

Prepared by and Return to:
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**THIRD AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR CANOPY CREEK
(F/K/A TUSCAWILLA)**

This Third Amendment to Declaration of Covenants, Conditions and Restrictions for Canopy Creek (f/k/a Tusawilla) ("Third Amendment") is made by **KC CANOPY CREEK LLC, a Delaware limited liability company** ("Declarant"), successor by merger with EF Minus S, L.L.C., a Florida limited liability company, as of the 14 day of March, 2015.

WITNESSETH:

WHEREAS, EF MINUS S, L.L.C., a Florida limited liability company, as original declarant (referred to herein as the "Original Declarant"), filed in the Public Records of Martin County, Florida, on October 12, 2006, in Official Records Book 2187, Page 2722, that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCAWILLA dated August 2, 2006 (the "Declaration"); and

WHEREAS, Declarant is the successor by merger with Original Declarant, and Declarant has been assigned and has assumed all of Original Declarant's rights and responsibilities as "Declarant" under the Declaration; and

WHEREAS, the Declaration has been amended pursuant to a First Amendment to Declaration of Covenants, Conditions and Restrictions for Tusawilla recorded November 30, 2007, in Official Records Book 2294, at page 1415, of the Public Records of Martin County, Florida (the "First Amendment"), and a Second Amendment to Declaration of Covenants, Conditions and Restrictions for Tusawilla recorded April 10, 2008, in Official Records Book 2321, at page 221, of the Public Records of Martin County, Florida (the "Second Amendment"), and all further references in this Third Amendment to the Declaration shall mean the Declaration as amended by said First Amendment and Second Amendment; and

WHEREAS, the name of the Property and the residential community has been changed from Tusawilla to Canopy Creek; and

WHEREAS, the Declaration states that each Unit Owner and the Association will be bound by and comply with the Club Plan; and

WHEREAS, the Declarant desires to amend the Declaration to reflect the change of the name of the community to Canopy Creek, and set forth additional information regarding the Club Plan and the privileges and obligations of Owners with respect to the Club Facilities; and

WHEREAS, this Third Amendment has been duly authorized in accordance with Subsection 14.7 of the Declaration.

NOW THEREFORE, in consideration of the premises stated above, Declarant, joined by the Club Owner and the Association, does hereby amend the Declaration as follows:

1. Recitals; Defined Terms. The recitals set forth in the preamble to this Third Amendment are hereby certified as being true and correct. All capitalized terms in this Third Amendment that are not defined herein shall have the meaning ascribed to them in the Declaration or in the Club Plan.

2. Name of Community and Club. All references in the Declaration to the Property or the Community as "Tusawilla" shall be deemed to mean and refer to "Canopy Creek". All references in the Declaration to the Club as "Tusawilla Club" shall be deemed to mean and refer to "Canopy Creek Club".

3. Definitions. The definition of "Club" in Section 1.1.15 of the Declaration is hereby amended to mean Canopy Creek Club and the Club Facilities, the use of which is provided for the Members of the Association in accordance with and subject to the provisions of the Club Plan. The definition of "Club Plan" in Section 1.1.23 of the Declaration is hereby amended to mean the Canopy Creek Club Plan dated March 19, 2015 and all amendments thereof.

4. Excluded Lots. The five (5) lots described on Exhibit "A" attached hereto and made a part hereof (collectively, the "Excluded Lots") are subject to the Declaration, but are not subject to the terms and conditions of the Club Plan and Owners of the Excluded Lots (collectively, the "Excluded Owners") are not required to acquire a Club Membership or pay any Club Dues or Club Expenses.

5. Use of Club Facilities. Section 14.25 of the Declaration is hereby deleted in its entirety and replaced with the following:

14.25 Use of Club Facilities and Club Plan. Each Owner and his or her Immediate Family Members shall have the non-exclusive rights and privileges to use the Club Facilities, in accordance with the terms of the Club Plan. If a Unit is owned by a corporation, trust or other legal entity, or is owned by more than one (1) family, then the Owner(s) collectively shall designate the one (1) person residing in the Unit who will be the Member of the Club with respect to such Unit. The Association and each Unit Owner, where applicable, shall be bound by and comply with the Club Plan, which is incorporated herein by reference. This Declaration is subordinate and inferior to the Club Plan. In the event of any conflict between the Club Plan and this Declaration, the Club

Plan shall control. Notwithstanding anything to the contrary herein, neither Club Owner, the Club Facilities, nor the Club Property shall be subject to this Declaration, except as otherwise expressly provided herein.

- a. Exceptions. A Lender or its affiliate that acquires title to a Unit as a result of foreclosing a mortgage on such Unit, or taking a deed in lieu of foreclosure for such Unit, shall be subject to the requirement of becoming a Member of the Club and complying with this Section 14.25, including without limitation, the obligation to pay Club Dues but only to the extent first arising and coming due after the date that such Lender or its affiliate acquires title to a Unit through foreclosure or a deed in lieu of foreclosure; provided, however, a Lender or its affiliate that acquires title to a Lot as a result of foreclosing a mortgage on such Lot, or taking a deed in lieu of foreclosure for such Lot, shall only be required to pay Club Expenses and shall not be required to pay any Club Membership Fees. The purchaser of a Unit from such a Lender or its affiliate, where the selling Lender or its affiliate has acquired title to a Unit as a result of foreclosing a mortgage on a Unit, or deed in lieu of foreclosure, shall be subject to the requirement of becoming a Member of the Club and complying with this Section 14.25; provided, however, such purchaser shall have no liability for any Club Dues arising or coming due prior to the date that such Lender or its affiliate acquired title to the Unit through foreclosure or a deed in lieu of foreclosure. If the Association acquires title to a Unit as a result of foreclosing a lien or deed in lieu of foreclosure, the Association shall not be subject to the requirement of becoming a Member of the Club; provided, however, the purchaser of a Unit from the Association shall be subject to the requirement of becoming a Member of the Club in compliance with this Section 14.25. A purchaser who acquires title to a Unit at a duly advertised public sale conducted by the clerk of the court, sheriff, or county tax collector, with open bidding provided by law (e.g. executed sale, foreclosure sale, judicial sale, or tax sale), shall be subject to the requirement of becoming a Member of the Club and complying with this Section 14.25.
- b. Criteria. The criteria for Club Membership for persons under contract to purchase a Unit shall be ministerial only: *i.e.*, limited to: (i) providing requisite information as may be reasonably required for Club records; (ii) filling out a Club Membership application; and (iii) payment of the necessary sums as may be required by the Club Plan from time to time for the Club Membership.
- c. No Assessment. Notwithstanding any term in this Declaration which may be to the contrary, the financial obligations of Club Membership and other obligations of Owners to the Club as provided for in this Declaration and the Club Plan shall not be an Assessment of the Association against any Lot or Unit under this Declaration.
- d. Lien. The obligation of each Owner or Builder to pay Club Dues, Special Use Fees, and all other amounts owed to Club Owner as described in the Club Plan shall be secured by a continuing lien in favor of Club Owner encumbering each

Unit and all personal property located thereon owned by the Owner or Builder. The lien may be foreclosed in the same manner as a mortgage. Additional terms concerning such lien are set forth in the Club Plan.

- e. Certificate of Compliance. No deed or other instrument purporting to transfer an interest in, or title to, a residential Lot or Unit shall be effective unless Club Owner shall certify that the financial obligations and any other obligations of the Owner of the residential Lot or Unit regarding Membership in the Club under the Declaration and the Club Plan are current, including but not limited to all dues and fees owed to the Club. A Certificate of Compliance by the Club Owner under this Section shall be effective only upon its recordation in the Public Records of Martin County, Florida, executed by the Club Owner and certifying compliance of the residential Lot or Unit as herein provided.

6. Restriction on Encumbrance or Amendment. Regions Bank, an Alabama banking corporation ("Regions Bank") has made a loan to Declarant secured by a Mortgage, Assignment of Rents and Security Agreement by Declarant in favor of Lender recorded in Official Records Book 2767, Page 343 of the Public Records of Martin County, Florida (the "Regions Bank Mortgage") and evidenced and secured by other related loan documents dated February 13, 2015 (the "Regions Bank Loan"). Declarant and Club Owner agree that as long as the Regions Bank Loan is outstanding and until the Regions Bank Mortgage has been satisfied as evidenced by the recordation of a Satisfaction of Mortgage in the Public Records of Martin County, Florida: (i) the Club Property and Club Facilities shall not be encumbered by any mortgage, or any other lien or encumbrance, without the prior written consent of Regions Bank, and (ii) the Club Plan shall not be modified, amended or terminated in a manner that is materially adverse to Regions Bank, without the prior written consent of Regions Bank, not to be unreasonably withheld, conditioned or delayed.

7. Full Force and Effect. In all other respects the terms and conditions of the Declaration are hereby ratified and confirmed.

**[NO FURTHER TEXT THIS PAGE
SIGNATURES AND ACKNOWLEDGMENT APPEAR ON FOLLOWING PAGES]**

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JOINDER OF ASSOCIATION

CANOPY CREEK COMMUNITY ASSOCIATION, INC., formerly known as Tusawilla Community Association, Inc., a Florida not-for-profit corporation, hereby joins in this Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Canopy Creek (formerly known as Tusawilla), for the sole purpose of agreeing to perform its obligations as contained herein.

Print Name: Sarah G. 12

Print Name: Doug Bruk

CANOPY CREEK COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, formerly known as TUSCAWILLA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation

By: Doug Bruk
Doug Bruk, President

STATE OF FLORIDA)
)ss
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 19th day of March, 2015, by Doug Bruk, as President of **CANOPY CREEK COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, formerly known as TUSCAWILLA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation**, on behalf of said not-for-profit corporation. The above-named individual [☒] is personally known to me or [] has produced the following as identification _____.



(Notarial Seal)

Michelle Sanchez
Notary Public - State of Florida
Print Name: Michelle Sanchez
Commission Number: FF058832
My commission expires: 9-30-17

JOINDER OF CLUB OWNER

CANOPY CREEK CLUB, LLC, a Florida limited liability company, hereby joins in this Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Canopy Creek (formerly known as Tuscawilla), for the sole purpose of acknowledging and agreeing to all of the provisions in the Declaration relating to the Club Property and Club Facilities.

[Signature]
Print Name: Seester

**CANOPY CREEK CLUB, LLC, a
Florida limited liability company**

By: The Kolter Group LLC, a Florida limited
liability company

[Signature]
Print Name: ghelle Alar

By: [Signature]
Howard Erbstein, Manager

STATE OF FLORIDA)
)ss
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this ___ day of March, 2015, by Howard Erbstein, as Manager of The Kolter Group LLC, a Florida limited liability company, which is Manager of CANOPY CREEK CLUB, LLC, a Florida limited liability company, on behalf of said limited liability company. The above-named individual ☒ is personally known to me or ☐ has produced the following as identification _____.



(Notarial Seal)

[Signature]
Notary Public - State of Florida
Print Name: Michelle Sanchez
Commission Number: FF058832
My commission expires: 9-30-17

EXHIBIT "A"
EXCLUDED LOTS

Lots 67, 68, 75, 89 & 90, of TUSCAWILLA PUD, according to the Plat thereof, as recorded in Plat Book 16, Page 39 of the Public Records of Martin County, Florida.