

Prepared By and Return to:  
James R. Fisher  
P.O. Box 290006  
Port Orange, FL 32129

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
PROMENADE PARKE SUBDIVISION  
NEW SMYRNA BEACH, VOLUSIA COUNTY, FLORIDA AND  
NOTICE OF PROVISIONS FOR PROMENADE PARKE  
HOMEOWNERS' ASSOCIATION, INC.**

THIS DECLARATION, made this 28<sup>th</sup> of November, 2006, by JPJ Investments, Inc. a Florida corporation having its principal place of business at 794 Sanders Road, Suite 1, Port Orange, Florida 32127. Hereinafter, JPJ Investments, Inc., is sometimes referred to as the Developer.

**WITNESSETH**

**WHEREAS**, the Developer is the owner of certain real property located in Volusia County, Florida, generally known as Promenade Parke and more particularly described in Exhibit A attached hereto and made a part hereof (the Property); and

**WHEREAS**, in accordance with the applicable provisions of state law and local ordinance, Developer intends to subdivide the Property into platted residential subdivisions known as Promenade Parke, and each platted subdivision will be designated Promenade Parke with the appropriate Unit Number; and

**WHEREAS**, the Developer intends to develop or provide within the Property such public and private streets, Common Areas, Conservation Easement Areas and Drainage Areas as will be indicated on the platted subdivisions; and

**WHEREAS**, there is a need to specify, make and impose covenants and to grant necessary easements for the use and benefit of the platted subdivisions and to provide for effective management, protection, maintenance and administration of the Common Areas, Conservation Easement Areas and Drainage Areas in the platted subdivisions; and

**WHEREAS**, the Developer has caused to be incorporated a Florida not-for-profit corporation known as Promenade Parke Homeowners' Association, Inc. (hereinafter called the

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Owners Association:) which has been formed to manage, maintain and administer the Common Areas, Conservation Easement Areas, Drainage Areas, private streets, islands and other areas and to enforce this Declaration and to collect assessments and generally provide for the orderly enjoyment of the subdivisions to be platted by Developer, its successors or assigns; and

**WHEREAS**, water and sewer utilities servicing the Property shall be provided by the City of New Smyrna Beach, or its successors and assigns.

**NOW, THEREFORE**, this Declaration is made, filed and recorded by the Developer so that from the effective date hereof, the real property described in the Legal Description which is attached hereto as Exhibit A, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the restrictions, conditions, easements, charges, burdens, assessments, affirmative obligations, and liens (all hereinafter sometimes referred to as the Covenants) hereinafter set forth. This Declaration shall become effective on the date and at the time it is filed and recorded in the Public Records of Volusia County. This Declaration does not and is not intended to create a condominium within the Florida Condominium Act.

## ARTICLE I DEFINITIONS AND DESCRIPTIONS OF PROPERTY

**Section 1.1 Definitions.** The following words and terms when used in this Declaration and any supplemental declaration, unless the context clearly indicates otherwise, shall have the following meanings:

- a. **Association.** Inclusively refers to the Owners Association.
- b. **Committee** shall mean the Design Review Committee appointed by the Developer, with responsibilities as defined in Article II hereof.
- c. **Common Area** shall mean those areas shown and indicated as Common Areas on the plats to be recorded and subjected to this Declaration.
- d. **Conservation Easement Areas** shall mean all those areas which are subject to the special use restrictions specified in Section 7.3 of this Declaration and which are shown and indicated as Conservation Easements on the plats to be recorded and subjected to this Declaration. Except to the extent they are located on Lot, all Conservation Easement Areas shall be dedicated to

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and owned by the Owners Association in fees simple. The Conservation Easements, including but not limited to those that restrict the use of a Lot, are fully enforceable by the Owners Association, the City of New Smyrna Beach and the Saint Johns River Water Management District..

e. **Developer** shall mean and refer to JPJ Investments, Inc., a Florida corporation, its successors and assigns.

f. **Drainage Area** shall mean any Drainage Area or Drainage Easement shown indicated on the plats to be recorded and subjected to this Declaration.

g. **Dwelling Unit** shall mean a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached residence for a single family home.

h. **Lot** shall mean any parcel of land located within a subdivision of the Property, according to a recorded plat, is identified by a number and is intended for use as a site for a Dwelling Unit.

i. **Neighborhood Association** shall mean and refer to those sub-homeowners associations created by Developer to fund necessary maintenance, repair and replacement of common roofs, walls, yards, amenities and similar expenses which are specific to a particular platted subdivision.

j. **Promenade Parke and Promenade Parke Community** shall mean and refer to the Property.

k. **Owners Association.** Shall mean and refer to the Promenade Parke Homeowners' Association, Inc., a Florida corporation not-for-profit, and its successors and assigns, the members of which shall consist of owners of Lots: in subdivisions of the Property hereinafter platted and recorded in the Public Records of Volusia County, Florida. A copy of the Articles of Incorporation and the By-laws of the Association are attached hereto as Exhibits B and C respectively.

l. **Phrases "purchase from Developer" "sale by Developer"** and similar phrases when used in conjunction with the sale of Lots, refer to transactions pursuant to contract between Developer and a purchaser in which the purchaser receives title to a Lot.

m. **Surface Water or Stormwater Management System** shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or

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otherwise affect the quantity and quality of discharges.

n. **Structure** shall mean any manmade item placed on, in or under the lands or placed on in or under any improvement or facility, including, but not limited to, buildings, dwelling units, swimming pools, fountains, fences, walls, signs, barbecue pits, television or radio antennae, or satellite dish or microwave antennae, clotheslines, garages, sheds, outbuildings, porches, balconies, patios, driveways, walls, lighting apparatus, window bauiers, window awnings, pipes, poles, recreational facilities such as basketball courts or goals, tennis courts, shuffleboard courts, and lawn decorative objects such as statues, tables, tents, flags, shacks, barns, sheds or other temporary storage or residence facilities.

o. **Subdivision** shall mean any platted unit or phase of the Property, recorded by the Developer in the Public Records of Volusia County, Florida.

p. **Wetlands** shall mean those areas indicated or shown as Wetlands on any recorded plat which is subjected to this Declaration.

**Section 1.2. Property Subject to Covenants and Restrictions**, The Property subject to the Declaration of Covenants and Restrictions is that Property, and any plats or replats thereof, described in the Legal Description which is attached hereto as Exhibit A.

## ARTICLE II RESTRICTIVE COVENANTS

**Section 2.1. Lot Usage** No Lot shall be used for any purpose other than a single-family dwelling, garage and grounds. The areas included within the lot line of each individual Lot, but not included within the Dwelling Unit constructed on each Lot, are hereinafter referred to as grounds, and shall be used for normal and customary yard purposes. Except, however, those portions of Lots shown on the plats as Conservation Easement Areas shall not be disturbed except as specifically allowed by order or permit issued by appropriate local government body or regulatory agencies.

**Section 2.2. Design Review Committee Approvals**. Except for Developer, no person or entity (including the Associations) may erect on, place on, alter, or permit any structure or addition to remain within the Subdivisions unless and until the site plan, floor, plan, elevation, landscaping plan, abbreviated specifications, etc., are reviewed and approved by the Design Review Committee

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(hereinafter the Committee). The Committee is a committee of the Owners Association (with or without express approval of the Owners Association) for the purposes of enforcing the decisions of the Committee, including but not limited to injunctive relief. In order to preserve the character of the Subdivisions, the Developer hereby reserves for itself and its successors the right to appoint the members of the Committee. All property owned or controlled by the Owners Association is subject to the Committee's authority. The Committee shall review proposed buildings or structures (including plans and specifications for same or alterations of prior approved buildings or structures) as to the harmony of the external design and location of the building or structure with respect to existing buildings and structures, with respect to topography, vegetation, drainage and the finished grade of elevation of the Lot, and with respect to any other relevant considerations the committee deems appropriate which are based upon acceptable standards of Planning, Zoning and Construction. The Committee may include considerations which are exclusively based on aesthetic factors. Owners will remain responsible for securing City building permits as necessary after securing approvals from the Committee.

**Section 2.3 Non-Permitted Structures and Vehicles.** No vehicles and no structure of a temporary nature or character, including, but not limited to, boats, trailers, house trailers, mobile homes, campers, recreational vehicles, tents, shacks, sheds, barns or similar structures or vehicles shall be used or permitted to remain on any Lot. No automobile, truck, or other commercial vehicle, which contains lettering, shall be parked (for any period of time in excess of ten consecutive hours) or stored or otherwise permitted to remain on any Lot except in a garage attached to the residence.

**Section 2.4. Parking.** No automobile, truck, motorcycle, boat and trailer, trailer, house trailer, mobile home, camper, or other similar vehicle shall be parked on any street (including the right-of-way) overnight or for a continuous period of time in excess of ten consecutive hours, except in designated off-street parking areas. No more than two (2) vehicles for each garage space shall be permitted on any lot.

**Section 2.5 R.V. and Boat Storage and Parking.** No recreational vehicle, boat, boat and trailer, or trailer alone shall be parked for any period of time in excess of ten consecutive hours, or stored or otherwise permitted to remain on any Lot except in a garage attached to the residence or in an approved detached garage.

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**Section 2.6. Remodeling or Changes.** In order to preserve the character of the Promenade Parke Community, no exterior walls or roofs of any structure (including materials and colors of said walls and roofs) shall be changed or modified without specific prior written approval of the Committee. No garage shall be converted to uses other than storage of vehicles or other personal property unless the Committee has approved another garage to be constructed as a replacement.

**Section 2.7. Owner Maintenance.** All owners shall keep landscaped portions of their grounds well maintained, free of disease, bugs and in a presentable condition, and shall not permit thereon any unsightly growth, weeds, or underbrush. If any owner shall fail to maintain the landscaped portion of his Lot as herein required, the Owners Association shall have the power to correct such omission and assess the cost thereof to such owner and place a lien for such cost against owner's Lot and improvements thereon. Owners, subject to approval of the Committee, may leave designated portions of their Lot, and if undeveloped, the entire Lot, in a natural state as long as it is not unsightly and does not constitute a nuisance. Any Conservation Easement located on a Lot must be left in a natural condition and undisturbed as required by any plats or Development Orders. The Owners Association shall have the right to adopt additional rules and regulations to enforce this subsection.

**Section 2.8. Owners Association Maintenance Rights.** Without limiting the above, the Owners Association shall have the right to maintain, require and enforce maintenance of that portion of Common Areas, street rights of way or Lots lying between fence line and the abutting Lot line or lying between the curb of a street within the Subdivision and the Lot line. The Owners Association shall have the right to adopt rules and regulations to enforce this provision.

**Section 2.9 Maintenance Easements.** For the purpose of providing access to each owner of a boundary line wall or structure, to permit painting, maintenance, repairs or reconstruction of such wall or structure that abuts such owner's boundary lines, the adjoining owner or owners of each Lot which abuts such boundary line wall or structure hereby give and grant a perpetual easement to the owner or owners of such wall or structure to enter upon the property of such adjoining owner or owners for the specific purpose of painting, maintaining, repairing or reconstructing such wall or structure. Such entry will be made in a reasonable manner and only at reasonable times, and any damage caused by such entry shall be repaired as soon as practicable and at the expense of the owner of the wall or structure who causes such entry to be made. In the event

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of controversy, the decision of the Board of Directors of the Owners Association shall control.

**Section 2.10. Special Maintenance Easements.** In the event any portion of any structure originally constructed by the Developer or a designated successor developer, including boundary line wall, shall protrude over an adjoining Lot or Common Area, such structure or boundary line wall shall not be deemed to be an encroachment upon the adjoining Lot or Common Area. In the event there is such a protrusion, the owner or owners of the Lot or Common Area on which such protrusion extends shall be deemed to have granted a perpetual easement to the adjoining owner or owners for continuing maintenance and use of such projection or boundary wall, including any replacement thereof. .

**Section 2.11. Design Review Committee Membership** The Committee shall be composed of three (3) persons. The members of the Committee shall be appointed by the Developer or its successors. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the Committee, the Developer or its successors shall retain the right to appoint members of the Committee even after turnover of the Owners Association to owners of Lots.

**Section 2.12. Committee Decision Making** The Committee shall indicate its approval or disapproval, as the case may be, of the matters required in Section 2.2 hereof to be approved or acted upon by them, by a written instrument filed with the Secretary of the Board of Directors of the Owners Association, and served personally or by certified mail upon the applicant, identifying the proposed building or structure and, if the same is disapproved, the reason for such disapproval. The decision of the Committee shall be final. If the Committee fails or refuses to approve or disapprove the aforesaid matters within thirty (30) days after the application of request for action is made and after a floor plan, elevation and abbreviated specifications (including landscaping, exterior materials, colors, and site plan for all structures) have been received by the Committee, then it shall be conclusively presumed, as to all owners and interested persons, that the particular alleged violation of this Declaration is, and it shall be deemed automatically to be, excused, but solely as to that particular applicant and application, and any and all rights of action of the Committee arising from said particular alleged violation shall be deemed to have been waived, but only with respect to that particular applicant and application.

**Section 2.13. Domesticated Animal Control.** In order to maintain and preserve the peace and tranquility of the Promenade Parke Community, the Owners Association shall have the right to adopt reasonable rules and regulations regarding the keeping of dogs, cats and other domesticated

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household pets, including prohibiting the keeping and breeding of such animals for commercial purposes, and specifically shall have the right (i) to require such animals to be leashed; (ii) to prohibit such animals from roaming at large beyond the confines of their owner's grounds; (iii) to require that owners keep their pets from making noises likely to disturb others; (iv) limit the number of such animals; (v) require owners to dispose of animal waste in a sanitary manner and to control the odors therefrom and (vi) to adopt such other rules and regulations as may seem necessary or required to carry out the purposes of this restriction.

**Section 2.14. Livestock Prohibition.** Except as provided otherwise in Section 2.13 above, no livestock, swine, poultry or animals of any kind other than those described in the preceding section shall be raised, bred or kept within the Promenade Parke Community.

**Section 2.15. Sign Control.** No sign of any kind shall be erected, permitted to remain on or displayed to public view on or from any Lot, except an approved sign giving the name of the occupant of the residence located on said Lot or an approved sign advertising the premises for sale or rent. All signs must be approved by the Committee as a condition to their being erected or being allowed to remain. Political signs shall be erected and removed in accordance with applicable City ordinances. The Declarant, and builders designated by him, reserves the right to erect signs, flags, or the like upon common areas or Lots owned by the Declarant for the purpose of advertising or marketing Declarant's Lots or the Venetian Bay Community in general to the public.

**Section 2.16. Offensive Activities.** No noxious or offensive activity may be or may, become an annoyance or a private or public nuisance shall be carried on or suffered to exist on any Lot.

**Section 2.17. Garbage Control** No Lot, Common Area, Drainage Area or Conservation Easement Area shall be used for dumping, discharge or storage of rubbish, trash, garbage, or other solid waster material. All Lots shall be kept free of the accumulations of rubbish, trash, garbage, and other waster materials. All incinerators or other equipment used for the collection, storage or disposal of solid waste materials shall be kept in a clean and sanitary condition. The use of any incinerators or similar equipment or facilities shall be in accordance with applicable state, county and city environmental laws and ordinances.

**Section 2.18. Fences and Shrubs.** Fence or wall placement and hedge or shrub planting near streets shall be subject to Committee approval and in compliance with the applicable provisions of the Ordinances of the City of New Smyrna Beach.



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**Section 2.19. Tree Removal.** Removal of trees from any Lot within the Subdivision shall be in accordance with applicable provisions of the Committee and Ordinances of the City of New Smyrna Beach.

**Section 2.20. Driveways** Each Lot owner is granted an exclusive easement for ingress and egress purposes over those parts of the Common Areas upon which a driveway to said owner's garage is built, said easement running with the land. It shall be the owner's duty and obligation to maintain and repair said driveway in good condition. The driveway to a garage is to be for the exclusive use of the garage owner. No driveway shall be constructed, maintained, altered or permitted to exist on any Common Area or Lot if the driveway obstructs or would obstruct or significantly impede the flow of surface drainage in the area adjacent to the Lot or in the street right-of-way or swale area, adjoining or abutting the Lot. No driveway shall be constructed of a material such as mulch that is subject to displacement by stormwater.

**Section 2.21. Common Area Management and Ownership** Except where operation, maintenance and management is more appropriately vested in a Neighborhood Association, the Owners Association shall operate, maintain and manage all Common Areas, all islands located in the streets, all private roads and all road rights-of-way which are not maintained by the City of New Smyrna Beach, whether or not such Common Areas, islands or road rights-of-way are shown on a plat. It is intended that the Owners Association shall maintain all rights-of-way and all islands, as well as all Common Areas. The Owners Association must accept any deed to the above-described areas from the Developer when tendered by the Developer. The Developer is authorized to record such deeds prior to delivering same to the Owners Association. The Owners Association shall enforce the restrictions and covenants contained herein, and shall undertake and perform all acts and duties necessary and incident to such duties, all in accordance with the provisions of this Declaration, the Articles of Incorporation and By-Laws of said Owners Association.

**Section 2.22. Maintenance of Stormwater System and Discharge Facilities Management and Ownership Drainage Areas and Conservation Easement Areas.** The Owners Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management systems shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities

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as permitted by St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or, if modified, as approved in writing by the St. Johns River Water Management District. The Owners Association shall manage and maintain all discharge facilities, and shall manage, maintain, monitor and, where applicable, preserve natural assets and materials located within the Drainage Areas and Conservation Easement Areas, including, but not limited to, groundwater, wetlands, lakes, ponds, tributaries and wildlife habitat. The Owners Association has the responsibility and authority to establish and enforce rules, regulations and other controls as needed to accomplish the maintenance, monitoring, management and preservation obligations outlined above. The Owners Association must accept from the Developer when tendered by the Developer any deed transferring to the Owners Association all or any part of the Drainage Areas or the Conservation Easement Areas. The Developer is authorized to record such deeds prior to delivering same to the Owners Association. The Owners Association is hereby granted authority to enforce and shall enforce the restrictions and covenants contained in this Section 2.22 herein or in Development Orders issued by the City of New Smyrna Beach, and shall undertake and perform all acts and duties necessary and incident to such Development Orders, all in accordance with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Owners Association.

**Section 2.23. Enforcement of Conservation Easements.** All Conservation Easements are perpetual undivided interests in the real property upon which the Conservation Easements are located. Nothing in this Declaration shall prohibit the Conservation Easement Areas from being acquired by any governmental body or agency or by a charitable corporation or trust described in Section 704.06, Florida Statutes (1995), as long as such acquisition is approved by the St. Johns River Water Management District or its successor governmental regulatory body (hereinafter inclusively referred to as the District;) and by the City of New Smyrna Beach. The Conservation Easements created by virtue of being shown and indicated on any recorded plat of real property which is developed as a unit or phase of the Promenade Parke and is subjected to this Declaration and the restrictions applicable to such Conservation Easement Areas shall be enforceable by the District, the City of New Smyrna Beach and the Owners Association, and shall not be amended without the prior approval of the District and the City of New Smyrna Beach. The Saint Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance,

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operations and repair of the surface water or stormwater management systems.

**Section 2.24 Insurance** Each Lot owner shall, at all times after construction of a Dwelling Unit on the Lot, and each owner of a Dwelling Unit shall maintain fire and extended coverage casualty insurance on the improvements on such Lot and on the Dwelling Unit, and shall use the proceeds thereof to repair or replace any damage to or destruction of such improvements or the Dwelling Unit within a reasonable time after such casualty.

**Section 2.25. Changes in Covenants.** No change in the Covenants which would materially alter the character of the Promenade Parke Community or the permitted use of the lands and structures within the Promenade Parke Community shall be made without the prior approval of the City Commission of the City of New Smyrna Beach. Any amendment to the Covenants which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior written approval of the St. Johns River Water Management District.

**Section 2.26. Amendments to Subdivision Plats.** The Developer or its successors, subject to approval of the District and the City of New Smyrna Beach regarding amendments to Conservation Easement Areas, shall solely retain the right to amend or replat the plats of the present and any future phases and units of the Subdivisions, without requiring concurrence by the Associations, Lot Owners or Dwelling unit owners, provided amendments are consistent with Article VIII of this Declaration.

**Section 2.27. Duties of the Association** The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the Saint Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved in writing by the Saint Johns River Water Management District.

**Section 2.28 Easement for Access and Drainage** The Owners Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall

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have the right to enter upon any portion of any Lot which is a part of the surface water or stormwater management system, at reasonable times, and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Owners Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

**Section 2.29 Drainage Swales** The developer has constructed drainage swales upon each lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Each lot owner, including builders, shall be responsible maintenance, operation and repair of the swales on the lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance and other stormwater management capabilities as permitted by the Saint Johns River Water District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human-induced phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the owner(s) of the Lot(s) upon which the Drainage Swale is located.

**Section 2.30 Property Rental** Short term rental of Single-family residential units is prohibited. Rentals must be for Six (6) months or longer. Maintenance and payment of dues and fees are the responsibility of the property owner.

### ARTICLE III OWNERS ASSOCIATION

**Section 3.1. Membership.** The owner of each Lot and the owner of each Dwelling Unit (all Subdivision Phases and all Units) shall automatically and mandatorily become a member of the

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Owners Association upon his or her acquisition of any ownership interest in the title to any Lot or Dwelling Unit. The memberships of such owners shall terminate automatically at the time that such persons divest himself or is divested of such ownership interest or title, regardless of the means by which such ownership may have been divested.

**Section 3.2. Membership Limits.** No person or corporation or other business entity holding any lien, mortgage or other encumbrance upon any Lot or Dwelling Unit shall be entitled by virtue of such lien, mortgage or other encumbrance, to membership in the Associations, or be charged with any of the duties of such membership; provided, however, that nothing contained herein shall be construed as prohibiting membership in the Associations of a person, corporation, or other business entity which acquires title to a Lot or Dwelling Unit either by foreclosure or by voluntary conveyance from a mortgagor or the mortgagor's successors or assigns.

**Section 3.3. Adoption of Rules and Regulations.** The Owners Association shall adopt and enforce reasonable rules and regulations regarding security that may be provided within the Subdivision. The Owners Association with respect to the areas of the Subdivisions subject to their ownership or control, shall enforce the restrictions and covenants contained herein, as well as their rules and regulations promulgated hereunder and shall undertake and perform all acts and duties necessary and incident to enforcing such restrictions, covenants, rules and regulations, all in accordance with the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Owners Association. True and complete copies of the Articles of Incorporation and By-Laws of the Owners Association are annexed hereto as Exhibit B and such documents are expressly made a part hereof.

**Section 3.4. Management and Enforcement Authority.** In the administration, operation and management as herein designated to the Associations and in the enforcement of the applicable Covenants and Restrictions, each of the Associations, in addition to any authority granted elsewhere herein, shall have and is hereby granted with respect to areas of the Promenade Parke Community within that Association's ownership and control, full power and authority: (a) to enforce all applicable provisions of this Declaration; (b) to levy and collect assessments in accordance herewith; and (c) in order to carry out the purposes of each of the Associations, to adopt, promulgate, and enforce reasonable rules and regulations governing the use and enjoyment of the areas of the Promenade Parke Community within that Association's ownership or control.

**Section 3.5. Liability Insurance.** The Owners Association is hereby required to maintain

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in force public liability insurance in an amount not less than \$500,000.00 C.S.L. with respect to all Common Areas, Drainage Areas, Conservation Easement Areas, and all traffic islands located within any public or private road right-of-way in the Promenade Parke Community. The Owners Association shall be named insured's with respect to the areas they own or control.

#### ARTICLE IV COVENANTS AND MAINTENANCE ASSESSMENTS

**Section 4.1 Creations of Lien and Personal Obligation.** The Developer agrees to, and each owner and each tenant of each Lot or Dwelling Unit shall, by acceptance of a deed or other instrument of conveyance or lease, whether or not it shall be so expressed in any such deed or instrument, be deemed to have agreed to all terms, covenants, conditions, restrictions, and other provisions of this Declaration and to have agreed to promptly pay to or on behalf of the Owners Association and, if applicable, one of the Neighborhood Associations or their successors or assigns, the following:

- (a) All quarterly assessments or charges (whether collected quarterly or annually); and
- (b) All special assessments or charges for the purposes set forth in Section 4.2 of this Declaration that shall be fixed, established, levied, and collected from time to time as hereafter provided. Annual and special assessment by the Association (together with such interest thereon and the cost of collection including reasonable attorneys' fees as hereinafter provided) shall be a charge and continuing lien on the real property and improvements thereon against which such assessment is made, whether or not a claim of lien is filed. Each assessment (together with such interest thereon and the costs of collection including reasonable attorneys' fees as above established) shall also be the personal obligation of the person who was the owner of such Lot or Dwelling Unit at the time when the assessment first become due and payable, and also the joint and several personal obligation of any subsequent grantees who take title to the Lot or Dwelling Unit without first obtaining a letter from the Associations as herein provided to the effect that there are no outstanding assessments against the Lot or Dwelling Unit being purchased. In the case of co-ownership or co-tenancy of a Lot or Dwelling Unit, each owner or tenant shall be jointly and severally liable for the entire amount of the assessments and the aforesaid interest, collection costs, and reasonable attorneys' fees. Prospective purchasers are hereby notified of the possible charge

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against the Lots and Dwelling units in the Promenade Parke Community.

**Section 4.2. Purpose of Assessments.** Assessments levied by the Association shall be exclusively: (a) to improve, maintain, enhance, enlarge, protect, monitor and operate the areas within their respective ownership or control as specified in this Declaration; (b) to cover operating and administrative expenses; (c) to fund services and benefits which the Association is authorized to provide, including, but not limited to: insurance; construction; maintenance, repair and replacement of improvements; the escrowing of sufficient monies for specific purposes to satisfy the City of New Smyrna Beach; the acquisition of labor or services (including security services and professional services of attorneys, accountants, engineers, consultants, etc.); equipment, materials, management, and the supervision necessary to provide the authorized services or benefits; (d) for the payment of principal, interest and other charges connected with loans made to or assumed by that particular Association for the purpose of enabling said Association to perform its authorized functions (including the payment of mortgages upon areas of the Promenade Parke Bay Community owned by said Association, even though such mortgages were of record at the time the Association received title from Developer; (e) to pay the costs of social functions open to all member; (f) to keep in force and pay for liability insurance on all areas of the Subdivision within its ownership or control in amounts not less than required by this Declaration; and (g) to be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements.

No initiation fee may be charged to members of the Association as a pre-condition to use of such areas or facilities. User fees, however, may be charged. The Association shall not be bound in setting assessments in subsequent years by the amount of the assessments set in earlier years. Notwithstanding any of the provisions of this Article, in no event shall assessments and other revenues collected by the Association exceed their expenses and reasonable reserves to an extent which would violate any Association's not-for-profit status.

**Section 4.3 Assessment Amounts.** The initial regular annual assessment is hereby set at the rate of \$800.00 per Lot or Dwelling Unit for the Owners Association.

Any Change in the annual assessment shall be determined at a meeting of the Board of Directors of the Association. In regard of the Owners Association annual assessment, the following two adjustment provisions shall apply. First, the assessment shall automatically adjust

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from one Association year to the next (subject to the approval of a majority of the Board of Directors of the up or down in an amount in accordance with the percentage increase or decrease in the Consumer Price Index during the last complete calendar year; provided, however, that the Directors shall have the authority in their approving resolution to round any such automatic adjustment upward or downward to a convenience amount. In the event that the increase from the Consumer price Index does not meet the budgetary needs of the Association, the Board of Directs may increase the annual assessment in an amount not exceeding fifteen percent (15%) of the previous year's assessment. Second, the assessment may be increased beyond that set at the annual meeting upon approval of the two-thirds of the members in attendance at any regular or special meeting of the applicable Association at which a quorum is present, but only after written notice of such meeting and such issue is given to all members of that Association at least ten (10) days prior to the date of said meeting. Nothing herein, however, shall be construed to preclude the Board of Directors of the Association from once annually fixing and levying an emergency assessment which may be levied without notice to the membership and without the holding of any special or regular meeting of said membership of the Association.

The Association, upon proper resolution adopted by its Board of Directors, may bill and collect assessments on a quarterly basis. Except as elsewhere provided herein to the contrary, each owner of a Lot or Dwelling Unit shall be obligated to pay assessments which accrued prior to his taking title and shall be obligated to pay the regular annual assessment continually from, at the latest, the date such Owner takes title to said Lot or Dwelling Unit.

In the event that, and at such time as, two Lots under single ownership shall have one Dwelling Unit constructed upon them in such a way that no other Dwelling Unit can be constructed thereon, then at the time of issuance of a Certificate of Occupancy for that one Dwelling Unit, the owner shall become liable for one regular annual assessment, and no longer for two such assessments as were owned prior to the completion of the Dwelling Unit.

The Developer shall not be obligated to pay any assessments on any vacant Lots or lands which it may own, notwithstanding the fact such Lots may have been platted or such Lots may be on paved roads. However, in the event the Developer constructs a Dwelling Unit on any Lot, it shall be liable for the annual and other assessments upon that Lot or Dwelling Unit which are charged, levied or assessed for the first time after the issuance of a Certificate of Occupancy for the Dwelling Unit, except Developer shall have the right to construct "model homes" for which no assessment



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shall be due until said model home is sold to a third party for residential use.

**Section 4.4. Late Charges.** Assessments which are not paid on or before the date the same become due shall be delinquent, and each delinquent assessment shall bear simple interest at eighteen percent (18%) per annum until it is paid in full. In addition to the accrual of interest, when an assessment becomes delinquent in payment, the applicable Association has the right to accelerate assessment payments for the balance of the calendar year and, in such event, the Association's lien shall be for the full amount as accelerated. There shall be no exemption from the payment of any assessment by waiver of the use of the Common Areas, Drainage Areas or other areas or by abandonment of the Lot or Dwelling Unit, or by extended absence from the Subdivision, or for any reason, except as provided for the Developer in Paragraph 4.3.

**Section 4.5. Statement for Assessments.** The Association, upon written request of any Lot owner or Dwelling Unit owner, shall furnish to a prospective purchaser or prospective mortgagee or any other authorized person a statement of the current status of that Association's assessments on such owner's Lot or Dwelling Unit. When executed by the Secretary/Treasurer of the Association, a mortgagee, potential purchaser or title examiner may rely upon such statement as an accurate statement of the status of the assessments by the Association upon the Lot or Dwelling Unit in question.

**Section 4.6. Foreclosure.** In the event that any institutional first mortgagee (defined as a chartered Bank, a chartered Savings and Loan Association, or the Developer) shall acquire title to any Lot or Dwelling Unit by foreclosure, judicial sale, documents of transfer from a governmental entity or documents of transfer from the mortgagor or his receiver, trustee in bankruptcy, personal representative, successors or assigns, then such institutional first mortgagee shall take title subject to the lien or liens of the Association, no to exceed the aggregate of assessments charged by the Associations to such Lot or Dwelling Unit during the twelve month period immediately preceding the date such institutional first mortgagee acquires title to the Lot or Dwelling Unit shall be liable or obligated for the payment of any assessments which were charged to the Lot or Dwelling Unit more than twelve months prior to the date the institutional first mortgagee acquired title to the Lot or Dwelling Unit, except a pro-rata share as follows: In the event of the acquisition of title as aforesaid, any assessments or assessments as to which the institutional first mortgagee so acquiring title shall not be fully liable, shall be absorbed and paid by all the owners of all the Lots and

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Dwelling Units; provided, however, that nothing contained herein nor any action taken by said institutional first mortgagee shall be construed as releasing the prior owner from liability for such delinquent assessments or construed as a waiver of the Association's right to legally enforce collection from the prior owner. In the event that any institutional first mortgagee shall acquire title to any Lot or Dwelling Unit as described above in this Section 4.8, the mortgagee so acquiring title shall also be liable and obligated for such assessments as may accrue to said Lot subsequent to the date of acquisition of such title.

**Section 4.7. Liens for Assessments.** Recognizing that proper management and operation of all the areas of the Promenade Parke Community benefits all owners of Lots or Dwelling Units, the Association are hereby granted a lien upon all the Lots and Dwelling Units within the Promenade Parke Community and the present and future interests of each Lot and Dwelling Unit owner in the Common Areas, Drainage Areas, Conservation Easement Areas and improvements thereof, to secure the prompt payment of each and all assessments made and levied in accordance with this Declaration. Each Lot and Dwelling Unit owner shall be liable for, and this lien shall secure, the full amount of said assessment including reasonable attorney's fees, deposition costs (whether or not depositions are used at trial), reasonable expert witness fees and costs (whether or not expert testifies at trial), postage, long distance, telephone, travel, lodging and meal costs which are incurred (either prior to trial, at trial, on appeal or on retrial) by the Association with respect to enforcement or interpretation of the provisions of this Declarations or of the Articles of Incorporation or the By- Laws of any of the Associations.

**Section 4.8. Foreclosure of Lien.** The lien herein established may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. The lien granted herein shall also secure such payment of or advances for taxes and payments on superior mortgages, lien or encumbrances which are advanced by any of the Associations in order to protect its interests, and each of the Associations shall be entitled to interest computed on the basis of advances made from time to time at the highest legal rate of interest on all such advances made by that Association.

**Section 4.9. Ownership Subject to Existing Liens.** All persons, firms, corporations, and other business entities, which shall acquire by whatever mean, any interest in the ownership of any Lot or Dwelling Unit, or who may be given or who may be given or who may acquire a mortgage, lien or other encumbrance on a Lot or Dwelling Unit are hereby placed on notice of the lien rights granted to the Associations under this Declaration (including the partial exception for institutional

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first mortgages) and all, of such persons, firms, corporations, and other business entities shall acquire their rights, title and interest in and to said Lot or Dwelling Unit expressly subject to the lien rights (and exceptions) provided herein.

**Section 4.10. Lien Preparation and Recording.** The lien created pursuant to this Declaration exists as of the date the Association sets the amount of its quarterly assessments for that year. The lien shall continue in effect until all sums secured by the lien have been fully paid. Such lien shall be perfected for the purpose of determining priority among competing creditors by the recording in the public records of the County in which the Lot is located of a claim of lien stating the description of the Lot or Dwelling Unit encumbered by the lien, the name of the record owner of the Lot or Dwelling Unit, the amounts due at that time and the date when any part of the unpaid amount first became due. If the Association accelerated the assessment for the balance of the calendar year, the claim of lien shall perfect a lien for the total accelerated amount. The claim of the lien shall perfect the lien not only for assessments which are due and payable when the claim of lien is recorded, but also for interest, collection costs, reasonable attorneys' fees, and advances to pay taxes and prior encumbrances and interest thereon, all as provided herein. The claim of lien shall be signed and verified by the President or Vice President of the Association the lien. When full payment of all sums secured by such lien is made, the claim of lien shall be satisfied of record by the President or Vice President of the Association.

**Section 4.11. Enforcement.** These Covenants and Restrictions may be enforced by an action at law for damages, a proceeding in equity for an injunction, or in a manner as provided for in Section XV of the By-Laws of the Association.

## ARTICLE V CHANGES, AMENDMENT AND TERMINATION

**Section 5.1. Developer Changes and Amendments.** Subject to approval of the governmental agencies with jurisdiction over the subject area, the Developer hereby reserves for itself, its successors and assigns the right to amend, modify or rescind such parts of this Declaration or any recorded plat as it, in its sole discretion, deems necessary or desirable so long as: (a) it is the

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sole owner of the property to which the plat or this Declaration (whichever is appropriate) applies; or (b) such amendment or modification does not substantially change the character, nature, or general scheme of development of the Subdivision. Subject to approval of the governmental agencies with jurisdiction over the subject area, Any amendment to the Covenants and Restrictions which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior written approval of the Saint Johns River Water Management District. Developer also reserves the following rights to amend, change or vary with respect to Subdivision units and phases: (a) the right to add more phase or units to the Promenade Parke Community; (b) the right in future phases and units to vary the mix and location of housing types as dictated by market conditions; and (c) the right to provide in future units and phases only those amenities as are shown on the recorded plats for such future units or phases. Neither the foregoing amendments nor Developer's exercise of the foregoing rights require the concurrence of any of the Associations or individual owners of Lots or Dwelling Units.

**Section 5.2. Owner's Right To Amend.** In addition to the rights of the Developer reserved in the preceding section, subject to the approval of the governmental agencies with jurisdiction over the subject area and upon affirmative vote by seventy-five percent (75%) of all members of record in the Owners Association, on a proper Resolution at a proper Owners Association meeting, the members of Owners Association may amend or modify such provisions of this Declaration as they deem necessary or desirable, expect that (a) provisions relating to the rights, powers and duties of the Owners Association or the Committee may not be amended until control of the Board of Directors of the Owners Association has been turned over to the Members; and (b) the owners cannot amend the Declaration in a manner which conflicts with or is inconsistent with the Development Orders issued by the City of New Smyrna Beach or is inconsistent with the requirements of St. Johns River Water Management District contained in this Declaration.

## ARTICLE VI USE OF COMMON PROPERTY

**Section 6.1. Lot Owners Common Area Usage.** The Common Areas, as specifically described herein, or hereafter designated by Developer (excluding area within utility easements

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where above ground utilities structures are located) shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all owners of Lots developed within the Subdivision, for the use of such owners and their immediate families, guests, tenants, invitees, and others similarly situated, for all proper and normal residential purposes, for the furnishing of services and facilities for which the Common Area can be reasonably utilized and for the quiet enjoyment of said owners.

**Section 6.2. Developers Common Area Usage.** Until all areas subject to Development Orders issued by the City of New Smyrna Beach have been developed and transferred or conveyed to third parties, Developer shall have the right (at no charge or fee) to reasonably utilize Common Areas for promoting the Subdivision and marketing Lots and Dwelling Units, including, but not limited to, the right to maintain sales offices in a Subdivision Community Building of Developer's choice.

## ARTICLE VII

### ALLOWED USES AND USE RESTRICTIONS APPLICABLE TO DRAINAGE AREAS AND CONSERVATION EASEMENT AREAS

**Section 7.1. Areas Located on Plats.** In order to maintain the values inherent in large areas of natural undisturbed and substantially undisturbed lands for the benefit of the residents of the Promenade Parke Community, Developer shall in plats of the Promenade Parke Community locate and identify Drainage Areas and Conservation Easement Areas which shall, as is more particularly described below, be preserved and protected in their current condition or will be subjected only to certain allowed improvements and activities.

**Section 7.2. Drainage Areas.** All parts of Drainage Areas constituting wetlands within the dredge and fill jurisdiction of the Florida Department of Environmental Protection will be preserved and protected in their natural state. Those parts of the Drainage Areas not falling within the dredge and fill jurisdiction of the Florida Department of Environmental Protection shall be improved and utilized as follows:

(1) Drainage facilities, retention ponds, lakes and related improvements may be made by the Developer as long as they are in compliance with all applicable Development Orders issued by the

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City of New Smyrna Beach.

(2) Vegetation shall not be altered or removed except as permitted by applicable Development Orders. No motorized boats or personal water craft (e.g., jet skis) shall be allowed upon the lakes or retention ponds except for boats utilized in necessary maintenance of such lakes and ponds;

(3) No water shall be removed or added to the lakes by any person or entity without the prior permission of the Owners Association,

(4) No waste or foreign materials shall be dumped or scattered in the Drainage Areas, but this shall not prohibit the use of fertilizers or pesticides in the minimum amounts necessary to stabilize and maintain vegetation in the Drainage Areas in functionally and aesthetically pleasing conditions.

**Section 7.3. Land Use Limitations Applicable to Conservation Easements.** The below listed activities and uses are prohibited in or upon all Conservation Easements Areas, except to the extent such activities are specifically authorized by permits issued by the District or the City of New Smyrna Beach:

(1) Construction or placing of buildings, roads signs, billboards or other advertising, utilities, or other structures on or above the ground.

(2) Dumping or placing of soil or other substances or materials as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

(3) Removal or destruction of trees, shrubs, or other vegetation.

(4) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

(5) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

(6) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(7) Acts or uses detrimental to such retention of land or water areas.

(8) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

All construction, including dredging or filling, shall be prohibited waterward of the wetlands limit lines established jointly by the Developer and the District and shall be prohibited

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within Conservation Easements designated on plats, even if such Conservation Easements overlap Lots or Common Areas; except, however, construction may occur in these areas to the extent specifically authorized by applicable permits issued by the District or the City of New Smyrna Beach. The district and the City of New Smyrna Beach may enforce the restrictions contained in this Section and this Section may not be amended without prior approval of the District and the City of New Smyrna Beach.

Section 7.4. Cross Easements. The Owners Association is hereby granted a perpetual easement upon all Common Areas and all Lots for the purpose of going upon said properties to fix, repair, alleviate or change any condition adversely affecting the stormwater management systems, discharge facilities, Drainage Areas, or Conservation Easement Areas. In exercising this right, the Owners Association shall act reasonably so as to cause the least in convenience or difficulty to the owner or owners of said properties.

**ARTICLE VIII  
COVENANTS AGAINST PARTITION  
AND SEPARATE TRANSFER OF COMMON AREAS**

It is recognized that the full use and enjoyment of any Lot or Dwelling Unit within the Promenade Parke Community is dependant upon the use, enjoyment, maintenance, protection and preservation of certain Common Areas Drainage Areas, Conservation Easement Areas and the improvements made thereto, and that it is in the interests of all Lot and Dwelling Unit Owners that the ownership of the Common Areas, Drainage Areas and Conservation Easements Areas be retained by the Association as provided in this Declaration. Accordingly, no Lot or Dwelling Unit owner shall have the right to transfer the Lot or Dwelling Unit owner's interest in the Association other than as an appurtenance to and in the same transaction with a transfer of title to the Lot or Dwelling Unit, and the Associations shall have no right to transfer title to any part of the Common Areas, Drainage Areas or Conservation Easement Areas without Developer's prior written consent. Nothing in this Article VII, however, shall: (a) preclude a conveyance by the Developer, its successors or assigns of any undivided interest in the Common Areas, Drainage Areas or Conservation Easement Areas to the Association for the purpose of effectuating the purposes of this Declaration; or (b) preclude a conveyance by the Developer, its successors or assigns of any utility

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easements across, under, above or upon the Common Areas, Drainage Areas or Conservation Easement Areas.

## ARTICLE IX CONTROL AND TURNOVER OF ASSOCIATIONS

**Section 9.1. Appointment of Directors by Developer.** The Developer shall have the right to at any time appoint members to the Board of Directors of the Owners Association to assure that Developer's appointed Directors constitute up to seventy-five percent (75%) of Association's Directors until the earlier of the following events occurs: (i) Three months after 90 percent of the Lots in all phases of the Promenade Parke Community that will ultimately be operated by the Owners Association have been conveyed to Members or (ii) such other date as the Developer may designate..

**Section 9.2. Veto by Developer.** Until the Developer turns over control of the Owners Association to the Members, the Developer shall have the right to veto any action taken by the Board of Directors of that particular Association at a time when more than twenty-five percent (25%) of the Directors of that Association were not appointed by the Developer. Control of the Owners Association, and the records shall be turned over to the members at such time as the Developer has turned the Owners Association over to the members.

## ARTICLE X COVENANTS TO RUN WITH LAND

The restrictions and burdens imposed by the provisions and covenants of this Declaration shall constitute covenants running with Property, and each provision and covenant shall constitute an equitable servitude upon the heirs, personal representatives, successors and assigns of each owner of a Lot or Dwelling Unit, and the same shall likewise be binding upon the Developer and its successors and assigns. This Declaration shall be binding and in full force and effect for a period of thirty (30) years from the date this Declaration is first recorded in the Public Records of Volusia County, Florida, after which time this Declaration shall be automatically extended for successive



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ten (10) year periods, unless (a) an instrument, signed by seventy-five percent (75%) of the then owners of record of Lots and Dwelling Units in the Subdivision, is recorded in the Public Records of Volusia County, Florida, pursuant to which the said owners repeal the provisions of this Declaration, and (b) proper governmental authority for repeal of this Declaration is obtained.

IN WITNESS WHEREOF, the Developer, JPJ INVESTMENTS, INC., a Florida CORPORATION has set its hand and seal on the date indicated below.

Lisa White  
Witness 1

LISA White  
Print Name

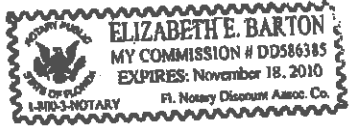
[Signature]  
Witness 2

DAWN M. WARREN  
Print Name

By: [Signature]  
Its: President  
Date: 11-28-06

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of November, 2006, by JAMES PAYTAS, JR, as President of JPJ Investments, Inc., Inc., a Florida corporation, on behalf of the corporation. He is personally known to me ~~or has produced~~ as identification and ~~did~~ did not take an oath.



Notary Public, State of Florida at Large  
Elizabeth E. Barton

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

LAW OFFICES

**SMITH, HOOD, PERKINS, LOUCKS, STOUT,  
BIGMAN, LANE & BROCK, P. A.**

**EXHIBIT A  
[Legal Description of Property]**

A portion of Sections 6 and 7, Township 17 South, Range 33 East, lying Southerly of Pioneer Trail, also known as State Road #40 and County Road #4118, a 66.00 foot right of way as now laid out and being more particularly described as follows:

Commence at the Northwest corner of said Section 7, Township 17 South, Range 33 East; thence North 89 degrees 36' 10" East along the North line of said Section 7, a distance of 2283.36 feet for the Point of Beginning; thence North 00 degrees 24' 31" West, a distance of 919.61 feet to the Southerly right of way line of said Pioneer Trail, a 66 foot right of way as now laid out; thence along said Southerly right of way line the following five (5) courses and distances; (1) South 77 degrees 07' 19" East, a distance of 334.96 feet; (2) South 70 degrees 25' 46" East, a distance of 128.27 feet; (3) South 74 degrees 09' 46" East, a distance of 1247.61 feet to a point of curvature of a curve concave Northeasterly having a radius of 4433.15 feet; (4) thence Southeasterly along said curve through a central angle of 5 degrees 12' 24", a distance of 402.86 feet; (5) South 79 degrees 22' 10" East, a distance of 554.31 feet; thence leaving said Southerly right of way line run South 01 degrees 28' 23" East, a distance of 2805.55 feet to the centerline of an existing drainage canal, thence North 80 degrees 30' 04" West along said centerline, a distance of 867.98 feet; thence North 82 degrees 01' 14" West, along said centerline, a distance of 866.36 feet; thence North 80 degrees 06' 02" West along said centerline, a distance of 901.25 feet; thence leaving said centerline of existing drainage canal North 01 degrees 18' 06" West, a distance of 2119.75 feet to the Point of Beginning.

Return to:  
Pattis Homes Inc  
PO Box 290490  
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**FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR PROMENADE PARKE SUBDIVISION, NEW SMYRNA BEACH, VOLUSIA COUNTY, FLORIDA AND NOTICE OF PROVISIONS FOR PROMENADE PARKE HOMEOWNERS' ASSOCIATION, INC.**

This First amendment executed this 24 day of Sept, 2013 is executed by COLEMAN FAMILY REAL ESTATE, INC, a Florida Corporation hereby referred to as 'the Declarant'

WITNESSETH-

WHEREAS, COLEMAN FAMILY REAL ESTATE, INC is the Declarant under the DECLARATION OF COVENANTS AND RESTRICTIONS FOR PROMENADE PARKE SUBDIVISION, NEW SMYRNA BEACH, VOLUSIA COUNTY, FLORIDA AND NOTICE OF PROVISIONS FOR PROMENADE PARKE HOMEOWNERS' ASSOCIATION, INC. recorded in Official Records Book 1539 Pages 68-86, Public Records of VOLUSIA County, Florida; and

WHEREAS, Declarant desires to amend the DECLARATION OF COVENANTS AND RESTRICTIONS PROMENADE PARKE SUBDIVISION, NEW SMYRNA BEACH, VOLUSIA COUNTY, FLORIDA AND NOTICE OF PROVISIONS FOR PROMENADE PARKE HOMEOWNERS' ASSOCIATION, INC. as per Section 2.25.

NOW THEREFORE, Declarant hereby amends the DECLARATION OF COVENANTS AND RESTRICTIONS PROMENADE PARKE SUBDIVISION, NEW SMYRNA BEACH, VOLUSIA COUNTY, FLORIDA AND NOTICE OF PROVISIONS FOR PROMENADE PARKE HOMEOWNERS' ASSOCIATION, INC. - as set forth herein and each transferee, mortgagee or lienor of any property within the PROMENADE PARKE, VOLUSIA COUNTY FLORIDA (including and future phases thereof submitted to the declaration) and their respective heirs, successors and assigns, shall be bound by such amendment and restatement, to wit:

1. SECTION 2.18 is amended to read as follows:

**Section 2.18 Fences and Shrubs.** Fence or wall placement and hedge or shrub planting near street shall be subject to Committee approval and in compliance with the applicable provisions of the Ordinances of the City of New Smyrna Beach. **Shrubbery shall be planted or maintained in the rear yard when abutting a lake or open space so long**

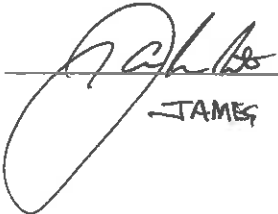
as it is maintained at a height of no more than 4ft above the ground when interfering with open space views. Shrubbery intended to create privacy can be maintained at a height of no higher than 6ft when abutting the structure or enclosure in which it is intended to protect. No shrubbery shall be planted or maintained in the common area between a homeowners property and the waters edge of any lake or waterway.

2. SECTION 2.29 is amended to read as follows:

**Section 2.29 Drainage Swales** The developer has constructed drainage swales upon each lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. **This area includes the property located from the rear property line of ach lot to the water's edge of retention areas.** Each lot owner, including builders, shall be responsible for maintenance, operation and repair of the swales on the lot **including the area located from the rear property line of ach lot to the water's edge of retention areas.** Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance arid other stormwater management capabilities as permitted by the Saint Johns River Water District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swal c:s is prohibited. No alteration of the drainage swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human induced phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the owner(s) of the Lot(s) upon which the Drainage Swale is located. **Each lot owner abutting a retention area is responsible for maintenance of that area located from the rear property line of ach lot to the water's edge of retention areas.**

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_  
Lisa White

  
\_\_\_\_\_  
JAMES M. MATHER

COLEMAN FAMILY REAL ESTATE, INC  
a Florida Corporation

by   
\_\_\_\_\_  
Jeff Hurt, VICE PRESIDENT

The foregoing instrument was acknowledged before me on this Sept 24 day of Sept, 2013, by JEFF HURT., the VICE PRESIDENT of COLEMAN FAMILY REAL ESTATE, INC, on behalf of said company. He is personally known to me and did/did not take an oath.



Notary Public  
State of Florida at Large  
My Commission No:  
My Commission Expires:



**SECOND AMENDMENT TO DECLARATION OF COVENANTS &  
RESTRICTIONS FOR PROMENADE PARKE SUBDIVISION, NEW SMYRNA  
BEACH, VOLUSIA COUNTY, FLORIDA, AND NOTICE OF PROVISIONS FOR  
PROMENADE PARKE HOMEOWNER'S ASSOCIATION, INC.**

The Second Amendment executed this 8<sup>th</sup> day of February, 2015 is executed by COLEMAN FAMILY REAL ESTATE, INC., a Florida Corporation, hereby referred to as the "Declarant".

WITNESSETH:

WHEREAS, COLEMAN FAMILY REAL ESTATE, INC. is the Declarant under the Declaration of Covenants and Restrictions for Promenade Parke Subdivision, New Smyrna Beach, Volusia County, Florida and Notice of Provisions for Promenade Parke Homeowner's Association, Inc., recorded in Official Records Book 1539, pages 68-86, Public Records of Volusia County, Florida; and

WHEREAS, Declarant desires to amend the Declaration of Covenants and Restrictions for Promenade Parke Subdivision, New Smyrna Beach, Volusia County, Florida and Notice of Provisions for Promenade Parke Homeowner's Association, Inc. as per Section 2.25.

NOW THEREFORE, Declarant hereby amends the Declaration of Covenants and Restrictions for Promenade Parke Subdivision, New Smyrna Beach, Volusia County, Florida and Notice of Provisions for Promenade Parke Homeowner's Association, Inc. as set forth herein and each transferee, mortgagee, or lienor of any property within the Promenade Parke, Volusia County, Florida (including and future phases thereof submitted to the Declaration) and their respective heirs, successors and assigns, shall be bound by such amendment and restatement, to wit:

1. Section 2.18 is amended to read as follows:

**Section 2.18 Fences and Shrubs.** Fence or wall placement and hedge or shrub planting near street shall be subject to Committee approval and in compliance with the applicable provisions of the Ordinances of the City of New Smyrna Beach. Shrubbery shall be planted or maintained in the rear yard when abutting a lake or open space so long as it is maintained as a height of no more than 4ft above the ground when interfering with open space views. Shrubbery intended to create privacy can be maintained at a height of no higher than 6ft when abutting the structure or enclosure in which it is intended to

protect. No shrubbery shall be planted or maintained in the common are between a homeowner's property and the water's edge of any lake or waterway.

Where the fence line abuts another lot in the rear of the lot, or along the South boundary where abutting the canal, a fence up to 6 feet tall and made of white PVC shall be allowed.

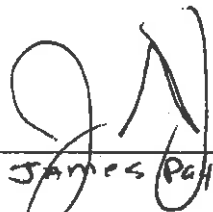
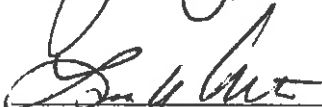
Where the yard abuts common areas, such as lakes, retention easements, parks, or other common spaces, an open picket-style white or bronze colored fence, no greater than 4 feet high shall be the only fence permitted.

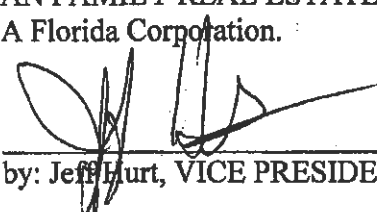
On the side of the structure, a fence shall be allowed provided it is placed no closer to the front boundary than 1/2 of the building structure.

The attached depiction is incorporated into this rule, and used for clarification and guideline purposes as to what fencing will be permitted on lots within Promenade Park Subdivision.

Signed, sealed and delivered in the presence of:


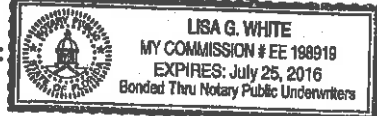
COLEMAN FAMILY REAL ESTATE, INC.  
A Florida Corporation.

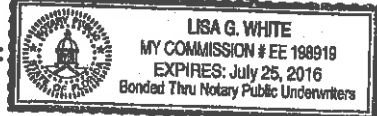
  
\_\_\_\_\_  
James Paltas Jr.  
  
\_\_\_\_\_  
Lisa White

  
\_\_\_\_\_  
by: Jeff Hurt, VICE PRESIDENT

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, this 8<sup>th</sup> day of FEB 2015, by JEFF HURT who is personally known to me or produced or who has produced a valid driver's license as identification and who did not take an oath.

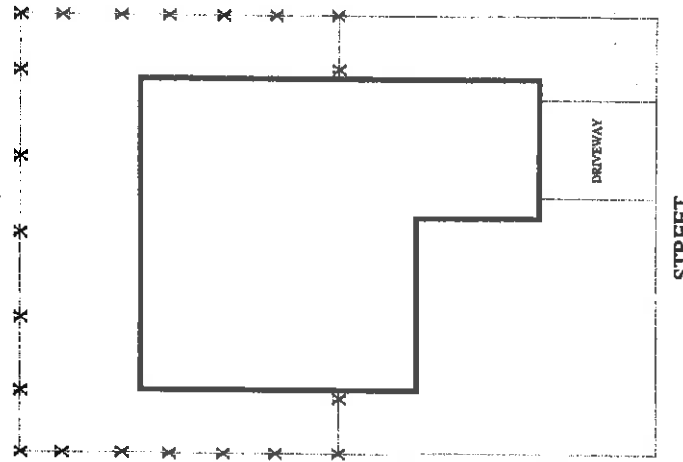
  
\_\_\_\_\_  
Notary Public:  
My Commission Expires: 



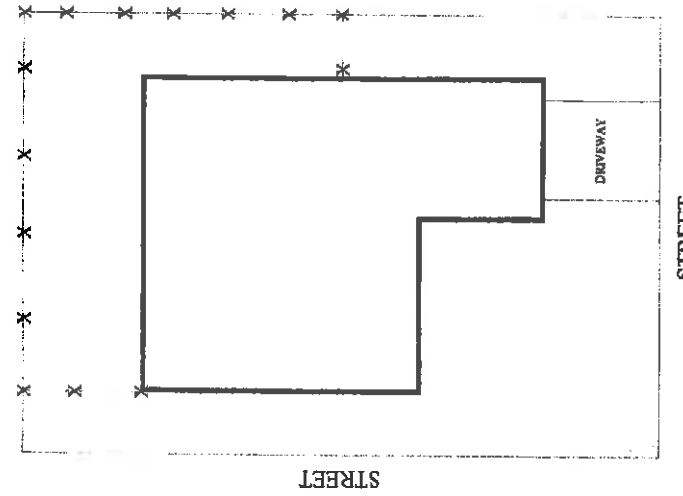
Instrument# 2015-026632 #  
Book : 7083  
Page : 2989  
Diane M. Matousek  
Volusia County, Clerk of Court

# Promenade Parke

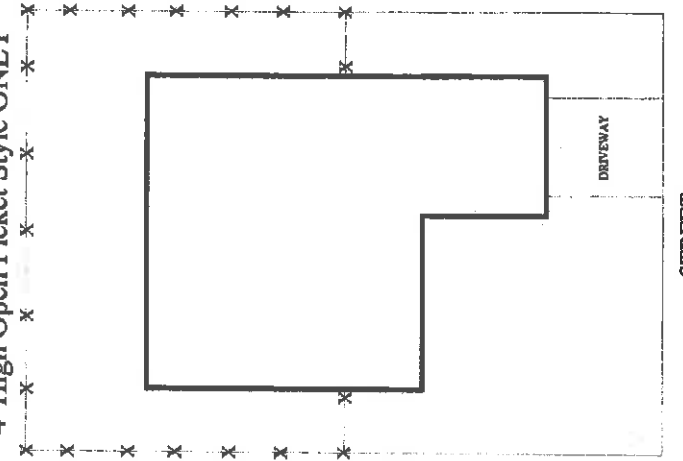
Where 6' Privacy Allowed



All Street Side Corners



Along Lake, Open Space or Common Area  
4' High Open Picket Style ONLY





**THIRD AMENDMENT TO DECLARATION OF COVENANTS &  
RESTRICTIONS FOR PROMENADE PARKE SUBDIVISION, NEW SMYRNA  
BEACH, VOLUSIA COUNTY, FLORIDA, AND NOTICE OF PROVISIONS FOR  
PROMENADE PARKE HOMEOWNER'S ASSOCIATION, INC.**

The THIRD Amendment executed this 9<sup>th</sup> day of March, 2016 is executed by COLEMAN FAMILY REAL ESTATE, INC., a Florida Corporation, hereby referred to as the "Declarant"

WITNESSETH:

WHEREAS, COLEMAN FAMILY REAL ESTATE, INC. is the Declarant under the Declaration of Covenants and Restrictions for Promenade Parke Subdivision, New Smyrna Beach, Volusia County, Florida and Notice of Provisions for Promenade Parke Homeowner's Association, Inc., recorded in Official Records Book 1539, pages 68-86, Public Records of Volusia County, Florida; and

WHEREAS, Declarant desires to amend the Declaration of Covenants and Restrictions for Promenade Parke Subdivision, New Smyrna Beach, Volusia County, Florida and Notice of Provisions for Promenade Parke Homeowner's Association, Inc. as per Section 2.25.

NOW THEREFORE, Declarant hereby amends the Declaration of Covenants and Restrictions for Promenade Parke Subdivision, New Smyrna Beach, Volusia County, Florida and Notice of Provisions for Promenade Parke Homeowner's Association, Inc. as set forth herein and each transferee, mortgagee, or lienor of any property within the Promenade Parke, Volusia County, Florida (including and future phases thereof submitted to the Declaration) and their respective heirs, successors and assigns, shall be bound by such amendment and restatement, to wit:

1. Section 2.18 is amended to read as follows:

**Section 2.18 Fences and Shrubs.** Fence or wall placement and hedge or shrub planting near street shall be subject to Committee approval and in compliance with the applicable provisions of the Ordinances of the City of New Smyrna Beach. Shrubbery shall be planted or maintained in the rear yard when abutting a lake or open space so long as it is maintained as a height of no more than 4ft above the ground when interfering with open space views. Shrubbery intended to create privacy can be maintained at a height of no higher than 6ft when abutting the structure or enclosure in which it is intended to protect. No shrubbery shall be planted or maintained in the common area between a homeowner's property and the water's edge of any lake or waterway.

Where the fence line abuts another lot in the rear of the lot, or along the South boundary where abutting the canal, a fence up to 6 feet tall and made of white PVC shall be allowed.



Where the yard abuts common areas, such as lakes, retention easements, parks, or other common spaces, an open picket-style white or bronze colored fence, no greater than 4 feet high shall be the only fence permitted. The ARC may grant permission to install a solid 4ft fence when abutting park in areas where the ARC decides, at its sole discretion, that a ~~solid~~ <sup>SHADOW BOX</sup> 4ft fence would not interfere with the overall feel and vision of the community.

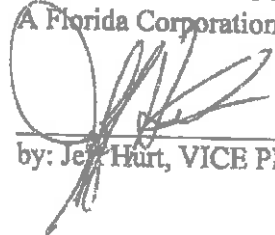
On the side of the structure, a fence shall be allowed provided it is placed no closer to the front boundary than 1/2 of the building structure.

The attached depiction is incorporated into this rule, and used for clarification and guideline purposes as to what fencing will be permitted on lots within Promenade Park Subdivision.

Signed, sealed and delivered in the presence of:

COLEMAN FAMILY REAL ESTATE, INC.  
A Florida Corporation.


  


  
by: Jesse Hurt, VICE PRESIDENT

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, this 9 day of Mar 2016, by Jesse Hurt who is personally known to me or produced or who has produced a valid driver's license as identification and who did not take an oath.

  
Notary Public:  
My Commission Expires

  
LISA A. WHITE  
MY COMMISSION # EE 188919  
EXPIRES: July 25, 2016  
Notary Public - Underwriter