and the Association. Electrical power shall be available to the time clock for use by the sprinkler system at all times.
- 5.8 **Post Light.** Each Residential Unit shall have and maintain a post style front yard light of a type and appearance approved by the Association or the Declarant. The light shall be photocell controlled for dusk to dawn operation with light bulbs of a type and wattage approved by the Association or the Declarant being promptly replaced where necessary. Electrical power shall be available to the post light at all times.
- 5.9 **Signs.** No signs may be displayed on a lot in the subdivision without prior written consent and approval of the Association or Declarant.
- 5.10 **Garbage.** No garbage, trash, refuse or rubbish shall be deposited, dumped or kept upon any part of the Property except in closed containers or other garbage collection facilities deemed suitable by the ARB, or appropriate governmental authority for curb side pickup and shall not be placed at the curb sooner than 5:00 pm on the day before the scheduled pickup. All containers and other garbage collection facilities shall be screened from view from outside the Lot upon which they are located and kept in a clean condition with no noxious or offensive odors emanating from them.
- 5.11 **Radio Equipment.** No ham radios or radio transmission equipment shall be operated or permitted to be operated in the Property, if the same would interfere with television, radio, or other electronic uses by others.
- 5.12 **Temporary Buildings.** No tents, trailers, shacks or other temporary buildings or structures shall be constructed or other wise placed within Palm Creek except in connection with construction, development or sales activities permitted under this Declaration or with the prior written consent of the Board or the ARB.
- 5.13 **Docks, Waterfront Construction and Boat Usage.** No docks, bulkheads, moorings, pilings, boat houses or boat shelters of any kind or any construction shall be erected on or over water management tracts, waterways, banks or shores within Palm Creek except as specifically provided for with regard to the North Canal. No motor powered boat of any kind shall be kept or used upon any lake, water management, tract or waterways of or within

PalmCreek except as specifically provided for with regard to the North Canal.

- 5.14 **Garages.** Each Unit shall have an attached garage providing parking for at least one automobile. No garage door shall be permanently enclosed nor shall any garage be converted to other use. All items desired or required to be stored in the garage must fit entirely within the garage allowing the garage door to fully close. The garage doors shall be kept closed when the garage is not in use by the Owner or when the Owner is absent from the Unit.
- 5.15 **Detached Buildings.** No detached buildings shall be permitted on any lot in the subdivision without the prior written consent and approval of the Association or Declarant.
- 5.16 **Repairs.** Each owner shall, at his own expense, repair his residence, keeping the same in a condition comparable to its original condition, normal wear and tear excepted.
- 5.17 **Casualty Damage.** If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty and responsibility of the owner thereof, with all due diligence, to rebuild, repair or reconstruct such residence to its appearance and condition immediately prior to the casualty. Said reconstruction shall be undertaken within sixty (60) days after the damage occurs and shall be completed within two hundred- sixty (260) days after the damage occurs, unless prevented by causes beyond the control of the owner.
- 5.18 **Exterior and Yard Condition.** Each owner shall maintain his lot and residence in good condition and repair at all times. No owner shall interfere with, or inhibit the lawn maintenance service of the Association. Outdoor storage or accumulation of wood, metal, glass, plastic, building materials, paper, appliances, vehicle parts, and the like is strictly prohibited.
- 5.19 **Vehicles. Vehicles and Boats.** Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, or other vehicles manufactured and used as private passenger vehicles, may be parked within the Property overnight without the prior written consent of the Developer or the Association, unless kept within an enclosed garage. In particular and without limitation, without the prior written consent of the Declarant or the Association, no vehicle containing commercial lettering, signs or equipment, and no truck, recreational vehicle, camper, trailer, racing car, hearse, or vehicle other than a private passenger vehicle as specified above, and no boat, may be parked or stored outside of a Unit overnight. No overnight parking is permitted on any streets, lawns, or areas other than Parking Areas, driveways and garages, without the consent of the Declarant or the Association. Notwithstanding the foregoing, automobiles owned by governmental law enforcement agencies are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the Property. All vehicles parked within the Property must be in good condition and repair, and no vehicle which does not have a current license plate or which cannot operate on its own power shall be parked within the Property outside of an enclosed garage for more than 24 hours, and no major repair of any vehicles are permitted. Mopeds, all-terrain vehicles, motorcycles, motorbikes, and the like are permitted to be operated if licensed for street use and equipped with appropriate noise

muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of the Property. All such mopeds, all-terrain vehicles, motorcycles, motorbikes, and the like shall be parked within the garage.

- 5.20 **Sub-subdividing.** No lot shall be partitioned, further subdivided or fractionally sold so as to create any additional lots beyond those shown on the record plat of PalmCreek Estates.
- 5.21 **Increase in Insurance Rates.** No Owner may engage in any action, which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering any portion of Palm Creek not owned by the Owner.
- 5.22 **Animals and Pets.** Only common household pets may be kept on any Lot or in a Dwelling Unit but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, or poultry of any kind shall be kept, raised bred or maintained on any portion of Palm Creek. No pit bull terriers shall be allowed on the Property at any time. No pet shall be kept outside of a Unit, or in any screened porch or patio, unless someone is present in the Unit. No pet shall be permitted to go or stray on any other Lot without the permission of the Owner of the Lot. Any pet must not be an unreasonable nuisance or annoyance to other residents of the Property. Any resident shall immediately pick up and remove any solid animal waste deposited by his pet on the Property, except for designated pet-walk areas, if any. Permitted pets shall be appropriately leashed and kept only in accordance with such rules and regulations as shall be promulgated from time to time by the Board. The Board may require any pet to be permanently removed from the Property due to a violation of this paragraph. No more than a total of 2 cats and/or dogs are allowed per lot.
- 5.23 **Light Intrusion.** All floodlights and similar lights installed on any Dwelling Unit or on any Lot shall be properly shielded to prevent the radiation of light in a manner which would cause annoyance or be otherwise offensive to the residents of other Dwelling Units in Palm Creek.
- 5.24 **Outside Storage of Personal Property.** All personal property of PalmCreek residents shall be kept inside the Dwelling Units or a fenced or a walled-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in the rear of the Lot and must be neat appearing, maintained in good condition, and screened from any road.
- 5.25 **Window Treatments.** Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window coverings, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding thirty (30) days after an Owner or tenant first moves into a Dwelling Unit or when permanent window treatments are being cleaned or repaired. All linings visible from the street shall be white.
- 5.26 **Weeds, Underbrush.** No weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Lot, and no refuse pile, debris, or unsightly objects shall be allowed to be placed or suffered to remain anywhere on any Lot. If any Owner shall fail or refuse to keep his Lot free of weeds, underbrush or refuse piles or other unsightly growths

or objects, the Association, upon 5 days prior notice to the Owner, may enter upon the Lot and remove them at the expense of the Owner, and such entry shall not be deemed a trespass.

- 5.27 **Aesthetic Compatibility.** Subject to the exemptions afforded the Declarant, below, all new construction or exterior remodeling shall be reviewed by the Architectural Review Board (ARB), herein established, prior to commencement of construction. No changes shall be made to the exterior physical appearance of a structure, including color changes, without the prior written consent of the ARB or Declarant as herein after provided.
- 5.28 **Underground Utilities.** PalmCreek Estates will be served by underground utilities, including but not limited to electric, phone, cable and gas. No aboveground conveyances such as exterior antennas are allowed without the prior written consent of the Association or Declarant. No owner shall excavate any portion of a lot without having the utilities located and without the prior written consent of the Association or Declarant.
- 5.29 **Yard Area.** No changes in landscaping outside of approved existing landscape beds may be made without the prior written consent and approval of the Association or Declarant. This condition assists with property lawn care maintenance and management, as well as conforming appearance. Any lot owner may be additionally assessed for custom landscaping that requires above average time or expense to maintain, or at the option of the association, the custom landscaping may be omitted from the regular maintenance schedule.
- 5.30 **Air Conditioning Units.** Only central air conditioning units are permitted, and no window, wall or portable air conditioning units are permitted.
- 5.31 **Outside Clothes Drying.** Clotheslines, clothes poles and other outside drying devices must be reasonably screened from all streets and roads within or adjacent to the Property.
- 5.32 **Flag Poles.** A single flag not to exceed 3' X 5' in size may be displayed at any one time. No free standing flagpoles are permitted without the consent of the ARB. Any American flag shall be maintained and displayed in a respectful manner.
- 5.33 **Lakes and Canals.** No swimming or motorized boating is allowed in any lake, water management tract or canal (except the North Canal) within or contiguous to the Property. No Owner shall deposit or dump any garbage or refuse in any lake or canal within or contiguous to the Property.
- 5.34 **North Canal.** The canal which is adjacent to the North boundary of the Property (the North Canal) is currently non-navigable. At such time, if ever, as the North Canal becomes navigable, the following additional restrictions shall apply to its use as well as to the lots adjacent to the North Canal.
 - a. **Boat Size.** A maximum boat size for any boat utilizing the North Canal shall be twenty-two (22) feet, with a maximum draft of two (2) feet. Dry boat weights may not exceed 6,000 lbs.

- b. **Boat Speed.** Trolling motors only shall be permitted to operate within the North Canal. No boat shall exceed idle speed - no wake.
 - c. **Weir Structure.** All authorized boats utilizing the Weir Structure must meet the size and weight limitations described above and approach at slow speed. Where indicated, engines must be cut off and trimmed out of the water. Failure to properly and safely utilize the Weir Structure shall result in the Owner's license to use the North Canal being suspended or revoked. All liability associated with the use of the Weir Structure is expressly assumed by the Owners, who operate and use the structure at their own risk. Neither the Association, Declarant, Okeechobee County, nor the South Florida Water Management District, nor any other entity assumes liability for the use of the Weir Structure.
 - d. **Boat Basins.** The installation of boat basins by owners of lots adjacent to the North Canal is prohibited.
 - e. **Boat Docks and Seawalls.** Any dock and seawall must be approved by the ARB and be permitted by the appropriate regulatory agency prior to construction. Any seawall must extend to both lot lines and any dock must observe building set back line.
 - f. **Boat Mooring.** No boats shall be moored or anchored in such a manner as to impede the navigation of others and no boats may be moored, anchored or banked on the north bank of the North Canal.
 - g. **Operational Parameters.** The Board shall set operational parameters not inconsistent with this Declaration in order to ensure safe and responsible use of the North Canal and Weir Structure. The Board may close the Weir Structure during such times as the water level is too low to allow safe operation and passage.
- 5.35 **Waiver.** The Board shall have the right to waive the application of one or more of these restrictions, or to permit a deviation from these restrictions, as to any Lot where, in the discretion of the Board, special circumstances exist which justify such waiver or deviation, or such waiver or deviation, when coupled with any conditions imposed for the waiver or deviation by the Board, will not adversely affect any other Owner. Any waiver must be in writing and in granting any waiver or deviation, the Board may impose such conditions and restrictions as the Board may deem necessary, and the Owner shall be required to comply with any such restrictions or conditions in connection with any waiver or deviation. In the event of any such waiver or permitted deviation, or in the event any party fails to enforce any violation of these restrictions, such actions or inactions shall not be deemed to prohibit or restrict the right of the Board, or any other person having the right to enforce these restrictions, from insisting upon strict compliance with respect to all other Lots, nor shall any such actions be deemed a waiver of any of the restrictions contained herein as same may be applied in the future. Furthermore, any approval given by the Board as to any matter shall not be deemed binding upon the Board in the future, and shall not require the Board to grant similar approvals in the future as to any other Lot or Owner.

- 5.36 **Exceptions.** The foregoing use and maintenance restrictions shall not apply to Declarant, or to any portion of the Property while owned by Declarant, and shall not be applied in a manner which would prohibit or restrict the development of any portion of the Property and the construction of any Units and other improvements thereon, or any activity associated with the sale or leasing of any Units, by Declarant. In addition, Declarant shall have the right to exempt any other builder or developer from any of the foregoing use and maintenance restrictions. Specifically, and without limitation, Declarant shall have the right to, and any other builder or developer who is exempted from the foregoing restrictions by Declarant shall have the right to:
- a. construct any buildings or improvements within the Property, and make any additions, alterations, improvements, or changes thereto;
 - b. maintain customary and usual sales, leasing, general office and construction operations on any Lot;
 - c. place, erect or construct portable, temporary or accessory buildings or structures upon any Property for sales, leasing, construction, storage or other purposes;
 - d. temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction of any Lot; and
 - e. post, display, inscribe or affix to the exterior of a unit or upon any Property, signs and other materials used in developing, constructing, selling or promoting any Lot.

VI. ARCHITECTURAL CRITERIA

- 6.1 **Architectural Review Board.** The architectural functions of the association shall be administered and performed by an Architectural Review Board (ARB), which shall consist of at least three (3) members, who need not be members of the association. The Declarant shall have the right to appoint all of the members of the ARB, or such lesser number as it may choose until such time as it has sold ninety percent (90%) of the parcels affected by this Declaration and amendments hereto. Those members of the committee after Declarant no longer has the right to appoint all of the members of the ARB shall be appointed by, and shall be subject to removal by the Board of Directors of the Association. At such time that the Board of Directors has the right to appoint one or more members of the ARB, the Board of Directors shall appoint at least one (1) architect or building contractor thereto. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors, provided however, that as long as the Declarant has the right to appoint all of the members of the ARB, any vacancy created by the death, resignation, removal or other termination of services of any member of the ARB filled by Declarant

- 6.2 **Requirement of ARB Approval.** Except for Dwelling Units, buildings and other structures and improvements constructed, installed or placed by or with the approval of the Declarant, landscaping and plantings by or with the approval of the Declarant, and additions, alterations, modifications and changes to any of the foregoing by or with the approval of the Declarant (collectively "Declarant Improvements"), which Declarant Improvements are not subject to the approval of the ARB, no improvement or structure of any kind, including, without limitation, any building, addition, wall, fence, awning, swimming pool, patio, tennis court, screen enclosure, lawn shed, dog house or animal pen, dog run, play structure, sewer, drain, disposal system, decorative building, device, object or other improvement shall be erected, placed or maintained on any portion of the Property, no landscaping or planting shall be commenced or maintained upon any portion of the Property, and no addition, alteration, modification or change to any such improvement, structure, landscaping or planting shall be made, without the prior written approval of the ARB. It is expressly intended that Declarant Improvements shall not require ARB approval.
- 6.3 **Method of Obtaining ARB Approval.** In order to obtain the approval of the ARB, two (2) complete sets of plans and specifications for proposed construction and landscaping shall be submitted to the ARB for its review. The plans and specifications shall include, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, and the nature, type and color of materials to be used. The ARB may also require the submission of such additional information and materials as may be reasonably necessary for the ARB to evaluate the purposed construction, landscaping or alteration. The ARB shall evaluate all plans and specifications utilizing standards of the highest level, as to the aesthetics, materials and workman ship and as to suitability and harmony of location, structures and external design in relation to surrounding topography, structures and landscaping.
- 6.4 **Approval or Disapproval by the ARB.** The ARB shall have the right to refuse to approve any proposed plans or specifications, which in its sole discretion, are not suitable or desirable including disapproval solely for aesthetic reasons. Any and all approvals or disapprovals of the ARB shall be in writing and shall be sent to the Board and the respective Owner, as applicable. In the event the ARB fails to approve or to disapprove in writing any proposed plans and specifications within (30) days after receipt by the ARB of the plans and specifications and all other reasonably requested information and materials related to them, the plans and specifications shall be deemed to have been approved by the ARB and the appropriate written approval shall be delivered promptly. The Board reserves the right to assess a reasonable fee for review and processing of requests.
- 6.5 **No Liability.** Notwithstanding anything contained herein to the contrary, the ARB shall merely have the right, but not the duty, to exercise architectural control as provided herein, and shall not be liable to any Owner due to the exercise or non-exercise of such control, or the approval, or disapproval of any construction, improvement, alteration or maintenance. Furthermore, the approval or failure to disapprove of any plans or specifications submitted for approval shall not be deemed to be a warranty that such plans or specifications are complete or do not contain structural defects, or in fact meet any standards, guidelines and/or criteria of the ARB, or are in fact architecturally or aesthetically appropriate, or comply with

any applicable governmental requirements. The Association and the ARB shall not be liable for any deficiency, or injury resulting from any deficiency, in such plans or specifications. Further, the approval of a particular improvement shall not eliminate the requirement of the approval of a similar improvement in the future. The indemnity provisions contained in the Articles shall extend to members of the ARB.

- 6.6 **Compliance With Governmental and Other Requirements.** In addition to any required approval of the ARB, any improvement on a Lot must be in compliance with all requirements of governmental entities having jurisdiction with respect to the Property including, if required, obtaining an appropriate building permits.

VII. HOMEOWNERS ASSOCIATION

- 7.1 **Membership.** Every Owner of a lot shall automatically be a Member of the Association; membership shall be appurtenant to and may not be separated from the ownership of a lot or unit. All Owners shall be entitled to one vote and one vote only, for each lot or unit that they own. Those Residential Units which straddle two lots shall be considered one unit for purposes of membership and voting.
- 7.2 **Board of Directors.** The Association shall be governed by the Board, which shall be appointed, Designated or elected, as the case may be, as set forth in the Articles.

VIII. ASSESSMENTS

- 8.1 **Affirmative Covenant to Pay Operating Expenses.** In order to fulfill the terms, provisions, covenants and conditions contained in this Declaration; to maintain, operate and preserve the Association Property for the recreation, use, safety, welfare and benefit of the Owners and their guests, invitees, lessees and licensees; and to fulfill the Association's obligations to the Master Association in accordance with the Master Association Documents, there is imposed upon each Contributing Unit (as hereafter defined) and each Contributing Unit Owner the affirmative covenant and obligation to pay to the Association all assessments provided for herein ("the Assessments"). Each Owner by acceptance of a deed or other instrument of conveyance conveying a Lot, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agree to pay to the Association all such Assessments.
- 8.2 **Establishment of Liens.** Any and all Assessments made by the Association in accordance with the provisions of the PalmCreek Documents with interest on them at the highest rate allowed by law and costs of collection, including, but not limited to, reasonable attorneys' fees, are declared to be a charge and continuing lien upon the Contributing Units against which each Assessment is made. Each Assessment against a Contributing Unit, together with interest on it at the highest rate allowed by law and costs of collection, including attorneys' fees shall be the personal obligation of the Owner of each such Contributing Unit regardless of when such assessment accrued and, except for Institutional Lenders, regardless of how title was acquired. The lien shall be effective only from and after the time of the recording in the Public Records of the County of a written and acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon

full payment of all sums secured by the lien, the party making payment shall be entitled to a Satisfaction of lien in recordable form. Notwithstanding anything to the contrary in this Declaration, if an Institutional Lender of record obtains title to a Contributing Unit as a result of foreclosure of its mortgage, or deed in lieu of foreclosure, it, and its successors or assigns, shall not be liable for the share of Assessments pertaining to the Contributing Unit which it acquired, or chargeable to the former Owner of it, which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure, unless the Assessment against the Contributing Unit is secure by a claim of lien for Assessment that is recorded prior to the recording of the mortgage foreclosed or with respect to which a deed in lieu of foreclosure was given.

8.3 **Collection of Assessments.** In the event any Contributing Unit Owner shall fail to pay assessments, or any installment of them, charged to the Contributing Unit Owner within fifteen (15) days after it becomes due, the Association, through its Board, shall have any and all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

- a. To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for its payment in installments.
- b. To advance on behalf of the Contributing Unit Owner in default, funds to accomplish the needs of the Association up to and including the full amount for which the Contributing Unit Owner is liable to the Association; the amount of monies advanced, together with interest at the highest allowable rate, and all costs of collection, including, but not limited to, reasonable attorneys' fees, may thereafter be collected by the Association. Such advance by the Association shall not waive the default.
- c. To file an action to foreclosure its lien at any time after the effective date of it. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.
- j. To file an action to collect the Assessment plus interest at the highest rate allowed by law, court costs and reasonable attorneys' fees, without waiving any lien rights or rights of foreclosure in the Association.

8.4 **Collection by Declarant.** If for any reason the Association shall fail to collect the Assessments, the Declarant shall at all times have the right, but not the obligation:

- a. to make the advances that the Association could have made pursuant to this Article; and
- b. to collect the Assessments and, if applicable, any sums advanced by Declarant, using the remedies available to the Association as provided in this Article, which remedies are declared to be available to the Declarant.

- 8.5 **Rights of Declarant and Institutional Lender.** The Declarant and any Institutional Lender shall have the right, but not the obligation, jointly or singularly, and at their sole option, to pay any of the Assessments which are in default and which may have become a charge against any Contributing Units in PalmCreek. Further, the Declarant and any Institutional Lender shall have the right, but not the obligation, jointly or singularly and at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association if they are overdue and when lapses in policies or services may occur. The Declarant and any Institutional Lender paying overdue Operating Expenses on behalf of the Association shall be entitled to immediate reimbursement from the Association, plus any costs of collection including, but not limited to reasonable attorneys' fees.

IX. METHOD OF DETERMINING ASSESSMENTS

9.1 Regular Assessments.

- a. The total anticipated Operating Expenses for each calendar year shall be set forth in a budget (the "Budget") prepared by the Board not later than December 1 of the calendar year preceding the calendar year for which the Budget is to be adopted, providing that the first Budget shall be adopted within sixty (60) days after the recording of the Declaration for the remainder of the first calendar year. The total anticipated Operating Expenses (other than those Operating Expenses which are properly the subject of a "Special Assessment"), shall be apportioned equally among the total number of Contributing Units contemplated to be constructed on the Property to determine the Regular Assessment for each Unit.
- b. Each Lot, together with the Dwelling Unit constructed on it, if any, shall become a "Contributing Unit" on the date it is conveyed by the Declarant. Any structure constituting a Contributing Unit which is destroyed or demolished shall nevertheless be deemed to remain a Contributing Unit. It is recognized that because the development orders applicable to PalmCreek permits, but does not require, 119 Dwelling Units, and because of the provisions set forth with regard to the Declarant's contribution, the number of Contributing Units will initially be less than, and could ultimately be other than set forth hereinabove. The ultimate number of Contributing Units may also be increased or decreased by an amendment to the development order to change the number of permitted Dwelling Units and by joinder of additional properties.
- c. Regular Assessments shall be payable monthly or quarterly as determined by the Board, in advance, on the first day of each assessment period. Regular Assessments and the periodic installments of them, as well as all other Assessments provided in the Declaration, and all installments of them, shall be adjusted from time to time by the Board to reflect
 - i. changes in the Budget or,
 - ii. a determination by the Board that the Assessments, or any installment of them, is either less than or more than the amount actually required.

- 9.2 **Special Assessments.** Special Assessments include, in addition to other Assessments designated as Special Assessments in this Declaration or in any other of the PalmCreek Documents, those Assessments which are levied for the costs (whether in whole or in part) of constructing acquiring, reconstructing or replacing capital improvements for or on the Association Property or Common Area. Notwithstanding anything to the contrary contained in this Declaration, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any individual Regular Assessment. Special Assessments shall be assessed by dividing the total amount of the Special Assessment by the total number of Contributing Units. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, no Special Assessment shall be made for capital improvements without the affirmative vote of two thirds (2/3) of all Owners and, as long as Declarant owns more than ten (10%) of the Lots, the Declarant's written consent. In no event shall any property owned by Declarant be liable for any Special Assessment whether for capital improvements or any other purpose.
- 9.3 **North Canal Assessments.** In addition to other Assessments, there may be assessments designated as North Canal Assessments and are those Assessments which are levied for the special maintenance, repair and replacement occasioned by the Weir Structure and the boat traffic within the North Canal. This assessment may be levied against those lots which are adjacent to the North Canal. It is not the intent of this paragraph to additionally assess these lots for the same routine weed control and maintenance required of the Lake and other portions of the surface water management system, but to provide a mechanism to reimburse the Association for any expenses which are directly related to the benefit enjoyed by those with frontage on the North Canal.
- 9.4 **Shortfalls Due to Nonpayment.** The Owners of each Contributing Unit shall be jointly and severally liable with the Owners of all Contributing Units for the Operating Expenses. Accordingly, if Contributing Unit Owners fail or refuse to pay an Assessment or any portion of it, the other Contributing Unit Owners shall be responsible for increased Assessments due to the non-payment by other Contributing Unit Owners, and the increased Assessment can and may be enforced by the Association and the Declarant in the same manner as all other Assessments as provided in this Declaration. Each of the foregoing provisions are subject to the limitations on the Declarant liability for Special Assessments under this Declaration.
- 9.5 **Initial Contribution For Working Capital.** In addition to the other Assessments provided for in this Article, upon the Conveyance of a Lot by Declarant to an Owner, the new Owner of the Lot shall pay to the Association a contribution to a working capital fund of the Association in an amount equal to two (2) current months' Regular Assessments for Operating Expenses, which shall be in addition to the new Owner's responsibility for Assessments for Operating Expenses. The working capital fund shall be used by the Association for start-up expenses or otherwise as the Association shall determine from time to time and need not be restricted or accumulated. Further, such fund may be expended in whole or in part, and need not be refunded or replaced by Declarant.
- 9.6 **Declarant's Contribution.** Notwithstanding the foregoing provisions of this Article, or anything contained elsewhere in this Declaration, during the period when Declarant appoints

the directors of the Association, Declarant shall not be liable for any Assessments for any Lots owned by Declarant, but during such period, Declarant shall be responsible for all Operating Expenses, exclusive of reserves or Special Assessments, actually incurred by the Association in excess of the Assessments for Operating Expenses and any other income receivable by the Association, including working capital fund contributions. During such period when Declarant appoints the directors of the Association, the Assessments for Operating Expenses shall be established by Declarant based upon Declarant's estimate of what the expenses of the Association would be if all Units contemplated within the Property were completed, so that Assessments during such period will be approximately what said Assessments would be if the development of the Property as contemplated by Declarant was complete. Notwithstanding the foregoing, in the event the Association incurs any expense not ordinarily anticipated in the day-to-day management and operation of the Property, including but not limited to expenses incurred in connection with lawsuits by or against the Association, or incurred in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of Declarant for such Expenses shall not exceed the amount that Declarant would be required to pay if it was liable for Assessments as any other Owner, and any excess amounts payable by the Association, shall be assessed to the other Owners. In addition to the foregoing, and notwithstanding anything contained herein to the contrary, after Declarant no longer appoints the Directors of the Association, Declarant will no longer be required to pay any monies to the Association, or any deficits of the Association, but Declarant may elect to pay Assessments or to fund all or any portion of the deficits of the Association in its full discretion, without prejudice to its right to discontinue such payments at any time thereafter. During the period when Declarant is not liable for Assessments, the Association will not be required to fund any reserve or other accounts which may be reflected in the budget except for those funds directly paid as Reserves by the Contributing Unit Owners.

X. PALM CREEK OPERATING EXPENSES

The following expenses of the Association Property and the Association are declared to be Operating Expenses, which the Association is obligated to assess and collect and which the Contributing Unit Owners are obligated to pay as provided in this Declaration or as may be otherwise provided in the Palm Creek Documents:

- 10.1 **Taxes.** Any and all taxes levied or assessed at any and all times upon the Association Property or any improvements to it by any and all taxing authorities, including, without limitation, all taxes, charges, assessments and impositions and liens, if any, for public improvements, special charges and assessments, and water drainage districts, and in general all taxes and tax liens which may be assessed against the Association Property and against any and all personal property and improvements, which are now or which hereafter may be placed on it, including any interest, penalties and other charges which may accrue on them.
- 10.2 **Utility Charges.** All charges levied by utilities providing services for the Association Property, whether supplied by a private or public firm, including, without limitation, all charges for water, gas, electricity, telephone, sewer, and any other type of utility or any other type of service charge.

10.3 Insurance Premiums. The premiums on the policies of insurance which the Board in its sole discretion determines to be in the best interests of the Association; provided, however, that the Association shall obtain and maintain the following insurance coverage:

- a. **Property Insurance.** Property insurance in an amount equal to the then full replacement costs, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all buildings and improvements now are hereafter located upon the Association Property, which insurance shall afford protection against at least the following:
 - i. loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and
 - ii. such other risks as shall customarily be covered with respect to areas similar to the Association property in developments similar to PalmCreek in construction, location and use.
- b. **Liability Insurance.** A comprehensive policy of public liability insurance naming the Association and, until termination of the Declarant Control Period, the Declarant as named insured, insuring against any and all claims or demands made by any person or persons whomsoever for injuries received in connection with, or arising from, the operation, maintenance and use of the Association Property and any improvements and buildings located on it, and for any other risks insured against by such policies with limits of not less than one Million Dollars (\$1,000,000.00) for damage incurred or claimed by any one occurrence and for not less than Three Hundred Thousand Dollars (\$300,000.00) property damage per occurrence with no separate limits stated for the number of claims. The insurance coverage shall include as appropriate, without limitation, protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, host liquor liability and such other risks as are customarily covered with respect to areas similar to the Association Property in developments similar to Palm Creek in construction, location and use.
- c. **Fidelity Bond.** After the termination of the Declarant Control period, adequate fidelity coverage to protect against dishonest acts on the part of Officers, Directors, and employees of the Association and all others who handle or are responsible for handling funds of the Association, the coverage to be in the form of fidelity bonds which meet the following requirements:
 - i. the bonds shall name the Association as an obligee; and
 - ii. the bonds shall be written in an amount of at least \$10,000; and
 - iii. the bonds shall contain waivers of any defense upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

10.4 Reconstruction Improvement Costs.

- a. **Repair Obligation and Insurance.** To the extent available, insurance proceeds shall

be used to repair, replace, construct or reconstruct any building or improvements upon the Association Property damaged by any casualty ("the restoration") unless at least two thirds (2/3) of the members vote not to make such restoration. Any difference between the amount of insurance proceeds received with respect to the damage and the amount of funds necessary for the restoration shall be an Operating Expense and it shall be the subject of a Special Assessment, which the Association may levy. The Association shall proceed diligently with the restoration and complete it as soon as reasonably possible after the damage occurs.

- b. **Special Assessments for Deficiency.** Should the insurance proceeds be sufficient for the restoration, and an excess remains after payment for the restoration, the excess proceeds shall be held by the Association for the use of the Association unless the Contributing Unit Owners of at least seventy-five percent (75%) of the Contributing Units then in existence shall have voted in favor of a distribution of the proceeds. If the restoration is paid by both a Special Assessment and insurance proceeds, and upon completion of payment for the restoration there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of the restoration were first disbursed from insurance proceeds and any funds remaining shall be deemed to be from Special Assessments and shall be returned to the Contributing Unit Owners by means of a distribution pro rata in accordance with the collection of the Special Assessment (s).

10.5 **Maintenance, Repair and Replacement Costs.** Any and all expenses necessary to

- a. keep, maintain, preserve, operate, repair and replace the Association Property, storm drains, drainage easements, the Lake, the North Canal, the surface water management system and other easements pertaining to PalmCreek and all sidewalks and paths within PalmCreek;
- b. maintain and preserve the landscaped, grassed and open and natural portions of the Association Property, and the landscaped area of each Lot as provided for and limited herein, including, without limitation, such expenses as grass cutting, tree trimming, sprinkling, fertilizing, spraying, and the like, and the maintenance, repair and replacement of the irrigation and sprinkler systems; and
- c. operate, maintain, preserve and protect the portions of the Association Property designated or used for water management purposes, including all costs of chemically treating the waters of such areas, controlling water levels, and maintaining and operating any improvements and amenities established within the areas;
- d. removal of sediments from the catchment area adjacent to Taylor Creek as well as upstream and downstream from the Weir Structure.
- e. keep, maintain, operate, repair and replace any and all buildings, improvements, personal property and furniture, fixtures and equipment upon the Association Property in a manner consistent with the development of PalmCreek and in

accordance with the covenants and restrictions contained in this Declaration, and in conformity with all applicable federal, state, County or municipal laws, statutes, ordinances, orders, rulings and regulations;

- f. maintain, repair and replace all street signs installed or placed on any part of the Property by Declarant or the Association which are not maintained, repaired and replaced by the County or other applicable governmental body or agency;
- g. maintain, repair and replace all signs, decorative walls, and other structures installed, placed or erected by Declarant or the Association within the Property constituting signs and entry features for PalmCreek or any part of it, and whether on land owned by or dedicated to the Association or on land over which the Association has an easement for such purposes;
- h. maintain and operate any street lights within or adjacent to the streets and roads within PalmCreek including, but not limited to, all charges of any utility company providing electric service for the street lights and costs for repair or replacement of damaged street lights to the extent the costs and charges are not paid for by governmental agencies or the utility company providing the service; and
- i. maintain and replace any gatehouses constructed within the Property, including the associated operating and staffing expenses.

10.6 Administrative and Operational Expenses. The costs of administration for the Association in the performance of its functions and duties under the Palm Creek Documents including, but not limited to, costs for secretarial and bookkeeping services, salaries of employees, legal and accounting fees and contracting expenses.

10.7 Costs of Compliance with Laws. The costs of taking what ever action the Association or its Board determines necessary or appropriate to maintain the Association Property and the improvements on it in compliance with all laws, statutes, ordinances and regulations of any governmental authority, whether federal, state or local, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions and fire hazards.

10.8 Indemnification Costs. The costs arising from the Association's covenants to indemnify and hold harmless Declarant (including Declarant's directors, officers, employees, and agents) from and against any and all actual or threatened claims, suits, actions, causes of action or damages arising from any personal injury, loss of life or damage to property sustained on or about the Association Property and improvements on it, and from and against all costs, expenses, attorney's fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred by Declarant arising from any such claim, the investigation of it, or the defense of any action or proceedings brought on it, and from and against any orders, judgments or decrees which may be entered on it; and from any expense Declarant may incur in bringing any suit or action for the purpose of enforcing the rights of Declarant under any of the Palm Creek Documents or of compelling

the specific enforcement of the terms, conditions and covenants contained in any of the PalmCreek Documents to be kept or performed by the Association or the Owners. Any assessment hereunder may be the subject of a Special Assessment.

- 10.9 **Failure or Refusal of Contributing Unit Owners to pay Assessments.** Funds needed for Operating Expenses due to the failure or refusal of Contributing Unit Owners to pay Assessments levied. Any assessment for sums needed to make up a deficiency due to the failure of Contributing Unit Owners to pay a Special Assessment may be the subject of a Special Assessment.
- 10.10 **Extraordinary Items.** Extraordinary items of expense under the PalmCreek Documents such as expenses due to casualty losses and other extraordinary circumstances may be the subject of a Special Assessment.
- 10.11 **Reserves.** The funds necessary to establish a reserve fund ("the Reserves") for deferred maintenance of the Association Property and the facilities and improvements on it in amounts determined by the Board from time to time. The Reserves shall be deposited in a separate account. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Owner shall have any interest, claim or right to the Reserves or any fund composed of the Reserves.
- 10.12 **Miscellaneous Expenses.** All costs or expenses pertaining to or for the benefit of the Association Property, or any part of it, not specifically enumerated in this Declaration, which are determined by the Board.

XI. ENFORCEMENT

- 11.1 **Non-Monetary Defaults.** In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their guests or invitees, of any of the provisions (other than provisions for payment of money) of this Declaration or the other PalmCreek Documents, the Association shall notify the Owner and any tenant of the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association, or if any similar violation is thereafter repeated, then the Association may, at its option:
 - a. Commence an action to enforce the performance on the part of the Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
 - b. Commence an action to recover damages; and/or
 - c. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration,

improvement or change which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration.

- 11.2 **Collection Expenses.** All expenses incurred by the Association in connection with the correction of any default under this Declaration, plus a service charge of (10%) percent of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorneys' fees whether or not incurred in legal proceedings, shall be assessed against the applicable Owner, and shall be due upon written demand by the Association. The Association shall have a lien for any such assessment and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such assessment, and may take such action to collect such assessment or foreclosure said lien as in the case and in the manner of any other assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of the County.
- 11.3 **Negligence.** An Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include but not be limited to any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot, Dwelling Unit, or the Common Areas.
- 11.4 **Responsibility of an Owner for Tenants and Guests.** To the extent provided or permitted by law, each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Unit, and for all guests and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Association Property or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the By-Laws, by any resident of any Unit, or any guest or invitee of an Owner or any resident of a Unit, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.
- 11.5 **Right of Association to Evict Tenants and Guests.** With respect to any tenant or other person present in any Unit or any portion of the Property, other than an Owner and the members of his immediate family permanently residing with him in the Unit, if such person shall materially violate any provision of this Declaration, the Articles, or the By-Laws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Association Property. Then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition

to any other remedy of the Association.

- 11.6 **No Waiver.** The failure of the Association to enforce any right, provision, covenant or condition which maybe granted by the PalmCreek Documents, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant, or condition in the future.
- 11.7 **Rights Cumulative.** All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of this Declaration or the other PalmCreek Documents shall not be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from exercising any additional remedies, rights or privileges as may be granted or as it might have by law.
- 11.8 **Enforcement By or Against Other Persons.** In addition to the foregoing, this Declaration may be enforced by Declarant (so long as Declarant is an Owner), or the Association, by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration, including attorneys' fees, shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration. In addition to the foregoing, any Owner shall have the right to bring an action to enforce this Declaration against any person violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, but no Owner shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any person, and the prevailing party in any such action shall be entitles to recover its reasonable attorneys' fees.

XII. DEVELOPMENT

- 12.1 **Declarant's Activities.** Declarant or the transferees of the Declarant shall undertake the work of developing all easements and common areas within the subdivision. The completion of that work is essential to the establishment and welfare of the subdivision as an ongoing residential community. In order that such work may be completed and the subdivision be established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to:
- a. Prevent Declarant's transferees or the employees, contractors or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the subdivision owned or controlled by Declarant or Declarant's transferees or their representatives, whatever they determine may be responsibly necessary or advisable in connection with the completion of such work;
 - b. Prevent Declarant, Declarant's transferees or the employees, contractors or subcontractors of Declarant's transferees from constructing and maintaining on any

part or parts of the subdivision property owned or controlled by Declarant, Declarant's transferees or their representatives, such structures as may be reasonable necessary for the completion of such work, the establishment of the subdivision as a residential community, and the disposition of parcels by sale, lease or otherwise;

- c. Prevent Declarant, Declarant's transferees or the employees, contractors or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the subdivision property owned or controlled by Declarant or Declarant's transferees or their representatives, the business of completing such work of establishing the subdivision as a residential community and of parcels by sale, lease or otherwise; or
- d. Prevent Declarant, Declarant's transferees or the employees, contractors or subcontractors of Declarant or Declarant's transferees from maintaining such signs on any of the parcels owned or controlled by Declarant or Declarant's transferees or their representatives, as may be necessary in connection with the sale, lease or other disposition of subdivision parcels.

XIII. MISCELLANEOUS PROVISIONS

- 13.1 **Lawful Use of Property.** Each portion of the Property will be subject to, and the Association and each Owner will conform to and observe, all laws, statutes, ordinances, rules and regulations of the United States of America, the State of Florida, the County, and any and all other governmental and public authorities and boards or officers of them relating to the Property, any improvements on it or the use of it, and no illegal or immoral purpose or use shall be permitted on the Property.
- 13.2 **Incorporation of PalmCreek Documents.** Any and all deeds conveying a Lot or any other portion of the Property shall be conclusively presumed to have incorporated in them all of the terms and conditions of the PalmCreek Documents, including, but not limited to, this Declaration, whether or not the incorporation of the terms and conditions of the Palm Creek Documents is specifically set forth by reference in deed, and acceptance by grantee of all of the terms and conditions of the PalmCreek Documents.
- 13.3 **Rental Restriction.** No Owner shall be permitted to rent or lease any Dwelling Unit more than twice in any calendar year, and any rental or lease agreement shall provide for a term of at least six (6) months. All tenants shall provide the Association with the names and permanent addresses of the residents together with an acknowledgment of their obligations under these covenants. A Violation of this paragraph may be enjoined by an action instituted by the Association in any court having jurisdiction. The foregoing lease restrictions shall not apply to Declarant, or to any portion of the Property while owned by Declarant.
- 13.4 **Notices.** Any notice or other communication required or permitted to be given or delivered under this Declaration shall be deemed properly given and delivered upon personal delivery or the mailing of it by facsimile transmission, overnight courier, or United States mail, postage prepaid, to: any Owner, at the address of the person whose name appears as the Owner on

the records of the Association at the time of the mailing and in the absence of any specific address at the address of any Dwelling Unit or Lot owned by the Owner.

- 13.5 **Exemption.** Lots 43, 44, 45 and 50 of PalmCreek Estates Unit No. 3 shall not be deemed to be subject to this Declaration, nor enjoy the benefits and protections afforded herein, until such time as the owners of said lots either execute a joinder or are adjudicated by a court of competent jurisdiction to be governed by the Declaration of Covenants, Conditions Restrictions and Easements of PalmCreek Estates Unit No. 3, or execute a joinder or are adjudicated by a court of competent jurisdiction to be governed by this Declaration.
- 13.6 **Lien Holders.** Upon the Association's receipt of a written request from the holder of a mortgage upon any Lot, or from an insurer or guarantor of the mortgage, which identifies the name and address of the mortgage holder, insurer, or guarantor, the Association shall provide the mortgage holder, insurer or guarantor, as the case may be, timely written notice of the following:
- a. Any condemnation loss or any casualty loss which affects a material portion of the Property or any Dwelling Unit on which there is a first mortgage held, insured, or guaranteed by the mortgage holder, insurer or guarantor;
 - b. Any delinquency, which remains uncured for 60 days, in the payment of assessments or charges owed by an Owner of a dwelling Unit subject to a mortgage held, insured or guaranteed by the mortgage holder, insurer or guarantor;
 - c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
 - d. Any proposed action which would require the consent of a specified percentage of mortgage holders.
- 13.7 **Conflict With Articles or By-Laws.** In any event of any conflict between the Articles, the By-Laws and this Declaration, the Declaration, the Declaration, the Articles, and the By-Laws, in that order, shall control.
- 13.8 **Captions Headings and Title.** Article and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall the captions, headings or titles define, limit, or in any way affect the subject matter or any of the terms and provisions under them nor the terms and provisions of this Declaration.
- 13.9 **Context.** Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form of it and the singular form or any nouns and pronouns may be deemed to mean the corresponding plural form of it and vice versa.
- 13.10 **Attorney's Fees.** Any provision in this Declaration for the collection or recovery of attorney's fees shall be deemed to include all costs and fees incurred at all trial and appellate

levels and whether or not suit is instituted.

- 13.11 **Severability.** In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction the judicial determination shall in no way affect any of the other provisions of this Declaration, which shall remain in full force and affect. Any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope of it shall be deemed limited to the maximum term and scope permitted by law. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or reduction in the scope or term of them by reason of judicial application of the legal rules against perpetuities or otherwise shall in no way affect any other provision, which shall remain in full force and effect for the period of time and to the extent permitted by law.
- 13.12 **Subordination.** The Declarant and the Association agree that their respective interests under this Declaration shall be and are subordinated to the lien, encumbrance and operation of any existing mortgages, as of the date of this Declaration, encumbering any portion of the Property and any additional, replacement or subsequent mortgages obtained by the Developer for the purpose of financing the construction of improvements upon any portion of the Property. While the provisions of this Paragraph are self-operative, the Association nevertheless agrees to execute such instruments in recordable form as may be necessary or appropriate to evidence this subordination of its interests to any of the mortgages and shall do so promptly upon the request of Developer.
- 13.13 **Amendment and Modification.** The process of amending or modifying this Declaration shall be as follows:
- a. Prior to the termination of the Declarant Control Period, all amendments or modifications shall be made by the Declarant without the requirement of the Association's consent or the consent of the Owners. The Association shall, promptly upon request of Declarant, join in any amendments or modifications and execute such instruments to evidence the joinder and consent as Declarant shall, from time to time, request.
 - b. After the termination of the Declarant Control Period, this Declaration may be amended
 - i. by the consent of the Owners of two-thirds (2/3) of all Contributing Units together with
 - ii. the approval or ratification of a majority of the Board. The consent of the Owners may be evidenced either by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the By-Laws evidenced by a certificate of the Secretary or an Assistance Secretary of the Association.
 - c. Notwithstanding anything to the contrary contained in this Declaration,
 - i. no amendment to this Declaration shall be effective which shall impair or

prejudice the rights or priorities of the Declarant, the Association or of any Institutional Lender under this Declaration or any other of the Palm Creek Documents without the specific written approval of the Declarant, Association or Institutional Lender affected by it;

ii. no amendment to this Declaration shall be effective which would increase the liabilities of a then Owner or prejudice the rights of a then Owner or prejudice the rights of a then Owner or his guests, invitees, lessees and licensees to utilize or enjoy the benefits of the then existing Recreation Areas or other Association Property, unless the Owner or Owners affected consent to the amendment in writing or unless the amendment is adopted in accordance with the procedures required for adoption of an amendment to this Declaration after the termination of the Declarant Control Period.

d. A true copy of any amendment to this Declaration shall be sent certified mail (the "Mailing") by the Association to the Declarant and to any Institutional Lender which may have requested notice of any amendments. The amendment shall become effective upon the recording of a Certificate of Amendment to this Declaration, setting forth the amendment or modification, in the Public Records of the County, but the certificate shall not be recorded until thirty (30) days after the Mailing, unless, the thirty-day period is waived in writing by Declarant and all Institutional Lenders.

13.14 Term of Declaration. All of the foregoing covenants, conditions, reservations and restrictions shall run with the land and continue and remain in full force and effect at all times as against all Owners, their successors, heirs or assigns, regardless of how the Owners acquire title, for a period of fifty (50) years from the date of this Declaration, unless within such time, members representing ninety percent (90%) of the votes of the entire membership of the Association execute a written instrument declaring a termination of this Declaration (as it may have been amended from time to time). After such fifty (50) year period, unless sooner terminated as provided above, these covenants, conditions, reservations and restrictions shall be automatically extended for successive periods of ten (10) years, until Members representing ninety percent (90%) of the votes of the entire membership of the Association, execute a written instrument declaring termination of this Declaration (as it may have been amended from time to time). Any termination of this Declaration shall be effective on the date the instrument of termination is recorded in the public records of the County, provided that any such instrument, in order to be effective, must be approved in writing by Declarant so long as Declarant owns more than ten percent (10%) of the Property. Notwithstanding anything contained herein to the contrary, this Declaration may not be terminated unless the instrument of termination is joined in by controlling governmental authorities.

13.15 Dissolution of Association. The association shall not be dissolved nor shall it dispose of any real property contained within the Common Areas, by sale or otherwise (except to an entity organized for the purpose of owning and maintaining such Common Areas), without the prior approval the Board of County Commissioners of Okeechobee County, Florida. The Board of County Commissioners, as a condition precedent to approving such dissolution, may require dedication of Common Areas or utilities to the public as deemed necessary. In the event of dissolution of the Association, control and responsibility for maintenance, together

with all easements related thereto, shall be transferred to a governmental agency or another association not-for-profit or a similar organization.

- 13.16 **Inapplicability of Condominium Act.** The covenants, restrictions and other provisions of this Declaration and of the Palm Creek Documents shall not be construed or deemed to create a condominium within the Property and Chapter 718, Florida Statutes, shall not be applicable to this Declaration or the PalmCreek Documents.
- 13.17 **Termination of Liability of the Developer.** Notwithstanding anything to the contrary in this Declaration, upon the sale or other disposition by the Developer of the Property or the balance of Property which it owns, the Developer shall be relieved of any and all obligations and liabilities of the Developer under this Declaration or any of the PalmCreek Documents.
- 13.18 **Authority of Association and Delegation.** Nothing contained in this Declaration shall be deemed to prohibit the Board from delegating to any one of its members or to any officer, or to any committee or any other person, any power or right granted to the Board by this Declaration including, but not limited to, the right to exercise architectural control and to approve any deviation from any use restriction, and the Board is expressly authorized to so delegate any power or right granted by this Declaration. Unless specifically expressed otherwise, the indemnity provisions contained in the Articles shall extend to such committees and delegates.
- 13.19 **Assignment of Declarant's Rights.** Any or all of the rights, privileges, or options provided to or reserved by Declarant in this Declaration, the Articles, or the By-Laws, may be assigned by Declarant, in whole or in part, as to all or any portion of the Property, to any person or entity pursuant to an assignment recorded in the public records of the County. Any partial assignee of any of the rights of Declarant shall not be deemed the Declarant, and shall have no other rights, privileges or options other than as are specifically assigned. No assignee of Declarant shall have any liability for any acts of Declarant or any prior Declarant unless such assignee agrees to assume such liability.
- 13.20 **Performance or Association's Duties by Declarant.** Declarant shall have the right from time to time, at its sole discretion, to perform at Declarant's expense the duties and obligations required hereunder to be performed by the Association and the Assessments for Operating Expenses payable by the Owners; provided, however, that any such performance on the part of Declarant may be discontinued by Declarant at any time, and any such performance shall not be deemed to constitute a continuing obligation on the part of Declarant.
- 13.21 **Lawsuits Brought by the Association.** To the extent permitted by law, the Association shall not commence any legal proceedings on its behalf or on behalf of the Owners, and shall not spend any money or make an assessment for any money whatsoever to investigate, prepare for, or research any such legal proceedings, without the consent of at least 75% of all of the Owners obtained at a duly called meeting of the Owners for the purpose of approving such action, except for legal proceedings against an Owner, to enforce the Owner's obligations, monetary or otherwise, under this Declaration, the Articles, the By-Laws or the Rules and

Regulations.

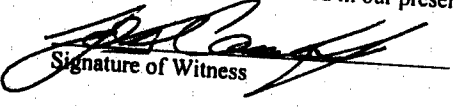
13.22 **Modification of Development Plan.** Declarant reserves the right at any time and from time to time to modify the development plan for all or any portion of the Property, and in connection therewith to develop Dwelling Units upon the Property which are substantially different from the Dwelling Units planned for the Property from time to time and in the event Declarant changes the type, size, or nature of the Dwelling Units or other improvements to be constructed upon the Property, Declarant shall have no liability therefore to any Owner. In addition, Declarant makes no representations or warranties as to the manner in which any other property outside of the Property will be developed, and shall have no liability to any Owner as regards the development of any other property in or around the property.

13.23 **Third Party Beneficiaries.** The South Florida Water Management District, or its Successors and Okeechobee County, a political division of the State of Florida shall be considered third party beneficiaries of this declaration and shall have the authority, but not the obligation, to enforce any provision herein.

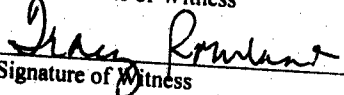
13.24 **Phasing.** PalmCreek is intended to be developed in several phases. Declarant may subject additional properties and/or subdivision phased units, to this Declaration at its sole discretion. Each and every homeowner in each and every phased unit will be responsible for the maintenance of all common areas contained within the platted PalmCreek Units, whether that common area is in their phased unit or another phased unit of the Subdivision. Upon joinder of additional phased units, the Owners of those new Lots will become Members of the Association and enjoy all of the rights and privileges of all other Members of the Subdivision.

IN WITNESS WHEREOF, the Declarant has hereunto caused the execution of this Declaration at Okeechobee County, Florida, this 16th day of August, 2000.

Signed, Sealed and Delivered in our presence:

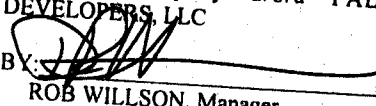

Signature of Witness

John A. Carroll, Jr.
Printed Name of Witness


Signature of Witness

Tracy Rowland
Printed Name of Witness

BIG LAKE PARTNERS, LLC, a Kentucky Limited Liability Company d/b/a PALMCREEK DEVELOPERS, LLC

BY: 
ROB WILLSON, Manager

RECORDED AS RECEIVED

OR BK 0443 PAGE 0888

STATE OF FLORIDA
COUNTY OF OKEECHOBEE

The foregoing instrument was acknowledged before me this 16th day of August, 2000, by ROB WILLSON, Manager of BIG LAKE PARTNERS, LLC, a Kentucky Limited Liability Company d/b/a PALMCREEK DEVELOPERS, LLC, who is ☐ personally known to me, or ☒ who has produced Fla. D.C. # as identification.

Tracy Rowland
NOTARY PUBLIC
Tracy Rowland TRACY ROWLAND
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # CC077841
PRINTED NAME OF NOTARY PUBLIC
MY COMMISSION EXPIRES: EXPIRES 7/12/2001
BONDED THRU ASA 1-888-NOTARY1

341961

FILED FOR RECORD
OKEECHOBEE COUNTY, FLA.

00 AUG 28 PM 2:12

SHARON ROBERTSON
CLERK OF CIRCUIT COURT