

PREPARED BY AND RETURN TO:

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Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
2701 N. Rocky Point Drive, Suite 930
Tampa, Florida 33607

-----SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA-----

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR AVALON VILLAGE**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR AVALON VILLAGE (this "**First Amendment**") is made by AVALON DEVELOPMENT, LLC, a Florida limited liability company ("**Developer**").

RECITALS

- A. Developer recorded that certain DECLARATION OF COVENANTS AND RESTRICTIONS FOR AVALON VILLAGE in O.R. Book 2084, Page 1236, Public Records of Hernando County, Florida (the "**Original Declaration**"). This First Amendment, together with the Original Declaration shall hereinafter be collectively referred to as the "**Declaration**."
- B. Developer reserved the right in the Declaration pursuant to Article XII, Section 12.5, to amend the Declaration without the approval or joinder of the Association or other Owners so long as the Developer is the Class B member.
- C. As of the date of this First Amendment, the Developer is the Class B member.

NOW THEREFORE, Developer hereby declares that every portion of AVALON VILLAGE is to be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

Words in the text which are lined through (——) indicate deletions from the present text; words in the text which are underlined indicate additions to the present text.

1. The foregoing Recitals are true and correct and are incorporated into and form a part of this First Amendment.
2. In the event that there is a conflict between this First Amendment and the Original Declaration, this First Amendment shall control. Whenever possible, this First Amendment and the Original Declaration shall be construed as a single document. Except as modified hereby, the Declaration shall remain in full force and effect.

3. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.

4. Article VII, Section 7.1 of the Declaration is hereby amended as follows:

Section 7.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot within the Property hereby covenants, and by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments, any telecommunication assessments, any special assessments and the Neighborhood Assessments established and collected as hereinafter provided. All such assessments, together with interest thereon from the due date at the highest lawful rate and costs of collection thereof (including reasonable attorneys' fees), shall be a charge and continuing lien upon each Lot against which each such assessment is made, and shall also be the personal obligation of each Owner. No Owner may avoid liability for the assessments by waiver of rights to use, or by non-use of, the Common Areas or by abandonment.

5. Article VII, Section 7.9 is hereby added to the Declaration as follows:

Section 7.9 Telecommunication Assessment. A monthly assessment (the "Telecommunication Assessment") shall be paid by each Owner for the provision of Telecommunication Services to Owner's Lot through Bulk Service Agreements as set forth in Section 9.5 of this Declaration, such assessment to mean the fee and any applicable taxes, franchise fees, surcharges or other amount that may be charged by the service provider for provision of Telecommunication Services. The Telecommunication Assessment may be billed separately from other assessments levied by the Association, shall be in addition to the other assessments set forth in this Declaration, and shall be subject to the terms and conditions applicable to Assessments contained in this Article 7 as applicable. No Owner may be exempted from liability for the Telecommunication Assessment by reason of waiver of the use or enjoyment of the Telecommunication Services.

6. Article VIII, Section 9.5 is hereby added to the Declaration as follows:

Section 9.5 Telecommunication Service. Developer has entered into an agreement with an infrastructure facilities provider ("IFP") for the installation within Avalon Village of facilities and equipment (the "Infrastructure") to provide cable television, high speed internet/intranet, local and long distance telephone services, security monitoring services and/or other telecommunication services (the "Telecommunication Services") and the arrangement for the provision of Telecommunication Services to Owners and the Association pursuant to bulk service agreements ("Bulk Service Agreements") with one or more service providers designated by IFP. Developer expressly reserves the right to enter into exclusive or non-exclusive agreements for Infrastructure and Telecommunication Services on such terms, and with

affiliated or non-affiliated third parties, as may be determined by Developer in its sole discretion.

Owner understands and acknowledges that any such Bulk Service Agreements may require mandatory participation by all Owners and may result in charges to the Association which are included in the assessments levied by the Association (the "Telecommunication Assessment"). By taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners to pay the Telecommunication Assessment.

In order to make available to Owners state of the art Infrastructure and Telecommunication Services, an exclusive easement (the "Communication Easement") over the Property (inclusive of Common Areas now existing or hereafter created) has been granted to the IFP and will be made available as necessary to service providers designated by the IFP for the provision of Telecommunication Services. The Association acknowledges the Communication Easement and its applicability to the Property and the Common Areas now existing and which may be established from time to time. The Association also shall be responsible for fulfilling its obligations under each Bulk Service Agreement and any agreement between the Association and IFP with respect to the provision of Infrastructure and the arrangement for the provision of Telecommunication Services to Avalon Village. The Association and each Owner acknowledge that provision of Telecommunication Services pursuant to Bulk Service Agreements shall be subject to usage policies and minimum equipment requirements of the service providers with respect to the services provided.

7. Article XI, Section 11.4 of the Declaration is hereby amended as follows:

Section 11.4 ~~Cable Television or Radio~~**Telecommunication Services**. Developer reserves for itself, and its successors and assigns, an exclusive easement for the installation, maintenance and supply of radio, telephone and television cables as well as any other equipment and infrastructure for the provision of cable television, high speed internet/intranet, local and long distance telephone services, security monitoring services and/or other telecommunication services within the rights of way and easement areas depicted upon any plat of any portion of the Property or within any easement reserved by this Declaration.

8. Article XII, Section 12.1.1 of the Declaration is hereby amended as follows:

12.1.1 If any Owner or other person shall violate or attempt to violate any of the covenants or restrictions herein set forth, it shall be lawful for the Association, the Developer, or any Owner (i) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenant; or (ii) to maintain any proceeding against those so violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory injunctions requiring compliance with the provisions of this Declaration. The ACOE and the SWFWMD shall have the right to enforce, by a proceeding at law or in

equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System and/or jurisdictional wetlands or conservation areas subject to the control of the ACOE or SWFWMD, and it shall be the Association's responsibility to assist the ACOE, the SWFWMD or both in any such enforcement proceedings. The Developer and the IFP shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the installation of Infrastructure, the provision of Telecommunication Services and assessments related thereto, and it shall be the Association's responsibility to assist the Developer and the IFP, or both, in any such enforcement proceedings. In the event litigation shall be brought by any party to enforce any provisions of this Declaration, the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party or parties, reasonable attorney's fees for pre-trial preparation, trial, and appellate proceedings. The remedies in this section shall be construed as cumulative of all other remedies now or hereafter provided or made available elsewhere in this Declaration, or by law.

9. Article XII, Section 12.5(d) is hereby added to the Declaration as follows:

(d) Any amendment to this Declaration which alters any provision relating to the Telecommunication Services or the Telecommunication Assessments must have the prior written approval of the Developer and the IFP.

10. This First Amendment shall be a covenant running with the land.

IN WITNESS WHEREOF, the undersigned hereunto set its hand and seal as of this ____ day of _____, 2005.

[SIGNATURE AND NOTARY JURAT APPEAR ON THE FOLLOWING PAGE]

WITNESSES:

"DEVELOPER"

AVALON DEVELOPMENT, LLC,
a Florida limited liability company

Joy L LaWarre

Print Name: Joy L LaWarre

Tamara A. Farnell

Print Name: TAMARA A. FARNELL

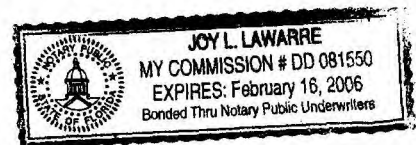
By: [Signature]
Name: JOHN C. KUNKEL
Title: VICE PRESIDENT
Date: 8/4/05

(Seal)

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 4th day of August, 2005, by John C Kunkel, as Vice President of AVALON DEVELOPMENT, LLC, a Florida limited liability company, on behalf of the company. Said person (check one) ☒ is personally known to me or ☐ produced _____ as identification.

Joy L LaWarre
Print Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____



**CONSENT AND JOINDER BY MORTGAGEE
RE: FIRST AMENDMENT**

The undersigned, Union Bank of Florida n/k/a Colonial Bank, N.A., a bank having an office at 1580 Sawgrass Corporate Parkway, Suite 310, Sunrise, Florida 33323, the Mortgagee under that certain Mortgage and Security Agreement from Avalon Development, LLC dated December 23, 2003 and recorded December 31, 2003 at Official Records Book 1776, Page 458, of the public records of Hernando County, Florida, hereby consents and joins to the foregoing First Amendment, and subordinates its lien under the Mortgage to the terms and conditions thereof.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its proper officer, duly authorized, and its seal to be affixed hereto this 3 day of August, 2005.

Signed and sealed in the presence of:

COLONIAL BANK, N.A.

Nadine Deluca
Nadine Deluca
(Printed Name)

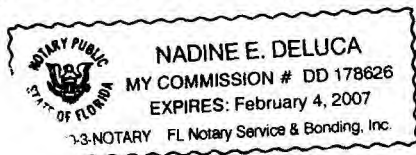
By: Bernadette Mazza
Name: BERNADETTE MAZZA
Its: SENIOR VICE PRESIDENT

Margaret Garcia
MARGARET GARCIA
(Printed Name)

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 3 day of August, 2005, by Bernadette Mazza, as the Sr. Vice Pres. of Colonial Bank, N.A., a bank, for and on behalf of said bank, and who ☒ is personally known to me or _____ has provided _____ as identification.

(Notary Seal must be affixed)



Nadine E. Deluca
(Signature of Notary)
Nadine E. Deluca
(Printed Name of Notary)
Notary Public, State of Florida
My Commission Expires: 2/4/07
Commission No. DD178626