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Cross Reference:

Declaration of Easements and  
Restrictions and Covenant to Share  
Costs for Joint Use Areas, as recorded  
in Book 781, Page 1905, Official  
Records of Flagler County, Florida

Amended and Restated Declaration of  
Easements and Restrictions and  
Covenant to Share Costs for Joint Use  
Areas, as recorded in Book 1313, Page  
1279, Official Records of Flagler  
County, Florida

STATE OF FLORIDA

COUNTY OF FLAGLER

**SECOND AMENDMENT TO AMENDED AND RESTATED  
DECLARATION OF EASEMENTS AND RESTRICTIONS AND  
COVENANT TO SHARE COSTS FOR JOINT USE AREAS**

(All references to recording information herein are to the Official records of Flagler County, Florida, unless otherwise indicated. All capitalized terms not otherwise defined herein shall be defined as set forth in the Amended Cost Sharing Declaration (defined below)).

This Second Amendment to Amended and Restated Declaration of Easements and Restrictions and Covenant to Share Costs for Joint Use Areas (this "Second Amendment") is made as of the 22<sup>nd</sup> day of MARCH, 2013 by VILLAGE AT PALM COAST HOMEOWNERS ASSOCIATION, INC. ("Phase I Association"), whose

address is P.O. Box 351465, Palm Coast, Florida 32135 and TIDELANDS CONDOMINIUM ASSOCIATION, INC. ("Phase 2 Association"), whose address is 5455 A1A South, St. Augustine, Florida 32080, as joined and consented to by CENTEX HOMES, a Nevada general partnership, d/b/a Centex Destination Properties ("Company"), whose address is 2301 Lucien Way, Suite 400, Maitland, FL 32751, each of who hereby acknowledge and agree to the terms and conditions of this Second Amendment.

### Recitals

WHEREAS, Longview Village Development Company ("Longview"), as ORIGINAL declarant, established and declared that the Properties are subject to that certain Declaration of Easements and Restrictions and Covenant to Share costs for Joint Use Areas, dated March 31, 2005, recorded at Book 123, Page 900, Official Records of Flagler County, Florida (the "Original Cost Sharing Declaration");

WHEREAS, Longview assigned its rights as declarant under the Phase I Declaration to Company, pursuant to the Assignment dated as of April 4, 2005, recorded at Book 1225, Page 630, Official Records of Flagler County, Florida;

WHEREAS, Company, as successor declarant, established and declared that the Properties are subject to that certain Amended and Restated Declaration of Easements and Restrictions and Covenant to Share Costs for Joint Use Areas, dated September 7, 2005, recorded at Book 1313, Page 1279, as amended by that certain First Amendment to Amended and Restated Declaration of Easements and Restrictions and Covenant to Share Costs for Joint Use Areas recorded at Book 1677, Page 1503, as amended by that certain Scrivener's Affidavit, recorded in Official Records Book 1706, Page 1467, all of the Official Records of Flagler County, Florida (collectively, the "Amended Cost Sharing Declaration");

WHEREAS, the Phase I Association acknowledged and agreed to be subject to the terms and conditions of the Original and Amended Cost Sharing Declaration;

WHEREAS, the Phase 2 Association acknowledged and agreed to be subject to the terms and conditions of the Amended Cost Sharing Declaration;

WHEREAS, the amendments made pursuant to the Original Cost Sharing Declaration and Amended Cost Sharing Declaration treat all the Property Owners equitably;

WHEREAS, the Development is a residential planned community located in the City of Palm Coast, Flagler County, Florida currently known as Tideland and formerly known as the Village at Palm Coast;

WHEREAS, the Phase I Property has been developed and is subject to the Phase I Declaration;

WHEREAS, pursuant to the Phase I Declaration, the Articles of Incorporation of the Phase I Association and the Bylaws of the Phase I Association, the Phase I Association is responsible for the governance of the Phase I Property;

WHEREAS, portions of the Phase 2 Property have been developed and are subject to the Phase 2 Declaration;

WHEREAS, pursuant to the Phase 2 Declaration, the Articles of Incorporation of the Phase 2 Association and the Bylaws of the Phase 2 Association, the Phase 2 Association is responsible for the governance of portions of the Phase 2 Property;

WHEREAS, in order to assure that each Property Owner is treated equitably, the expense associated with the Joint Use Areas shall be allocated equitably among the Property Owners;

WHEREAS, Article 11, Section 11.8 of the Amended and Restated Declaration of Easements and Restrictions and Covenant to Share costs for Joint Use Areas provides that the Cost Share Declaration may be amended by the joint written consent of the Phase I Association (acting through its board of directors), the Phase 2 Association (acting through its board of directors), the Joint Committee (majority approval required), Company, if Company owns any portion of the Properties, Private Amenity Owner, if and only if, such amendment affects the rights of the Private Amenity Owner or Private Amenity Users, Marina Owner, if and only if, such amendment affects the rights of the Marina Owner and Rental Operator, if and only if, such amendment affects the rights of the Rental Operator;

WHEREAS, there is no Private Amenity Owner, Private Amenity Users, Marina Owner and/or Rental Operator in the Development, and the Company has agreed to consent to this Second Amendment;

WHEREAS, Company does not have the authority or right to appoint or elect any members of the Joint Committee, as restructured as provided in more detail hereinbelow;

WHEREAS, the Phase I Association and the Phase 2 Association are recording this Amendment for the purpose of amending the Amended Cost Sharing Declaration and establishing and confirming (i) a re-definition of the Joint Use Areas, (ii) certain provisions regarding the operation, use and maintenance of Joint Use Areas, (iii) the allocation of expenses associated with Joint Use Areas, and (iv) composition and operation of the Joint Committee;

NOW THEREFORE, the following amendments to the Amended Cost Sharing Declaration are hereby adopted and each Phase I Owner and Phase 2 Owner, transferee, mortgagee or lien holder of any property within Phase I and Phase 2 (including any future phases or expansion thereof submitted to the Declaration) and

respective heirs, successors and assigns, shall be bound by and subject to such amendment, to wit:

1. Definitions. Article 1 of the Cost Sharing Declaration shall be amended as follows:

A. Section 1.18 is hereby amended as follows:

"1.18 Phase 2 Association. The one or more condominium association(s) responsible for the governance of the Phase 2 Property that is subject to the Phase 2 Declaration. The Phase 2 Association shall have the right to delegate its duties under this Cost Sharing Declaration to a management company that is performing similar duties in connection with the Phase 2 Property and/or the operation of the Phase 2 Association or portion thereof.

B. Section 1.19 is hereby deleted in its entirety and replaced with the following:

"1.19 Phase 2 Declaration. That certain Declaration of Condominium for Tidelands, a Condominium, recorded in Official Records Book 1313, Page 13111, of the Public Records of Flagler County, Florida, as amended and supplemented.

C. Section 1.21 is hereby amended as follows:

"1.21 Phase 2 Property. All of those tracts or parcels of land lying and being in the City of Palm Coast, Flagler County, Florida, as more particularly described on Exhibit "B" of the Cost Sharing Declaration; provided, however, that in the event Additional Property is subjected to the Phase 2 Declaration, then such Additional Property shall be Phase 2 Property. For purposes of the Amended Cost Sharing Declaration, "Phase 2 Property" shall include the Remaining Phase 2 Property (as defined below) unless otherwise specifically excluded.

D. The following definition shall be added as Section 1.34:

"1.34 Remaining Phase 2 Property. Any portion of the Phase 2 Property conveyed by Company to a successor-in-title and not encumbered by the Phase 2 Declaration and not submitted to the governance of the Phase 2 Association."

E. The following definition shall be added as Section 1.35:

"1.35 Remaining Phase 2 Property Owner. The owner(s) of all or a portion of the Remaining Phase 2 Property, excluding an individual owner of a Unit."

F. The following definition shall be added as Section 1.36:

"1.36 Remaining Phase 2 Association. A condominium or property owners' association formed by the Remaining Phase 2 Property Owner responsible for the governance of the Remaining Phase 2 Property."

G. The following definition shall be added as Section 1.37:

"1.37 Association. Each of the Phase 1 Association, the Phase 2 Association and the Remaining Phase 2 Association, as the context may require"

2. Joint Committee. Section 3.1 of the Amended Cost Sharing Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"3.1 Establishment of Joint Committee. In order to ensure that: (i) the Joint Use Areas are operated and maintained for the benefit of all Property Owners, and (ii) Phase 1 Owners and the Phase 2 Owners are treated equitably with respect to the use, enjoyment and benefit of and from the Joint Use Areas, a six (6) member Joint Committee shall be established upon recording this Amendment to the Amended Cost Sharing Declaration. The board of directors of the Phase 1 Association shall appoint three (3) members of the Joint Committee and the board of directors of the Phase 2 Association shall appoint three (3) members of the Joint Committee. Any member of the board of directors of the Phase 1 Association or the Phase 2 Association may be appointed to serve on the Joint Committee. The Chair of the committee may be a representative of either the Phase 1 Association or the Phase 2 Association and shall rotate annually. Each member of the Joint Committee shall serve at the discretion of the board of directors of the Association which appointed them. The Joint Committee does not replace the board of directors of the Phase 1 Association and/or the Phase 2 Association. The Joint Committee will evaluate the Cost Share Budget and Maintenance Program as hereinafter provided, while the Phase 2 Association will implement the actions required to be taken pursuant to the Amended Cost Sharing Declaration. All decisions made by the Joint Committee and Phase 2 Association shall be made such that the Phase 1 Owners and the Phase 2 Owners are treated equitably.

Any dispute arising between Phase 1 and Phase 2 shall be resolved by binding arbitration commenced and conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The costs of the arbitration, including the arbitrator's fees and the attorney's fees of the prevailing party, shall be taxed to the non-prevailing party. Additionally, the prevailing party shall have the right to record and enforce the final arbitration ruling in a court of law having proper jurisdiction. The venue for arbitration shall be Flagler County, Florida."

3. Cost Share. Section 6.1 of the Amended Cost Sharing Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"6.1 Obligation to Share Costs. Each Property Owner of a Unit, whether located in Phase I Property or Phase 2 Property, or any new units built within the Phase 2 property no matter how identified shall be treated equitably with regard to the allocation of costs associated with this Cost Sharing Declaration. Since the Phase 2 Association is responsible for performing the obligations under this Cost Sharing Declaration, the Phase I Association shall be responsible for reimbursing the Phase 2 Association for the Phase I Association's pro rata share of the cost incurred. The Phase I Association shall pay to the Phase 2 Association its pro rata share of the Budget. The allocation of costs between the two Associations shall be based on the number of Units located in the Phase I Property and the number of Units located in the Phase 2 Property plus the number of Units located in the Remaining Phase 2 Property, divided by the total number of such Units and then rounded to the nearest tenth of a percentage. The Phase I Association's "Units" shall consist of all constructed single-family homes as well as lots located in the Phase I Property. The Phase 2's "Units" shall consist of all constructed condominium or other residential dwelling units located in the Phase 2 Property. The Remaining Phase 2 Property's "Units" shall consist of any future condominium or other residential dwelling units constructed on property located within the Remaining Phase 2 Property, effective as of the issuance of the certificates of occupancy for any such units. The allocation of costs described above, shall become effective January 1, 2013. The allocation described in the Amended Cost Sharing Declaration remained in effect until December 31, 2012.

Unless otherwise provided by the Phase 2 Association, the Phase I Association and the Remaining Phase 2 Association (as and when such becomes due) shall pay 1/12<sup>th</sup> of its pro rata share of the Budget to the Phase 2 Association by the fifth day of each calendar month. Each Association shall be responsible for collecting assessments from its members in order to fulfill its payment obligations. Accordingly, each Association may determine how it will allocate its pro rata share of such costs among its members. The allocation of cost among members of an Association based on a particular size of dwelling or a particular type of dwelling shall be deemed to be equitable. For example, an Association may allocate its pro rata share of the cost equally to its members or it may allocate its pro rata share of the costs to its members based on formulas which take into account the square footage of a dwelling or whether a dwelling exists on a lot.

Twice annually, the Phase 2 Association shall reconcile the actual costs incurred in performing the obligations of this Cost Sharing Declaration with the Budget. Reconcilements shall be done by the Phase 2 Association by June 30<sup>th</sup> and December 31<sup>st</sup> each year. In the event the Budget exceeds the actual costs incurred during a reconciled six-month period, each Association's contributions shall be accordingly reduced during the next six-month period. Similarly, in the event that the actual costs incurred during the reconciled six-month period exceed the Budget, each Association's contributions shall be accordingly increased during the next six-month period.

In addition to the Budget, the Joint Committee may recommend that a special assessment be levied from time to time to cover unbudgeted expenses or expense in excess of those in the Budget. These special assessments shall be allocated between the Phase 1 Association, the Phase 2 Association and the Remaining Phase 2 Association (when applicable) according to the proration provided above. Any special assessment shall be subject to evaluation by the Joint Committee and shall become effective unless disapproved by either the Joint Committee, the board of directors of the Phase 1 Association, the board of directors of the Phase 2 Association or the board of directors of the Remaining Phase 2 Association. Notwithstanding anything to the contrary in the Phase 1 Declaration and the By-Laws of the Phase 1 Association, each special assessment shall be payable in such manner and at such times as determined by the Joint Committee and may be payable in installments extending beyond the fiscal year in which the special assessment is assessed."

4. Joint Use Areas. Section 1.9 of the Amended Cost Sharing Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"1.9 Joint Use Areas. That certain real property, personal property and improvements either: (i) designated as Joint Use Area on Exhibit "C" attached hereto and incorporated herein by reference; or (ii) now or hereafter designated as a "Joint Use Area" on any plat of all or a portion of the Properties which is recorded in the public records of Flagler County, Florida, or described as such in any deed from Company which is recorded in the public records of Flagler County, Florida, with the exception of certain parcels, which are described below with specificity.

Moreover, while certain parcels included in the area described in Exhibit "C" will remain part of the Joint Use Areas, the Phase 1 Property Owners and Phase 2 Property Owners will not be obligated to share costs in regards to same. Such parcels are described below with specificity. Nothing contained herein shall terminate or otherwise effect in any manner, any easement created pursuant to the terms of the Amended Cost Sharing Declaration; provided however, neither the Phase 1 Association, nor its members, guests or invitees, shall have any right of access to or use of Tract "F", Tract "J" or Tract "K" as depicted on the plat

of Village at Palm Coast, Phase 2 (Tidelands), recorded in Plat Book 35, at page 37, of the Official Records of Flagler County, Florida.

Improvements located on Joint Use Areas shall be deemed to be part of the Joint Use Areas for the purposes of this Cost Sharing Declaration, unless otherwise specified in the document designating the real property, personal property and/or improvements as to a Joint Use Area.

The following parcels shall be removed from the Joint Use Areas and shall be maintained by the Phase I Association. Furthermore, the Phase I Association shall be obligated to maintain said parcels and shall be solely responsible for all costs associated with said parcels.

- Common Area "A" and the landscaped islands located within Village Point and Pavilion Court as depicted on the plat of Village at Palm Coast, Phase I recorded in Map Book 33, pages 1 through 4, of the Official Records of Flagler County, Florida (the "Phase I Plat").

The following parcels shall remain part of the Joint Use Areas, but the Phase 2 Association shall have no obligation to share costs for said parcels. While the parcels listed below will remain part of the Joint Use Area, the Phase I Association shall be obligated to maintain said parcels and shall be responsible for all costs associated with said parcels, with the sole exception of storm water charges levied by the City of Palm Coast, which shall be prorated between the Phase I Association and the Phase II Association as part of the Budget.

- Common Areas "D", "E" and "G" of the Phase I Plat.

The parcels listed below shall be removed from the Joint Use Areas. However, the parcels listed below have paths lying in them. The paths will remain available for the use of both Phase I Owners and Phase 2 Owners. The Phase 2 Association shall have no obligation to share in the costs for said parcels or the paths described above. Rather, the Phase I Association shall be obligated to maintain said parcels and for all costs associated with the parcels and the paths.

- Parcel "C" and Parcel "F" of the Phase I Plat.

The following parcels shall be removed from the Joint Use Areas and shall be maintained by the Phase 2 Association. Furthermore, the Phase 2 Association shall be obligated to maintain said parcels and shall be solely responsible for all costs associated with said parcels.



- Tracts "F", "J" and "K" as depicted on the plat of Village at Palm Coast Phase II (Tidelands) recorded in Plat Book 35, pages 37 through 40, of the Official Records of Flagler County, Florida (the "Phase II Plat").

Notwithstanding the above, the parcels listed below shall be removed from the Joint Use Areas. However, the parcels listed below have paths lying in them. The paths will remain available for the use of both Phase I Owners and Phase 2 Owners. The Phase I Association shall have no obligation to share in the costs for said parcels or the paths described above. Rather, the Phase 2 Association shall be obligated to maintain said parcels and for all costs associated with the parcels and the paths.

- Tracts "E", "G", "H" and "I" of the Phase II Plat."

5. Exhibits. Exhibit "C" attached to this Second Amendment shall be substituted in its entirety for and shall replace Exhibit "C" and Exhibit "C-1" attached to the Amended Cost Sharing Declaration.

6. No Encumbrance. Nothing in this Second Amendment shall in any way be construed as spreading the encumbrance of the Phase I Declaration or the Phase 2 Declaration against any of the Remaining Phase 2 Property not currently encumbered by the either the Phase I Declaration or Phase Declaration as of the date of this Second Amendment.

6. No Further Amendments. In the event of any inconsistencies between the terms and provisions of this Second Amendment and the terms and provisions of the Amended Cost Sharing Declaration, the terms and provisions of this Second Amendment shall control. Otherwise the Amended Cost Sharing Declaration is unmodified and remains in full force and effect. From and after the date of execution and recording of this Second Amendment, any and all references to the Amended Cost Sharing Declaration shall be deemed to refer to the Amended Cost Sharing Declaration as amended by this Second Amendment.

7. Effective Date. This Second Amendment shall become effective upon the recordation of this Second Amendment in the Public Records of Flagler County, Florida.

[Signatures begin on the following page]

IN WITNESS WHEREOF, VILLAGE AT PALM COAST HOMEOWNER'S ASSOCIATION, INC., also referred to above as "Phase I" has hereunto set its hand and seal as of the 22<sup>nd</sup> day of March, 2013.

VILLAGE AT PALM COAST HOMEOWNER'S ASSOCIATION, INC.

BY [Signature]  
John F. Loder milk, in his/her capacity as President for VILLAGE AT PALM COAST HOMEOWNER'S ASSOCIATION, INC.

Signed, Sealed and Delivered in the presence of:

Witness [Signature]  
William A. Aldridge Jr.

Witness [Signature]  
Paul R. [unclear]

STATE OF FLORIDA )  
  ) SS:  
COUNTY OF )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of March, 2013, by JOHN L OUDERMILK, in his/her capacity as the PRESIDENT of VILLAGE AT PALM COAST HOMEOWNER'S ASSOCIATION, INC. to me personally known to be the individual described herein, and who voluntarily executed this Second Amendment to Amended and Restated Declaration of Easements and Restrictions and Covenant to Share Costs for Joint Use Areas.

[Signature]  
(Signature of Notary Public State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_



IN WITNESS WHEREOF, TIDELANDS CONDOMINIUM ASSOCIATION, INC., also referred to above as "Phase 2" has hereunto set its hand and seal as of the 22nd day of March, 2013.

TIDELANDS CONDOMINIUM ASSOCIATION, INC.

BY [Signature], in his/her capacity as PRESIDENT for TIDELANDS CONDOMINIUM ASSOCIATION, INC.

Signed, Sealed and Delivered in the presence of:

Witness [Signature]  
Witness [Signature]

STATE OF FLORIDA )  
  ) SS:  
COUNTY OF )

The foregoing instrument was acknowledged before me this 22nd day of March, 2013, by DONALD E. TOBIN, in his/her capacity as the PRESIDENT of TIDELANDS CONDOMINIUM ASSOCIATION, INC. to me personally known to be the individual described herein, and who voluntarily executed this Second Amendment to Amended and Restated Declaration of Easements and Restrictions and Covenant to Share Costs for Joint Use.

[Signature]  
(Signature of Notary Public State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_



**CONSENT AND JOINDER**

CENTEX HOMES, a Nevada general partnership, d/b/a Centex Destination Properties, hereby consents to and joins in the foregoing Second Amendment to Amended and Restated Declaration of Easements and Restrictions and Covenant to Share Costs for Joint Use Areas to which this Consent and Joinder is attached, and agrees for itself and its successors and assigns, that all portions of the Remaining Phase 2 Property owned by it shall be subject to all terms and provisions thereof.

CENTEX HOMES, a Nevada general partnership, d/b/a Centex Destination Properties

By: [Signature]  
Name: DAN FITZPATRICK  
Title: VP OF FINANCE

Signed, Sealed and Delivered in the presence of:

Witness William A. Albridge Jr.  
Witness [Signature]

STATE OF FLORIDA )  
                                  ) SS:  
COUNTY OF )

The foregoing instrument was acknowledged before me this 22nd day of March, 2013, by DAN FITZPATRICK, in his/her capacity as the VP OF FINANCE of Centex Real Estate Corporation, a Nevada corporation, the managing partner of Centex Homes, a Nevada general partnership d/b/a Centex Destination Properties, to me personally known to be the individual described herein, and who voluntarily executed this Consent and Joinder.

[Signature]  
(Signature of Notary Public State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_



**Exhibit "C"**

Parcel "B", Parcel "C", Common Area "D", Common Area "E", Common Area "G" and Parcel "H", as depicted on the plat of Village at Palm Coast, Phase I, recorded in Map Book 33, pages 1 through 4, of the Official Records of Flagler County, Florida (the Phase I Plat").

TOGETHER WITH:

The walking paths located within Parcel "C" and "Parcel "F" of the Phase I Plat.

TOGETHER WITH:

All catch basins, grates, pipes, drainage control devices and other facilities comprising the storm drainage system located within the Phase I Plat.

TOGETHER WITH:

All entry features and associated landscaping located near the vicinity of the intersection of Longview Parkway and Norman Young Parkway and the intersection of River Bend South and Norman Young Parkway, both as depicted on the Phase I Plat.

TOGETHER WITH:

Riverview Bend South, Tract "A", Tract "B", Tract "C", Tract "E", Tract "G", Tract "I", and those portions of Tract "D" and Tract "H" that are not included within the boundaries of any condominium, as depicted on the plat of Village at Palm Coast, Phase II (Tidelands) recorded in Plat Book 35, pages 37 through 40, of the Official Records of Flagler County, Florida (the "Phase II Plat").

TOGETHER WITH:

The walking paths located within Tracts "E", "G", "H" and "I" of the plat of Village at Palm Coast, Phase II (Tidelands), recorded in Plat Book 35, pages 37 through 40, of the Official Records of Flagler County, Florida.

TOGETHER WITH:

All catch basins, grates, pipes, drainage control devices and other facilities comprising the storm drainage system located within the Phase II Plat.