

INSTR # 2017250354  
BK 10354 Pgs 0478-0486 PG(s)9  
12/29/2017 08:59:44 AM  
STACY M. BUTTERFIELD,  
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**Fifth Amendment to Master Declaration of Covenants,  
Conditions and Restrictions for Vienna Square**

**COVER PAGE**

After recording return requested to:  
Michael E. Workman, Esquire  
Clark, Campbell, Lancaster & Munson, P.A.  
500 South Florida Avenue, Suite 800  
Lakeland, FL 33801

**FIFTH AMENDMENT TO  
MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VIENNA SQUARE**

This Fifth Amendment ("Fifth Amendment") to Master Declaration of Covenants, Conditions and Restrictions for Vienna Square (hereinafter referred to as "Vienna Square Community" or "the Community") is made effective this 26 day of ~~October~~<sup>December</sup>, 2017 by Baytree Partners, LLC, a Florida limited liability company ("Declarant"), for itself and its successors and assigns, and is joined by Vienna Square Homeowners' Association, Inc., a Florida not-for-profit corporation (the "Association"), and MX Communication Services, LLC, a Florida limited liability company ("MX Communication Services"). Collectively, Declarant, the Association, and MX Communication Services are referred to herein as "the parties" and may be individually referred to herein as "party".

**RECITALS**

WHEREAS, Declarant as the developer of the Vienna Square Community, and in connection therewith has recorded that certain Master Declaration of Covenants, Conditions and Restrictions for Vienna Square, recorded December 4, 2006, in Official Records Book 7080, Page 2010 ("Master Declaration"), as amended by that certain First Amendment thereto, recorded July 17, 2007, in Official Records Book 7363, Page 378, as further amended by that certain Second Amendment thereto, recorded November 16, 2007, in Official Records Book 7483, Page 1032, as further amended by that certain Third Amendment thereto, recorded October 21, 2009, in Official Records Book 7999, Page 760, as further amended by that certain Fourth Amendment thereto, recorded January 26, 2010, in Official Records Book 8063, Page 126, all in the Public Records of Polk County, Florida (collectively, the "Declaration"); and

WHEREAS, Declarant is the original Developer and Declarant of the Vienna Square Community and was and remains a party to the Declaration with certain rights conferred thereby; and

WHEREAS, Section 15.10 of the Declaration provides in pertinent part that Declarant may, in its sole discretion, by an instrument filed of record in the County, unilaterally modify, enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of the Declaration, and any recorded exhibit thereto; and

WHEREAS, MX Communication Services has, from the inception of the Vienna Square Community in 2006, heretofore provided or arranged for the provision of certain cable television, home security monitoring and related services (defined as "the System" in Section 7.2 of the Declaration) in and to the Vienna Square Community and is a party to the Declaration, as amended, with certain rights conferred thereby; and

WHEREAS, the Association, the Declarant and MX Communication Services, desire to amend and modify the Declaration for the purposes set forth herein, intending and agreeing that this Fifth Amendment shall relate back to the recording of the Master Declaration; provided,

however, that the terms and conditions of the Master Declaration, shall otherwise not be amended, modified or disturbed, but shall remain in full force and effect, except as expressly set forth in this Fifth Amendment; and

NOW, THEREFORE, the Declaration is further amended as follows:

1.0 **Incorporation of Recitals; Defined Terms**: The undersigned parties incorporate the foregoing Recitals by this reference as substantive terms of this Fifth Amendment. Unless otherwise defined herein, defined terms used in this Fifth Amendment shall have the same meanings as set forth in the Declaration.

2.0 **The System to be Non-Exclusive and Voluntary**: Effective as of October 5, 2017, the System Assessment shall no longer be mandatory. Thereafter, such cable or home security services that MX Communications Services may, in its discretion, choose to provide to the Vienna Square Community, if any, including the System, will be optional to the residents of said Community, provided on a non-exclusive basis, and may be discontinued by MX Communications Systems at any time.

3.0 **Further Amendments to the Master Declaration, as Previously Amended**: In furtherance of the change of the System from its previously mandatory nature to services to which Vienna Square Community residents may subscribe through MX Communications Services on a voluntary basis, the Master Declaration and certain subsequent amendments thereto are hereby amended as follows:

Section 1.2, at page 3 of the Master Declaration defining "Assessment" or "Assessments", is amended to delete the language "and the System Assessment (as provided herein) which is levied and payable to MX (hereinafter defined) as authorized by Section 9 of this Declaration".

Section 4.1, "Classes of Membership", subparagraph (A), at page 13 of the Master Declaration, is amended to delete the language "or MX (in regards to the System Assessment)" from the third sentence and from the fourth sentence of this subparagraph.

Section 7.2, "System Assessment", at pages 34-35 of the Master Declaration, is amended to strike the language "System Assessment" as the title of said section and, in its stead, insert "Certain Easements".

Section 7.3, "Contracts with Service Providers", at page 35 of the Master Declaration, is deleted in its entirety.

Section 7.4, "Collection of System Assessments and Initial System Assessments", at pages 35-36 of the Master Declaration, is deleted in its entirety.

Section 9.1, “Creation of Lien”, subparagraph (D), at page 40 of the Master Declaration, is deleted in its entirety.

Section 9.3, “Purpose of Assessments”, subparagraph (D), “To provide utility, cable television and other systems of telecommunications services by bulk contract with third parties;” at page 42 of the Master Declaration, is deleted in its entirety.

Section 9.5, “Amount of Assessments”, at page 43 of the Master Declaration, is amended to delete the language “and MX (with regards to the System Assessment)” and “and/or the initial System Assessment per Lot” from the final sentence of this Section 9.5.

Section 9.8, “System Assessment”, at pages 43-44 of the Master Declaration, is deleted in its entirety.

Section 9.9, “Lien”, at page 44 of the Master Declaration, is amended as follows:

Delete the language: and if it pertains to any unpaid past due System Assessments by an officer or agent of MX.

Delete the language: (or System Assessments in the case of MX)

Delete the sentence: MX has a lien on each Lot and Living Unit for any unpaid past due System Assessments, together with interest, late payment penalties and reasonable attorneys’ fees and costs incurred by MX in enforcing the lien.

Section 9.10, “Foreclosure of Lien”, at pages 44-45 of the Master Declaration, is amended by striking from this Section 9.10 the language “MX’s or the”, and replacing that language with “The”, and striking “or MX” and “or System Assessments (in the case of MX)”.

Section 9.12, “Ownership”, at page 45 of the Master Declaration, is amended to delete the sentence “System Assessments collected by or on behalf of MX become MX property; no Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot or Living Unit”.

Section 10.3, “Damages and Attorneys’ Fees”, at page 47 of the Master Declaration, is amended to delete the language “and MX”.

Section 11.6, “Villas Association Membership Voting Rights”, subparagraph (A)(i) at page 53 of the Master Declaration, is amended to delete the language “or MX (in regard to the System Assessment)” from the fourth sentence and from the fifth sentence of this subparagraph.

Section 11.8, “Villas Assessments”, subparagraph (A)(v) at page 55 of the Master Declaration, is deleted in its entirety.

Section 11.8, “Villas Assessments”, subparagraph (H) at pages 59-60 of the Master Declaration, is amended as follows:

Delete the language: and if it pertains to any unpaid past due System Assessments by an officer or agent of MX.

Delete the language: (or System Assessments in the case of MX)

Delete the sentence: MX has a lien on each Lot and Living Unit in the Villas for any unpaid past due System Assessments, together with interest, late payment penalties and reasonable attorneys’ fees and costs incurred by MX in enforcing the lien.

Section 11.8, “Villas Assessments”, subparagraph (I) at page 60 of the Master Declaration, is amended by striking from this Section 11.8(I) the language “MX’s or the”, and replacing that language with “The”, and striking “or MX” and “or System Assessments (in the case of MX)”.

Section 14.2, “Mortgage Foreclosure”, at pages 69 of the Master Declaration, is amended and restated in its entirety as follows to remove references to MX, which were added as a result of that certain Third Amendment to the Master Declaration:

Except as otherwise provided by Florida law as amended from time to time, if a first mortgagee (including, without limitation, an Institutional Mortgagee) acquires title to a Lot, Living Unit Tract or Parcel as a result of foreclosure of the mortgage, or as a result of a deed given in lieu of foreclosure, such mortgagee’s liability for the unpaid Assessments that accrued or came due before such mortgagee’s acquisition of title, shall be the lesser of: (a) the Lot’s or Living Unit’s unpaid common expenses and Assessments that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (b) one percent of the original mortgage debt. The limitations on first mortgage liability as set forth above in this Section 14.2 apply only if such first mortgagee filed suit against the Owner and initially joined the Association as defendants in the mortgagee foreclosure action. However, joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee. Any unpaid Assessments or charges for which such acquirer is exempt from liability becomes an expense collectible from all Owners, pro rata, including such acquirer and his successors and assigns. No Owner or acquirer of title to a Lot, Tract or Parcel by foreclosure or by deed in lieu of foreclosure may,

during the period of his, her or its ownership, be excused from the payment of any Assessments or charges coming due during the period of such ownership. Notwithstanding the foregoing, the first mortgagee (including without limitation, an Institutional Mortgagee) shall be liable for CDD assessments, which liability shall not be limited by the terms and provisions of this Section 14.2 or otherwise in this Declaration.

4.0 **Joinder of Fifth Amendment by MX Communication Services, LLC, Vienna Square Homeowners' Association, Inc., and The Villas at Vienna Square Homeowners' Association, Inc.:** MX Communication Services, LLC, a Florida limited liability company, Vienna Square Homeowners' Association, Inc., a Florida not-for-profit corporation, and The Villas at Vienna Square Homeowners' Association, Inc., a Florida not-for-profit corporation, are parties to this Fifth Amendment in order to evidence their non-objection and consent thereto.

5.0 **No Changes to Declaration, Etc., Except as Stated Herein; Captions:** Except as expressly modified and amended herein, the Declaration shall remain unchanged and in full force and effect. Captions used in this Fifth Amendment are for reference and convenience only and are not to be construed as substantive terms of this Fifth Amendment or of the Declaration.

IN WITNESS WHEREOF, Vienna Square Homeowners' Association, Inc., MX Communication Services, LLC, Baytree Partners, LLC, and The Villas at Vienna Square Homeowners' Association, Inc., hereby execute this Fifth Amendment to Master Declaration of Covenants, Conditions and Restrictions for Vienna Square, effective as of the day and year first set forth above.

*(Signatures on Following Pages.)*

**Vienna Square Homeowners' Association, Inc.**

By: [Signature]  
Mark E. Schreiber, President

Attest: [Signature]  
David Owens, Vice-President

Witnesses:  
[Signature]  
Name: DeWanna Moore

Witnesses:  
[Signature]  
Name: MICHAEL RAYNO

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 26 day of December, 2017 by Mark E. Schreiber as President of Vienna Square Homeowners' Association, Inc., a Florida not-for-profit corporation. He is personally known to me or did produce \_\_\_\_\_ as identification.

(SEAL) 

DeWanna W. Moore  
Notary Public, State of Florida  
DeWanna W. Moore  
Print Name

**Baytree Partners, LLC**

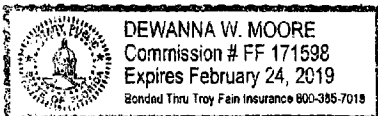
By: [Signature]  
Mark E. Schreiber, Manager of Century Residential, LLC, Manager of Baytree Partners, LLC

Witnesses:  
[Signature]  
Name: DeWanna MOORE

Witnesses:  
[Signature]  
Name: MICHAEL RAYNO

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 26 day of December, 2017 by Mark E. Schreiber as Manager of Century Residential, LLC, a Florida limited liability company, Manager of Baytree Partners, LLC, a Florida limited liability company. He is personally known to me or did produce \_\_\_\_\_ as identification.

(SEAL) 

DeWanna W. Moore  
Notary Public, State of Florida  
DeWanna W. Moore  
Print Name

MX Communication Services, LLC

By: [Signature]

Lawrence W. Maxwell, Manager of  
Century Properties-RES, LLC, Manager  
of MX Communication Services, LLC

Witnesses:

Name: Michael E. Workman

Witnesses:

Name: Malea Greear

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 5 day of December, 2017 by Lawrence W. Maxwell as Manager of Century Properties-RES, LLC, a Florida limited liability company, Manager of MX Communication Services, LLC, a Florida limited liability company. He is personally known to me or did produce \_\_\_\_\_ as identification.



(SEAL)

[Signature]  
Notary Public, State of Florida

Print Name

**The Villas at Vienna Square Homeowners' Association, Inc.**

By: \_\_\_\_\_

Mark E. Schreiber, Director

Attest: \_\_\_\_\_

David D. Owens, Director

Witnesses:

Name: \_\_\_\_\_

Witnesses:

Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by Mark E. Schreiber as Director of The Villas at Vienna Square Homeowners' Association, Inc., a Florida not-for-profit corporation. He is personally known to me or did produce \_\_\_\_\_ as identification.

(SEAL)

Notary Public, State of Florida

Print Name

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**MX Communication Services, LLC**

By:

Lawrence W. Maxwell, Manager of  
Century Properties-RES, LLC, Manager  
of MX Communication Services, LLC

Witnesses:

Name:

Witnesses:

Name:

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by Lawrence W. Maxwell as Manager of Century Properties-RES, LLC, a Florida limited liability company, Manager of MX Communication Services, LLC, a Florida limited liability company. He is personally known to me or did produce \_\_\_\_\_ as identification.

(SEAL)

Notary Public, State of Florida

Print Name

**The Villas at Vienna Square Homeowners' Association, Inc.**

By:

Mark E. Schreiber, Director

Attest:

David D. Owens, Director

Witnesses:

Name: DEWANNA MOORE

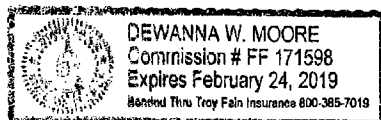
Witnesses:

Name: MICHAEL BALADO

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 26 day of December, 2017 by Mark E. Schreiber as Director of The Villas at Vienna Square Homeowners' Association, Inc., a Florida not-for-profit corporation. He is personally known to me or did produce \_\_\_\_\_ as identification.

(SEAL)



Notary Public, State of Florida

Print Name