

# DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

## AVALON AT TURTLE CREEK

Orange Co FL 5666575  
06/27/96 08:54:12am  
OR Bk 5080 Pg 221  
Rec 195.00

**THIS DECLARATION** is made this 6th day of May, 1996 by T.C.A. Development Company, a Florida corporation, hereinafter referred to as "Developer".

### WITNESSETH

**WHEREAS**, Developer currently owns all of that certain real property located in Orange County, Florida, hereinafter referred to as "the Avalon Property", more particularly described on Exhibit "A" attached hereto; and

**WHEREAS**, Developer has submitted the Avalon Property to the Declaration of Covenants and Restrictions for Turtle Creek, which was recorded in the Public Records of Orange County, Florida in Official Records Book 5058, at Pages 2263 through 2319 (the "Turtle Creek Declaration"); and

**WHEREAS**, Developer desires to establish the Avalon Homeowners Association to: (1) own, operate, administer, maintain and repair portions of the Avalon Property; (2) engage in various activities for the benefit of all residents and owners of the Avalon Property, (3) enforce the covenants, restrictions, easements, charges and liens contained in this Declaration and (4) enforce the covenants, restrictions, easements, charges and liens specifically assigned to the Avalon Association, as hereinafter defined, in the Turtle Creek Declaration, if any.

**NOW, THEREFORE**, in consideration of the premises, the Developer hereby submits and declares the Avalon Property to be subject to the following covenants, restrictions, easements, charges and liens.

### ARTICLE I

#### DEFINITIONS

Unless defined in this Declaration, all terms used herein shall have the same meanings as in the Turtle Creek Declaration. The following words, when used in this Declaration (unless the context shall otherwise provide), shall have the following meanings:

(a) "Avalon Association" shall mean and refer to Avalon Homeowners Association, Inc., a Florida corporation not for profit. Attached hereto and made a part hereof by this reference as Exhibits "B" and "C" is a copy of the Articles of Incorporation and By-Laws, respectively, of the Avalon Association.

(b) "Avalon Common Areas" shall mean and refer to the any and all real and personal property (or interest therein) within the Avalon Property which may be specifically dedicated to the Avalon Association on any recorded plat of the Avalon Property or shown on any such plat as to be maintained by the Avalon Association together with any portion of the Avalon Property conveyed to the Avalon Association for the common use and enjoyment of the members of Avalon Association. Tract B as shown on the plat of the Avalon Property is not a part of the Avalon Common Areas to be owned by or dedicated to the Avalon Association.

(c) "Avalon Lot" shall mean and refer to any Lot which is part of any recorded plat of the Avalon Property.

(d) "Avalon Property" shall mean and refer to all real property described on Exhibit "A" attached hereto.

(e) "Member" shall mean and refer to all of those Owners who are members of the Avalon Association as provided in Article III hereof.

*Engineering - G. Stone*

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Avalon Lot.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION 5080 Pg 222 Orange Co FL 5666575

All of the Avalon Property shall be subject to this Declaration, as well as to the Turtle Creek Declaration.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**Section 1. Membership.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Avalon Lot shall be a Member of the Avalon Association, as well as the Turtle Creek Homeowners' Association, Inc. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Avalon Association.

**Section 2. Voting Rights.** The Avalon Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all those Owners as defined in Section 1 with the exception of the Developer (as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but, in no event shall more than one vote be cast with respect to any such Lot, except as to Class B.

**Class B.** The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote, plus four (4) votes for each Avalon Lot owned by the Developer. Developer shall be entitled to cast such votes any time Class A Members shall be entitled to vote. The Class B membership shall cease and terminate three (3) months after ninety percent (90%) of the Avalon Lots in all phases have been sold and conveyed by the Developer (or its affiliates), to Members (but not including builders, contractors or others who purchase a Avalon Lot for the purpose of constructing improvements thereon for resale), or sooner at the election of the Developer (whereupon the Class A members shall be obligated to elect the Board and assume control of the Avalon Association).

**Section 3. General Matters.** When reference is made herein, or in the Articles, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.

## ARTICLE IV

### STRUCTURE OF ASSOCIATION AND NEIGHBORHOOD ASSOCIATION

**Section 1. Creation of the Avalon Association.** The Developer has formed the Avalon Association for the purpose of holding title to the Avalon Common Areas and enforcing the covenants, restrictions, easements, charges and liens contained in this Declaration as such rights of enforcement are provided herein or which may be assigned to it from time-to-time by Developer. The Avalon Association is also formed for the purpose of enforcing the covenants, restrictions, easements, charges and liens specifically assigned to the Avalon Association for enforcement in the Turtle Creek Declaration, if any. The Avalon Association also shall have

such other powers and duties as are prescribed in its Articles of Incorporation and Bylaws. The Avalon Association shall: (a) abide by the Turtle Creek Declaration; (b) enforce the covenants, restrictions, easements, charges and liens created by this Declaration or other deed and use restrictions; (c) maintain the Avalon Association Common Areas; (d) administer the affairs of all property owned by the Avalon Association and (e) perform such other duties as are prescribed by the Articles of Incorporation and Bylaws of the Avalon Association or which may be assigned to it from time to time by the Developer.

**Section 2. Election of Board of Directors.** The Avalon Association shall be governed by a Board of Directors, members of which shall be elected by Class A and Class B (when applicable) Members of the Avalon Association.

**Section 3. Powers of Board of Directors.** All of the duties and powers of the Avalon Association existing under Chapter 617 of the Florida Statutes, this Declaration, and the Articles of Incorporation and Bylaws of the Avalon Association shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject to approval by the Members only when specifically required.

**Section 4. Management Service.** The Avalon Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Developer) for management services.

## ARTICLE V

### PROPERTY RIGHTS IN THE AVALON COMMON AREAS

**Section 1. Ownership.** The Avalon Common Areas are hereby dedicated non exclusively to the joint and several use, in common, of the Developer and the Owners of all Avalon Lots that may from time to time constitute part of Avalon Property and the Developer's and such Owners' tenants, guests and invitees. The Avalon Common Areas shall, not later than completion of the improvements thereon or the date when the last Avalon Lot within Avalon Property has been conveyed to a purchaser, be conveyed to the Avalon Association, which shall accept the such conveyance. Beginning from the date these covenants are recorded, the Avalon Association shall be responsible for the maintenance of such Avalon Common Areas (whether or not then conveyed or to be conveyed to the Avalon Association), such maintenance to be performed in a continuous and satisfactory manner without cost to the general taxpayers of Orange County. It is intended that all real estate taxes assessed against that portion of the Avalon Common Areas owned or to be owned by the Avalon Association shall be proportionally assessed against and payable as part of the taxes of all applicable Avalon Lots. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Avalon Common Areas, the Avalon Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date these covenants are recorded.

**Section 2. Members' Easements.** Each Member, and each tenant, agent and invitee of such Member, shall have a non-exclusive permanent and perpetual easement over and upon the Avalon Common Areas for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees, in such manner as may be regulated by the Avalon Association. The right to the use and enjoyment of the Avalon Common Areas and facilities thereon shall extend to all permitted users' immediate family who reside with them, and their guests, subject to regulation from time to time by the Avalon Association in its lawfully adopted and published rules and regulations.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

(a) The right and duty of the Avalon Association to levy assessments against each Avalon Lot for the purpose of maintaining the Avalon Common Areas and facilities in

compliance with the provisions of this Declaration and with the restrictions on the plats of portions of the Avalon Property from time to time recorded.

(b) The right of the Avalon Association to suspend the Owner's (and his permittees') right to use the recreational facilities (if any) for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations.

(c) The right of the Avalon Association to charge reasonable admission and other fees for the use of the recreational facilities (if any) situated on the Avalon Common Areas.

(d) The right of the Avalon Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Avalon Common Areas and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as if originally set forth at length in this Declaration.

(e) The right of the Developer to permit such persons as Developer shall designate to use the Avalon Common Areas and all recreational facilities located thereon (if any).

(f) The right of the Avalon Association, by a two-thirds (2/3) affirmative vote of the entire membership, to dedicate portions of the Avalon Common Areas to a public agency under such terms as the Avalon Association deems appropriate and to create or contract with special taxing districts for lighting, roads, recreational or other services, security, or communications and other similar purposes deemed appropriate by the Avalon Association.

**Section 3. Easements Appurtenant.** The easements provided in Section 2 shall be appurtenant to and shall pass with the title to each Avalon Lot.

**Section 4. Maintenance.** The Avalon Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Avalon Common Areas and the paving, drainage system, lighting fixtures and appurtenances, landscaping, swimming pool improvements and other structures (except utilities) situated on the Avalon Common Areas, if any, all such work to be done as ordered by the Board of Directors of the Avalon Association. Maintenance of the aforesaid lighting fixtures, if any, shall include and extend to payment for all electricity consumed in their illumination. Without limiting the generality of the foregoing, the Avalon Association shall assume all of Developer's and its affiliates' responsibility to Orange County of any kind with respect to the Avalon Common Areas and shall indemnify and hold Gallimore Southwest Fil Estate, Ltd., the Developer and their affiliates harmless with respect thereto.

All work pursuant to this Section and all expenses incurred hereunder shall be paid for by the Avalon Association through assessments (either general or special) imposed in accordance herewith. No Owner may waive or otherwise escape liability for assessments by nonuse of the Avalon Common Areas or abandonment of the right to use the Avalon Common Areas.

**Section 5. Utility Easements.** Use of the Avalon Common Areas for utilities, as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration. The Developer and its affiliates and its and their designees shall have a perpetual easement over, upon and under the Avalon Common Areas for the installation and maintenance of community and/or cable television and security and other communication lines, equipment and materials and other similar underground television, radio and security cables (and all future technological advances not now known) for service to the Avalon Lots and other portions of the Development.

**Section 6. Public Easements.** Fire, police, health and sanitation, postal, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Avalon Common Areas.

**Section 7. Developer Easement.** Developer hereby reserves to itself, its successors, assigns, and affiliates, a perpetual easement, privilege and right in and to, over, under, on and across the Avalon Common Areas, the right from time to time to enter upon the Avalon Common Areas for the purpose of construction, reconstruction, repair, replacement, and/or alteration of any improvements or facilities on the Avalon Common Areas that Developer and its affiliates elect to effect, and to use the Avalon Common Areas for sales, displays and signs or for any other purpose during the period of construction and sale of a portion of the Development. Without limiting the generality of the foregoing, the Developer and its affiliates shall have the specific right to maintain upon any portion of the property subject to this Declaration, sales, administrative, construction or other offices without charge, and appropriate easements of access and use are expressly reserved unto the Developer and its affiliates, and its and their successors, assigns, employees and contractors, for this purpose. Any obligation to complete portions of the Avalon Common Areas shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, the Developer shall not be liable for delays in such completion to the extent resulting from the above-referenced activities.

**Section 8. Easement to Public Right-of-Way.** Notwithstanding anything to the contrary set forth in this Declaration, each Owner shall have an easement for access to and from the Owner's property to a public right-of-way over and across the roadways shown on each of the plats of the Avalon Property.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of the Assessments.** Except as provided elsewhere herein, the Developer, for all Avalon Lots, hereby covenants and agrees, and each Owner of any such Lot by acceptance of a deed therefor shall be deemed to covenant and agree, to pay to the Avalon Association annual assessments or charges for the maintenance, management, operation and insurance of the Avalon Common Areas as provided elsewhere herein, including such reasonable reserves as the Avalon Association may deem necessary, capital improvement assessments, as provided elsewhere herein, and all other charges and assessments hereinafter referred to, all such assessments to be fixed, established and collected from time to time as herein provided. In addition, special assessments may be levied against particular Owners and Lots for fines, expenses incurred against particular Lots and/or Owners to the exclusion of others and other charges against specific Lots or Owners as contemplated in this Declaration. The annual, special and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due and all subsequent Owners until paid. Except as provided herein with respect to special assessments which may be imposed on one or more Lots and Owners to the exclusion of others, all assessments imposed by the Avalon Association shall be imposed against all Lots subject to its jurisdiction equally.

Reference herein to assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

**Section 2. Purpose of Assessments.** The regular assessments levied by the Avalon Association shall be used exclusively for the cost of taxes, insurances, labor, equipment, materials, management, improvement, and maintenance of the Common Areas and any easement in favor of the Avalon Association, for certain Lot maintenance including lawn maintenance for all Avalon Lots, for capital improvements, reserves (if any), and to promote

the health, safety, welfare and recreational opportunities of the Members of the Avalon Association and their families residing with them, their guests and tenants, and for any other expense on behalf of the Avalon Association, all as provided for herein and in the Articles of Incorporation and By-Laws of the Avalon Association.

**Section 3. Special Assessments for Specific Damage.** Owners (on their behalf and on behalf of their family, guests, and invitees) causing damage to any portion of the Common Areas as a result of misuse, negligence, failure to maintain or otherwise shall be directly liable to the Avalon Association and a special assessment may be levied therefore against such Owner or Owners. Such special assessments shall be subject to all of the provisions hereof relating to other assessments, including but not limited to, the lien and foreclosure procedures.

**Section 4. Capital Improvements.** Funds in excess of \$10,000.00 in any one case which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Areas under the jurisdiction of the Avalon Association and which have not previously been collected as reserves or are otherwise available to the Avalon Association shall be levied by the Avalon Association as special assessments only upon approval of a majority of the Board of Directors of the Avalon Association and upon approval by two-thirds (2/3) favorable vote of the Members of the Avalon Association voting at a meeting or by ballot as may be provided in the By-Laws of the Avalon Association.

**Section 5. Date of Commencement of Initial and Annual Assessments; Due Dates.** The first of the annual assessments provided for in this Article shall commence on the date of recording of this Declaration, and shall be applicable through December 31, 1996. Each subsequent annual assessment shall be imposed for the year beginning January 1 and ending December 31. Until changed by the Board of Directors, the annual assessment shall be \$1,020.00, and shall be effective upon transfer of a lot to a Class A owner.

The annual assessments shall be payable in advance in quarterly, semi- or annual installments or other as may be determined by the Board of Directors of the Avalon Association. An initial assessment or one-time entry fee of \$100.00 shall be due and payable upon transfer of an Avalon Lot to a Class A Owner; except that the fee shall not be due from an approved builder/contractor until sale by the approved builder/contractor, or upon occupancy or rental by the approved builder/contractor.

The assessment amount (and applicable installments) may be changed at any time by said Board from that originally stipulated or from any other assessment that is in the future adopted. The original assessment for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, every six (6) months), but the amount of any revised assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year.

The due date of any special assessment shall be fixed in the Board resolution authorizing such assessment.

**Section 6. Determination of Assessments.** The Board of Directors of the Avalon Association shall fix the date of commencement and the amount of the assessment against each Lot subject to the Avalon Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Avalon Lots and assessments applicable thereto which shall be kept in the office of the Avalon Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto thirty (30) days prior to payment of the first installment thereof, except as to emergency assessments. In the event no such notice of a change in the assessment for a new assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the amount payable for the previous period, until changed in the manner provided for herein.



**Section 7. Effect of Nonpayment of Assessment: Personal Obligation, Lien, Remedies of the Avalon Association.** If the assessments or installments are not paid on the date(s) when due (being the date(s) specified herein), then such assessments (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, his heirs, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment shall pass to his successors in title and recourse may be had against either or both.

If any installment of an assessment is not paid within thirty (30) days after the due date, at the option of the Avalon Association, a late charge in an amount not less than twenty five dollars (\$25.00) or, ten percent (10%) of the amount of such unpaid installment, whichever is greater may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges, provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid) or the next twelve (12) months' worth of installments may be accelerated and become immediately due and payable in full and all such sums shall bear interest from the dates when due until paid at the rate of eighteen percent (18%) per annum and the Avalon Association may bring an action at law against the Owner(s) personally obligated to pay the same or may record a claim of lien (as evidence of its lien rights as herein above provided for) against the Lot on which the assessment and late charges are unpaid or may foreclose the lien against the Lot on which the assessment and late charges are unpaid or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs of preparing and filing the claim of lien and the complaint, if any, in such action shall be added to the amount of such assessments, late charges and interest, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and reasonable attorneys' fee to be fixed by the court together with the costs of the action, and the Avalon Association shall be entitled to attorneys' fees in connection with any appeal of any such action.

In the case of an acceleration of the next twelve (12) month's worth of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then more current delinquent installment, provided that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the Owner of the Lot whose installments were so accelerated shall continue to be liable for the balance due by reason of such increase and special assessments against such Lot shall be levied by the Avalon Association for such purpose.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the enjoyment of the Common Areas (except for legal access) until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid and no sale or other disposition of Lots shall be permitted until an estoppel letter is received from the Avalon Association acknowledging payment in full of all assessments and other sums due; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 8 of this Article.

It shall be the legal duty and responsibility of the Avalon Association to enforce payment of the assessments hereunder. Failure of the Avalon Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

All assessments, late charges, interest, penalties, fines, attorneys' fees and other sums provided for herein shall accrue to the benefit of the Avalon Association.

Owners shall be obligated to deliver the documents originally received from the Developer, containing this and other declarations and documents, to any grantee of such Owner.

**Section 8. Subordination of the Lien.** The lien of the assessments provided for in this Article shall be subordinate to tax liens and to the lien of any mortgage (recorded prior to recordation by the Avalon Association of a claim of lien, which mortgage encumbers a Lot) to any institutional lender and which is now or hereafter placed upon any property subject to assessment; provided, however, that any such mortgagee when in possessions or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be as assessment divided equally among, payable by and a lien against all Lots subject to assessment by the Avalon Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

**Section 9. Access at Reasonable Hours.** For the purpose solely of performing the Lot and exterior maintenance authorized by this Article, the Avalon Association, through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Avalon Lot at reasonable hours on any day to accomplish such work.

**Section 10. Effect on Developer.** Notwithstanding any provision that may be contained to the contrary in this instrument, for as long as Developer (or any of its affiliates) is entitled to cast votes for a majority of the voting membership of the Association pursuant to Article III hereof, neither the Developer, nor any such affiliates, shall be liable for assessments against any Lot owned by them. For so long as the Developer (or any of its affiliates) is entitled to cast votes for a majority of the voting membership of the Association pursuant to Article III hereof, the Developer shall pay any operating expenses of the Association that exceed the assessments receivable from other Members and other income of the Association. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or any combination thereof. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Developer (or any of its affiliates) for the payment of some portion of the operating expenses of the Association.

**Section 11. Trust Funds.** The portion of all regular assessments collected by the Avalon Association for reserves for future expenses, and the entire amount of all special assessments, shall be held by the Avalon Association for the Owners of all Avalon Lots as their interests may appear, and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions the deposits of which are insured by an agency of the United States.

## **ARTICLE VII**

### **INSURANCE**

**Section 1. Casualty Loss or Damage.** The Avalon Association shall keep all buildings, improvements and fixtures of the Common Areas, if any, insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Avalon Association may deem desirable. The Avalon Association may also insure any other property, whether real or personal, owned by the Avalon Association against loss or damage by fire and such other hazards as the Avalon Association may deem desirable, with the Avalon Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Avalon Common Areas shall be written in the name of and the proceeds thereof shall be payable to the Avalon Association. Insurance proceeds shall be used by the Avalon Association for the repair or replacement of property for which the insurance was carried.

**Section 2. Replacement of Repair of Property.** In the event of damage or destruction of any part of the Avalon Common Areas, the Avalon Association shall repair or



replace the same from the insurance proceeds available, if any. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Avalon Association may make a special assessment against all Avalon Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds.

**Section 3. Waiver of Subrogation.** As to each policy of insurance maintained by the Avalon Association, which will not be voided or impaired thereby, the Avalon Association hereby waives and releases all claims against the Board, the Owners, the Developer and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**Section 4. Liability and Other Insurance.** The Avalon Association shall obtain and maintain public liability insurance in such limits as the Board of Directors may, from time to time, determine, covering each member of the Board of Directors of the Avalon Association, each Owner and the Developer. Such public liability coverage shall also include, if obtainable, cross-liability endorsement insurance for each insured against liability to each other insured. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

## ARTICLE VIII

### ARCHITECTURAL REVIEW BOARD (ARB) PLANNING CRITERIA

**Section 1. Architectural Review Board.** An Architectural Review Board (ARB) shall be appointed by the Board of Directors as a committee thereof, which Board shall consist of not less than three persons. No building, wall, fence or other structure or improvement of any nature (including, but not limited to, landscaping, exterior paint or finish, hurricane protection, basketball hoops, children's play structures, birdhouses, other pet houses, swales, asphaltting or other improvements or changes of any kind) shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping or of the materials as may be required by the ARB have been approved in writing by the ARB named below and all necessary governmental permits are obtained. Refusal to approve plans, specifications and plot plans, or any of them, may be based on any ground, including purely on aesthetic grounds, which in the sole and uncontrolled discretion of said ARB deem sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any substantial change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The ARB shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph and shall further have the right to waive or modify the provisions of these covenants and restrictions, when the ARB, in its sole discretion, deems such waivers or modifications to be necessary or desirable to carry out the orderly development and maintenance of the subdivision development. The ARB is composed initially of:

David Benghiat  
Fred Pohlmann  
John B. Shoemaker

If and to the extent required by the laws of the State of Florida, the By-Laws governing meetings of the Board of Directors shall likewise apply to meetings of the ARB. A majority of the ARB may take any action the ARB is empowered to take, may designate a representative to act for the ARB and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any Member of the ARB, the Board of Directors of the Association shall appoint a successor. The members of the ARB shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Review Board shall act on submissions to it within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved.

**Section 2. ARB Planning Criteria.** In order to secure approval by the ARB, a planned improvement must comply with all of the covenants and restrictions contained in this Declaration, including the following criteria (however, such compliance does not entitle an applicant to ARB approval of its planned improvement):

(a) **Building Type.** No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single family residence with heatable living area of not less than 1,600 square feet for Avalon Lots, not to exceed thirty-five (35) feet in height, and a private and closed garage for not less than two nor more than four cars. Unless approved by the ARB as to use, location and architectural design, no garage, tool or storage room or other auxiliary structures may be constructed separate and apart from the residence, nor can any of the aforementioned structures be constructed prior to the main residence. No guest house is to be constructed on any Lot unless the location, use and architectural design is approved by the ARB.

(b) **Layout.** No foundation for an improvement can be poured until the layout for the improvement is approved by the ARB. It is the purpose of this approval to assure that few trees are disturbed and that the improvement is placed on the Lot in its most advantageous position.

(1) Front yard setbacks shall be approved by the ARB. The minimum setback shall be as required by the appropriate governmental authority.

(2) Rear yard setbacks shall be approved by the ARB. The minimum setback shall be as required by the appropriate governmental authority.

(3) Side yard setbacks shall be approved by the ARB. The minimum setback shall be as required by the appropriate governmental authority.

(c) **Exterior Color Plan.** The ARB shall have final approval of all exterior color plans and each builder must submit to the ARB a color plan showing the color of the roof, exterior walls, shutters, trim, etc. Failure to submit may result in the builder having to repaint the home. Exterior color choices shall be limited to those color plans approved by the ARB prior to the construction of the first home on an Avalon Lot or as otherwise approved by the ARB.

(d) **Roofs.** Roofs shall have a pitch of at least 5/12 unless otherwise approved by the ARB. Flat roofs shall not be permitted unless approved by the ARB. Such areas where flat roofs may be permitted are Florida rooms, porches, and patios. There shall be no flat roofs on the entire main body of an improvement. No built up roofs shall be permitted, except on approved flat surfaces.

The composition of all pitched roofs shall be flat ceramic tile. The color of all pitched roofs shall be determined by the ARB prior to the construction of the first home on an Avalon Lot.

(e) **Garages.** In addition to the requirements stated in paragraph one, all garages must have a minimum width of twenty-one (21) feet for a two car garage; twenty-nine (29) feet for a three car garage; or thirty-nine (39) feet for a four car garage, measured from inside walls of garage. All garages must have a minimum depth of twenty (20) feet on 2 stalls of the garage, measured from inside walls of garage. Front-entry garage entrances are permitted for Avalon Lots; provided, however, that no four car front-entry garages shall be permitted. All garages must have either a single overhead door with a minimum door width of sixteen (16) feet or two (2) individual overhead doors, each with a minimum door width of eight (8) feet for a two car garage; or a single overhead door with a minimum door width of sixteen (16) feet together with a single overhead door with a minimum door width of eight (8) feet or three (3) individual overhead doors, each with a minimum door width of eight (8) feet for a three car garage; or two (2) overhead doors each with a minimum door width of sixteen (16) feet, or four

(4) individual overhead doors, each a minimum of eight (8) feet in width for a four car garage. No carports will be permitted.

(f) **Driveway and Sidewalk Construction.** All dwellings shall have a paved driveway of at least sixteen (16) feet in width at the entrance to the garage. Unless prior approval is obtained from the ARB, all driveways must be constructed of concrete. When curbs are required to be broken for driveway entrances, the curb shall be repaired in a neat and orderly fashion and in such a way as to be acceptable to the ARB. A four foot concrete sidewalk is required on each Lot and shall connect with the sidewalk on adjacent properties, corner Lot, front and side.

(g) **Dwelling Quality.** The ARB shall have final approval of all exterior building materials. Eight inch (8") concrete block shall not be permitted on the exterior of any house or detached structure, unless finished with stucco. The ARB shall discourage the use of any material other than stucco.

(h) **Walls, Fences and Shelters.** No wall or fence shall be constructed with a height of more than six (6) feet above ground level of an adjoining Lot, and no hedge or shrubbery abutting the Lot boundary line shall be permitted with a height of more than six (6) feet without the prior written approval of the ARB. No wall or fence shall be constructed on any Lot until its height, location, design, type, color, composition and material shall have first been approved in writing by the ARB. The height of any wall or fence shall be measured from the existing property elevations. Chain link fences will not be permitted. Any dispute as to height, length, type, design, composition or material shall be resolved by the Board, whose decision shall be final. Hurricane or storm shutters may be used on a temporary basis, but shall not be stored on the exterior of any improvement unless approved by the ARB.

(i) **Lighting.** All exterior lighting of a Lot shall be accomplished in accordance with a lighting plan approved in writing by the ARB.

(j) **Swimming Pools.** Any swimming pool to be constructed on any Lot shall be subject to requirements of the ARB and must be approved prior to construction.

(k) **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Lot at any time as a residence or other use either temporarily or permanently.

(l) **Removal of Trees.** In reviewing the building plans, the ARB shall take into account the natural landscaping such as trees, shrubs, palmettos, and encourage the builder to incorporate them in his landscaping plan. No trees of six inches (6") in diameter at one foot (1') above natural grade can be cut or removed without approval of the ARB, which approval may be given when such removal is necessary for the construction of an improvement.

(m) **Landscaping.** A landscaping plan for each Lot must be submitted to and approved by the ARB. Unless extenuating circumstances can be demonstrated to the ARB, the ARB will not approve any landscaping plan that does not show a minimum expenditure of two thousand dollars (\$2,000.00) for the front and side yards of Avalon Lots. These amounts shall be exclusive of irrigation systems and sod. Sod must be improved bitter blue Floratam St. Augustine grass or its equivalent, and will be required on all yards. Each improvement must have shrubs on front yards. Each improvement shall be required to have the front, rear and side yards irrigated by a sprinkler system approved by the ARB.

(n) **Air Conditioning and Heating Equipment.** All air conditioning and heating units shall be shielded by landscaping, painted wood fence or wall, so that they shall not be readily visible from any adjacent street.

(o) **Mailboxes.** No mailbox or paperbox or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected on any Lot unless and until the size, location, design and type of material for said boxes or

receptacles shall have been approved by the ARB. If and when the United States mail service or the newspaper or newspapers involved shall indicate a willingness to make delivery to wall receptacles attached to the improvement, each Owner, on the request of the ARB, shall replace the boxes or receptacles previously employed for such purpose or purposes with wall receptacles attached to the improvement.

(p) **Utility Connections.** All connections for all utilities including, but not limited to, water, sewerage, electricity, gas, telephone and television shall be run underground from the proper connecting points to the improvement in such a manner to be acceptable to the governing utility authority.

(q) **Contractors.** All construction of houses and subsequent construction work, shall be performed by a licensed residential building contractor approved by the Developer or the ARB. If a lot has been sold to an approved contractor, any subsequent purchaser shall be required to comply with this paragraph.

**Section 3. Inspection and Noncompliance.** The ARB shall have the right to enter upon and inspect any portion of the Avalon Property at any time prior to, during or after the construction or alteration of improvements on such portion to ensure compliance with this Article. If, during the inspection, the ARB finds that the work was not performed, or the improvements were not constructed, in substantial compliance with plans approved by the ARB; or if during subsequent inspection the ARB notes that previously inspected improvements are not being maintained in compliance with this Article or with the aesthetic standards or other standards imposed by the ARB, then the ARB shall notify the Owner in writing of such noncompliance. Such written notice shall specify the particular areas of noncompliance and shall demand that the Owner immediately bring such improvements into compliance.

**Section 4. Enforcement.** If an Owner shall have failed to remedy a noncompliance within thirty (30) days from the date of the notice described in the previous section, the ARB shall notify the Board of Directors in writing of such failure. The Board of Directors shall demand that the Owner remedy or remove the noncomplying improvements within a period of not more than thirty (30) days from the date of such demand. If the Owner does not comply within that period, the Board of Directors, in its sole discretion, may either remove the noncomplying improvement or remedy the noncomplying improvement, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If such expenses are not promptly reimbursed to the Association, the Board of Directors shall levy a special assessment against the Lot upon which the noncomplying improvement is located, as provided in Article VI. In addition to the above, the Association may take any other action authorized by Article VI.

**Section 5. Variance.** The ARB, in its sole discretion, may authorize variances from compliance with any of the provisions of this Article when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration otherwise would prevent utilization of the site. The variance shall be evidenced in writing and signed by a majority of the members of the ARB. If a variance is granted, no violation of this Article shall be deemed to have occurred with respect to the matter for which the variance was granted.

**Section 6. Nonliability for Actions.** Neither the ARB, the Developer, the Association, nor any of their members, officers, directors or duly authorized representatives, shall be liable to any person or entity for any loss, damage, injury or inconvenience arising out of or in any way connected with the performance or nonperformance of the ARB's duties.

**Section 7. No Waiver.** If, for any reason, the ARB fails to notify an Owner of any noncompliance, such failure shall not relieve the Owner from the requirement to comply with all provisions of this Declaration.

**Section 8. Exemption of Developer.** The Developer shall be exempt from the provisions of this Article and shall not be obligated to obtain ARB approval for any construction

or changes in construction or alterations to improvements which the Developer may elect to make at any time.

## **ARTICLE IX**

### **CERTAIN RULES AND REGULATIONS**

**Section 1. Applicability.** The Provisions of this Article IX shall be applicable to all of the Avalon Property but shall not be applicable to the Developer or property owned by the Developer.

**Section 2. Land Use and Building Type.** No Lot, nor building on a Lot, shall be used except for residential purposes and no Lot shall have more than one home. Temporary uses by Developer and its affiliates for model homes, sales displays, parking lots, sales offices, and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes place. No changes may be made in buildings erected by the Developer or its affiliates (except if such changes are made by the Developer) without the consent of the Architectural Review Board as provided herein.

**Section 3. Easements.** Easements for installation and maintenance of utilities are reserved as shown on the recorded plats covering the Avalon Property and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities. The area of each Lot covered by an easement and all improvements in that area shall be maintained continuously by the Owner of the Lot, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association and the Developer and its affiliates, and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewer, storm conduits, under and through the utility easements as shown on the plats. Developer and its affiliates, and its and their designees, successors and assigns, shall have a perpetual easement for the installation and maintenance of cable and community antenna, radio, television, and security lines (and for all future technological advances not now known) within platted utility easement areas. All utilities and lines within the subdivision, whether in street rights-of-way or utility easements, shall be installed and maintained underground.

**Section 4. Nuisances.** No noxious, offensive or unlawful activity shall be carried on upon the Avalon Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners.

**Section 5. Temporary Structures.** No structure of a temporary character, or trailer, tent, or mobile home, shall be permitted on the Avalon Property at any time or used at any time as a residence, either temporarily or permanently, except by the Developer and its affiliates during construction.

**Section 6. Signs.** No sign of any kind shall be displayed to the public view on the Avalon Property, except only one professionally prepared sign of not more than one (1) square foot used to indicate the name of the resident and one sign of not more than five (5) square feet advertising the property for sale or for rent (in locations and in accordance with design standards approved by the Architectural Review Board).

**Section 7. Oil and Mining Operation.** No oil drilling, oil Development operations, oil refining, quarrying or mining operations of any kind or equipment used in connection with such, shall be permitted upon or in the Avalon Property.

**Section 8. Pets, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except no more than two (2) household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor. More than two (2)

household domestic pets may be permitted with express written approval of the Architectural Review Board. This approval may be withheld for any reason and in the sole discretion of the Architectural Review Board. Domestic animals shall be fenced or on a leash at all times. Domestic animals shall also be subject to applicable rules and regulations. Dog houses/runs shall not be permitted.

**Section 9. Visibility at Intersections.** No obstruction to visibility at street intersections or Common Area intersections shall be permitted.

**Section 10. Exterior Appearances and Landscaping.** The paint, coating, stain and other exterior finishing colors on all residential buildings may be maintained as that originally installed, without prior approval of the Architectural Review Board, but prior approval by the Architectural Review Board shall be necessary before any such exterior finishing color is changed. The Lot landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Owner substantially as originally installed by Developer, unless the prior approval for any change, deletion or addition is obtained from the Architectural Review Board. No artificial vegetation shall be permitted on the exterior of any residential building.

**Section 11. Exterior Maintenance.** The Owner shall maintain the structures and grounds on his Lot at all times in a neat and attractive manner and as provided elsewhere herein. Upon the Owner's failure to do so, the Association may at its option, after giving the Owner written notice and hearing as provided in Article IX sent to his last known address, or to the address of the subject premises, have that portion of the grass, weeds, shrubs and vegetation which the Owner is to maintain cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot and replaced, and may have any portion of the Lot resodded or landscaped, and all expenses of the Association under this sentence shall be a lien and special assessment charged against the Lot on which the work was done and shall be the personal obligation of all Owners of such Lot. Upon the Owner's failure to maintain the structures and improvements on his Lot in good repair and appearance and otherwise as required herein, the Association may, at its option, after giving the Owner thirty (30) days' written notice and hearing as provided in Article IX sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot which the work was performed, collectible in a lump sum and secured by the lien against the Lot as herein provided. No bids need to be obtained by the Association for such work and the Association shall designate the contractor in its sole discretion. For the purpose solely of performing the Lot and exterior maintenance authorized by this Section, the Association, through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day to accomplish such work.

**Section 12. Commercial Trucks, Trailers, Campers and Boats.** No truck or commercial vehicles, or campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on the Avalon Property, unless the Developer designates specifically certain spaces for some or all of the above. Provision for temporary visitation may be established by rules and regulations. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to vehicles for personal use which are stored within garages, which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Developer or its affiliates. No on-street parking shall be permitted, except for temporary visitation.

Any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle, if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty



of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reasons, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes, boats and trailers; and an affidavit of the person posting such notice stating that it was properly posted shall be conclusive evidence of proper posting.

No vehicles commonly known as "three-wheelers", "two-wheel dirt bikes", "all-terrain vehicles", or "go carts" or any other form of this motorized transportation shall be operated on the Avalon Property.

**Section 13. Garbage and Trash Disposal.** No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time for the applicable governmental authority for disposal or collection of waste shall be complied with. All containers for the storage or disposal of such material shall be kept in a clean and sanitary condition. Such containers may not be placed out for collection sooner than Twenty-four (24) hours prior to scheduled collection and must be removed within twelve (12) hours of collection.

**Section 14. Fences.** No fence, wall or other structure shall be erected in the front yard, back yard, or side yard set-back areas, except as originally installed by Developer or its affiliates, and except any approved by the Architectural Review Board as above provided. No wood fences shall be permitted around the perimeter of any Lot, except those installed by Developer during construction of the subdivision, and those installed for the specific purpose of screening AC units, pool pumps, or for gates on a brick or block wall.

**Section 15. No Drying.** To the extent lawful, no clothing, laundry or wash shall be aired or dried on any exterior portion of the Avalon Property.

**Section 16. Unit Air Conditioners, Screening of Equipment and Reflective Materials.** No air conditioning units may be mounted through windows or walls unless approved by the Architectural Review Board. No building shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass, except such as may be approved by the Architectural Review Board for energy conservation purposes. All AC units and pool pumps or other equipment must be screened from view from the adjacent street by a brick, stone, masonry wall (stuccoed) or wood fence or if the rear yard of the Lot abuts a water retention area or pond, then screened from view from the water retention area or pond by appropriate landscaping. All masonry walls and wood fences erected for such purposes must be painted. All such fences and walls shall be properly maintained by Owner. In addition, the height, length, type, design, composition, material and color of such fence or wall must be approved by the Architectural Review Board.

**Section 17. Exterior Antennas.** No exterior antennas and no citizen band or short wave antennas or satellite dishes in excess of eighteen inches (18") in diameter shall be permitted on any Lot or improvement thereon, except that Developer and its affiliates shall have the right to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines. The location of any approved satellite dish must be approved by the Architectural Review Board which may require appropriate screening.

**Section 18. Chain Link Fences.** No chain link fences shall be permitted on any Lot or portion thereof, unless installed by Developer or its affiliates during construction periods.

**Section 19. Skateboard Ramps.** No skateboard ramps shall be permitted on any Lot or on the Avalon Property at any time.

**Section 20. Fuel Tanks.** All tanks for gas, propane and similar fuels must be buried or screened from view by a fence or wall as provided in Section 16 herein, and approved by the Architectural Review Board.

**Section 21. Solar Heating Panels.** For aesthetic purposes, the location, type and design of solar heating panels must be approved by the Architectural Review Board prior to installation which may require landscape screening and shall be installed so as not to face any street.

**Section 22. Association Property and Common Areas.** Time of play on Association Property and Common Areas for basketball, tennis, etc. shall be limited to the hours of 8:00 A.M. to 8:00 P.M. No lighting shall be permitted on the Association tennis courts. The Association may, however, install lighting for security purposes only which is not offensive to neighbors of Association Property and common recreation areas.

**Section 23. Basketball Goals and Equipment.** No basketball goals, backboards, poles and other equipment will be allowed.

**Section 24. Children's Play Structures.** Prior to placement on the Owner's property, the location of any children's play structure shall be preapproved by the Architectural Review Board in its sole discretion. Children's play structures shall not have any material coverings or canopies except those approved by the Architectural Review Board, which may require a specific type, design, material and color. The Architectural Review Board in its sole discretion may require children's play structures to be partially screened by landscaping, trees, fences or walls as provided elsewhere herein and approved by the Architectural Review Board.

**Section 25. Outside Storage.** No stripped, unsightly, offensive, wrecked, junked or dismantled vehicles or portions thereof, no furniture or appliances designed for normal use or operation within (as distinguished from outside of home), or any other debris or unsightly material, shall be parked, permitted, stored or located upon any Lot. No open outside storage on any Lot is permitted. No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot, except for purposes of construction on such Lot, and they shall not be stored for longer than that length of time reasonably necessary for the construction in which same is to be used.

**Section 26. Owner's Obligation to Rebuild.** If all or any portion of a home on any Lot is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such home in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, unless prevented by governmental authority.

**Section 27. Soliciting.** No soliciting shall be allowed at any time within the Avalon Property.

**Section 28. Windows and Pool Enclosures.** Window and porch screening shall be a color approved by the Architectural Review Board. Mill-finish aluminum shall not be allowed. Pool enclosures must tie in or match the building structure with a matching roof line and/or slope. Pool enclosures shall be shown on all plans, including roof plans, floor plans and elevations.

**Section 29. Sale and Leasing.** No Owner shall lease less than their entire Avalon Lot and home for a period of less than six (6) months or more than twice in any calendar year.

**Section 30. Additional Rules and Regulations.** The Board of Directors of the Association may from time to time adopt additional rules and regulations of the Association without the necessity of recording an amendment hereto or thereto in the public records. Such rules and regulations shall be published and available upon request by any member.

**ARTICLE X**

**ENFORCEMENT OF RESTRICTIONS,  
COVENANTS, RULES AND REGULATIONS**

**Section 1. Compliance by Owners.** Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Avalon Association.

**Section 2. Enforcement.** Failure of an Owner to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Avalon Association shall have the right to suspend use of Avalon Common Areas (except for legal access) of defaulting Owners. The offending Lot Owner shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs.

Except as to liens as a result of nonpayment of initial and annual assessments, before any court action is initiated by the Board the owner shall be entitled to notice and hearing as provided in Section 4.

**Section 3. Fines.** In addition to all other remedies, in the sole discretion of the Board of Directors of the Avalon Association, a fine or fines not to exceed the lesser of five hundred dollars (\$500.00) or the maximum amount permitted by Florida law per violation may be imposed upon an Owner for failure of an Owner, his family, guests, invitees or employees, to comply with any covenant, restriction, rules or regulation, provided the procedures of Section 4 are adhered to.

**Section 4. Enforcement Procedures.** The following procedures shall be followed when any action is to be taken for violation of any covenant and restriction or rule or regulation of the Avalon Association; except that no such procedure shall be required for enforcement of a lien for nonpayment of initial or annual assessments.

(a) **Notice:** The Avalon Association shall notify the Owner of the date and time of a special meeting of the Board of Directors at which time the Owner may present reasons why penalties should not be imposed. At least fourteen (14) days' notice of such meeting shall be given. Notice shall be by personal delivery or by United States Mail Certified (or its equivalent) and if by mail, shall be deemed delivered three days after mailing.

(b) **Hearing:** The alleged noncompliance shall be presented at the special meeting of the Board of Directors to a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, or sibling of an officer, director, or employee of the Association. At the same meeting, the Owner sought to be fined or suspended may present reasons why the proposed penalty should not be imposed. If the committee does not approve, by a majority vote, a proposed fine or suspension of Common Area use rights, it may not be imposed. The decision of the committee shall be submitted to the Owner in writing not later than twenty-one (21) days after the Board of Director's meeting. The Owner shall have a right to be represented by counsel and to cross-examine witnesses.

(c) **Penalties:** The Board of Directors (if its or such panel's findings are made against the Owner) may impose special assessments against the Lot owned by the Owner of not more than the lesser of five hundred dollars (\$500.00) or the maximum amount permitted by Florida law for each non-compliance or violation.

(d) **Payment of Penalties:** Fines shall be due and payable not later than five (5) days after notice of the imposition or assessment of the penalties.

(e) **Collection of Fines:** Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth herein.

(f) **Application of Penalties:** All monies received from fines or penalties shall be allocated as directed by the Board of Directors.

(g) **Non-exclusive Remedy:** These fines and penalties shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Avalon Association may be otherwise legally entitled; provided, however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Avalon Association may otherwise be entitled to recover by law from each Owner. The Association, any Owner, the Developer (or any of its affiliates), their successors and assigns shall have the right to enforce, by proceeding at law or in equity, whether in an action for damages, injunctive relief or both, all restrictions, covenants, easements, charges, and liens now or hereafter imposed by this Declaration.

**Section 5. No Waiver.** The failure of the Developer, or the Avalon Association, to enforce any covenant or restriction herein contained, however long continued, shall in no event be deemed a waiver of right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto.

## ARTICLE XI

### RESALE RESTRICTIONS

No Owner may sell or convey his interest in an Avalon Lot unless all sums due the Avalon Association shall be paid in full and an estoppel certificate in recordable form to such effect shall have been received by the Owner executed by any officer of the Avalon Association or an agent of the Avalon Association appointed for such purpose by resolution of the Board of Directors recorded in the Public Records of Orange County, Florida. If all such sums shall have been paid, the Avalon Association shall deliver such certificate within ten (10) days of a written request therefor. The Owner requesting the certificate shall pay to the Avalon Association a fee not to exceed twenty five dollars (\$25.00) or such other fee as may be set by the Board, to cover the costs of examining records and preparing the certificate.

## ARTICLE XII

### GENERAL PROVISIONS

**Section 1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Avalon Property, and shall inure to the benefit of and be enforceable by the Developer, Avalon Association, the Architectural Review Board and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of 75% of all the Lots subject hereto has been recorded, agreeing to revoke the said covenants and restrictions.

**Section 2. Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Avalon Association at the time of such mailing.

**Section 3. Enforcement.** Enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots subject hereto to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

**Section 5. Amendment.** In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument executed by the Developer, for so long as it or its affiliates hold title to not less than ten percent (10%) of the Lots affected by this Declaration; or alternatively by approval at a meeting of Owners holding not less than 66-2/3% vote of the membership in the Avalon Association, provided, that so long as the Developer or its affiliates is the Owner of any Lot affected by this Declaration, the Developer's consent must be obtained if such amendment, in the sole opinion of the Developer, affects its interest. Further, any amendment to this Declaration shall also be approved by a majority of the Board of Directors of the Turtle Creek Association. The foregoing Section 5 may not be amended.

**Section 6. Effective Date.** This Declaration shall become effective upon its recordation in the Orange County Public Records.

**Section 7. Withdrawal.** Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Avalon Property then owned by the Developer or its affiliates or the Avalon Association from the provisions of this Declaration to the extent included originally in error or as a result of reasonable changes in the plans for the Avalon Property desired to be effected by the Developer.

**Section 8. Conflict.** This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Avalon Association and the Articles shall take precedence over the By-Laws.

**Section 9. Standards for Consent, Approval, Completion, Other Action and Interpretation.** Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer or its affiliates or the Avalon Association, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Developer or its affiliates or the Avalon Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Developer or Avalon Association, as appropriate. This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the Avalon Association rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation.

**Section 10. Easements.** Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Avalon Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement. The Owners hereby designate hereby the Developer and the Avalon Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of the provisions.

**Section 11. Covenants Running With the Land.** Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Section 1 hereof, it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with the land and with title to all property affected by this Declaration. Without limiting the generality of Section 4 hereof, if any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with the land; but if such provision and/or application cannot be so modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties affected hereby (that these covenants and restrictions run with the land as aforesaid) be achieved.

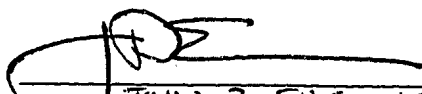
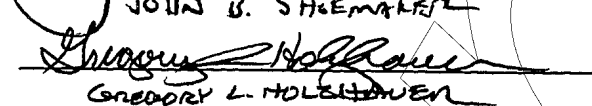
**Section 12. No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Avalon Common Areas to the public, or for any use. However, the Avalon Association shall have the right to dedicate or transfer all or any part of the Avalon Common Areas to any municipality, public agency or authority for such purposes and such conditions as may be agreed upon by the Members. Such dedication or transfer shall be effective only with the assent of two-thirds of the vote of each class of members of the Avalon Association.

EXECUTED as of the date first above written.

DEVELOPER:

Signed, Sealed and Delivered  
in the Presence of:

T.C.A. Development Company,  
A Florida Corporation

  
JOHN B. SHEEMAKER  
  
GREGORY L. HOLZHAUSER

By:   
Albert Kodosi, President

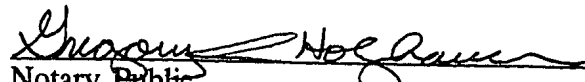
503 N. Orlando Avenue, Suite 105  
Cocoa Beach, Florida 32931

Corporate Seal

STATE OF FLORIDA  
COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared ALBERT KODSI, President of T.C.A. Development Company, a Florida Corporation, and acknowledged executing the same on behalf of the corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 6<sup>th</sup> day of May, 1996.

  
Notary Public  
By Commission Expires:

THIS DOCUMENT PREPARED BY:  
Gregory L. Holzhauser, Esq.  
Winderweedle, Haines, Ward  
& Woodman, P.A.  
Post Office Box 880  
Winter Park, FL 32790-0880

W:\WPFILES\GLH\GALLIMORIA\AVALON.DEC  
5/6/96 (12:54 pm)



EXHIBIT "A"

OR Bk 5080 Pg 241  
Orange Co FL 5666575

Part of the South 1/4 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 10, Township 24 South, Range 28 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the North 1/2 of the Southwest 1/4 of said Section 10; thence N.88°58'12"E. along the South line of the North 1/2 of the Southwest 1/4 of said Section 10, a distance of 619.99 feet to the Point of Beginning; thence departing said South line, run N.01°11'08"W., a distance of 179.21 feet; thence N.08°16'36"E., a distance of 121.60 feet; thence N.01°11'08"W., a distance of 695.46 feet; thence N.07°59'35"E., a distance of 126.63 feet; thence N.38°17'58"E., a distance of 115.63 feet; thence N.44°18'06"E., a distance of 125.00 feet; thence N.45°41'54"W., a distance of 60.00 feet; thence N.44°18'06"E., a distance of 118.57 feet; thence N.67°53'58"E., a distance of 59.58 feet to a point on a curve concave to the Northeast, having a radius of 574.90 feet; thence from a tangent bearing S.47°04'32"E., run Southeasterly along said curve through a central angle of 02°44'59" for a distance of 27.59 feet; thence non-tangentially, run N.39°44'42"E., a distance of 114.01 feet; thence S.57°59'47"E., a distance of 248.43 feet; thence S.48°31'32"E., a distance of 74.75 feet; thence S.41°53'18"E., a distance of 74.61 feet; thence S.35°15'49"E., a distance of 74.46 feet; thence S.28°39'11"E., a distance of 74.29 feet; thence S.22°03'27"E., a distance of 74.12 feet; thence S.15°28'40"E., for a distance of 73.94 feet; thence S.10°25'53"E., a distance of 73.84 feet; thence N.88°48'52"E., a distance of 30.00 feet to the Westerly right-of-way line of Apopka-Vineland Road; thence S.01°11'08"E. along said Westerly right-of-way line, a distance of 786.66 feet; thence continue along said Westerly right-of-way line, run S.01°06'25"E., for a distance of 25.90 feet; thence S.43°53'31"W., a distance of 164.31 feet to the aforementioned South line of the North 1/2 of the Southwest 1/4 of said Section 10; thence S.88°58'12"W. along said South line, a distance of 753.60 feet to the Point of Beginning.

**LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:**

Part of the South 1/4 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 10, Township 24 South, Range 28 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the North 1/2 of the Southwest 1/4 of said Section 10; thence N. 88°58'12" E. along the South line of the North 1/2 of the Southwest 1/4 of said Section 10, a distance of 1373.60 feet; thence N. 43°53'35" E. for 121.91 feet to the Point of Beginning; thence N. 01°06'25" W. parallel with the Westerly right of way line of Apopka-Vineland Road for 55.88 feet; thence N. 01°11'08" W. for 786.64 feet; thence N. 88°48'52" E. for 30.00 feet to the said Westerly right of way line of Apopka-Vineland Road; thence following said right of way line, run S. 01°11'08" E. for 786.66 feet; thence S. 01°06'25" E. for 25.90 feet; thence leaving said right of way line run S. 43°53'35" W. for 42.42 feet to the Point of Beginning.

EXHIBIT "A"

OR Bk 5080 Pg 242  
Orange Co FL 5666575

Part of the South 1/4 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 10, Township 24 South, Range 28 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the North 1/2 of the Southwest 1/4 of said Section 10; thence N.88°58'12"E. along the South line of the North 1/2 of the Southwest 1/4 of said Section 10, a distance of 619.99 feet to the Point of Beginning; thence departing said South line, run N.01°11'08"W., a distance of 179.21 feet; thence N.08°16'36"E., a distance of 121.66 feet; thence N.01°11'08"W., a distance of 695.46 feet; thence N.07°59'35"E., a distance of 126.63 feet; thence N.38°17'58"E., a distance of 115.63 feet; thence N.44°18'06"E., a distance of 125.00 feet; thence N.45°41'54"W., a distance of 60.00 feet; thence N.44°18'06"E., a distance of 118.57 feet; thence N.67°53'58"E., a distance of 59.58 feet to a point on a curve concave to the Northeast, having a radius of 574.90 feet; thence from a tangent bearing S.47°04'32"E., run Southeasterly along said curve through a central angle of 02°44'59" for a distance of 27.59 feet; thence non-tangentially, run N.39°44'42"E., a distance of 114.01 feet; thence S.57°59'47"E., a distance of 248.43 feet; thence S.48°31'32"E., a distance of 74.75 feet; thence S.41°53'18"E., a distance of 74.61 feet; thence S.35°15'49"E., a distance of 74.46 feet; thence S.28°39'11"E., a distance of 74.29 feet; thence S.22°03'27"E., a distance of 74.12 feet; thence S.15°28'40"E., for a distance of 73.94 feet; thence S.10°25'53"E., a distance of 73.84 feet; thence N.88°48'52"E., a distance of 30.00 feet to the Westerly right-of-way line of Apopka-Vineland Road; thence S.01°11'08"E. along said Westerly right-of-way line, a distance of 786.66 feet; thence continue along said Westerly right-of-way line, run S.01°06'25"E., for a distance of 25.90 feet; thence S.43°53'31"W., a distance of 164.31 feet to the aforementioned South line of the North 1/2 of the Southwest 1/4 of said Section 10; thence S.88°58'12"W. along said South line, a distance of 753.60 feet to the Point of Beginning.

**LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:**

Part of the South 1/4 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 10, Township 24 South, Range 28 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the North 1/2 of the Southwest 1/4 of said Section 10; thence N. 88°58'12" E. along the South line of the North 1/2 of the Southwest 1/4 of said Section 10, a distance of 1373.60 feet; thence N. 43°53'35" E. for 121.91 feet to the Point of Beginning; thence N. 01°06'25" W. parallel with the Westerly right of way line of Apopka-Vineland Road for 55.88 feet; thence N. 01°11'08" W. for 786.64 feet; thence N. 88°48'52" E. for 30.00 feet to the said Westerly right of way line of Apopka-Vineland Road; thence following said right of way line, run S. 01°11'08" E. for 786.66 feet; thence S. 01°06'25" E. for 25.90 feet; thence leaving said right of way line run S. 43°53'35" W. for 42.42 feet to the Point of Beginning.

ARTICLES OF INCORPORATION

OF

AVALON HOMEOWNERS ASSOCIATION, INC.

FILED  
96 MAY -2 AM 11:46  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned subscriber to these Articles of Incorporation, a natural person competent to contract, hereby forms a corporation not for profit under the "Florida Not For Profit Corporation Act", Chapter 617, Florida Statutes.

ARTICLE I

OR Bk 5080 Pg 243  
Orange Co FL 5666575

NAME

The name of this corporation is:

AVALON HOMEOWNERS ASSOCIATION, INC.

For convenience, the corporation is sometimes referred to in this instrument as the "Association".

ARTICLE II

PURPOSES

This corporation is organized to provide for the improvement, maintenance, and preservation of the property affected by the Declaration of Covenants and Restrictions for Avalon at Turtle Creek to be recorded in the Public Records of Orange County, Florida (the "Declaration") and to provide the health, safety and welfare of the Members of the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any property affected by the Declaration shall be a Member of the Association. Notwithstanding anything else to the contrary herein, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

**Section 2. Voting Rights.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all those Owners as defined in Section 1 with the exception of T.C.A. Development Company, a Florida corporation (the "Developer", as defined in the Declaration) as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify. Except as

provided below, Class A Members shall be entitled to one (1) vote for each Avalon Lot (as that term is defined in the Declaration) in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Avalon Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but, in no event shall more than one vote be cast with respect to any such Lot, except as to Class B.

**Class B.** The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote, plus four (4) votes for each Lot owned by the Developer. Developer shall be entitled to cast such votes any time Class A Members shall be entitled to vote. The Class B Membership shall cease and terminate three (3) months after ninety percent (90%) of the Avalon Lots in all phases within the Avalon Property (as that term is defined in the Declaration) have been sold and conveyed by the Developer (or its affiliates) to Members (but not including builders, contractors or others who purchase a Avalon Lot for the purpose of constructing improvements thereon for resale), or sooner at the election of the Developer (whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association).

OR Bk 5080 Pg 244  
Orange Co FL 5666575

#### ARTICLE IV

##### **TERM OF EXISTENCE**

This corporation shall commence existence on the date of filing with the Secretary of State, and shall exist perpetually.

#### ARTICLE V

##### **INCORPORATOR**

The names and addresses of the subscriber is:

##### NAME

Gregory L. Holzhauer

##### ADDRESS

250 Park Avenue South  
5th Floor  
Winter Park, Florida 32789

#### ARTICLE VI

##### **OFFICERS**

The affairs of the corporation shall be managed by a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as may be provided for in the bylaws. An officer

may hold one or more offices. The Officers shall be elected by the Board of Directors annually in accordance with the provisions of the bylaws; and they should serve at the pleasure of the Board of Directors.

## **ARTICLE VII**

### **INITIAL OFFICERS**

The names of the officers who are to serve until the first election hereunder are:

<b>President/Assistant Secretary</b>	John B. Shoemaker
<b>Vice President</b>	Fred Pohlmann
<b>Treasurer</b>	Victoria L. Plum
<b>Secretary</b>	Sylvia Lee

OR Bk 5080 Pg 245  
Orange Co FL 5666575

## **ARTICLE VIII**

### **DIRECTORS**

The Board of Directors of the Corporation shall consist of not less than three (3) persons nor more than nine (9) persons, the exact number to be determined in accordance with the provisions of the bylaws and shall be elected by the Members annually in accordance with the provisions of the bylaws.

## **ARTICLE IX**

### **INITIAL DIRECTORS**

The names and addresses of the persons who are to serve as initial directors until the first election hereunder are:

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>
John B. Shoemaker	503 North Orlando Avenue, Suite 105 Cocoa Beach, Florida 32931
Fred Pohlmann	503 North Orlando Avenue, Suite 105 Cocoa Beach, Florida 32931
David Benghiat	503 North Orlando Avenue, Suite 105 Cocoa Beach, Florida 32931

## ARTICLE X

### **BYLAWS**

The bylaws of the corporation shall be made, altered, or rescinded by affirmative vote of a majority of the Directors of the corporation.

## ARTICLE XI

### **INDEMNIFICATION**

**Section 1.** Neither the Members, nor officers of the corporation shall be personally liable for any obligations of the corporation of any nature whatsoever; nor shall any of the property of any Member or officer of the corporation be subject to the payment of the obligations of the corporation to any extent whatsoever.

**Section 2.** Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding whether civil, criminal, administrative or investigative, or any settlement of any proceeding, or any appeal from such proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association, or having served at the Association's request as a director or officer of any other corporation, whether or not he is a director or officer at the time such expenses are incurred, regardless of by whom the proceeding was brought, except in relation to matters as to which any such director or officer shall be adjudged liable for gross negligence or willful misconduct, provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors of the Association approve such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

**Section 3.** Expenses incurred in defending a suit or proceeding whether civil, criminal, administrative or investigative may be paid by the Association in advance of the final disposition of such action, suit or proceeding if authorized by all of the non-interested directors upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not to be indemnified by the Association as authorized by these Articles of Incorporation.

**Section 4.** The Association shall have the power to purchase at its expense and maintain insurance on behalf of any person who is or was a director or officer of the Association, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of these Articles.



## ARTICLE XII

OR Bk 5080 Pg 247  
Orange Co FL 5666575

### AMENDMENTS

These Articles of Incorporation may be amended by the affirmative vote of a majority of the Members of the corporation, after no less than fifteen (15) days prior written notice to all Members.

## ARTICLE XIII

### MISCELLANEOUS.

**Section 1.** The corporation shall have no capital stock.

**Section 2.** This corporation shall have all powers to carry out its purposes and activities incidental to its purposes in furtherance, and not in limitation of, the powers conferred by law and by the "Florida Not For Profit Corporation Act", Chapter 617, Florida Statutes, or as the same may be amended.

**Section 3.** Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

**Section 4.** Unless specifically prohibited, any and all functions, duties and powers of the Association shall be fully transferrable in whole or in part, to any developer, management agent, governmental unit, public body, or similar entity. Any instrument effecting such a transfer shall specify the duration thereof and the means of revocation.

## ARTICLE XIV

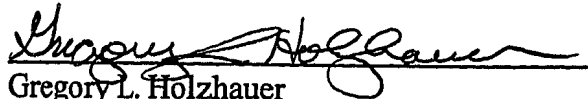
### DISSOLUTION

Upon the dissolution of this corporation the Board of Directors shall, after paying or making provision for the payment of all the liabilities of the corporation, pursuant to the procedure of provisions of Florida Statutes §617.05, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner as the Board of Directors shall determine. Any of the assets not so disposed of shall be disposed of by the Circuit Court of the County in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine, which are organized and operated exclusively for such purposes.

**ARTICLE XV - Initial Principal Office;**  
**Initial Registered Office and Agent**

The street and mailing address of the initial principal office of the corporation is 503 North Orlando Avenue, Suite 105, Cocoa Beach, Florida 32931. The initial registered office of the corporation shall be 503 North Orlando Avenue, Suite 105, Cocoa Beach, Florida 32931 and the registered agent of the corporation at that office shall be John B. Shoemaker.

IN WITNESS WHEREOF, the incorporator has executed these Articles of Incorporation the 1st day of May, 1996.

  
Gregory L. Holzhauser

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 1st day of May, 1996, by Gregory L. Holzhauser who is personally known to me..

  
NOTARY SIGNATURE

  
NOTARY NAME PRINTED  
Notary Public  
My Commission Expires:

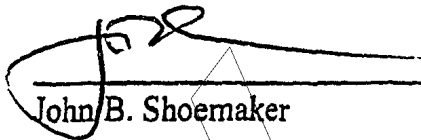


FILED  
96 MAY -2 AM 11:46  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

# CONSENT OF REGISTERED AGENT

John B. Shoemaker, the undersigned, hereby accepts appointment and hereby consents to serve as registered agent of Avalon Homeowners Association, Inc., a Florida corporation not for profit and agrees to maintain the registered office and accept process according to law.

DATED this 17<sup>th</sup> day of April, 1996.

  
John B. Shoemaker

OR Bk 5080 Pg 249  
Orange Co FL 5666575

COPY

BY-LAWS

OR Bk 5080 Pg 250  
Orange Co FL 5666575

OF

AVALON HOMEOWNERS ASSOCIATION, INC.

I. OFFICES

1. **Offices.** The offices of the Association in the State of Florida shall be located at the City of Cocoa Beach, County of Brevard, at 503 North Orlando Avenue, Suite 105, Cocoa Beach, Florida 32931 or such other address as shall hereafter be determined by action of the Board of Directors. A resident agent shall be designated thereat upon whom process may be served. The Association may have such other offices, either within or without the State of Florida, as the Board of Directors may determine or as the affairs of the Association may require from time to time. The principal office shall also be the registered office of the Association and the address of the principal office may be changed from time to time by resolution of the Board of Directors.

II. MEMBERSHIP AND VOTING RIGHTS

1. **Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any property affected by the Declaration of Covenants and Restrictions for Avalon at Turtle Creek to be recorded in the Public Records of Orange County, Florida (the "Property") and as amended from time to time (the "Declaration") shall be a Member of the Association. Notwithstanding anything else to the contrary herein, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

2. **Voting Rights.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all those Owners as defined in Section 1 with the exception of the Developer, as defined in the Declaration (as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A Members shall be entitled to one (1) vote for each Lot (as that term is defined in the Declaration) in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but, in no event shall more than one vote be cast with respect to any such Lot, except as to Class B.

**Class B.** The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote, plus four (4) votes for each Lot owned by the Developer. Developer shall be entitled to cast such votes any time Class A Members shall be entitled to vote. The Class B Membership shall cease and terminate one (1) year after the last Lot within The Properties has been sold and conveyed by the Developer (or its affiliates), or sooner at the election of the Developer (whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association).

3. **Meetings of Members.** The first annual meeting of Members of the Association shall be held on the date, at the place and at the time determined by the Board of Directors; provided, however, that said meeting shall be held to the extent possible, within one (1) year from the date of incorporation of the Association. Thereafter, the annual meeting of the Association shall be held on the anniversary date of the first annual meeting; provided, however, that should the

anniversary date fall on a legal holiday, then such annual meeting of the Members shall be held on the next day thereafter which is not a legal holiday.

4. **Special Meetings.** Special meetings of the Members may be held on dates and at times and places to be determined by the Board of Directors or may be called by at least ten percent (10%) of the Members of the Association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

5. **Notice of Meetings.** Except in the event of emergency, written notice stating the place, day and hour of any annual or special meeting of the Members shall be posted in a conspicuous place within the Property at least forty-eight (48) hours before the meeting, or shall be delivered personally or by mail to each Member of the Association not less than seven (7) days before such meeting. Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

6. **Quorum.** Thirty (30) percent of the Members of the Association shall constitute a quorum for the transaction of business. Every act done or decision made by a majority of the Members present in person or by proxy, at duly held meetings at which a quorum is present shall be regarded as an act of the Members of the Association.

### III. BOARD OF DIRECTORS

1. **General Powers.** The policies of the Association shall be established by the Board of Directors.

2. **Qualifications, Number and Tenure.** Directors need not be residents of the State of Florida, but shall be individuals of at least age 21, or older. The number of Directors shall be no less than three (3) nor more than nine (9) Directors and may be changed within this range by resolution of the Board of Directors, unless a different number shall be set by resolution of the Board of Directors, but, in any event not less than three (3) Directors. The initial Directors as named in the Articles of Incorporation of the Association shall serve until the first election as herein set forth.

3. **Election of Directors.** At the first annual meeting of the Members of the Association following the cessation of the Class B Membership and at each annual meeting thereafter, the Members shall elect the members of the Board of Directors of the Association to serve until the next annual meeting of the Members of the Association. Each Member shall be permitted to cast the same number of votes as the number of Directors of the Association. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. Members of the Board of Directors shall be permitted to succeed themselves in office. Vacancies in the Board of Directors shall be filled by a vote of the majority of the remaining Directors, even though they may constitute less than a quorum and each person so elected shall serve until the next annual meeting of the Members of the Association.

4. **Annual Meeting.** An annual meeting of the Board of Directors shall be held at a time set by the President but not less than 60 days after the annual meeting of Members.

5. **Place of Meeting.** The Board of Directors may designate any place in Orange County, Florida, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors, if all of the members of the Board of Directors shall meet at any time and



place, either within or without the State of Florida, or all of them consent to the holding of such a meeting at which a quorum is present, such meeting shall be valid without call or notice, and at such meetings any corporate action may be taken.

6. **Notice of Meetings.** (a) All meetings of the Board of Directors shall be open to all Members except for meetings between the Board of Directors and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Except in an emergency, written notice stating the place, day and hour of any annual or adjourned annual meeting of the Board of Directors shall be posted in a conspicuous place within the Avalon at Turtle Creek community at least forty-eight (48) hours before the meeting, or shall be delivered either personally or by mail to each Member of the Association, not less than seven (7) nor more than thirty (30) days before the date of such meeting.

(b) Notice of any special meeting of the Board of Directors and Members shall be given at least seven (7) days previously thereto by written notice stating the place, day and hour of any annual or adjourned annual meeting of the Board of Directors and shall be posted in a conspicuous place within the Avalon at Turtle Creek community at least forty-eight (48) hours before the meeting, or shall be delivered personally or sent by mail or telegram to each Member of the Association at the address as shown by the records of the Association. The purpose or purposes for which the special meeting is called shall be stated in the notice.

(c) If mailed, a notice of any meeting shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed with postage thereon prepaid.

If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company.

(d) An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments.

(e) Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Except as set forth above, neither the business to be transacted at, nor the purpose of any annual, regular or special meeting of the Board need be specified in the waiver of notice of such meeting.

7. **Quorum.** A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

8. **Manner of Acting.** The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, by the Articles of Incorporation, or by these By-Laws.

9. **Informal Action by Directors.** Except as limited by Florida law, any action required by law to be taken at any meeting of Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

10. **Compensation; Expenses.** All Directors shall serve without compensation but shall be reimbursed direct expenses incurred upon approval of the Board of Directors.

11. **Proxies; Attorneys-in-Fact.** At any meeting of Directors, a person entitled to vote may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after two months from the date of its execution. Any act or writing which might be executed by a Director may be executed on his behalf by a duly authorized attorney-in-fact acting in his behalf.

#### IV. OFFICERS

1. **Officers Provided.** The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer.

2. **Election and Term of Office.** The officers of the Association shall be those persons elected by the Board of Directors and who shall hold office with the Association for a term of one (1) year, or until preemptively removed by vote of the Directors at any meeting. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified.

3. **President.** The President shall be the principal executive officer of the Association and shall in general supervise all of the business and affairs of the Association, subject to the policies of the Board of Directors. The President shall preside at meetings of the Board of Directors. He may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, commitments, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and

execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association; and in general he shall perform all duties incident to office of President and such other duties as may be prescribed by the Board of Directors from time to time.

4. **Treasurer.** If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors may determine. He shall, with one or more other cosignators have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected by the Board of Directors and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

5. **Secretary.** The Secretary shall keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; be custodian of the corporate records and of the seal of the Association and see that seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these By-Laws; keep a register of the post office address of each Director and Member which shall be furnished by each Director to the Secretary;

and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President, or by the Board of Directors.

## V. CONTRACTS, CHECKS,

### DEPOSITS AND FUNDS

1. **Contracts.** The Board of Directors may authorized any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.
2. **Checks, Drafts, etc.** All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness, transfers, or stock powers relating to securities or stock owned or issued by the Association, shall be signed by two officers of the Association in the name of the Association who shall be determined from time to time by resolution of the Board of Directors. In absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or Assistant Treasurer and countersigned by the Chairman of the Board, the President or a Vice President of the Association.
3. **Deposits.** All funds of the Association shall be promptly deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.
4. **Gifts.** The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association. The Association may take, receive, and hold real and personal property, including the

principal and interest of any money or other fund, that is given, conveyed, bequeathed, devised to or otherwise vested in the Association in trust for a purpose consistent with the purposes set out in the Articles of Incorporation of this Association from time to time, pursuant to Florida Statutes, Section 617.021.

## VI. COMMITTEES

1. Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more committees, each of which shall consist of two or more Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Association; provided, however, that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the By-Laws; electing, appointing or removing any member of any such committee or any Director or officer of the corporation; amending the Articles of Incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of the assets of the Association; or amending, altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Directors, of any responsibility imposed upon it or him by law.

2. **Other Committees.** Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee need not be Directors of the Association, and the Chairman of the Board or the President of the Association shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Association shall be served by such removal.

3. **Term of Office - Committees.** Each member of a committee shall continue as such until the next annual meeting of the Board of Directors of the Association and until his successor is appointed, unless the committee shall be sooner terminated, or unless such person be removed from such committee, or unless such person shall cease to qualify as a member thereof. The President or a Vice President designated by him shall be exofficio member of all committees, except the committee responsible for approving or rejecting proposed fines or suspension of common area use rights referenced in Article X Section 4(b) of the Declaration..

4. **Chairman - Committees.** One member of each committee shall be appointed chairman by the person or persons authorized to appoint the members thereof.

5. **Vacancies - Committees.** Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.



## VII. BOOKS AND RECORDS: SEAL

1. **Books and Records.** The Association shall keep at its registered office correct and complete books and records of account and minutes of the proceedings of its Board of Directors and Members, and committees having any of the authority of the Board of Directors. All books and records of the Association may be inspected by any Director or Member, or his agent or attorney for any proper purpose at any reasonable time.

2. **Seal.** The Secretary shall provide a corporate seal, which shall be in form of a circle and shall have inscribed thereon:

**AVALON HOMEOWNERS ASSOCIATION, INC.**

**INCORPORATED 1996**

**Corporation not for Profit**

**Florida**

## VIII. FISCAL YEAR

The Fiscal Year of the Association shall at all times be the calendar year.

## IX. WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the Florida "Corporation not for profit" act or under the provisions of the Articles of Incorporation or the By-Laws of the Association, a waiver thereof in writing signed by the person or persons entitled to such notice,

whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### X. AMENDMENTS TO BY-LAWS

These By-Laws may be altered, amended, repealed, restated, or new By-Laws adopted by a majority of the then Directors present at any regular meeting or any special meeting, if at least seven (7) days written notice is given of intention to alter, amend, repeal, restate, or to adopt new By-Laws at such meeting.

I, John B. Shoemaker, Assistant Secretary of Avalon Homeowners Association, Inc., hereby certify that the foregoing is a true and correct copy of the By-Laws of the Association adopted by the Directors on the May 5 day of \_\_\_\_\_, 1996.

  
JOHN B. SHOEMAKER,  
Assistant Secretary

W:\WPFILES\GLHGALLIMOR\AVALON.BYL  
5/6/96 (1:08 pm)

**JOINDER AND CONSENT**

OR Bk 5080 Pg 263  
Orange Co FL 566575

Recorded - Martha O. Haynie

The undersigned, as the owner and holder of a mortgage encumbering the property described herein dated September 15, 1995, recorded September 19, 1995 in Official Records Book 4946, Page 3519, Public Records of Orange County, Florida, hereby joins in and consents to the above Declaration of Covenants and Restrictions for Avalon at Turtle Creek.

Signed, sealed and delivered  
in the presence of:

BARNETT BANK OF CENTRAL  
FLORIDA, N.A.

Debra J. Grey  
DEBRA J. GREY  
Donna M. Large  
DONNA M. LARGE

By:

Bradley J. Carpenter  
Name: Bradley J. Carpenter

VICE PRESIDENT  
Title: VICE PRESIDENT

P.O. Box 698267  
Orlando, Florida  
32867-8267

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 28th day of February, 1996, by BRADLEY J. CARPENTER as VICE PRESIDENT of BARNETT BANK OF CENTRAL FLORIDA, N.A., a national banking corporation, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.

Debra J. Grey  
Notary Public

Print Name: DEBRA J. GREY

My Commission Expires:

