

B. Riverwood Development, Inc., a Florida corporation, assigned any and all rights as the original declarant under the Declaration to Declarant by virtue of that certain Assignment of Declarant's Rights recorded in Official Records Book 1662, Page 1610, of the Public Records of Charlotte County, Florida.

C. Declarant desires to change, amend and modify the Declaration in the manner hereinafter set forth and pursuant to, and in accordance with, Section 19.2 of the Declaration, Declarant has the right to change, amend and modify the Declaration in the manner hereinafter set forth.

NOW, THEREFORE, Declarant hereby changes, amends and modifies the Declaration as specifically set forth below:

1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.

2. **Defined Terms.** Capitalized terms used in this Fourth Amendment as defined terms and not otherwise defined herein shall have the meaning ascribed to such terms in the Declaration.

3. **Voting Groups.** Section 5.3.2 of the Declaration is hereby deleted in its entirety and replaced as follows:

Section 5.3.2. Voting Groups. The election of the Board of Directors shall be determined under the procedures set forth in the Bylaws, in lieu of a system of Voting Groups.

4. **Declarant's Rights in the Association.** Section 5.4 of the Declaration is hereby amended in its entirety, with additions reflected as underlined and deletions shown as stricken as follows:

Section 5.4. Declarant's Rights in the Association. Prior to ~~and after~~ the Turnover ~~and until conveyance of the last Lot, Recreational or Commercial Property to be contained within the Property,~~ whether the Declarant exercises the right to appoint a majority of the Board of Directors or not, the Board shall have no authority to, and shall not, without the written consent of the Declarant, which may be withheld for any or no reason whatsoever, undertake any action which shall:

5.4.1. prohibit or restrict in any manner the sales and marketing program of the Declarant, any Merchant Builder or any Owner of Commercial or Recreational Property or the leasing activities of the Declarant, any Merchant Builder or any Owner of Commercial or Recreational Property;

5.4.2. decrease the level of maintenance services of the Association performed by the initial Board of Directors;

5.4.3. make any Special or Benefit Assessment against or impose any fine upon the Declarant's property within Riverwood or the Declarant;

- 5.4.4. change the membership of the NCC or diminish its powers as stated herein;
- 5.4.5. alter or amend the Declaration, the Articles or By-Laws of the Association;
- 5.4.6. terminate or waive any rights of the Association under this Declaration;
- 5.4.7. convey, lease, mortgage, alienate or pledge any easements, Common Area or Exclusive Common Area of the Association;
- 5.4.8. accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association;
- 5.4.9. terminate or cancel any easements granted hereunder or by the Association;
- 5.4.10. terminate or impair in any fashion any easements, powers or rights of the Declaration or the Commercial or Recreational Property Owners hereunder;
- 5.4.11. restrict the Declarant's rights of use, access and enjoyment of any of the Properties, or
- 5.4.12. cause the Association to default on any obligation of it under any contract or this Declaration.

In any such matter, the Declarant's consent shall be exercised by the appointee on the Board or other person designated to so act by the Declarant.

5. **Creation of Assessments.** Section 12.1 of the Declaration is hereby amended in its entirety, with additions reflected as bold/underlined and deletions shown as bold/stricken, as follows:

Section 12.1 Creation of Assessments. There are hereby created Assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article. There shall be four (4) types of Assessments: (a) Common Assessments for Common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in section 12 below; and (d) Benefit Assessments as described in section 12 below. Common Assessments shall be allocated as follows:

Residential One (1) assessment per Lot

Commercial

Retail One (1) assessment per 15,000 sq. ft.

Office One (1) assessment per 5,000 sq. ft. gross rentable space

In the case of a parcel of vacant land or land which improvements are under construction, the parcel shall be deemed to contain the types and amount of square footage designated for such parcel on the site plan approved by Declarant until such time as a certificate of occupancy is issued on the entire parcel by the local governmental entity having jurisdiction.

Recreational

Club One (1) assessment per 25 acres

Marina One (1) assessment per 10 slips

Neighborhood Assessments shall be levied equally on all Lots within the Neighborhood for whose benefit Neighborhood Expenses are incurred as provided in section 4 below.

All Assessments, together with interest (at a rate not to exceed the highest rate allowed by Florida usury law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the Private Property (and improvements) to which they pertain and shall be a continuing lien upon the Private Property against which each assessment is made. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who owned such Private Property at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable to the time of conveyance, except as otherwise provided in section 12.11 below.

The Association shall, upon the written request of any Owner, furnish, within ten (10) days after such written request, to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such Assessment has been paid as to his particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed three month's Common Assessment on one Lot for the issuance of each such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors and such determinations by the Board may include, without limitation, acceleration of that fiscal year's Common Assessments and any Neighborhood Assessments for delinquencies. Unless the Board otherwise provides, the Common Assessment and any Neighborhood Assessments shall be paid in quarterly installments and any Benefit assessments shall be paid monthly in advance or as incurred.

No Owner may waive or otherwise exempt himself from liability for Assessments, including, by way of illustration and not limitation, by non-use

of Common Areas or abandonment of the property. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. The Class "C" Member, Class "D" Member and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be expressed in any such deed, shall be deemed to covenant and agree to pay the Assessments and such obligations shall be binding on all Merchant Builders or developers purchasing Lots for development and/or resale. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Declarant in connection with the development of Riverwood or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

~~Prior to Turnover, the Declarant shall have no obligation to pay Assessments on Lots, Recreational or Commercial Property which it owns, whether such Lots, Recreational or Commercial Property are original inventory or have been reacquired by Declarant. Rather, until that time, the Declarant may elect annually to pay the difference between the amount of Assessments assessed relative to all Lots, Recreational or Commercial Property subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Such election shall be by written notice to the Board not less than thirty (30) days prior to the beginning of each fiscal year and if no notice is delivered by Declarant, Declarant shall be deemed to have elected to pay such differential. The Declarant's financial obligations to the Association may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. After turnover the The Declarant shall be obligated to pay Assessments on Lots, Recreational and Commercial Properties which it owns and are platted and are part of the Association (i.e. no deficit funding).~~

6. **Reserve Budget and Reserve Contribution.** Section 12.8 of the Declaration is hereby deleted in its entirety and replaced as follows:

Section 12.8 Appropriated Reserves. The Association shall maintain reserve funds for the replacement or repair of all assets ("Appropriated Reserve Funds"). Each reserve fund shall be funded annually on the basis of the expected life of the asset and each reserve fund shall only be used for the intended asset. The reserve funds shall be held in a separate account exclusively for this purpose. Declarant shall deposit or cause such reserve funds to be deposited in said accounts on a quarterly basis as the Assessments are received. Individual asset reserve funds that are currently over or under funded shall be properly adjusted and properly funded beginning with the 2003 budget. After consulting with representatives appointed by the CDD, the Board of Directors of the Association shall adopt

and adhere to a comprehensive and detailed policy regarding the Appropriated Reserve Funds. At a minimum, said policy shall include a detailed description of each reserve account, a detailed description of the methodology used to determine the useful life of the asset for which funds are being reserved to replace the asset, a long-term funding schedule for all Appropriated Reserve Funds, an annual line item detailed accounting of the debits and credits to each reserve account, and an annual written determination by the auditors in the annual audit report as to whether or not the reserve funds have been maintained and accounted for in a manner consistent with the policy. The detailed figures for such funds shall be available for inspection and copying by Owners upon request and reasonable notice.

7. **Contributions to Working Capital.** Section 12.12 of the Declaration is hereby deleted in its entirety and replaced as follows:

Section 12.12. Contribution to Working Capital. Upon each and every transfer of record title to a Lot, Recreational or Commercial Property, a contribution shall be made by or on behalf of the purchaser to working capital of the Association in an amount of Three Hundred Dollars (\$300.00). The Declarant or the Association (as applicable) shall collect same upon the transfer of a Lot, Recreational or Commercial Property; provided, however, that where any Lot, Recreational or Commercial property is sold to a Merchant Builder or other developer, the Declarant may, by reference thereto in a contract for sale or deed of conveyance, postpone the payment thereof to the earlier of (a) two (2) years from the date of conveyance by Declarant or (b) the sale of the Lot by such Merchant Builder or developer. This contribution shall be collected by Declarant or the Merchant Builder or developer, as the case may be, and disbursed therefrom to the CDD for use in covering capital costs and expenses incurred by the Association pursuant to the terms of this Declaration and the By-laws. The Contributions to the Working Capital Fund will be overseen and administered by the Owners through the CDD. The CDD shall determine how and when the fund will be utilized, within legally permissible limits. The Declarant, its parent, subsidiaries, affiliates and assigns, shall be exempt from payment of the contribution required by this Section. The capital contribution required by this Section shall constitute an assessment against the Lot, Recreational or Commercial Property and shall be subject to the same lien rights and other rights of collection applicable to other Assessments under this Article XII.

8. **Unappropriated contingency Fund.** Section 12.14 of the Declaration is hereby added to the Declaration as follows:

Section 12.14 Unappropriated Contingency Fund.

12.14.1. The Association shall create an "Unappropriated Contingency Fund" to pay for unanticipated expenses, usually arising as the result of an emergency or other major unanticipated event. This fund is not to be used to fund special projects or equipment that were not included in the adopted budget.

- 12.14.2. The expenditure of the Unappropriated Contingency Fund shall require a majority vote of the Board of Directors, provided there is at least one affirmative vote from one of the two Board members appointed by the Voting Members (i.e. the resident Owners).
- 12.14.3. The Unappropriated Contingency Fund shall be budgeted and funded at \$50,000 by 2004. Any unused amount in this Unappropriated Contingency Fund will be carried over in this account from year to year. For 2003 only, the Unappropriated Contingency Fund will be budgeted and funded with \$25,000.
- 12.14.4. The target amount of the Unappropriated Contingency Fund of \$50,000 may be increased or decreased by a majority vote of the Board, provided that at least two of the Board members appointed by the Voting Members (i.e. the resident Owners) vote in the affirmative to support the change.
- 12.14.5. The Unappropriated Contingency Fund will not be considered an expense or a budget item for the purpose of Section 12.15 (i.e. this Unappropriated Contingency Fund could not be used to balance the budget).

9. **Budget.** Section 12.15 of the Declaration is hereby added to the Declaration as follows:

Section 12.15 Budget

- 12.15.1. The RCDD will appoint a budget committee comprised of: 1 CDD Board member, residents chosen by the Riverwood Neighborhood Council (RNC), 2 Association resident Board members, 1 Declarant appointee, and the Association Manager.
- 12.15.2. The Committee shall solicit input from Declarant, the RNC, and from Neighborhood Associations. Association and the Association manager will timely provide the Budget Committee with the data reasonably necessary to formulate a tentative budget.
- 12.15.3. A tentative budget will then be presented by the Budget Committee to the Association at an open budget hearing conducted by the Association in October of each year. Following this meeting, the Budget Committee may amend the tentative budget and will provide the final tentative budget recommendation to the Association prior to its November budget adoption meeting.
- 12.15.4. The Association will adopt a budget in November of each year. The Association will either adopt the budget as presented by the Budget Committee, or amend it. If amending the final budget presented by the Budget Committee, the Association will do so on a line item by line item basis. A separate motion, discussion, and vote will be required for each amended line item.

- 12.15.5. Unspent funds from a budget year shall not be refunded, but rather shall carryover to the next budget year.
- 12.15.6. Except for the restrictions and requirements contained in this Declaration and in the December 17, 2002 Agreement between the Declarant, the Association, and the RCDD, the Board has the right to adopt the annual budget. However, each annual Association budget shall contain the reasonably anticipated expenses and revenue for that year.
- 12.15.7. Except in cases of emergency, each neighborhood's annual maintenance budget shall not be over-spent. Except in cases of emergency, for the remainder of the Association budget, total annual expenses shall not exceed the total annual budget.

10. **Amendment of the Riverwood Covenants and Association Bylaws.** Section 19.2 of the Declaration is hereby amended in its entirety, with additions reflected as underlined and deletions shown as stricken, as follows:

Section 19.2. Amendment. Until the Turnover, the Declarant may unilaterally amend this Declaration provided said amendments do not have a direct adverse financial impact on the Owners. Whether before or after the Turnover, Declarant may amend the Declaration and Bylaws and any other documents which have a direct adverse financial impact on the Owners only if any such amendment first has the prior written approval of the CDD. After Turnover, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendments ~~is~~are (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule, requirement or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on Private Property; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on Private Property; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Private Property; or (e) correct any stenographic, scrivener's or surveyor's error or any error of a like nature; provided, however, any such amendment shall not adversely affect the title to any Private Property unless the Owner thereof shall consent thereto in writing. After the Turnover, (a) any non-Declarant initiated amendment, or (b) any Declarant initiated amendment which has a materially adverse effect on the Owner of Private Property shall require the affirmative vote (in person or by alternate) or written consent, or any combination thereof, of Voting Members representing sixty-seven percent (67%) of the total votes in the Association, including sixty-seven percent (67%) of the votes held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant owns one (1)

or more Lots, Recreational or Commercial Properties within the Properties. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the Public Records of Charlotte County, Florida.

No amendment which affects the Surfacewater Management System within the Properties or maintenance thereof shall be effective without the prior written consent of the CDD and the Southwest Florida Water Management District.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant, as the case may be, or the assignee of such right or privilege.

Notwithstanding anything to the contrary set forth in this Section 19.2, no amendment shall be effective without the written joinder and consent of the Declarant (so long as the Declarant owns one or more Lots, Recreational or Commercial Properties within the Properties) to the amendment.

11. **Declaration Unmodified.** It is the express intention of the parties hereto that, except as changed, amended, and modified by this Fourth Amendment, each and every one of the terms and provisions of the Declaration shall remain in full force and effect as originally written. Accordingly, nothing contained in this Fourth Amendment shall be construed to alter, affect, or impair the charge or encumbrance, or otherwise diminish the operation or effect, of those terms and provisions of the Declaration which were not expressly and specifically changed, amended and modified hereby.

12. **Conflict.** In the event of any inconsistency between the terms and provisions of this Fourth Amendment and the terms and provisions of the Declaration, the terms and provisions of this Fourth Amendment shall control. From and after the recording of this Fourth Amendment, all references to the Declaration shall refer to the Declaration as modified and amended by this Fourth Amendment.

13. **Successors and Assigns.** This Fourth Amendment shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns.

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JOINDER OF ASSOCIATION

The Riverwood Community Association, Inc. joins in and consents to the foregoing Fourth Amendment.

Signed, Sealed and Delivered
in the Presence of:

**RIVERWOOD COMMUNITY Association,
INC.,** a Florida not-for-profit corporation

Ted Mosher
Signature

By: Dan Halloran

Ted Mosher
Print Name

Name: DAN HALLORAN

Jeff Roscoe
Signature

Its: PRESIDENT

Jeff Roscoe
Print Name

STATE OF FLORIDA)
COUNTY OF Collier)

The foregoing instrument was acknowledged before me this 19 day of December, 2003, by Dan Halloran as President, of **RIVERWOOD COMMUNITY ASSOCIATION, INC.**, a Florida not-for-profit corporation, for and on behalf of the corporation. He/she [] is personally known to me or [] has produced _____ as identification.

Marci Rae Phillips
Signature of Notary

Marci Rae Phillips
Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal): _____

My Commission Expires (if not legible on seal): _____

