

2/29/2004 AT 02:14 PM REC. \$217.00 SUR. \$243.50

①
2

This instrument prepared by:
Cheryl L. Hastings, Esq.
GRANT, FRIDKIN, PEARSON, ATHAN & CROWN, P.A.
5551 Ridgewood Drive, Suite 501
Naples, Florida 34108
(239) 514-1000

Recording Fees: \$ 517.00
Intangible Tax: \$ _____
Doc. Stamps: \$ _____

COPY
(space above line for official use only)

**MASTER DECLARATION OF RESTRICTIVE COVENANTS,
CONDITIONS, RESERVATIONS AND EASEMENTS FOR
AVILA AT PALENCIA**

THIS MASTER DECLARATION is made this 15th day of December 2004, by CROSSWINDS AT PALENCIA, LLC, a Florida limited liability company (the "Developer").

COPY
BACKGROUND

A. Developer is the owner of a parcel of land located in St. Johns County, Florida, legally described on Exhibit "1" hereto (the "Property") on which Developer presently plans, but has not committed, and does not hereby commit itself, to develop residential living community, together with other amenities and facilities for the common use and enjoyment of the Owners (as hereinafter defined) of all Units (as hereinafter defined) pursuant to a general plan of development, such development on the Property to be known as "Avila at Palencia;" and

B. In order to (i) insure that such general plan of development is adhered to; (ii) establish certain continuing relationships in the form of mutual rights and obligations between Developer and the persons who acquire ownership of Units (as hereinafter defined) developed in Avila at Palencia by Developer, and their respective successors, with respect to use, enjoyment and maintenance of certain areas and facilities within Avila at Palencia, and (iii) protect, preserve, and enhance the value of the Avila at Palencia, Developer has determined that this Declaration, establishing certain easements, servitudes, restrictions, and conditions in the form of covenants running with the land shall be binding upon, enforceable against and inure to the benefit of all such present and future owners of property developed within Avila at Palencia and shall run with title to the land hereby and hereafter subjected to it.

NOW, THEREFORE, Developer hereby declares that title to the Property, and to all Units (as hereinafter defined) now and hereafter existing thereon shall be held, sold, conveyed, encumbered, used and occupied subject to the terms and conditions of this Declaration as covenants running with the land enforceable as aforesaid.

ARTICLE I**DEFINITIONS**

Section 1. The following terms when used in this Declaration shall have the following meanings:

(a) "Articles" means the Articles of Incorporation of the Association (as hereinafter defined). A copy is attached as Exhibit "2."

(b) "Association" shall mean and refer to the Avila at Palencia Master Association, Inc., a non-profit Florida corporation, whose purpose is to administer the Common Property (as hereinafter defined) in accordance with the provisions of this Declaration and the governing documents of the Association.

(c) "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration."

(d) "Building" means a separate detached structure in the usual sense.

(e) "Bylaws" means the Bylaws of the Association. A copy is attached as Exhibit "3."

(f) "Common Assessment" shall mean the charge against each Owner (as hereinafter defined) and his or her Unit (as hereinafter defined), representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Common Property.

(g) "Common Expense" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacements of the Common Property (as hereinafter defined), including unpaid Special Assessments (as hereinafter defined), including those costs not paid by the Owner (as hereinafter defined) responsible for payment; the costs of any and all commonly metered utilities, cable or master television charges, and other commonly metered charges for the Common Property; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening and other services benefiting the Common Property, and any recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the Common Property; the costs of bonding of the members of the management body; taxes paid by the Association, including real property taxes for the Common Property; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Property, or portions thereof; and the costs of any other expenses incurred by, the Association for any reason whatsoever in connection with the Common Property for the benefit of all of the Owners.

(h) "Common Property" shall mean and refer to those portions of the Property which are intended to be devoted to the common use and enjoyment of the Owners (as hereinafter defined) of Units (as hereinafter defined).

(i) "Developer" means, as aforesaid, and its successors and assigns who acquire title to any portion of Avila at Palencia for the purpose of development so long as Crosswinds at Palencia, LLC, a Florida limited liability company, assigns its rights hereunder to such persons by express assignment or by operation of law.

(j) "First Mortgagee" shall mean and refer to an Institutional Lender (as hereinafter defined) which holds a first mortgage encumbering any Unit (as hereinafter defined) and which has notified the Association in writing that it holds same.

(k) "Institutional Lender" shall mean and refer to a commercial or savings bank, savings and loan association, mortgage company, life insurance company, pension fund, business trust or governmental agency or corporation, including, but not limited to, a real estate investment trust, or any assignee of a loan made by any such lender, or any private or governmental institution which has insured the loan of the lender or any combination of the foregoing entities.

(l) "Lake" shall mean and refer to any body of water designated in a site plan or plot plan as a "Lake" or that actually functions as a water body.

(m) "Land Use Documents" shall mean this Declaration, the Articles and Bylaws.

(n) "Member" shall mean and refer to an Owner (as hereinafter defined) whom is a member of the Association as provided in Article III hereof. The Association has Class "A" and Class "B" Members as defined in its Articles of Incorporation.

(o) "Notice" shall mean and refer to:

(i) Written notice delivered personally or mailed to the last known address of the intended recipient, in the manner set forth herein;

(ii) Notice published at least once each week for two (2) consecutive weeks in a newspaper having general circulation in St. Johns County, Florida; or

(iii) Notice given in any other manner provided in the Bylaws of the Association.

(p) "Open Space" shall mean and refer to those portions of the Property so designated in any supplemental declaration pursuant hereto which constitute open area, clear from the ground upward, devoid of residential buildings, accessory structures and parking area; except, however, those buildings used exclusively for recreational purposes.

(q) "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Unit (as hereinafter defined) or to any Unit developed by Developer upon any portion of the Property subject hereto but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any holder of a mortgage encumbering a Unit unless and until such holder has acquired title thereto pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

(r) "Restricted Common Property" shall mean any portion of the Common Property (such as, but not limited to, automobile parking spaces), designed for the exclusive use of particular Owners, as are, from time to time, designated by amendment or supplement to the Declaration.

(s) "Roads" shall mean those private streets, roads, terraces, drives, cul-de-sacs, courts and avenues, including the entire right-of-way, as from time to time are improved and exist within any portion of the Property subjected hereto.

(t) "Property Owners Declaration" means the Declaration of Covenants and Restrictions for Palencia, as recorded in the Public Records of St. Johns County, Florida at O.R. Book 1666, Page 807, *et seq.*, and all recorded exhibits thereto, as they have been amended and may be amended from time to time and to which the Declaration of Condominium is subject. Provision is made in the Property Owners Declaration for establishment of the Palencia Property Owners Association of St. Johns County, Inc. (the "Property Owners Association").

(u) "Special Assessments" shall mean a charge against a particular Owner and his or her Unit (as hereinafter defined), directly attributable to the Owner, equal to the cost incurred by the Association for capital expenses or for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

(v) "Sub-Association" shall mean and refer to any corporation so identified in a supplemental declaration filed by the Developer, or a designated successor, as an association formed for the purpose of administering and maintaining all or any portion of the Property.

(w) "Supplemental Declaration" Any declaration subsequently filed by Developer making reference to this Declaration.

(x) "Unimproved Living Unit" shall mean and refer to a Unit (as hereinafter defined) owned by, or located on land owned by the Developer, for which a certificate of occupancy has not been issued by the appropriate governmental authority or which has not been conveyed by the Developer to a Class "A" Member of the Association.

(y) "Unit" shall mean and refer to any portion of a Building situated upon the Property designed and intended for use and occupancy as a residence by a single family, including a unit in a condominium submitted on the Property. The Developer may also designate land as a Unit by a Supplemental Declaration.