

Prepared by, Record and Return to:

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SECOND AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

(LAND USE PLAN AMENDMENT PC 06-29)

This Second Amended Declaration of Restrictive Covenants (“Second Amended Declaration”) is executed as of this _____ day of _____, 2016 by **PALM COVE HOLDINGS, LP**, a Delaware limited partnership, (“Owner”) whose address is 848 Brickell Avenue, Penthouse 1, Miami, Florida, 33131, its successors and assigns, and shall be for the benefit of **BROWARD COUNTY**, a political subdivision of the State of Florida, with a post office address of 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 (“County”), and **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**, with a post office address of 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301 (“School Board”).

WHEREAS, Owner is the fee title owner of approximately 34.1 gross acres of land located in the City of Tamarac, Broward County, Florida, as more particularly described in Exhibit “A” attached hereto (“Property”); and

WHEREAS, County previously approved Land Use Plan Amendment Application PC 06-29 for the Property, which changed the Property’s land use designation from Commercial Recreation to Low Medium (10) Residential; and

WHEREAS, Owner’s predecessor-in-interest to the Property voluntarily entered into a Declaration of Restrictive Covenants executed on August 2, 2007 and recorded on August 10, 2007 in Official Records Book 44460, Pages 1773 through 1784, of the Public Records of Broward County, Florida (“Declaration”) restricting development to 48 single family units (24 three-bedroom units and 24 four-bedroom units) and 184 townhouses units (138 two-bedrooms units and 46 three-bedroom units), which at the time was anticipated to generate 25 elementary, 9 middle and 10 high school students, for a total of 44 students; and

WHEREAS, Owner’s predecessor-in-interest to the Property subsequently voluntarily entered into an Amended Declaration of Restrictive Covenants (“Amended Declaration”) executed on August 11, 2014 and recorded on October 10, 2014 in Official Records Book 51160, Pages 744 through 751, of the Public Records of Broward County, Florida which reduced the density and changed the residential unit type to develop the Property with a total of 225 units consisting of 61 single family units (43 three-bedroom and 18 four-bedroom) and 164 townhouse units (all three-bedroom), which at the time was anticipated to generate 33 elementary, 15 middle and 21 high school students, for a total of 69 students; and

WHEREAS, Owner now intends to reduce the density and intensity (residential type) of development on the Property to a total of 214 single family residential units (65 three-bedroom and 149 four or more bedroom units); and

WHEREAS the School Board has further determined that the proposed density reduction and change in residential type calculated utilizing the updated student generation rates will now generate 94 (46 elementary, 23 middle and 25 high school) students, thus generating 25 (13 elementary, 8 middle and 4 high school) additional students (over currently approved residential unit mix) into Broward County Public Schools consistent with the currently effective student generation rates contained in the Broward County Land Development Code (BCLDC), attached hereto as Exhibit "B"; and

WHEREAS, Broward County and the City of Tamarac, in conjunction with the School Board, have adopted public school concurrency since approval of the Declaration requiring all new residential development proposals to comply with development review criteria for school concurrency in Broward County, and in particular the change in density and residential unit type will necessitate public school concurrency review either at the plat or site plan (or functional equivalent) state of review; and

WHEREAS Owner now wishes to revise the Amended Declaration to modify the School Board approved school mitigation plan under the Amended Declaration to reflect the current proposed density reduction and change in residential unit type and its anticipated additional student impact on Broward County Public Schools; and

WHEREAS, the School Board has agreed with the revised student mitigation plan outlined herein, and has requested the execution and recordation of this Second Amendment to Declaration to accomplish the parties' desire and intent.

NOW, THEREFORE, in consideration of the promises and covenants herein contained, Owner hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, and regulations hereinafter set forth.

1. The above recitals are true and correct and are incorporated into this Second Amendment to Declaration by this reference.

2. Other than as amended herein, Owner hereby confirms, ratifies and reaffirms the covenants, restrictions and obligations contained in the Declaration and Amended Declaration.

3. Pursuant to the Amended Declaration, Owner's predecessor-in-interest agreed to mitigate for student impacts by paying no less than \$1,243,624.00 ("Minimum Payment") to mitigate the student impact anticipated from the revised unit mix. Broward County impact fee regulations and School Board Policy 1161, require school mitigation to be no less than the school impact fees which are due at the time of payment, therefore, the total Minimum Payment due may change time to time and the actual payment due shall be determined at the time of payment.

4. Prior to environmental review approval of construction plans as set forth within Chapter 27, Broward County Code of Ordinances, by the Development Management Division for the first building permit for construction or erection of the first residential unit on the Property, Owner shall make one lump sum payment to the School Board for the Minimum Payment, as may be modified at the time of payment. Upon satisfaction of the then current Minimum Payment, 164 single family residential units [65

three bedroom (“Three-Bedroom, Vested-Unit Pool”) and 99 four or more bedroom (“Four-Bedroom, Vested-Unit Pool”)] within the Property shall be vested for public school concurrency, which includes education impact fees.

5. Upon satisfying payment of the then current Minimum Payment and completing the permitting of 164 single family (65 three bedroom and 99 four or more bedroom) residential units, the School Board acknowledges that the remaining 50 single family residential units within the Property shall then be subject to Public School Concurrency (PSC) review. The Owner may transfer units from the Four-Bedroom, Vested-Unit Pool to the Three-Bedroom, Vested-Unit Pool on a unit-per-unit basis until a maximum of 164 residential units are constructed. The Owner shall be subject to and pay the then applicable education impact fee(s) as contained in the Broward County Land Development Code (“BCLDC”) if PSC review determines that the capacity is available at the impacted schools for the remaining 50 single family residential units.

6. In the event that the total number of residential units changes from what is represented in the Application and there is an increase in the number of residential units or unit type(s), Owner shall submit an application to the Facility Planning and Real Estate Department for Public School Concurrency review and determination. In the event that changes in the overall mix of residential units results in a net reduction in the amount of units, no refund of any portion of the school impact and/or mitigation fees shall be due and owing to Owner by the County or the School Board.

7. Except as modified herein, all other terms and conditions of the Declaration and the Amended Declaration shall remain in full force and effect.

8. The County and the School Board are the beneficiaries of this Second Amendment and as such, both or either may enforce this Second Amendment by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of this Second Amended Declaration. Any failure of either the County or the School Board to enforce this Amended Declaration shall not be deemed a waiver of the right to do so thereafter.

9. This Second Amendment shall be recorded in the Public Records of Broward County, Florida, by Owner and the provisions hereof shall constitute a covenant running with the land and shall remain in full force and effect and binding upon the undersigned, its heirs, legal representatives, estate successors, grantees and assigns until released as provided for herein.

10. This Second Amendment constitutes the entire agreement, with regard to the subject matter contained herein, and may only be amended, modified or released with the consent of the parties. In the event of a conflict between the terms, covenants, restrictions or conditions of the Declaration and the Amended Declaration, the terms of this Second Amended Declaration shall control and prevail.

11. The undersigned hereto expressly covenants and represents that he/she has the authority to enter into this Second Amendment to Declaration and so bind all general partners and affiliated partnerships.

IN WITNESS WHEREOF, the undersigned has caused this Second Amendment to be executed this 28th day of March, 2016.

Signed, sealed and delivered in the presence of:

Palm Cove Holdings, LP, a Delaware limited liability company

WITNESS:

[Signature]
Print name: Elisa Seguin

By: [Signature]
Arnaud Karsenti, Manager

[Signature]
Print name: Lindsay M Rayner

STATE OF FLORIDA

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 28th day of March, 2016, by Arnaud Karsenti on behalf of PALM COVE HOLDINGS, LP, a Delaware limited partnership. He is personally known to me or has produced _____ as identification.

Seal

[Signature]
Notary Public, State of Florida
My commission expires: 9/27/19



Lindsay M Rayner
COMMISSION #FF922054
EXPIRES: September 27, 2019
WWW.AARONOTARY.COM

Joinder & Consent

Mortgagee, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Agreement.

Witnesses (if partnership):

Branch Banking and Trust Company

Jarvis Daniels
(Signature)

Print Name: Jarvis Daniels

Lauren Ramos
(Signature)

Print name: LAUREN RAMOS

By: [Signature]

Print name: William Ruiz

Title: Vice President

Address:

30th day of March, 2016

STATE OF FLORIDA

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 30 day of March, 2016, by William Ruiz, VP of BRANCH BANKING AND TRUST COMPANY, a North Carolina corporation, who is personally known to me or has produced _____ as identification.

Seal



Michelle Tandron

Notary Public, State of Florida

My commission expires:

EXHIBIT LIST

Exhibit A - Property Legal Description

Exhibit B - Student Generation Rates

Exhibit "A"

All of the Plat of "Palm Cove", according to the Plat thereof, as recorded in Plat Book 181, Page 157, of the Public Records of Broward County, Florida.

Exhibit "B"



**FACILITY PLANNING AND REAL ESTATE DEPARTMENT
GROWTH MANAGEMENT SECTION**

Generation Rate Detailed Information

	<u>Bedrooms</u>	<u>Elem</u>	<u>Middle</u>	<u>High</u>
Single Family	2 or less	0.000	0.000	0.000
	3	0.173	0.091	0.107
	4 or more	0.232	0.111	0.122
	Average			
Townhouse/ Duplex/Villa	<u>Bedrooms</u>	<u>Elem</u>	<u>Middle</u>	<u>High</u>
	1 or less	0.060	0.000	0.000
	2	0.109	0.049	0.056
	3 or more	0.177	0.076	0.110
Average				
Garden Apartment	<u>Bedrooms</u>	<u>Elem</u>	<u>Middle</u>	<u>High</u>
	1 or less	0.013	0.003	0.004
	2	0.136	0.056	0.044
	3 or more	0.193	0.113	0.123
Average				
Mid Rise Apartment	<u>Bedrooms</u>	<u>Elem</u>	<u>Middle</u>	<u>High</u>
	Studio	0.008	0.004	0.004
	1	0.008	0.004	0.004
	2	0.028	0.013	0.021
Average				
High Rise Apartment	<u>Bedrooms</u>	<u>Elem</u>	<u>Middle</u>	<u>High</u>
	Studio	0.010	0.004	0.006
	1	0.010	0.004	0.006
	2 or more	0.010	0.004	0.006
Average	0.010	0.004	0.006	
Mobile Home	<u>Bedrooms</u>	<u>Elem</u>	<u>Middle</u>	<u>High</u>
	1 or less	0.084	0.083	0.000
	2	0.084	0.083	0.000
	3 or more	0.182	0.182	0.000
Average				

0.00 - No Students were observed in the sample.
Ordinance #2014-36 became effective January 26, 2015.