

INSTR # 4841144 OR BK 3235 PG 1796 RECD 03/27/00 01:09 PM  
CHARLIE GREEN, CLERK OF COURT, LEE COUNTY  
DEPUTY CLERK B CRUZ

**WITNESSETH:**

Section 4. Common Areas shall mean all real and personal property now or hereinafter owned by the Association for the common use and enjoyment of the owners, and property owned by the Association and subject to its maintenance pursuant to the terms of this Declaration, including the entrance gate, roadway, lake, lake maintenance area, gazebo cabana, swimming pool, conservation area and playground to be located on the Property.

Section 5. Common Assessments shall mean and include actual and estimated expense of operating the Association including any reasonable reserve all as may be imposed hereunder or found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation, and any amendments thereto.

Section 6. Lot shall mean a portion of the property, other than the Common Area, intended for any independent residential use or ownership. Lots may be shown on the plats filed for individual residential subdivisions within the property, plats or maps filed with this Declaration or amendments to this Declaration, or as attachments in any other Declaration which may be made affecting all or any portion of the property.

Section 7. Member shall mean and refer to a person or entity entitled to membership in the Owners' Association as provided herein, as well as in the Articles of Incorporation and By-Laws of the Owners' Association.

Section 8. Owner shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

Section 9. Surface Water Management Area shall refer to the integrated system of canals, ditches, dikes, weirs, lakes, culverts, and all related structures within the development as required by the Surface Water Management Permit of the South Florida Water Management District for this project as it might be amended from time to time.

Section 10. Total Property shall mean the real property described on Exhibit "A" attached hereto and made a part hereof.

## ARTICLE II Property Rights

Section 1. General. Every owner shall have a right and easement of enjoyment in and to the Common Area, subject to any restrictions, limitations or provisions contained in this Declaration or any deed of conveyance to the Association. Such right and easement may be delegated to the members of one's family and his or her tenants and invitees, subject to such regulations or procedures as may be adopted by the Board. The aforementioned right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot subject to the following reservations, rights, and provisions:

(a) the right of the Association to suspend an Owner's voting rights and right to use the facilities as may be located on the Common Area for any period during which any assessment of the Association remains unpaid, and for any infraction of the Association's rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed thirty (30) days;

(b) the right of the Developer or the Association, with the approval of the Developer, to dedicate, transfer, or grant permits, licenses, and easements in and to the Common Area for utilities, roads, and other purposes reasonably necessary or useful for the proper development, maintenance, or operation of the Development.

(c) the right of the Association to borrow money for the purpose of improving the Property or any portion thereof, acquiring additional Common Area, or repairing or improving any facility located or to be located on the Property, and to give as security for the payment of any such loan and mortgage covering all or any portion of the Common Area; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges herein reserved.

(d) the easement rights of the Developer and its successors and assigns to enter and travel upon, over, and across the Common Area for the purpose of completion and repair of the improvements within the Property and for all reasonable purposes to further assist and enhance the marketing of the Property in general and Lots and residences specifically located or to be located on the Property.

Section 2. Owner's Right to Ingress, Egress, and Support. Every Owner shall have the right of ingress and egress over, upon, and across the Common Area necessary for access to his, her or its Lot or Residence and shall have the right to lateral support. Such rights shall be appurtenant to and pass with the title to each Lot.

Section 3. Easement of Encroachment. If any portion of the improvements constructed on the Common Area encroaches upon a Lot or any improvement constructed on a Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists; provided, however, if any improvement on a Lot is knowingly and willfully or recklessly constructed, reconstructed, or repaired so as to encroach on the Common Area, no such easement shall exist.

Section 4. Use of Common Area. Other than for the right of ingress and egress, the Owners are hereby prohibited and restricted from using any of the Common Area outside their respective Lots and Residences except as may be allowed by the Association's Board of Directors or as may be expressly permitted in this Declaration or any amendment thereto.

Section 5. Acknowledgment of Rights of Use. Each Owner, by acceptance of a deed, is deemed to accept the reservations, rights of use, licenses, easements, and permits existing in, through, and over the Common Areas.

Section 6. Conveyance of Common Area. The Association covenants to accept title to all or portions of the Common Area when offered by the Developer.

Section 7. Rules and Regulations. The Board may establish reasonable rules and regulations concerning the use of the Common Area and improvements located thereon. Such regulation shall be binding upon the Owners and users, their families, tenants, guests, invitees, and agents, until and unless such regulation, rule, or requirement is specifically overruled, canceled, or modified by the Board. The Board shall have the authority to impose reasonable monetary fines and other sanctions for violations of its rules, and monetary fines may be collected by lien and foreclosure, as provided in Article VII hereof. In addition, the Board shall have the right to suspend votes and the right to use the Common Area, other than as may be necessary to access one's Lot or Residence for violation of its rules, as well as to proceed

judicially to enjoin and abate violations of such rules as if such rules were use restrictions contained herein.

Section 8. Construction and Sale Period. Despite any provisions contained in this Declaration to the contrary, it shall be expressly permissible for Developer and all Builder/Owners to maintain and carry on upon such portion of the Committed Property as the Developer may deem necessary, including, but not limited to, the Common Area, such facilities and activities as in the sole opinion of Developer may be reasonably required, convenient, or incidental to construction or sale, including, without limitation, business offices, signs, model homes, and sales offices, so long as construction on or original offering for sale of all or any portion of the Total Property, continues. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots and Residences owned by the Developer or its designated Builder/Owners as models and sales offices and to authorize sales and construction personnel to travel upon and enter the Common Area. Furthermore, Developer reserves the right, during installation of concrete paving or streets, as shown on any Subdivision Plat or plat of portion of the Committed Property to enter onto any Lot or Lots for the purpose of disposing of street excavation, including the removal of any trees, if necessary, whether or not the Lot or Lots have been conveyed to and/or contracted for or by any other Owner or Owners.

Section 9. No Partition. Except as is permitted in this Declaration, there shall be no partition of the Common area or any part thereof, nor shall any person acquiring any interest in any of the Property or any part thereof seek any such partition, judicial or otherwise, unless the affected area has been removed from the provisions of this Declaration. This Section does not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Section 10. Easements for Utilities, Etc. There is hereby reserved the power to grant blanket or specific easements upon, across, over, and under all of the Committed Property for ingress, egress, installation, replacing, repairing, and maintaining master television antenna or cable systems, security, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, telephones, gas, cable television, and electricity. The Board shall, upon written request, grant such easements as may be reasonably necessary for the development of any property contained in Exhibit "A". Developer reserves the easements and rights-of-way as shown on any Subdivision Plat of the Committed Property for the purpose of constructing, maintaining, and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, or any other utility Declarant determines to install in, across, and/or under the Committed Property; provided, however, Developer reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Neither Developer nor any utility company using the easements referred to in this Declaration shall be liable for any damages done by them or their assigns, agents, employees, or servants to any fences, shrubbery, trees, flowers, or any other property of the Owner situated on the property covered by said easements.

Section 11. Assignment of Developer Rights. Developer may assign its rights as Developer to all or any portion of the Committed Property or Uncommitted Property to any party or parties who take title to all or any portion of such Committed Property or Uncommitted Property for the purpose of development and sale. Developer, however, unless otherwise specifically assigned, shall, so long as it owns any interest in the community, retain all Class "B" votes despite any such transfer or assignment.

ARTICLE III  
Association Membership and Voting Rights

Section 1. Membership. Subject to Section 2 of this Article, every person who is the record owner of a fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership.

Section 2. Multiple Owners. No Owner or Occupant whether one or more persons shall have more than one (1) membership per Lot owned or occupied; provided, however, multiple use rights for multiple owners may be authorized and regulated by the Board. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse.

Section 3. Voting. For the purposes of voting, the Association shall be deemed to have two (2) types of Memberships; i.e., Class A Memberships, which shall include all Owners of Lots within the Property, and Class B Membership which is the Developer and its designated successors and assigns.

(a) Class A Members shall be entitled to one (1) vote for each Lot owned by such Class A Member. The Class A Member's vote shall be cast in accordance with this paragraph and specifically in accordance with Section 4.

(b) The Class B Member shall be the Developer, or any assignee, successor, designee or nominee of the Developer, in whole or in part, to whom the Developer has assigned all or part of its rights as a Class B Member. The Developer shall have the same number of votes at any meeting in which votes are to be taken as is held by all other Class A Members and Class B Members plus one vote. Class B membership shall terminate and be converted on a Lot basis to Class A Members when the Developer no longer owns any property in the Southwind development (Exhibit "A" and any additions thereto) for sale in the ordinary course of business or on such earlier date as the Developer may elect to terminate its Class B Membership.

In the event that the development is not built to its maximum density under this Declaration (101 units), then the Association shall have a reduced number of votes.

Section 4. Voting. The By-Laws shall provide for the manner of casting votes as well as the day-to-day operation of the Association.

Section 5. Election of Board of Directors. Directors of the Association shall be elected at the annual meeting of the Members in the manner provided in the By-Laws. Directors may be removed and vacancies on the Board shall be filled in the manner provided in the By-Laws.

Section 6. Control of Board by Developer. So long as there is a Class B Member, the Developer has the right to designate or elect all of the members of the Board of Directors, and the designated directors need not be members of the Association (Class A Members). The Developer may waive its right to designate one or more directors, all as provided in the By-Laws.

Notwithstanding the foregoing, the Owners, other than the Developer, shall be entitled to elect a majority of the Board three (3) months after ninety percent (90%) of the Lots are conveyed to Members other than builders or contractors or others whose purpose for purchase is the construction of an Improvement for resale to others.

#### ARTICLE IV Association Powers and Responsibilities

##### A. IN GENERAL:

Section 1. Common Area. The association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common area and all improvements thereon and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. The Association shall maintain, operate, and preserve the Common Area for the good and benefit of the community.

Section 2. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof and any other personnel as the Association's Board of Directors shall determine to be necessary or desirable for the proper operation of the Property. Such personnel may be furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Committed Property or the enforcement of this Declaration. The Developer and Association may, but shall not be required to, arrange as an Association expense with others to furnish trash collection, security, cable television, and other common services.

Section 3. Personal Property and real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property.

Section 4. Power to Contract. The Association may, acting through its Board of Directors, contract with any other residential or commercial association, Parcel, or Neighborhood to provide services and/or perform services on behalf of such other association, Parcel, or Neighborhood.

Section 5. Enforcement of Restrictions. The Association shall have the right and power to enforce each and every restriction herein contained, including those restrictions relating to architectural approval and modification, and shall have all those powers and privileges necessary or desirable to so act. Additionally, the Association shall have the power to enforce and assess for enforcement of the covenants and restrictions of any governing Neighborhood Association.

Section 6. Power to Assess. The Association shall have the right and power, as more particularly set forth in this Declaration, to fix, levy, collect, and enforce payment by any lawful means, all charges and assessments pursuant to the terms of this Declaration, to pay all expenses in connection therewith, and all office and other expenses incident to the conduct and affairs of the business of the Association.

Section 7. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the By-Laws, or its Articles of Incorporation and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 8. The Association shall have the responsibility to implement and discharge the obligations of the Developer under all applicable rules, laws and regulations in perpetuity with regard to the conservation area designated on any plat.

**B. MAINTENANCE:**

Section 1. Association Responsibility. The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Area.

Section 2. Owner's Responsibility. Subject to Section A hereof, the maintenance responsibility of an Owner shall be as follows:

(a) All maintenance of Lots or Residences and all attachments, additions and extensions to such residences, unless specifically identified hereunder as being the responsibility of the Association, shall be the responsibility of the Owner of such Lot or Residence.

(b) In the event the Board of Directors determines that any Owner or owners of any Lot has failed to discharge he, she or its responsibility or that the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, the Association, except in the event of an emergency situation, shall give the owner as appropriate, written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at their sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary and the cost thereof. the noticed party shall have fifteen (15) days within which to pay such amount claimed; or, complete said maintenance, repair or replacement; or in the event that such maintenance, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such person's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such party is subject and shall become a lien against the Lot or Residence of such party.

**C. INSURANCE AND CASUALTY OR LIABILITY LOSSES.**

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards (including flood), and including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy

applicable to the Common Area covering the Association, its officers, directors, members, and agents. The public liability policy shall have at least a Five Hundred Thousand (\$500,000.00) Dollar per person limit, as respects bodily injury and property damage, a One Million (\$1,000,000.00) Dollar limit per occurrence, and a Fifty Thousand (\$50,000.00) Dollars minimum property damage limit. Unless otherwise provided by the Board of Directors, the cost of all such insurance coverage shall be paid from the common expense. Each insurance policy may contain a deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as Trustee, for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Florida and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Owners and their mortgagees, as their interest may appear.

(c) Exclusive authority to adjust losses under policies in force on any portion of the Property, including the Common Area, obtained by the Association shall be vested in the Association's Board of directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

(e) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if reasonably available, with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Lee County area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its Manager, the owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual owners;



(iv) that no policy may be canceled, invalidated or suspended on account of any defect or of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any owner or mortgagee; and

(v) that any "other insurance" clause in any policy exclude individual owners' policies from consideration.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, workmen's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' assessments, plus reserve on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction, or in the event no repair or reconstruction is made after making such settlement as is necessary and appropriate with the affected Owner or owners and their mortgagee(s), as their interests may appear, shall be retained by and for the benefit of the Association. This is a covenant for the benefit of any mortgagee of any part of the Property and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 3 of this Article, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, available proceeds shall be disbursed in the manner as provided for excess proceeds in Section 2(a) hereof.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association and the Developer shall decide within sixty (60) days after the casualty not to repair or reconstruct. If

for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the property by its respective owner or owners in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners ultimately responsible for the payment of the policy premium in the same proportion as an Owner's assessment bears to the Association's budget. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

#### ARTICLE V Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation) by any authority having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association, as Trustee for all Owners, to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Developer and at least seventy-five (75%) percent of the Class A members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article IV hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

#### ARTICLE VI Committed Property

Section 1. Uses of Committed Property. All portions of the Committed Property shall be subject to the use limitations, restrictions and other provisions, if any, imposed thereon as

may be set forth in these protective covenants, a supplement or any other Southwind documents as same are applicable to the property. In addition, the provisions of these protective covenants, a supplement or any other Southwind documents may restrict specified portions of the Committed Property to specified uses.

## ARTICLE VII Assessments

### Section 1. Creating of the Lien and Personal Obligation

(a) Each Owner, except the Developer and any licensed builder, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, shall be covenanting and agreeing to pay to the Association:

(1) Annual Assessments.

(2) Special Assessments.

(3) Other fees or charges (including fines) against the Owner of one or more Lots, as provided for elsewhere in this Declaration or in the By-Laws of the Association.

(b) Assessments shall be fixed, levied, established and collected as provided in the By-Laws, but shall only commence on the earlier of the substantial completion of a residence on the Lot.

(c) The assessments, together with interest, late payment penalties and costs of collection, including reasonable attorney's fees, which includes those resulting from any appellate proceeding, shall be a continuing lien upon the Lot or improvements located thereon against which such assessment is made.

(d) Each assessment, together with interest and costs of collection including reasonable attorney's fees, which include those resulting from appellate proceedings, shall also be the personal obligation of any person who was the Owner of the Lot at the time such assessment came due, and any due and unpaid assessments shall also be the personal obligation of each Person who becomes an Owner of the Lot. Each Owner, by acceptance of a deed for a Lot, is personally covenanting and agreeing to pay any such obligation coming due prior to or during the time of his ownership and such personal obligation shall survive any conveyance. Joint Owners shall be jointly and severally liable.

(e) The Association will collect due and unpaid Association assessments and other charges directly from any Owner personally and may impose a lien against any Lot for the payment of such assessments and other charges which are due and payable.

(f) The purpose, amount, rate, exemption from, and non-payment of initial, annual and special assessments, and the establishment of annual budgets shall be set forth in the Association's By-Laws.

(g) No land shall be subject to assessment by the Association if it is a Common Area, or is owned by a governmental agency and used solely for a public purpose. Only Lots shall be subject to assessments.

(h) **Developer's Assessments.** Notwithstanding anything herein to the contrary, Developer shall have the option, in its sole discretion, to (i) pay assessments on the Lots owned by it, (ii) pay assessments only on certain designated Lots (e.g., those under construction) or (iii) not pay assessments on any Lots, or pay at a rate lower than that applicable to Lots owned by non-Developer Owners, and in lieu thereof fund any resulting deficit in the Association's operating expenses not produced by assessments receivable from Owners other than Developer and other income receivable by the Association. The deficit to be paid under option (iii), above, shall be the difference between (a) actual operating expenses of the Association (exclusive of capital improvement costs and reserves) and (b) the sum of all monies receivable by the Association (including, without limitation, assessments, interest, late charges, fines and incidental income) and any surplus carried forward from the preceding year(s). Developer may from time to time change the option under which Developer is making payments to the Association by written notice to such effect to the Association. If Developer at any time elects option (ii), above, it shall not be deemed to have necessarily elected option (i) or (iii) as to the Lots which are not designated under option (ii). When all Lots within the Property are sold and conveyed to purchasers, neither the Developer nor its affiliates shall have further liability of any kind to the Association for the payment of assessments, deficits or contributions. Without limiting the generality of Article II, Section 11 hereof, the Developer's rights under this Section may be assigned by it in whole or in part and on an exclusive or non-exclusive basis.

## Section 2. Lien

(a) If any Owner fails to pay any assessment or to make any other payment required to be paid to the Association within ten (10) days after the due date, the Association is hereby granted a lien on such Owner's Lot, which lien shall secure the payment then due and all sums coming due thereafter up to the date of the satisfaction or discharge of the claim of lien hereinafter mentioned, together with interest at the highest lawful rate from the date of delinquency, and all costs of collection, including reasonable attorney's fees which includes those resulting from appellate proceedings, which may be incurred by the Association in enforcing this lien and the costs of performing any other work required to enforce compliance with this Section 2.

(b) The lien herein created shall be perfected from and after the date of recording of a Claim of Lien in the Public Records of Lee County, Florida, which Claim of Lien shall state the description of the property encumbered thereby, the name of the Owner, the amount then due and the date when due and the lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid, and the lien satisfied or discharged.

(c) The Association may bring an action at law against an Owner to pay his personal obligations to the Association or it may foreclose the lien against his Lot. An Owner against whom any such proceeding is successfully brought shall pay all costs of collection, including reasonable attorney fees, which includes those resulting from appellate proceedings.

(d) No Owner may avoid or escape liability for the payments provided for herein by non-use or abandonment of his Lot or the Common Areas.

## ARTICLE VIII Architectural Standards

All property which is now or may hereafter be subjected to this Declaration is subject to architectural review. This review shall be in accordance with this Article and such standards as may be promulgated by the Board, the New Construction Review Board, or the Modifications Committee.

Section 1. New Construction Review Board. The New Construction Review Board (NCRB) shall have exclusive jurisdiction over all original construction on any portion of the Property. No original construction or development of any kind whatsoever shall commence or be carried out on any Lot until approved in writing by the NCRB. Approval shall be subject to such regulations, architectural standards, and applicable procedures as may be promulgated by the NCRB. The NCRB may charge a reasonable fee not to exceed One Hundred (\$100.00) Dollars to cover the administrative expense of its review and comment, such fee to be payable to the NCRB members. The NCRB shall make its regulations, standards, and procedures available to Owners and Builder/Owners who seek to engage in development of or construction upon all or any portion of the Property and shall conduct its operations in accordance therewith. The Developer, in its sole discretion, shall appoint the members of the NCRB which shall consist of three (3) members, none of whom shall be required to be residents of Southwind or own property at Southwind. The NCRB shall and may act independently of the Association and its Board until such time as the Developer assigns its rights of appointment to the Board of Directors, at which time the NCRB shall function in the same fashion as committees of the Association. This Section may not be amended without the written approval of Developer.

Section 2. Modifications Committee. The Modifications Committee (MC) shall consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The MC shall have jurisdiction over modifications, additions, or alterations made on or to existing Residential Units or structures containing Residential Units and the open space, if any, throughout the Property; provided, however, the MC may delegate this authority to the appropriate board or committee of any residential association subsequently created or subsequently subjected to this Declaration, so long as the MC has determined that such board or committee has in force written review and enforcement practices, procedures, and appropriate written guidelines and standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice; provided, further, the MC shall not have jurisdiction over modifications or alterations made by the Developer or Builder/Owners, and the jurisdiction of the MC shall be subordinate to the NCRB. Decisions of the MC shall be advisory in nature and reported to the Board of Directors no later than thirty (30) days prior to the time the Board's power to deny a proposed modification expires.

The MC shall promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein

shall be construed to limit the right of an owner to remodel the interior of his or her Residential Unit or to paint the interior of his or her Residential Unit any color desired. In the event the Board, after receiving the report of the MC, fails to approve or to disapprove such plans or to request additional information reasonably required within sixty (60) days after submission, the plans shall be deemed approved. The MC may charge a reasonable fee not to exceed One Hundred (\$100.00) Dollars to cover the administrative expense of its review and comment, such fee to be payable to the Association.

#### ARTICLE IX Enforcement

The Association through its Board has the power to enforce all covenants, conditions, restrictions and agreements applicable to Southwind and the Board is authorized to promulgate and enforce rules and regulations governing the use of the Common Area. The Association may bring an action to enforce such rules and regulations by injunction, by damages, and by the levying and collection of fines against any Owner. Fines shall be in the maximum amount of One Hundred (\$100.00) Dollars per person per day for each violation. Fines imposed may constitute a lien on the member's Lot and may be collected in the same manner as any other assessment owed to the Association.

Section 1. Enforcement. For so long as the Declarant owns a Lot or any land in Southwind that it holds for development or sale, the Developer reserves unto itself, the right and the power to: (i) enforce the covenants, conditions, restrictions and other provisions of this Declaration. No amendment not agreed to by the Developer shall be effective to diminish or alter the Developer's rights, powers and privileges, as long as the Developer holds any Lot or land for future development, for sale in the ordinary course of business, or holds the Total Property or any portion thereof, unless the Developer shall so consent in writing; and (ii) delegate or assign, either exclusively or non-exclusively, any or all of its rights, powers, duties or privileges hereunder to the Association, or to an Owner, or to one or more third persons or entities. Upon the assumption by the Association of all the Developer's rights hereunder pursuant to the Governing Documents, the Association shall be responsible for all of the duties and rights which the Developer previously had hereunder, and the Developer shall be released from liability associated therewith; (iii) Developer reserves the right to amend this Declaration, consistent with the overall development plan for the community for a period of two (2) years after recording, without the consent of the Association or any owner or mortgagee.

For so long as the Developer owns a Lot or any land in Southwind, the Developer shall have the right and the power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by a proceeding at law or in equity against any person violating or attempting to violate any such provisions, to restrain any violation or attempted violation of such provisions, to require specific performance of such provisions, and to recover damages for violations of such provisions and to levy fines against the land and enforce any lien created by this Declaration. Failure by the Developer, or the Association, or any Owner, or any other person to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

The costs and reasonable attorneys fees, including those resulting from any appellate proceedings incurred by the Developer in any action against an Owner to enforce any provision of this Declaration, shall be a personal obligation of such Owner which shall be paid by such

Owner, and any amount thereof which remains due and unpaid shall be a continuing lien upon such Owner's Lot, collectible in the manner provided above:

Section 2. Declarant's Inaction. Neither the execution or recordation of this Declaration nor the creation of any Association or other entity, nor the recordation of any other instrument subjecting any land in Southwind to protective covenants, conditions, restrictions or other provisions shall obligate or require the Developer: (i) to grant any right, power, duty or privilege of any nature or kind to the Association or to any other entity; or (ii) to require the Developer, the Association or any other entity to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do.

## ARTICLE X Rights of Mortgagees

Section 1. Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or substantial damage to, or destruction of any part of the Common Area, the record holder of any first mortgage on the Common Areas or any Lot shall be entitled to notice.

Section 2. Mortgage Foreclosure. Except as otherwise provided by law, if the mortgagee of an institutional mortgage of record, its successors or assigns, acquires title to any Lot as a result of foreclosure of the mortgage, or as a result of a deed given in lieu of foreclosure, such mortgagee shall not be liable for the share of the Association expenses or assessments attributable to the Lot or chargeable to the former owner of the parcel which came due prior to the mortgagee's acquisition of title. Any unpaid share of the Association expenses which because of such acquisition is exempt from collection and liability shall become an expense collectible from all lot owners, including the owner of such acquired property and his successors and assigns. No owner who acquires title to a Lot by foreclosure (or by a deed in lieu of foreclosure) may during the period of his ownership of such parcel, whether or not the parcel is occupied, be excused from the payment of any assessments coming due during the period of such ownership. In the event of a conflict between this paragraph and Article VII, Section 1(d), this paragraph shall supersede.

Section 3. Right to Inspect Books. The Association shall make available to any institutional mortgagees requesting same, current copies of the Declaration of Covenants, Conditions and restrictions for Southwind, By-Laws and other rules concerning the Association and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be made available at the expense of the mortgagee requesting same.

Section 4. Financial Statement. Any institutional mortgagee is entitled, upon written request, to a financial statement of the Association for the immediately preceding fiscal year.

ARTICLE XI  
Use Restrictions

Section 1. Annoyance or Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance to the neighborhood. The display or shooting of firearms, fireworks, or firecrackers is expressly forbidden.

Section 2. Temporary Structures. Subject to Developer's and Builder/Owner's reserved rights herein, no structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, or other outbuilding shall be maintained or used on any Lot at any time as a residence or for any other purpose, either temporarily or permanently. No garage, servants' quarters, or other permitted accessory structure shall be erected, placed, or maintained on any Lot until construction of a main residential dwelling has commenced. Any structure on which construction has commenced must be completed within a reasonable length of time. No boat trailers, boats, travel trailers, inoperative automobiles, campers, vehicles of any kind, or portable buildings are to be permanently or semi-permanently stored in the public street right-of-way or on driveways. Permanent and semi-permanent storage of such items and vehicles must be screened from public view, either within the garage or behind a fence which encloses the rear of the Lot.

Section 3. Signs and Billboards. No signs, billboards, posters, or advertising devices of any character shall be erected, permitted, or maintained on any Lot or plot without the express prior written consent of the Board of Directors, except for Builder/Owners, who may place on each Lot owned by such Builder/Owners during the construction and sales period of improvements not more than one (1) sign of not more than five (5) square feet of sign space. The right is reserved by Developer on its behalf, as well as on the behalf of Builder/Owners, to construct and maintain such signs, billboards, or advertising devices as is customary in connection with the general sale of Property.

Section 4. Oil and Mining Operations. No oil drilling or development operation, soil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

Section 5. Storage and Disposal of Garbage and Refuse. Subject to Developer's reserved rights, no Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste materials shall not be kept, except in sanitary containers constructed of metal, plastic, or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.



Section 6. Unlicensed Motor Vehicles. No unlicensed motor vehicles shall be allowed on the Property. No motorbikes, motorcycles, motor scooters, or other vehicles of that type shall be permitted on the properties, if they are a nuisance by reason of noise or manner of use in the sole judgment of the Board.

Section 7. Pets. No horses, cows, hogs, poultry, or livestock of any kind (other than house pets of reasonable kind, size and number) may be kept on any Lot. Should such pets become a nuisance in the opinion of the Developer or Board, they must be removed from the Property. No pets are to run at-large.

Section 8. Drainage. Drainage of streets, Lots, or roadway ditches will not be impaired by any person or persons. Driveway culverts will be of sufficient size to afford proper drainage of ditches without backing water up into a ditch or diverting flow. In no event shall a culvert be less than eighteen (18) inches. Developer or the Board may remove any culvert that obstructs the flow of water through the street ditches. The breaking of curbs for drive installations will be accomplished in a good and workmanship-like manner, and such break will be recemented without hindrance to drainage, and such work is subject to inspection and approval, as provided in Article VIII hereof.

Section 9. Solar Heating Panels. Solar heating panels and other passive solar devices will be located to the rear of the property and out of sight from the road that provides access to individual homes. Solar panels will be located on the roof in a fashion so that their visibility by neighboring property owners is minimized.

## ARTICLE XII Water Management

In addition to all other purposes and powers stated herein, one of the primary purposes for the establishment of the Southwind Owners Association at Fort Myers, Inc. is to operate and maintain the surface water management system within the Southwind development in accordance with permits granted by the South Florida Water Management District including all lakes, retention areas, culverts and related appurtenances. In connection with the requirements of said agency, the Association is specifically granted the following additional powers by Developer if the grant elsewhere contained in this document is not sufficient:

- (a) to own and convey property;
- (b) to establish such rules and regulations as it may deem appropriate or as may be required by the South Florida Water Management District;
- (c) to sue and be sued;
- (d) to assess members and enforce said assessments relating to the operation and maintenance of the common property;
- (e) to contract for services for operation and maintenance of said corporation deemed with outside service appropriate and feasible; and
- (f) in the event of dissolution of said corporation, said corporation shall have the power to dedicate the operation and maintenance of the common areas and specifically the surface water management system to an appropriate agency of local government for the purposes of operating and maintaining said common property in accordance with South Florida Water Management District requirements, or if not accepted by said local

agency, then the surface water management system shall be dedicated to a successor or similar non-profit corporation. Any amendment affecting surface water management system contained within Southwind including the water management portions of the Common Area must first be submitted for prior approval to South Florida Water Management District; and

- (g) The beneficiaries of the Stormwater Management System shall have the legal right to enforce the provisions of this Article and require the Association or other entity with responsibility to continuously maintain the drainage system, easements and right of way.

### ARTICLE XIII General Provisions

Section 1. Coverage and Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns. The covenants, conditions, and restrictions of this Declaration, as they may be amended from time to time, shall run with and bind the Property for a term of forty (40) years from the date of recordation, unless amended, as herein provided. After such initial term, such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless within sixty (60) days before the commencement of any such ten (10) years period, these covenants are extinguished by a written instrument executed by the members holding at least seventy-five (75%) percent of the Class A votes and Class B votes if then in effect.

Section 2. Amendment. Subject to the provisions of Article IX, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing two-third (2/3) or more of the total voting power of the Association authorized to vote on amendments, plus the consent of the Class B member. Any amendment must be recorded among the Real Property Records of Lee County, Florida. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate

general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Merger and Subdivision of Lots. Upon application in writing by an owner of adjoining Lots, the Board of Directors may authorize the merger or subdivision of adjoining Lots; provided, however, such merger or subdivision shall be in conformance within the provisions of any Supplemental Declaration that may be applicable to such Lots, including provisions which may further regulate merger or subdivision. No merger or subdivision of Lots shall be allowed unless approved by the Board. Such plats and plans as may be necessary to show the merged or subdivided Lots shall be thereafter prepared at the expense of the requesting owner, who shall additionally be responsible for all costs, including legal fees, associated with the merger or subdivision of such Lots. The Board may impose conditions for use of the merged or subdivided Lot as a condition precedent to granting approval for such a merger or subdivision. From and after the time a merger or subdivision of Lots is approved, such Lots shall, for all purposes, be considered Lots in accordance with their new boundaries.

Section 5. Corrective Plats. Until the time a Lot is transferred by the Developer to another (other than a Builder/Owner, an affiliate of Developer, or a holder of a first mortgage on the entire Committed Property), no Owner of any Lot shall have any rights whatsoever to the continuation of any covenants, conditions, or restrictions on such Parcel or Phase as contained herein or as may be imposed, expressly or impliedly, by recordation of any plat or as might otherwise be implied or expressed. In furtherance thereof, until the time a Lot within the Committed Property is transferred by the Developer as aforementioned, the Developer may revoke or cancel any plat or other instrument which might be deemed, either expressly or impliedly, to impose any covenants, conditions, or restrictions or may take whatever steps it deems necessary or desirable to avoid the implication of such existing.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Reservation From Lot Conveyance. It is expressly agreed and understood that the title conveyed by Developer to any Lot within the Property by contract, deed, or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph, telephone, or television purposes and shall convey no interest in any pipes, lines, poles, or conduits, or in any utility facility or appurtenances thereto, constructed by or under authority of Developer or any easement owner, or their agents through, along, or upon the premises affected thereby, or any part thereof, to serve said land or any other portion of the Property, and where not affected, the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party, and such right is hereby expressly reserved.

Section 8. Incorporation by Reference. All dedications, limitations, restrictions, and reservations shown on any subdivision plat or any plat of a Phase are incorporated herein and made a part hereof as if fully set forth herein and shall be constructed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Developer and, thereafter, each successive Owner, conveying any of the Property, whether specifically referred to therein or not.

IN WITNESS WHEREOF, the undersigned Developer has executed this Declaration this 17 day of March, 2000.

WITNESS:

[Signature]  
Witness

[Signature]  
Witness

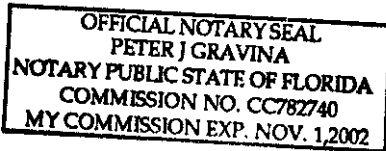
FDR PROPERTIES, L.L.C., a Minnesota limited liability company

By [Signature], Manager

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 17 day of March, 2000, by Pick Munary, as Manager of FDR PROPERTIES, L.L.C., a Minnesota limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did not take an oath.

(Notary Seal)



[Signature]  
Signature of Notary Public

PETER J. GRAVINA.  
Print name of Notary Public  
My commission:

f:\wpdata\pjg\rdlsouthwd2.dec

Prepared by: Peter J. Gravina, Esq.  
Pavese, Garner Law Firm  
P. O. Drawer 1507  
Ft. Myers, FL 33902  
(941) 334-2195

## EXHIBIT "A"

## LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 10, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND BEING LOTS 21, 22, 23, 42, 43 & 44, SEMINOLE GARDENS, RECORDED IN PLAT BOOK 4, PAGE 65, LEE COUNTY PUBLIC RECORDS; LESS THE WINKLER ROAD RIGHT-OF-WAY EXTENSION AND BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 23, SEMINOLE GARDENS SUBDIVISION, PLAT BOOK 4, PAGE 65, LEE COUNTY PUBLIC RECORDS; THENCE S.01°13'43"E. ALONG THE EAST LINE OF LOTS 23, 22 AND 21 OF SAID SUBDIVISION FOR 989.58 FEET TO THE SOUTHEAST CORNER OF SAID LOT 21; THENCE S.88°40'55"W. ALONG THE SOUTH LINE OF SAID LOT 21 FOR 1296.36 FEET TO THE SOUTHEAST CORNER OF LOT 44 OF SAID SUBDIVISION; THENCE S.88°42'35"W. ALONG THE SOUTH LINE OF SAID LOT 44 FOR 1267.83 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF WINKLER ROAD EXTENSION (100 FEET WIDE); THENCE N.01°16'56"W. ALONG SAID EASTERLY RIGHT-OF-WAY LINE FOR 990.25 FEET TO THE NORTH LINE OF LOT 42 OF SAID SUBDIVISION; THENCE N.88°43'17"E. ALONG SAID NORTH LINE FOR 1269.09 FEET TO THE NORTHWEST CORNER OF SAID LOT 23; THENCE N.89°42'00"E. ALONG THE NORTH LINE OF SAID LOT 23 FOR 1296.02 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 58.28 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE WINKLER ROAD EXTENSION EASTERLY RIGHT-OF-WAY AS BEARING N.01°16'56"W.

OR BK 03235 PG 1816