

AMENDED AND RESTATED

DECLARATION OF COVENANTS AND RESTRICTIONS FOR

IBIS POINT

The purpose of this Amended and Restated Declaration of Covenants and Restrictions for Ibis Point (hereinafter "Declaration") is to continue the purposes of the Declaration of Covenants and Restrictions for Ibis Point as originally recorded in the Public Records of Martin County, Florida at Official Records Book 630, Page 2527, et. seq. and as amended at Official Records Book 1892, Page 1176 et. seq. All provisions of this Amended and Restated Declaration of Covenants and Restrictions for Ibis Point and all exhibits hereto shall be construed to be covenants running with the land.

WITNESSETH:

WHEREAS, the real property located in Martin County, Florida, and legally described in Exhibit "A", attached hereto and made a part hereof (the "Property") is commonly known as "Ibis Point"; and

WHEREAS, a general plan and uniform scheme of development and improvement of the Property has been established; and

WHEREAS, in order to provide for the preservation and enhancement of property values, amenities and opportunities within the Property and to contribute to the personal and general health, safety and welfare of the property owners and residents therein, and to maintain the land and improvements therein, the Property has been subjected to the covenants, restrictions, easements, reservations, Assessments, charges, liens and other provisions hereinafter set forth.

NOW THEREFORE, the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, reservations, Assessments, charges, liens and other provisions hereinafter set forth in this Amended and Restated Declaration of Covenants and Restrictions.

ARTICLE 1  
DEFINITIONS

The following terms, as used in this Declaration, shall have the following meanings:

1.1 "Architectural Review Board" or "ARB" shall mean that committee appointed by the Board, created for the purpose of establishing and enforcing criteria for the construction and modification of improvements within the Property.

1.2 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association as they may exist from time to time.

1.3 "Assessment" shall mean and refer to those charges made by the Association from time to time, against each Parcel within the Property, for the purposes, and subject to the terms, set forth herein.

1.4 "Association" shall mean and refer to IBIS POINT HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, and its successors and assigns.

1.5 "Association Property" shall mean and refer to all real and personal property, other than the Common Property, which may be acquired by the Association for the benefit and private, common use and enjoyment of all Owners.

1.6 "Board" or "Board of Directors" shall mean and refer to the board of directors of the Association.

1.7 "By-Laws" shall mean and refer to the By-Laws of the Association as they may exist from time to time.

1.8 "Common Expenses" shall mean and refer to all expenses incurred by the Association in connection with its ownership, maintenance and other obligations set forth herein.

1.9 "Common Property" shall mean and refer to all portions of the Property which are intended for the common use and enjoyment of the Owners, and which are identified and dedicated to the Association on the recorded subdivision plats of the Property, or conveyed to the Association by deed.

1.10 "Common Surplus" shall mean and refer to the excess of all receipts of the Association, including but not limited to, Assessments, rents, profits and revenues in excess of the amount of Common Expenses.

1.11 "County" shall mean and refer to Martin County, Florida.

1.12 "Declaration" shall mean and refer to this instrument, and all exhibits hereto, as the same may be amended from time to time.

1.13 "Developer" shall mean and refer to Southern Land Group, Inc., a Florida corporation, its parents, subsidiaries and affiliates, and their successors and assigns.

1.14 "Dwelling" shall mean and refer to any single family dwelling constructed, or to be constructed, on a Lot.

1.15 "Golf Club Facilities" shall mean and refer to those properties and the improvements thereon which are owned by Martin Downs Country Club, Inc., a Florida corporation, including but not limited to that eighteen (18) hole championship golf course which is known as the Osprey Course, that eighteen (18) hole golf course known as the Crane Creek Course, and such ancillary improvements located thereon, and such other properties and improvements as may now or hereinafter be constructed, acquired or designated as "Golf Club Facilities" by the owner thereof.

1.16 "Golf Club Owners" shall mean and refer to Martin Downs Country Club, Inc., a Florida corporation, its successors and assigns, and other such entities or persons that may now or hereinafter own or acquire Golf Club Facilities within Martin Downs.

1.17 "Golf Clubs" shall mean and refer to all present and future organizations consisting of members who have use and enjoyment rights in the Golf Club Facilities.

1.18 "Improvements" shall mean and refer to all structures of any kind, including, without limitation, any building, fence, wall, sign, paving, grating, parking and building addition, alteration, screen enclosure, sewer, drain, disposal system, decorative building, landscaping, or landscape device or object.

1.19 "Institutional Mortgagee" shall mean and refer to any bank, bank holding company, trust company or subsidiary thereof, savings and loan association, Federal National Mortgage Association, insurance company, union pension fund, mortgage company, or an agency of the United States Government, which holds a first mortgage of public record on any Parcel.

1.20 "Lot" shall mean and refer to any tract of land located within the Property which is intended for use as a site for a Dwelling, and which is designated as a "Lot" on any subdivision plat of the Property.

1.21 "Martin Downs" shall mean and refer to the planned unit development which is located in Martin County, Florida and known as Martin Downs, as same is legally described in the P.U.D. Agreement.

1.22 "Martin County Utilities" shall mean and refer to that department of Martin County providing Utility Services to residents of the Property.

1.23 "Master Association" shall mean and refer to Martin Downs Property Owners Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

1.24 "Master Association Assessment" shall mean and refer to those charges made by the Master Association from time to time, against each Parcel within the Property, for the purposes, and subject to the terms, set forth herein.

1.25 "Member" shall mean and refer to a member of the Association.

1.26 "Owner" or "Parcel Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel, excluding, however, any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.27 "Parcel" shall mean and refer to a Lot and/or to a Lot and the Dwelling located thereon.

1.28 "Property" shall mean and refer to that real property legally described in Exhibit "A", attached hereto and made a part hereof.

1.29 "P.U.D. Agreement" shall mean and refer to the Planned Unit Development Zoning Agreement between the County, Developer, Southern Realty Group, Inc., a Florida corporation, and South Florida Land, Inc., a Florida corporation, dated August 8, 1980, and recorded in Official Record Book 502, Page 1646, in the public records of Martin County, Florida, as amended, or as may hereafter be amended.

1.30 "Street" shall mean and refer to any street, highway or other thoroughfare dedicated to the Association, whether the same is designated as street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk, or other similar designation.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Existing Property. The property subject to this Declaration upon the recordation hereof in the County Public Records, is the Property.

## **ARTICLE 3**

### **ASSOCIATION**

3.1 Formation. At or about the time of the recording of the original Declaration, Developer caused the Association to be formed, by the filing of the Articles of Incorporation therefore in the office of the Secretary of State of Florida. The Association is formed to operate, maintain and ultimately own the Common Property; to enforce the covenants, conditions, restrictions, and other provisions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Articles of Incorporation and the By-Laws of the Association. Subject to the additional limitations provided herein and in the Articles of Incorporation and the By-Laws of the Association, the Association shall have all of the powers and be subject to all the limitations of a not-for-profit corporation as contained in Florida Statutes, Chapter 720 ("Homeowner's Associations") and Chapter 617 (the "Florida Not for Profit Corporation Act"), as the same may be amended from time to time.

3.2 Membership. A person or entity shall automatically become a Member of the Association upon acquisition of fee simple title to any Parcel, by filing a deed therefore in the public records of the County. Membership shall continue until such time



as the Member transfers or conveys his interest of record or the interest is transferred and conveyed by operation of law, at which time membership, with respect to the Parcel conveyed, shall automatically be conferred upon the transferee. Membership shall be appurtenant to, and may not be separated from, ownership of Parcel(s) subject to this Declaration. No person or entity holding an interest of any type or nature whatsoever in a Parcel only as security for the performance of an obligation shall be a Member.

3.3 Voting. The Association shall have one (1) class of voting membership. Each Member shall be entitled to one (1) vote for each Parcel owned by such Member as to matters on which the membership shall be entitled to vote, which vote may be exercised or cast by the Member in such manner as may be provided in the By-Laws of the Association. Any Member who owns more than one (1) Parcel, shall be entitled to exercise or cast one (1) vote for each Parcel. When more than one (1) person owns a Parcel, all such persons shall be Members of the Association; provided, however, that the vote of such Owners shall be exercised as provided hereinbelow, and that in no event shall more than one (1) vote be cast with respect to each Parcel. If more than one (1) person, a corporation, or other entity owns a Parcel, they shall file a certificate with the Secretary of the Association naming the person authorized to cast votes for said Parcel. If the certificate is not on file, the Owner(s) shall not be qualified to vote and the vote of such Owner(s) shall not be considered nor shall the presence of such Owner(s) at a meeting be considered in determining whether the quorum requirement has been met. If a Parcel shall be owned by husband and wife as tenants by the entirety, no certificate need be filed with the Secretary naming the person authorized to cast votes for said Parcel, and either spouse, but not both, may vote in person or by proxy and be considered in determining whether the quorum requirement has been met at any meeting of the members, unless prior to such meeting, either spouse has notified the Secretary in writing that there is a disagreement as to who shall represent the Parcel at the meeting, in which case the certificate requirements set forth above shall apply.

3.4 Administration of the Association. The affairs of the Association shall be administered by the Board of Directors in accordance with this Declaration, the Articles of Incorporation and the By-Laws of the Association. The Articles of Incorporation and By-Laws may be amended in the manner set forth therein; provided, however, that no such amendment shall conflict with the terms of this Declaration and provided further that no amendment, alteration or rescission may be made which affects the rights or privileges of any Institutional Mortgagee, without the express prior written consent of the Institutional Mortgagee so affected, and provided further that no amendment, alteration or rescission of the Articles of Incorporation or the By-Laws shall be made without the Master Association's prior written approval. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

3.5 Suspension of Membership Rights. No Member shall have any vested right, interest or privilege in or to the assets, functions, affairs or franchises of the Association, or any right, interest or privilege which may be transferable or which shall continue after his membership ceases, or while he is not in good standing. A Member shall be considered "not in good standing" during any period of time in which he is suspended from the use of common area facilities due to a violation of any provision of

this Declaration or any Rules or Regulations promulgated by the Association or during any period of time in which he is suspended from voting due to a delinquency in the payment of any assessment. The Association may impose any such suspensions in accordance with Florida Statutes §720.305 (2004), as amended from time to time.

#### **ARTICLE 4**

#### **ASSOCIATION PROPERTY AND COMMON PROPERTY**

4.1 Title to Common Property. The Association shall be responsible for the management, maintenance and operation of the Association Property and Common Property, and for the payment of all property taxes and other assessments which are liens against the Association Property and the Common Property, from and after the date of recordation of this Declaration. Simultaneously, with its relinquishment of control of the Association, Developer conveyed all of its right, title and interest in the Common Property to the Association. Anything herein contained to the contrary notwithstanding, certain portions of the Common Property may be reserved as limited common property for the exclusive benefit and use of specific Owners.

4.2 Acquisition and Conveyance of Property. The Association shall have the power and authority to acquire and convey such interests in real and personal property as it may deem beneficial to its Members. Such interests may include fee simple or other absolute ownership interests, leaseholds, or such other possessory use interests as the Association may determine to be beneficial to its Members. Any property acquired pursuant to this section shall be Association Property. The above provisions notwithstanding, the Association shall not dispose of any Common Property by sale or otherwise (except to an organization conceived and organized to own and maintain the Common Property) without first receiving the approval of the Board of County Commissioners of Martin County, Florida. The Board, as a condition precedent to disposal of the Common Property, may require dedication of Common Property to the public, as deemed necessary.

4.3 Maintenance of Property. The Association shall, either by virtue of the appointment of a real estate management agent, or through its own personnel, be responsible for the maintenance and repair of the Association Property and the Common Property. Additionally, the Association shall be responsible for the maintenance and repair of the following portions of the Parcels: the painting of the exterior of the Dwellings, the cleaning of the roofs of the Dwellings, the lawns and landscaping of all Parcels and the sprinkler system for the Property. The Association through its agents and employees or through a management entity contracted by the Association, shall ensure that all Parcels are mowed and edged and kept free of debris and vegetation (including weeds, underbrush and/or unsightly growth).

4.4 Rules and Regulations Governing Use of Association Property and Common Property. The Association, through its Board of Directors, shall regulate the use of the Parcels, the Association Property and Common Property by Members and Owners, and may from time to time promulgate such rules and regulations consistent with this Declaration, governing the use thereof as it may deem to be in the best interest of its Members. A copy of all rules and regulations established hereunder and any

amendments thereto shall be made available to all Members at the office of the Association. Such rules and regulations and all provisions, restrictions and covenants, including, without limitation, all architectural and use restrictions contained in this Declaration, may be enforced by the levying of fines and/or the commencement of legal or equitable action of the Association.

4.5 Traffic Regulations. The Master Association, through its Board of Directors, shall have the right to post motor vehicle speed limits throughout the Property, and to promulgate traffic regulations (the speed limits and traffic regulations are collectively referred to herein as the "Traffic Regulations") for use of the Streets. A copy of all Traffic Regulations established hereunder and any amendments thereto shall be made available to all members at the office of the Master Association. The Master Association or the Association, through their respective Board of Directors, shall have the right to establish enforcement mechanisms for violations of the Traffic Regulations, including without limitation, the assessment of fines which shall be collected as an individual assessment from Owners, the removal of vehicles from the Property, and the suspension of an Owner's rights and easements of enjoyment, as provided hereinbelow. Those who violate the Traffic Regulations shall be entitled to notice and a hearing before a committee of the Master Association or the Association, prior to the imposition of any fine or the suspension of the right to use the common area facilities pursuant to Florida Statute §720.305 (2004), as amended from time to time.

4.6 Owners Easements of Enjoyment. Subject to the provisions hereinbelow, each Owner shall have a right and easement of enjoyment in and to the Common Property, which easement shall be appurtenant to, and shall pass with, the title to each Parcel.

4.7 Extent of Owner's Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

4.7.1 The right of the Association to borrow money for the purpose of improving the Common Property and, in connection therewith, to mortgage the Common Property.

4.7.2 The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosures.

4.7.3 The right of the Association to suspend the enjoyment rights and easements of any Owner for any period during which an assessment remains unpaid by that Owner.

4.7.4 The right of the Association to suspend the enjoyment rights and easements of any Owner for any period during which such Owner is in violation of this Declaration, the Declaration of Covenants and Restrictions for Martin Downs, any of the rules and regulations promulgated by the Association or the Master Association, or any of the Traffic Regulations.

4.7.5 The right of the Association to properly maintain the Common Property.

4.7.6 The right of the Association, its agents and employees, and any management entity contracted by the Association to have access on the Parcels for purposes of maintenance as provided herein.

4.7.7 The rules and regulations governing the use and enjoyment of the Common Property, as promulgated by the Association or the Master Association.

4.7.8 The Traffic Regulations governing the use and enjoyment of the streets, as promulgated by the Master Association.

4.7.9 The right of the Association to dedicate or transfer all, or any part, of the Common Property to any governmental or quasi-governmental agency, authority, utility, water management or water control district.

4.7.10 Restrictions contained on any plat, or filed separately, with respect to all or any portion of the Property.

4.7.11 All of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and all exhibits thereto, and all rules and regulations adopted by the Association, as same may be amended from time to time.

4.7.12 All of the provisions of the Declaration of Covenants and Restrictions for Martin Downs, and the Articles of Incorporation and By-laws for the Master Association and all exhibits thereto, and all rules and regulations adopted by the Master Association, as same may be amended from time to time.

4.8 Continual Maintenance. In the event of a permanent dissolution of the Association, the Members shall immediately thereupon hold title to the Common Property as tenants in common and shall collectively provide for the continued maintenance and upkeep thereof. In no event shall the County be obligated to accept any dedication offered to it by the Association or the Members pursuant to this section, but the County may accept such a dedication and in the event the County does so, the acceptance must be made by formal resolution of the then empowered Board of County Commissioners. The Association shall not be dissolved without first receiving approval from the Board of County Commissioners of Martin County, Florida. The Board, as a condition precedent to the dissolution, may require dedication of Common Property or utilities to the public, as deemed necessary.

4.9 Failure to Maintain Common Property. If the Association fails at any time to maintain the Common Property in reasonable order and condition in accordance with the approved final development plan, then the Board of County Commissioners of Martin County, Florida, may serve written notice by certified mail, return receipt requested, upon the Association and upon each Owner, which notice shall set forth the manner in which the Association has failed to maintain the Common Property in reasonable order and condition and shall demand that such failure be remedied within



thirty (30) days of the sending of such notice, or in the alternative that the Association appear before the Board at a specified time (at least ten [10] days but not more than thirty [30] days after the sending of such notice) either to contest the alleged failure to maintain the Common Property or to show cause why it cannot remedy such failure within the thirty (30) day period. If such failure has not been remedied within the thirty (30) day period or such longer period as the Board may have allowed, then the Board, in order to preserve the taxable values of the real property within the Property and to prevent the Common Property from becoming a public nuisance, shall hold a public hearing to consider the advisability of the County entering upon such Common Property and maintaining it for a period of one (1) year. Notice of such hearing shall be sent by certified mail, return receipt requested, to the Association and to each Owner within the Property and shall be published one (1) time in a newspaper of general circulation published in the County. Such notice shall be sent and published at least fifteen (15) days prior to the hearing. At such hearing the Board may determine that it is or is not advisable for the County to enter upon such Common Property, take possession of same and maintain it for a period of one (1) year. The County shall have a right of entry, possession and maintenance, provided that the above procedures have been followed, and such entry, possession and maintenance shall not constitute a trespass. Such entry, possession and maintenance shall not give the public any right to use the Common Property. The Board may, upon public hearing with notice given and published in the same manner as above, return possession and maintenance of the Common Property to the Association, its successors or assigns, abandon such possession and maintenance, or continue such possession and maintenance for an additional one (1) year period. The costs of such maintenance by the County shall be assessed ratably against all Parcels within the Property and shall become a charge or lien on the Parcels, and such charge shall be paid by the Owners of said Parcels within thirty (30) days after receipt of a statement therefore.

4.10 Limited Common Element Patios. As provided in Section 4.1 above, each Dwelling shall have reserved as Limited Common Property for the exclusive benefit and use of the Owner of the Dwelling, a patio no larger than ten feet (10') wide by twenty four (24') long adjacent to the rear of the Dwelling. The size and specific location of the Limited Common Element patio must be approved in advance by the A.R.B. The Owner of each Dwelling shall be responsible for the maintenance of the Limited Common Element patio.

## **ARTICLE 5** **EASEMENTS**

5.1 Easement Grants. The following easements are hereby granted and/or reserved over, across and through the Property:

5.1.1 Easements for the installation and maintenance of utilities are granted as shown on the recorded subdivision plats of the Property. Within these easement areas, no structure, planting or other material, (other than sod) which may interfere with the installation and maintenance of underground utility facilities, shall be placed or permitted to remain, unless such structure, planting or other material was installed by the Developer. The Association (or such other entity as is indicated on the



plats) is hereby granted access to all easements within which such underground facilities are located for the purpose of operation, maintenance and replacement thereof.

5.1.2 Easements for the installation and maintenance of drainage facilities are granted to the Association, and/or other entities as shown on the recorded subdivision plats of the Property. Within these easement areas, no structure, planting or other material, (other than sod) which may interfere with such installation and maintenance, or which may obstruct or retard the flow of water through drainage channels shall be placed or permitted to remain unless such structure, planting or other material was installed by Developer. The Association (or such other entity as is indicated on the plats) shall have access to all such drainage easements for the purpose of operation and maintenance thereof.

5.1.3 The Common Property is hereby declared to be subject to a perpetual nonexclusive easement in favor of the Association, the Master Association, employees and agents of the Association and the Master Association, and of any management entity contracted by the Association or the Master Association, in order that such employees, agents or management entity may carry out their duties.

5.1.4 A non-exclusive easement is hereby granted for ingress and egress for pedestrian and vehicular traffic over, through and across the Streets, walks, parking areas, other rights of way, and such other portions of the Common Property as may from time to time be intended and designated for such uses and purposes, for the use and benefit of the owners, their families, guests, employees and invitees, in obtaining reasonable access from the Parcels to the abutting public way.

5.1.5 An easement is hereby granted to each Institutional Mortgagee for the purpose of access to the property subject to its mortgage.

5.1.6 An easement is hereby granted to the Association, its agents and employees and any management entity contracted by the Association for the purposes of maintaining the portions of the Parcels as provided herein.

5.1.7 An easement is hereby granted to members of the Golf Clubs and their guests, and to the Golf Club Owners and their agents and employees, to permit the doing of every act necessary and incident to the playing of golf on the golf courses adjacent to the Parcels. These acts shall include, but not be limited to, the recovery of golf balls from Parcels, the flight of golf balls over and upon Parcels, the use of necessary and usual equipment upon the golf courses, the creation of the usual and common noise level associated with the playing of the game of golf, together with all such common and usual activities associated with the game of golf and with all the normal and usual activities associated with the operation and maintenance of a golf club.

5.1.8 A non-exclusive easement is hereby granted to Martin County Utilities for ingress and egress over, across and through all Streets for access to and from Martin County Utilities and the utilities located within the Property, by the owners,

employees, agents and licensees of Martin County Utilities. This easement is subject to all rules and regulations promulgated by the Association and the Master Association from time to time.

5.1.9 A reciprocal maintenance easement is hereby granted on each Parcel in order to enable Owners to have access on adjacent Parcels, for the purpose of maintaining and repairing the Owner's dwelling. Such easement shall be located on the boundary line of the lot and shall be five (5) feet in width. There shall also be a twenty-four (24) inch easement on each Parcel for roof overhang, so that no technical encroachments will be created.

5.1.10 An easement for encroachments is hereby granted in the event that a Dwelling or any part of the Dwelling or any other Improvement now or hereafter constructed encroaches upon another Parcel or upon the Common Property, due to minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement or otherwise. The encroaching Improvement shall remain undisturbed as long as the encroachment exists. This easement for encroachment shall also include an easement for the maintenance and use of the encroaching Improvements.

5.2 Additional Easements. The Association shall have the right to grant such additional easements (including, without limitation, easements to private cable television service companies) or to relocate existing easements throughout the Property as the Association may deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, provided that such additional easements or relocation of existing easements do not prevent or unreasonably interfere with the Owners' use or enjoyment of the Property.

5.3 Restriction on Owner Easements. No Owner shall grant any easement upon any portion of the Property to any person or entity, without the prior written consent of the A.R.B.

## **ARTICLE 6** **ASSESSMENTS AND LIENS**

6.1 Authority of Association. The Association, through its Board of Directors, shall have the power and authority to make and collect Assessments as hereinafter set forth.

6.2 General Assessments. General Assessments shall be determined annually for the purpose of maintenance and management of the Association, the Association Property and the Common Property and for the purpose of promoting the safety and welfare of the Owners. Without limiting the foregoing, general Assessments shall be used for payment of: operation, maintenance and management of the Association, the Association Property and the Common Property; property taxes and assessments against, and insurance coverage for, the Association Property and Common Property; legal and accounting fees; maintenance of the Streets; management fees; security costs; normal repairs and replacements; charges for utilities used upon the Association Property and Common Property; expenses and liabilities incurred by the

Association in enforcement of its rights and duties against the Members or others; maintenance of vacant property; maintenance of the Parcels as provided herein; the creation of reasonable reserves; charges for cable or other television services; and all other expenses deemed by the Board of Directors of the Association to be necessary and proper for management, maintenance, repair, operation and enforcement.

6.3 Basis and Collection of General Assessments. The Association shall annually estimate the Common Expenses it expects to incur and the period of time involved therein and shall assess its Members sufficient monies to meet this estimate. All Parcels shall be assessed at a uniform rate, to be determined by the Association, so that all Parcels subject to a general Assessment shall be assessed equally. Should the Association at any time determine that the Assessments made are insufficient to pay the Common Expenses, the Board of Directors shall have authority to levy and collect additional general Assessments to meet such needs. General Assessments shall be collectible in advance monthly, quarterly, semi-annually or annually, as the Board of Directors shall determine.

6.4 Special Assessments. The Association shall have the power and authority to levy and collect a special Assessment from each Member for payment of the following: the acquisition of property by the Association; the cost of construction of capital improvements to the Common Property; the cost of construction, reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto; and the expense of indemnification of each director and officer of the Association. All special Assessments shall be at a uniform amount for each Parcel assessed. A special Assessment shall be collectible in such manner as the Board of Directors shall determine. If a special Assessment shall exceed one thousand dollars (\$1,000.00) per Parcel, it shall require the approval of the membership of the Association, to be obtained at a duly convened regular or special meeting at which a quorum exists and which is called at least in part to secure this approval. Approval shall be by an affirmative vote of at least fifty-one percent (51%) of the votes present in person or by proxy.

6.5 Emergency Special Assessments. The Association may levy an emergency Special Assessment when, in the sole determination of the Board of Directors, there is potential danger of damage to persons or property. Emergency special Assessments may be utilized to pay for preventative, protective or remedial construction, reconstruction, Improvements, repairs or replacements. Events justifying emergency special Assessments include, but are not limited to, hurricane, floods, and fires. Emergency special Assessments shall be collectible in such manner as the Board of Directors shall determine.

6.6 Individual Assessments. The Association shall have the power and authority to levy and collect an individual Assessment against a particular Parcel for the cost of maintenance, repairs or replacements within or without the Parcel, which the Owner thereof has failed or refused to perform, and which failure or refusal has, in the opinion of the Association, endangered or impaired the use or value of other portions of the Property or for this Declaration. The Association shall have a right of entry onto each Parcel to perform necessary maintenance, repairs and replacements, including the

right to abate or eliminate any nuisance. The individual Assessment may include an administrative fee charged by the Association in an amount to be determined by the Board of Directors in its discretion from time to time. All individual Assessments shall be collectible in such manner as the Association shall determine.

6.7 Effect of Non-Payment of Assessments. All notices of Assessments from the Association to the Members shall designate when the Assessment is due and payable. If an assessment is not paid on the date when due, it shall then become delinquent and shall bear interest at the maximum rate allowed by the Florida usury laws, from the date when due until paid. Additionally, the Board of Directors may impose a reasonable late fee for any assessment not paid when due. The Assessment, together with interest thereon, any late fees and the cost of collection thereof, including attorneys' fees, shall be a continuing lien against the Parcel against which the assessment is made, and shall also be the continuing personal obligation of the Owner thereof. The Association shall also record a claim of lien in the Public Records of the County, setting forth the amount of the unpaid Assessment, the rate of interest due thereon, any late fees and the costs of collection thereof. If any Assessment, or any installment thereof, shall not be paid within thirty (30) days following the due date, the Association may declare the entire Assessment immediately due and payable. The Association may at any time thereafter bring an action to foreclose the lien against the Parcel assessed in the manner in which mortgages on real property are foreclosed, and/or a suit on the personal obligation of the Owner. There shall be added to the amount of the Assessment the cost of such action, including attorneys' fees, and in the event a judgment is obtained, such judgment shall include interest and late fees on the Assessment, as above provided, and attorneys' fees incurred by the Association, together with the costs of the action. Regardless of the date of recordation of any claim of lien, the effective date thereof shall relate back, and it shall take priority, as of the date of recordation of this Declaration. Any successor in title to a Parcel shall be held to have constructive notice of the records of the Association to determine the existence of any delinquency in the payment of Assessments. In addition to the above remedies, the Association may suspend Membership rights as provided in Section 3.5 above.

6.8 Certificate of Assessments. The Association shall prepare a roster of the Parcels and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by all Members. At the request of an Owner, the Board of Directors shall prepare a Certificate of Assessments signed by an officer of the Association, setting forth whether the Owner's Assessments have been paid and/or the amount which is due as of the date of the Certificate. As to parties without knowledge of error who rely thereon, such certificate shall be presumptive evidence of payment or partial payment of any Assessment therein stated as having been paid or partially paid.

6.9 Subordination of Lien to Mortgages. Regardless of the effective date of the lien of any Assessments made by the Association, such Assessment lien shall be subordinate and inferior to the lien of the mortgage of any Institutional Mortgagee. Such subordination shall, however, apply only to the Assessments which have become due and payable prior to a final sale or transfer of the mortgaged Parcel pursuant to a decree of foreclosure, or in any other proceeding or conveyance in lieu of foreclosure of



the mortgage. No sale or other transfer shall relieve any Parcel from liability for any Assessment becoming due thereafter, nor from the lien of any such subsequent Assessment. Any delinquent Assessments which are extinguished pursuant to a sale or transfer in connection with the foreclosure of a mortgage, or any proceeding or deed in lieu of foreclosure, shall be reallocated and assessed to all Owners as a Common Expense. The written opinion of the Association that the Assessment lien is subordinate to a mortgage lien shall be dispositive of any question of subordination.

6.10 Master Association Assessments. The Association shall have the power and authority to collect from Owners all Assessments, whether they be general, special, emergency special or individual Assessments, which are levied against Parcels by the Master Association (the "Master Association Assessment"). The Master Association Assessment shall be collected by the Board of Directors of the Association, pursuant to the procedures set forth in this Article 6. If the Master Association Assessment is not paid on the date when due, the provisions of the Declaration of Covenants and Restrictions for Martin Downs, as to the effect of non-payment of the Master Association Assessments, including the Master Association's lien rights, shall fully apply. The Master Association Assessment shall be in addition to, and not in lieu of, the Assessments levied by the Association.

6.11 Exempt Property. The following property shall be permanently exempt from the payment of all Assessments and Master Association Assessments:

6.11.1 All property dedicated to, or owned by, the Association or the Master Association.

6.11.2 Any portion of the Property dedicated to the County.

6.11.3 Any portion of the Property exempted from ad valorem taxation by the laws of the State of Florida.

## **ARTICLE 7** **MAINTENANCE OF PROPERTY**

7.1 Association Responsibilities. The Association shall be responsible for maintenance of the Association Property and the Common Property. Additionally, the Association shall be responsible for the maintenance and repairs of the following portions of the Parcels: the landscaping and lawns of all Parcels, the sprinkler system for the Property, the painting of the exterior of all Dwellings and the cleaning of the roofs of all Dwellings.

7.2 Parcel Owner Responsibilities. The Owner of each Parcel shall be responsible for maintenance of all portions of the Parcel except for the portions to be maintained by the Association as provided in Section 7.1 above. The expense of any maintenance, repair or construction of any portion of the Association Property or the Common Property necessitated by the negligent or willful acts of an Owner, or his invitees, licensees, family or guests, shall be borne solely by such Owner, and his Parcel shall be subject to an individual Assessment for such expense. All repairs and



replacements made by an Owner shall be subject to the approval of the Architectural Review Board, as set forth in Article 9 of this Declaration.

## ARTICLE 8 USE RESTRICTIONS

### 8.1 Restrictions on Use of Parcels and Common Property.

8.1.1 Residential Use. All Parcels shall be used only as single family, private, residential dwellings and for no other purpose. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof.

8.1.2 Pets. Parcel Owners may keep as pets, dogs, cats, tropical fish and birds; provided that no more than two (2) pets per Parcel shall be permitted with the exception of tropical fish, and that no such pets are kept, bred or maintained for any commercial purpose. All pets shall be kept on a leash under the control of a responsible person at all times when the pet is outside of a Dwelling. At no time shall a pet be allowed to enter upon any Parcel other than the Parcel on which the pet is kept. The pet owner shall be responsible at all times for cleaning up and removing all excrement after a pet relieves itself while on the Property and for appropriately disposing of said excrement using the sanitary containers on said Owner's Parcel. The Board of Directors of the Association or Master Association shall have the right to order the removal of any pet which is considered a nuisance, in the board's sole discretion. In such event, the Board of Directors shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property.

8.1.3 Boats. Except as needed for authorized maintenance and control of the lakes and waterways by the Association or the Master Association, no boat or water craft of any kind shall be kept or used upon any lake or waterway within the Property without the prior written approval of the Association and Master Association.

### 8.1.4 Vehicle Parking.

8.1.4.1 Recreational and Commercial Vehicles. Except as authorized in Section 8.1.4.2 below, no boats, recreational vehicles, trucks, commercial vehicles, trailers, motor homes, mobile homes or other motor vehicles may be placed, parked or stored upon any Parcel except within a building which is totally removed from public view. No maintenance or repair shall be performed upon any boat or motor vehicle upon any Parcel except within a building which it totally removed from public view. Notwithstanding the foregoing, service and delivery vehicles may park in the driveway of a Parcel or on the Streets during regular business hours, as needed for providing services or deliveries to the Parcel. In the event of a dispute concerning the type of vehicle, the decision of the Board of Directors, in its sole discretion shall control.

8.1.4.2 Authorized Vehicles. Four wheel passenger automobiles, sport utility vehicles and vans with windows, passenger seating and no commercial lettering or graphics, may be parked, placed or stored only in a designated

parking area or in the garage or driveway of the Owner's Parcel. Guests and invitees of Owners may park an authorized vehicle in a designated parking area or in the garage or driveway of the Owner's Parcel, or on the Street; provided however, that no vehicle of any kind shall be parked overnight on any Street. For purposes of this provision, "overnight" shall be defined as between the hours of midnight and 6:00 a.m. No vehicle of any kind shall be placed, parked, or stored on the lawn of any Parcel, or on any portion of the Common Property, unless such area is specifically designated as a parking area.

8.1.4.3 Enforcement of Violations. The Association or the Master Association shall have the right to authorize the towing of any vehicle in violation of Sections 8.1.4.1 or 8.1.4.2 above, and to collect the cost thereof from the Owner as an individual Assessment. The Association, the Master Association, their officers, directors and employees, shall be held harmless by the Owner of such vehicle with regard to such towing of a vehicle.

8.1.5 Temporary Structures. No structure or object of a temporary character such as, but not limited to, house trailers, tents, shacks, sheds or temporary or accessory buildings or structures, shall be erected, kept or maintained on the Property, or any part thereof.

8.1.6 Insurance. No Owner shall permit or suffer anything to be done or kept within his Parcel, or make any use of the Common Property which will increase the rate of insurance on any portion of the Property.

8.1.7 Nuisances. No use or practice which is either an annoyance to Owners or an interference with the peaceful possession and proper use of the Property by the Owners shall be allowed. No Owner shall commit or permit any nuisance or any immoral or illegal activity in or about the Property. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners, or allow any such noise or disturbance to be made on his Parcel.

8.1.8 Outside Displays. No Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Parcel, nor shall he place any furniture or equipment outside his Dwelling, without the prior written consent of the A.R.B., except that the consent of the A.R.B. shall not be required with respect to the use of holiday decorations or the display of one portable United States flag or other official flags as allowed by Florida Statute §720.304 (2004), as amended from time to time.

8.1.9 Antenna/Satellite Dishes. Antennas and satellite dishes for the reception of video programming, less than one meter in diameter, may be installed on a Parcel. Any such installation must be in the backyard of the Parcel, if an acceptable signal may be received within the backyard. All other radio, television or other electronic antenna may only be erected upon prior written approval by the A.R.B. The installation of an approved satellite dish shall not relieve the unit owner from his share of

Association expenses relative to any bulk contract for Cable, SMATV or other pay television services.

8.1.10 Subdivision of Lots. No Lot shall be re-subdivided to form a lot smaller than a platted Lot.

8.1.11 Access to Parcels. Whenever the Association or the Master Association is permitted or required by this Declaration or the Declaration of Covenants and Restrictions for Martin Downs, to enter any Parcel for the purpose of correction, repair, cleaning, clearing, mowing, or any other required or permitted activity, such entrance shall not be deemed a trespass.

8.1.12 Signs. No signs, advertisements or notices of any kind, including without limitation "For Sale" or "For Rent" signs, shall be displayed to the public view on any Parcel or on the Common Property, without the prior written approval of the A.R.B.

8.1.13 Easements. No Dwelling or other Improvement, or any tree, bush, shrub or landscaping of any kind shall be built or maintained upon any easement or right-of-way and said easements and rights-of-way shall at all times be open and accessible to the persons entitled to the use thereof. This provision shall not apply to the reciprocal maintenance easement described in section 5.1.9 of this Declaration, in that roof overhangs may be maintained within the reciprocal maintenance easement areas.

#### 8.1.14 Limited Access Easements.

8.1.14.1 Golf Courses. On Parcels abutting a golf course, Owners, their guests, licensees, invitees and employees shall not use the five (5) foot limited access easement area, as shown on the plat, for access onto the golf course(s).

8.1.14.2 Streets. On Parcels abutting a Street, vehicular access is prohibited in the five (5) foot limited access easement area abutting certain Streets, as shown on the plat.

8.1.15 Maintenance of Parcels. All Parcels shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. In the event an Owner fails to maintain his Parcel as aforesaid for a period of at least thirty (30) days, the Association shall have the right, exercisable in its sole discretion, to remove any rubbish, refuse or unsightly debris and/or growths from any Parcel deemed by the Association to be a health menace, fire hazard or a detraction from the aesthetic appearance of the Property; provided, however, that at least fifteen (15) days prior notice shall be given by the Association to the Owner of such parcel before such work is done by the Association. In the event the Association, after such notice, causes the subject work to be done, then, and in that event, the costs of such work, together with interest thereon at the maximum rate permitted by the civil usury laws of the State of Florida, shall be charged to the Owner and shall become a lien on the subject Parcel, which lien shall be effective, have priority and be enforced pursuant to the procedures set forth in Article 6 of this Declaration.

8.1.16 Refuse Containers and Storage Tanks. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary refuse containers, which shall be placed in a walled-in area, so they are not visible from the Street or from adjoining Parcels. All oil tanks or bottle gas tanks must be kept underground or placed in a walled-in area so they shall not be visible from the Street or from adjoining Parcels. Trash, refuse or waste materials shall not be burned on any Parcel.

8.1.17 Streets. No title to any land in any Street is intended to be conveyed or shall be conveyed to the grantee of a Parcel under a deed, or to the purchaser of a Parcel under any contract, unless expressly so provided in such deed or contract of purchase from Developer.

8.1.18 Laundry. No portion of a Parcel shall be used for the drying or hanging of laundry, unless such laundry is adequately screened from public view, so that the laundry is not visible from the Street or from adjoining Parcels.

8.1.19 Air Conditioners. All window or wall air conditioning units are prohibited. All air conditioner compressors shall be screened from view from the Street and from adjacent Parcels and shall be insulated by a fence, wall or shrubbery so as to minimize the transmittal of noise.

8.1.20 Underground Utilities. All secondary electrical conduits and hook-ups shall be kept underground. No above ground wires of any kind shall be permitted.

8.1.21 Energy Saving Devices. All Dwellings shall be equipped with the latest state of the art energy saving devices, including without limitation, energy saving water closets, refrigerators, and motors. Time clocks shall be installed on all underground sprinkler systems, water heaters and outside lights.

8.1.22 Mailboxes and Newspaper Boxes. No mailboxes or newspaper boxes may be installed or maintained on any Parcel without the prior written approval of the A.R.B.

8.1.23 Emergencies. Dwellings may be boarded up only when there is an imminent threat of a storm. In no event shall any Dwelling be boarded up for any period after the imminent threat of a storm has passed. No hurricane or storm shutters shall be installed or maintained unless they are first approved, in writing, by the A.R.B. Hurricane or storm shutters, approved by the A.R.B. and painted to match or compliment the house or trim color, may be installed while residents are temporarily not in residence.

8.1.24 Storage Areas. All exterior storage areas, service areas, and utility meters shall be screened from view from the Street and from adjacent Parcels by an enclosure, fence, wall, or landscaping.

8.1.25 Basements. No Dwelling shall be permitted to have a basement.



8.1.26 Swimming Pools. No swimming pool shall be constructed or maintained on any Parcel without the prior written approval of the A.R.B.

8.1.27 Elevation. No change in the elevation of any Lot shall be made, nor shall any fill be used to extend the property beyond the Lot Line, without the prior written consent of the A.R.B. Further, no Lot abutting water shall be increased in size by filling in the water it abuts, without the prior written consent of the A.R.B.

8.1.28 Height of Dwellings. No Dwelling which is more than one (1) story in height shall be erected, constructed or maintained on any Lot.

8.1.29 Garages. No automobile garage shall be permanently enclosed or converted without the prior written approval of the A.R.B. All garages must be attached to the Dwelling; garages shall not have entrances facing a Street, unless the garage is set back twenty-five (25) feet or more from the front Lot line and is approved by the A.R.B. The doors of all garages shall be kept in a useful operating condition and shall be closed at all times, except as needed for ingress and egress or when garage area is in active use. No carports shall be constructed or maintained on any Lot.

8.1.30 Additions, Improvements and Painting. The exterior surfaces of all Dwellings, including all colors, materials and finishes on all exterior areas of Dwellings shall not be altered or changed in any manner whatsoever by an Owner without the prior written consent of the A.R.B. All external areas of a Dwelling which are stained or painted must be restained or repainted at sufficient intervals, so as to preserve the aesthetic beauty of the Property. No Owner shall have the right to construct any Improvements of any type or nature whatsoever on his Parcel, including without limitation, any fences, hedges, patios or landscaping, without the prior written consent of the A.R.B.

8.1.31 Docks. No docks, bulkheads, moorings, pilings, boathouses or boat shelters of any kind may be erected on any part of the Property, including without limitation any lakes and waterways within the Property, without the written consent of the A.R.B.

8.1.32 Solar Heating. All solar heating apparatus must be approved by the A.R.B. and conform to the standards set forth in the Florida Model Energy Efficiency Code. No solar panels, vents or any other roof-mounted, mechanical equipment shall project more than 1.5 feet above the surface of the roof of a Dwelling; further, all such equipment shall be painted consistent with the color scheme of the roof of the Dwelling.

8.1.33 Setback Restrictions. No Dwelling shall be constructed within fifteen feet (15') of the front Lot line, or within ten feet (10') of the rear Lot line, or within ten feet (10') of any non-zero Lot line side of a Lot. Any side of a Lot which is designated as a "zero Lot line" side, shall have no setback requirement.

8.1.34 Lot Coverage. No Dwelling, (excluding patios and decks) shall occupy more than fifty percent (50%) of the gross area of a Lot.



8.1.35 Windows, Doors. No windows, doors or other openings of any type whatsoever shall be constructed or maintained on any side of a Dwelling facing a zero Lot line side of a Lot.

8.1.36 Window Treatment. All draperies, curtains, shades or other window coverings installed in a Dwelling and which are visible from the Street or from other Dwellings shall have a white backing, unless otherwise approved, in writing, by the A.R.B.

8.1.37 Approval of Curtains, Draperies and Shades. The color of all draperies, curtains, shades or other similar coverings installed inside a screened porch or glass enclosed porch must be approved, in writing, by the A.R.B.

8.1.38 Leasing. Parcels may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Parcels or assignments of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in a Parcel. All leases shall be in writing and shall be for an initial term of no less than three (3) months. No Parcel may be leased more than one (1) time in any calendar year. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner at least fourteen (14) days prior to the date of occupancy. The Owner must make available to the lessee copies of the Declaration, Bylaws and the Rules and Regulations of the Association and the Master Association. Additionally, the Board may require a prospective lessee to appear for a personal interview and sign a form stating he has read and will abide by the Declaration, Bylaws, and the Rules and Regulations of the Association and the Master Association. The Association shall issue a certificate of occupancy to the lessee, after compliance with this provision. The Association may collect a reasonable fee in connection with the review and processing of all leases. Any guest, invitee or other non-owner residing in a Dwelling in excess of sixty (60) consecutive days, shall be deemed to be a lessee and must comply with the provisions of this Section 8.1.38.

8.2 Rules and Regulations. No person shall use the Common Property, or the Association Property, or any Parcel, in any manner contrary to, or not in accordance with, the rules and regulations which may be promulgated by the Association, or the Master Association, or the Traffic Regulations.

## **ARTICLE 9**

### **ARCHITECTURAL AND LANDSCAPE CONTROLS**

9.1 Architectural Review Board. The Board will appoint an Architectural Review Board (the "A.R.B.") for the purpose of maintaining a residential community of high quality and harmonious improvements. The A.R.B. shall have the powers, duties and responsibilities set forth in the Declaration of Covenants and Restrictions for Martin Downs as assigned to the Association by the Master Association.

9.2 Improvements. No Improvement shall be erected, constructed, removed, planted or maintained, nor shall any addition to or any change, replacement or alteration

therein be made until the same shall have been submitted to and approved by the A.R.B.

9.3 A.R.B. Procedures. All of the procedures and provisions governing the A.R.B., including without limitation, the approval process for Improvements, shall be as set forth in the Declaration of Covenants and Restrictions for Martin Downs, as same may be amended from time to time.

9.4 Design Guidelines. The Board is empowered to publish, amend and modify from time to time, design and development standards for the property. The A.R.B. shall exercise its powers, duties, and responsibilities in accordance with any such established design guidelines.

## **ARTICLE 10** **ADDITIONAL RESTRICTIONS**

In addition to all of the covenants, restrictions and provisions contained in this Declaration, the Articles of Incorporation and the By-Laws for the Association, and the rules and regulations adopted by the Association, as same may be amended from time to time, the Property shall also be subject to all of the covenants, restrictions and provisions, including without limitation all assessments, and lien rights, contained in the Declaration of Covenants and Restrictions for Martin Downs, the Articles of Incorporation and the By-Laws for the Master Association, all rules and regulations adopted by the Master Association, as same may be amended from time to time, and all provisions of the P.U.D. Agreement.

## **ARTICLE 11** **INSURANCE**

The Association is hereby authorized to purchase insurance, other than title insurance, on the Common Property and the Association Property, in such amounts and with such companies as the Board of Directors shall deem appropriate. Additionally, the Board shall obtain workers' compensation insurance, if and to the extent required by law, directors and officers liability coverage and if reasonably available, 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.

## **ARTICLE 12** **SALE OR OTHER ALIENATION OF PARCELS**

Any Owner who desires to transfer the ownership of his Parcel, or any interest therein, must comply with the notice and information procedures set forth below:

### **12.1 Notice to the Association.**

12.1.1 Sale. An Owner intending to make a bonafide sale of his Parcel, or any interest therein, shall give to the Association, notice of such intention, in writing,

together with the name and address of the intended purchaser, and such other information concerning the intended purchaser as the Association may reasonably require.

12.1.2 Gift, Devise or Inheritance; Other Transfers. An Owner who has obtained title by gift, devise or inheritance, or by any other manner not previously mentioned, shall give the Association, notice of the acquisition of title, together with such information concerning the owner as the Association may reasonably require.

12.1.3 Failure to Give Notice. If the above required notice to the Association is not given, the Association may deny the unauthorized owner or occupant of a Parcel, the use of the common property, and may take such other action at law and/or equity to divest the unauthorized owner or occupant of record title and/or possession of the Parcel.

12.2 Certificates of notice of transfer shall be given in the following manner:

12.2.1 Except as otherwise provided herein below, within ten (10) days of receipt of such notice and information, the Association shall cause a certificate of notice of transfer to be executed by any officer of the Association. Such certificate of notice of transfer shall be recorded in the public records of the county, along with the Deed, or other instrument of conveyance.

12.2.2 In the event that an Owner is delinquent in paying any Assessment or Master Association Assessment, or that an owner, his family, guest, agents, licensees or invitees are not in compliance with any provisions of this Declaration, the Declaration of Covenants and Restrictions for Martin Downs, or the Rules and Regulations adopted by the Association or the Master Association, the Association shall have the right to disapprove the proposed sale by sending a notice of disapproval to the Owner within ten (10) days after receipt of the notice and information. In the event the delinquent assessment is paid or the violation is corrected, the Association shall cause a certificate of notice of transfer to be executed by any officer of the Association, that the delinquent assessment has been paid or the violation corrected.

12.3 Transfers Void. Any sale, gift, devise or other transfer not authorized pursuant to the terms of this Declaration shall be void unless a certificate of notice of transfer of the Association is subsequently obtained and recorded in the public records of the county.

12.4 Exceptions. The foregoing provisions of the Article 12 shall not apply to an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Parcel concerned, and this shall be so, whether the title is acquired by Deed from the mortgagor, his successors or assigns, or through foreclosure; nor shall such provisions apply to a transfer or sale by an Institutional Mortgagee that so acquires the title. Neither shall such provisions require the approval of a purchaser who acquires title to a Parcel at a duly advertised public sale with open bidding provided by law such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale.

12.5 Transfer Fee. The Association is empowered to charge a reasonable transfer fee in connection with the receipt of notices and provision of certificates of notice of transfer as provided above to cover the Association's expenditures and services in regard thereto.

12.6 An Owner shall provide a copy of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and the Declaration of Covenants and Restrictions for Martin Downs, Articles of Incorporation, Bylaws and Rules and Regulations of the Master Association and any amendments to the foregoing documents to the purchaser or other party acquiring title to the Parcel. Copies of any of the foregoing documents may be obtained by any Owner from the Association at a reasonable cost to be determined by the Board of Directors.

### **ARTICLE 13** **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Every director and officer of the Association shall be indemnified by the Association against all expenses and liability, including attorneys' fees, incurred by or imposed upon him in connection with any 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, whether or not he is a director or officer at the time such expenses are incurred, except in such cases where the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided however, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director or officer seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board of Directors approves such settlement and reimbursement as being in 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 officer or director may be entitled.

### **ARTICLE 14** **GENERAL PROVISIONS**

14.1 Assignment. All of the rights, powers, obligations, easements and estates reserved by, or granted to, Developer, the Association, or the Master Association, may be assigned by Developer, the Association or the Master Association, as the case may be. After such assignment, the assignee shall have the same rights and powers, and be subject to the same obligations and duties as were the Developer, the Association or the Master Association, prior to the assignment, and Developer, the Association and/or the Master Association shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.

14.2 Amendment. This Declaration may be amended upon the recordation of an appropriate instrument in the Public Records of the County, subject to the following provision:

This Declaration may be amended upon the initiation of the Board of Directors or at least ten percent (10%) of the members of the Association,



at any time, upon approval of at least fifty-one percent (51%) of the votes of the Members. Votes may be cast at a meeting of the Members, voting in person or by proxy or Members may express their approval by written consent.

No amendment or change to this Declaration or the Exhibits hereto shall be effective to affect or impair the validity or priority of a first mortgage held by an Institutional Mortgagee encumbering a Parcel, or to effect or impair the rights granted herein to Institutional Mortgagees, without the written consent thereto by the Institutional Mortgagee owning and holding the mortgage encumbering the Parcel, which consent shall be executed with formalities of Deeds and recorded with the amendment. Any amendment which would effect any of the requirements of the PUD Agreement or the County Code of Laws and Ordinances must have the prior approval of the County Board of County Commissioners. Any duly adopted amendment to this Declaration shall run with and bind the property for the same period and to the same extent as do the covenants and restrictions set forth herein.

14.3 Duration. All of the covenants, restrictions and other provisions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date of recordation of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument executed by at least seventy-five percent (75%) of the votes of the membership then existing, and by all Institutional Mortgagees, has been recorded, agreeing to change or terminate these covenants and restrictions.

14.4 Covenants Running with the Property. The agreements, covenants, conditions, restrictions, Assessments, liens and other provisions contained herein shall constitute a servitude upon the Property and each portion thereof, shall run with the Property, shall be binding upon the Owners of any portion thereof, and shall inure to the benefit of Developer, the Association, the Master Association, and the Owners.

14.5 Enforcement. Enforcement of the covenants, restrictions, conditions, obligations, reservations, rights, powers, Assessments liens and other provisions contained herein shall be by a proceeding at law or in equity against any persons or entities violating or attempting to violate same and/or against the Property subject hereto to enforce any lien created by this Declaration. In the event that Developer, the Association and the Master Association fail to enforce the terms of this Declaration then any Member may do so. The failure or refusal of Developer, the Association, the Master Association or any Member to enforce any of the provisions of this Declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter. Additionally, the Board of Directors shall have the authority to levy reasonable fines for the violations of the provisions of this Declaration, the Articles of Incorporation, Bylaws and reasonable Rules and Regulations enacted by the Association in accordance with Florida Statute §720.305(2004) as amended from time to time.

14.6 Notice. Any notice required or permitted to be given by this Declaration shall be given or made in writing by personal delivery or by certified mail addressed:



to the Owner at: the last known address of Owner as appears on the records of the Association at the time of such delivery or mailing.

or to the Association at: c/o Jakab Management  
Post Office Box 111  
Jensen Beach, Florida 34958

Or to the Master  
Association at: Martin Downs Property Owners  
Association, Inc.  
Post Office Box 1666  
Palm City, FL 34991

Any notice given in accordance with the provisions of this subsection shall be deemed to be effective, if personally delivered, on the date of such delivery, or if mailed by registered or certified mail, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be. Each party may give notice to each of the other parties of a change of its address for the purposes of giving notice under this subsection, which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Declaration.

14.7 Plat. In addition to this Declaration, the Property shall be subject to the additional covenants, restrictions, reservations and other terms and provisions set forth in the plat of the Property, which plat is recorded in the Public Records of the County.

14.8 Gender and Number. The use of the singular herein shall include the plural, and the use of any gender shall include all genders.

14.9 Severability. Invalidity of any one of the covenants or restrictions contained herein by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

14.10 Captions. The captions used in this Declaration and exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text of this Declaration or any exhibits hereto.

14.11 Effective Date. This Declaration became effective upon its recordation in the Public Records of the County.

This Amended and Restated Declaration of Covenants and Restrictions for Ibis Point has been approved by at least fifty-one percent (51%) of all of the members, which vote was sufficient for approval.

The undersigned, Ibis Point Homeowners Association, Inc., hereby consents to the terms and conditions contained in the foregoing Declaration and hereby assumes the duties and obligations imposed upon the undersigned thereunder.

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed in its name by its President, its Secretary and its corporate seal affixed this day of 11/10/05, 2005.

WITNESSES:

IBIS POINT HOMEOWNERS  
ASSOCIATION, INC.

Ronald G. Morrow  
Printed Name #1: RONALD G. MORROW

By: Joseph A. Jakab, Jr.  
Joseph A. Jakab, Jr. Its President

William J. Neal  
Printed Name #2: WILLIAM J. NEAL

Ronald C. Christensen  
Printed Name #1: RONALD C. CHRISTENSEN

By: Jean Belton  
JEAN BELTON Its Secretary

Charles A. Harris  
Printed Name #2: CHARLES A. HARRIS

CORPORATE  
SEAL

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me on 11/10/05, 2005, by JOSEPH A. JAKAB, JR. as President of Ibis Point Homeowners Association, Inc. [☒] who is personally known to me, or [ ] who has produced identification [Type of Identification: \_\_\_\_\_].

Notarial Seal



JOSEPH J. JAKAB, JR.  
MY COMMISSION # DD 342549  
EXPIRES: August 29, 2008  
Bonded Thru Budget Notary Services

Joseph J. Jakab, Jr.  
Notary Public JOSEPH J. JAKAB JR.

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me on 11/10/05, 2005, by JEAN BELTON, as Secretary of Ibis Point Homeowners Association, Inc. [☒] who is personally known to me, or [ ] who has produced identification [Type of Identification: \_\_\_\_\_].

Notarial Seal



JOSEPH J. JAKAB, JR.  
MY COMMISSION # DD 342549  
EXPIRES: August 29, 2008  
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Joseph J. Jakab, Jr.  
Notary Public JOSEPH J. JAKAB JR.

## EXHIBIT "A"

IBIS POINT

## LEGAL DESCRIPTION:

A parcel of land situated in Section 13, Township 38 South, Range 40 East, Martin County, Florida, and being more particularly described as follows:

Commencing at the Northwest corner of said Section 13, Thence S00°29'53"W, along a line 40.00 Feet Westerly and parallel with the Easterly Right-Of-Way line of S.W. Crane Creek Avenue as recorded in Plat Book 9, Page 37 of the Martin County Public Records, A distance of 200.00 Feet; Thence S89°30'06"E a distance of 40.00 Feet to said Right-Of-Way line and the point of beginning.

From the point of beginning; Thence N00°29'54"E, along said Right-Of-Way line, a distance of 14.98 Feet; Thence S81°13'19"E, departing from said Right-Of-Way line, a distance of 210.53 Feet; Thence S76°29'31"E a distance of 920.77 Feet; Thence S31°05'07"E a distance of 329.73 Feet; Thence S50°07'24"E a distance of 29.64 Feet; Thence N58°54'52"E a distance of 200.87 Feet; Thence N21°45'41"E a distance of 156.23 Feet to the beginning of a curve, having a radius of 150.00 Feet from which a radial line bears S68°14'19"E; Thence Northerly, Easterly, and Southerly along the arc of said curve, subtending a central angle of 226°06'20", a distance of 591.94 Feet; Thence S21°45'41"W a distance of 93.77 Feet; Thence S58°54'52"W a distance of 297.08 Feet; Thence S02°56'55"W a distance of 39.96 Feet; Thence S23°28'34"E a distance of 95.54 Feet; Thence S33°05'42"W a distance of 217.26 Feet; Thence S89°46'29"W a distance of 204.32 Feet; Thence N31°02'26"W a distance of 82.64 Feet to the beginning of a curve, having a radius of 34.97 Feet from which a radial line bears S58°57'34"W; Thence Northwesternly and Southwesterly along the arc of said curve, subtending a central angle of 90°02'43", a distance of 54.96 Feet; Thence S58°54'52"W a distance of 217.90 Feet; Thence N76°36'40"W a distance of 224.42 Feet; Thence N27°25'22"W a distance of 229.25 Feet; Thence N72°05'47"W a distance of 106.88 Feet; Thence S73°33'04"W a distance of 125.18 Feet; Thence S16°26'56"E a distance of 10.00 Feet; Thence S73°33'04"W a distance of 141.81 Feet to a point on the above referenced Right-Of-Way line and also a point on a curve having a radius of 1950.17 Feet from which a radial line bears N64°29'24"E; Thence Northwesternly along the arc of said curve, subtending a central angle of 26°00'30", a distance of 885.25 Feet to the point of Beginning.

The above described parcel contains 26.514 acres more or less.

JOINDER OF MASTER ASSOCIATION

MARTIN DOWNS PROPERTY OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, hereby joins in this Amended and Restated Declaration of Covenants and Restrictions for Ibis Point for the sole purpose of agreeing to perform its obligations contained herein.

WITNESSES:

MARTIN DOWNS PROPERTY  
OWNERS ASSOCIATION, INC.

Valerie Karpinski  
Printed Name #1: VALERIE KARPINSKI

By: Dennis Rohan, Its President

Scott P. Bonan  
Printed Name #2: ELIZABETH P. BONAN

Valerie Karpinski  
Printed Name #1: VALERIE KARPINSKI

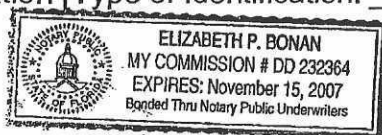
By: Robert Graves, Its Secretary

Scott P. Bonan  
Printed Name #2: ELIZABETH P. BONAN

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me on November 14, 2005, by Dennis Rohan as President of Martin Downs Property Owners Association, Inc. ☒ who is personally known to me, or ☐ who has produced identification [Type of Identification: \_\_\_\_\_].

Notarial Seal

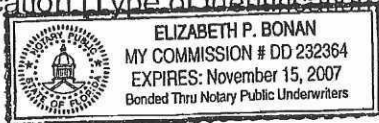


Notary Public

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me on November 14, 2005, by Robert Graves, as Secretary of Martin Downs Property Owners Association, Inc. ☒ who is personally known to me, or ☐ who has produced identification [Type of Identification: \_\_\_\_\_].

Notarial Seal



Notary Public