

**DECLARATION
OF COVENANTS, EASEMENTS, CONDITIONS, RESTRICTIONS**

THE PALMS OF FREEPORT HOA, INC.

THIS DECLARATION, made on the date hereinafter set forth by PALMS OF FREEPORT DEVELOPERS, LLC, hereinafter referred to as “Declarant”;

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Walton County, Florida, upon which is described in the Legal Description attached hereto as Exhibit “B”, and

WHEREAS, the real property and townhouses described in the Site Plan, Exhibit “A”, attached and incorporated herein, are known as THE PALMS OF FREEPORT TOWNHOMES, and in the Legal Description, Exhibit “B”, attached and incorporated herein.

NOW, THEREFORE, Declarant hereby declares that all of the real property described in Exhibit “A” shall be sold and conveyed subject to the following, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of the owners thereof.

ARTICLE I

DEFINITIONS

Section 1: “Unit Owner” or “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any townhouse lot described in Exhibit “A”, attached hereto, but excluding those having such interest merely as security for the performance of an obligation.

Section 2: “Lot” shall mean and refer to each of the lots described in the aforesaid Exhibit “A”, and the to be recorded plat of THE PALMS OF FREEPORT TOWNHOMES.

Section 3: “Townhouse” or “Unit” shall mean an improved lot with a residential building thereon.

Section 4: “Association” shall mean and refer to THE PALMS OF FREEPORT, HOA, INC., a Florida non-profit corporation, its successors and assigns.

Section 5: “Property” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 6: “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the owners. The common area to be owned by the Association at the time of conveyance of the first lot is described as follows:

All that real property described in Exhibit “B”, known as THE PALMS OF FREEPORT TOWNHOMES, plat to be recorded in the public records of Walton County, Florida, other than number lots shown on such plat.

Section 7: “Declarant” shall mean and refer to THE PALMS OF FREEPORT HOA, INC., and its successors and assigns.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

Section 2. When more than one person holds any interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any townhouse lot.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owner’s Easement of Enjoyment. Each owner shall have right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;
- (b) The right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

- (c) The right of the Association to dedicate or transfer all of any part of its title to the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;
- (d) Ownership of each lot shall entitle the owner or owners thereof to the use of not more than 2 automobile parking spaces which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association may permanently assign one vehicle parking for each unit.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws his right of enjoyment to the common area and facilities to the members of his family, tenants, occupants or contract purchasers who reside on the property.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each improved lot owned within the property, hereby covenants, and each owner of any improved lot by acceptance of title thereunto, whether or not it shall be so expressed in such deed or other conveying instrument, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessment for capital improvements, such as assessments to be established and collected as hereinafter provided, and (3) special assessments imposed upon an individual lot owner for repair or maintenance necessitated by the willful or negligent act of the owner, his family or guests, tenants or invitees. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in interest unless expressly assumed by them.

Section 2. Purpose of Assessments.

- (a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the common area, and of the units situated upon the property. The Association shall not be responsible for maintenance of any portion inside the patio areas appurtenant to each unit but such responsibility will be the unit owner's obligation and shall be enforceable as though such common areas were part of the owned area to which it is appurtenant.
- (b) In addition to maintenance upon the common area, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces nor any maintenance of any kind inside patio areas or balconies appurtenant to each unit.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the owner, his family or guests, or invitees, or tenants the cost of such maintenance or repairs shall be added to and become part of the assessment to which such lot is subject.

Section 3. Annual Assessments. The Association's board of directors, with the approval of a majority of the members present and voting at a meeting of the membership called for such purpose, shall establish the amount of the annual assessment, which annual assessment must be fixed at a uniform rate for all lots, unless in the event of maintenance or repair cost necessitated by the willful or negligent act of an owner his family or their guests, tenants or invitees, occasions an increased assessment to a particular owner. Annual assessments may be collected on a monthly, quarterly, semi-annual or annual basis as the board of directors may establish. Initially, such assessments shall be payable monthly.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereon, provided that any such assessment shall have the

assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Annual Assessments- Due Dates. The annual assessments provided for herein shall commence as to all improved lots on the first day of the month following the initial conveyance of each owner's lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The board of directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the board of directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot have been paid.

Section 7. Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of (10%) percent per annum. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the owner's lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to

payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot or owner from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure shall be commenced, repaired, erected or maintained upon any of the lots described in Exhibit “A”, nor shall any exterior repair or addition to or change or alteration in kind, color, shape, height, materials or location different from the existing structure be made until the plans and specifications showing the nature, color, kind, shape, height, materials and location of same shall have been submitted to and approved in writing as to harmony of external design, color, and location in relation to the surrounding structures and topography by the then owners of 2/3 of the 67 units described in Exhibit “A” attached hereto, which approval shall be evidenced by their written consent to the specified changes and recorded in the public records except as hereinafter provided.

ARTICLE VI

PARTY WALLS

Section 1.

- (a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the units upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) Easements to Accommodate Encroachments Upon Adjoining Lots. Each lot owner shall have an easement over, upon and under each adjoining lot described in Exhibit “A” to accommodate encroachments from one lot upon another lot limited to wall, rooms, living spaces, eaves, and roof overhangs, together with like easements of access of adjoining lots and structures for the purposes of repairing and maintaining such encroachment building projections; provided that the lot owner, exercising such easement shall restore at such owner’s expense all damages to the lot subject to such easement. The easement privilege granted

herein shall be exercised only between 9:00 o'clock a.m. and 5:00 o'clock p.m. daily except in cases of emergency.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the owners under any rule of law regarding liability for negligent or willful acts omissions.

Section 4. Weather-proofing. Notwithstanding any other provisions of this Article, an owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under the Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. Arbitration. In the event of any dispute concerning any provision of this Article V, either party may notify the other party in writing of the name and address of the requesting party's arbitrator and request the other party to furnish the name and address of his arbitrator within fifteen (15) days after the receipt of such notice. The failure of the requested party to name an arbitrator within that time shall entitle the requesting party to have the dispute settled by the requesting party's arbitrator alone. In the event that the requested party names his arbitrator within the time limited herein, the two arbitrators shall select a third arbitrator within ten (10) days thereafter and the decision of a majority of the three arbitrators shall be conclusive and shall be made within thirty (30) days after the selection of the third arbitrator. The arbitrator shall notify each of the parties to the dispute in writing of their decision. All arbitration proceedings, costs and fees involved shall be determined in accordance with Chapter 682 of the Florida Statutes as such shall be hereafter amended not inconsistent herewith.

ARTICLE VII

DUTY TO REBUILD OR REPAIR AND INSURANCE COVENANTS

Section 1. In the event of damage to or destruction of any unit by fire, windstorm, water or any other cause whatsoever, the owner shall, within a reasonable time, cause said unit to be repaired or rebuilt so as to place the same in as good and tenantable condition as it was before the event causing such damage or destruction; failure to do so shall constitute a breach of these covenants. Subject to priority of any mortgagee under a mortgage clause, all insurance proceeds for loss or damage to any unit or any other improvement upon any lot shall be used to assure the repair or rebuilding of any such unit or any part thereof.

Section 2. The Association created hereunder shall have a lien on all such insurance proceeds, regardless of whether it is named in any insurance policy, subordinate only to the claim of any mortgagee under a mortgage clause, to enforce the intent of the foregoing provision.

Section 3. Authority to Purchase; Name Insured. All of the following Sections shall govern all owners as to insurance to be carried upon all units. Association may purchase insurance on units any time board of directors so choose or upon any unit in the event the owner fails to produce upon request of the board of directors a policy in conformity with this and succeeding sections under this Article. The named insured shall be the Association individually and as agent for the owners without naming them, and as agent for their mortgagees. Provisions shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of units and memoranda of insurance to individual unit owners. The mortgagee endorsement shall be furnished for each unit subject to a mortgagee with a dollar amount specified therein as the coverage for that particular unit. Unit owners may obtain coverage at their own expense upon their personal property and living expenses.

Section 4. Coverage.

A. Casualty. All units shall be insured by the unit owners in an amount equal to the maximum insurable replacement value excluding the foundation and excavation cost, all as determined annually by the board of directors of the Association. Such coverage shall afford protection against:

- (1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
- (2) such other risks as from time to time shall be customarily covered

with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

B. Public Liability in such amounts and such coverage as shall be required by the board of directors of the Association with cross liability endorsement to cover liabilities of the owners as a group to an individual unit owner.

Section 5. Premiums. Premiums upon insurance policies purchased by the Association is a common maintenance expense purchased for all units and assessed against each unit equally. If insurance is purchased on a particular unit because of failure of the owner to do so, such premium cost shall be treated as a special assessment against that unit enforceable by the Association in accordance with Article IV, Section 1, of this Declaration.

Section 6. Imposition of Lien and personal Obligation of Assessment. The assessments for insurance premiums as set forth hereinabove, together with interest, cost and reasonable attorney's fees, shall be a continuing lien upon such unit against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney fees, shall also be the obligation of the person who is the owner of the property at the time the special assessment is made.

Section 7. Right of Mortgagee to Purchase Insurance; Creation of Lien

A. If the Association fails or a unit owner fails for any reason to purchase insurance called for herein or fails to provide the coverage called for herein on any unit, or if any unit owner becomes delinquent in the payment of his pro-rata share of the insurance premium on any units or the Association cannot purchase insurance called for on such unit, the mortgagee of any unit, in its discretion, may purchase insurance coverage on a unit regardless of the number of living units which it holds a mortgage on or advance to the Association sufficient funds on behalf of the delinquent unit owner to allow the Association to purchase such insurance.

B. The mortgagee shall have the right to purchase such insurance or advance premium for the purchase of such insurance for any delinquent owners.

C. If any insurance policy is purchased by a mortgagee provided herein for any unit, such mortgagee shall have all the rights under this Article given the Association.

D. In the event, as set forth herein, it becomes necessary for the mortgagee of any unit to purchase insurance called for herein or to advance funds to pay insurance premiums for the

owner of any unit who is delinquent in the payment of his insurance premium, whether or not such mortgagee holds a mortgage on such unit and lot and shall be a continuing lien upon such property and shall be enforceable by the mortgagee in accordance this Declaration.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of (10) years, unless a majority of the members of the Association decide that such covenants, conditions and restrictions shall abate, which decision if made shall be evidenced by an agreement in writing signed by a majority of the membership setting forth their decision, which document shall be effective when duly recorded in the public record of Walton County, Florida. This Declaration may be amended by the Declarant prior to the closing and transfer of all townhouse lots, or after the closing and transfer of all townhouse lots to third parties, by an instrument signed by not less than seventy-five (75%) percent of the lot owners. Any amendment must be recorded in the Public Records of Walton County, Florida.

Section 4. Animals. For sanitary reasons and the peace and quiet of the area, all pets shall be confined to the interior of each unit. No excrement or other waste produced by pets shall be disposed of upon any portion of any exterior area of any owner's property or common area; and the unit owner shall be responsible for control of all pets brought on the property by occupants of his units. Any barking or other noise or disturbance created by such pets which is audible to any other owner beyond the walls of the units containing such pets is expressly prohibited.

Section 5. Regulation. Other reasonable regulations may be imposed on all units described in Exhibit "A" if approved in writing by 2/3 of the 67 unit owners then of record and recorded in the public records, provided copies of such regulations are hand delivered or mailed to the last known address. An affidavit of hand delivery by the person delivering the same to a unit owner or a registered mail, return receipt signed by the unit owner or his spouse or other adult living with such owner, shall be conclusive proof of receipt of such additional regulations.

In Witness Whereof, the undersigned, being the Declarant herein, has hereunto caused its hand and seal to be affixed.

By: _____

Ryan Lorenzen, Managing Member
PALMS OF FREEPORT DEVELOPERS, LLC.

Witness: Printed Name

Witness: Printed Name

State of Florida

County of _____

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Ryan Lorenzen, to me well known to be the person named in the foregoing instrument and they acknowledged executing the same freely and voluntarily.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2005.

Notary Public
My Commission Expires: _____