

Prepared by:

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**DECLARATION OF RESTRICTIONS
FOR
DARWIN PLAZA**

WHEREAS, S & S INVESTMENTS, a New Jersey partnership and HERMAN M. JEFFER, herein referred to as "Developer", is the Developer of a tract of land located in St. Lucie County, Florida, which is described in the attached Exhibit "A" and is herein referred to as DARWIN PLAZA or the "Property"; and

WHEREAS, Developer desires to subject all of the Property to certain mutual and beneficial restrictions, covenants, terms, conditions and limitations, herein for convenience sometimes referred to collectively as the "Restrictions", for the benefit of the Property and any Owners of all or part thereof.

NOW, THEREFORE, Developer does hereby proclaim, publish and declare that the Property shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and approved, subject to these Restrictions, which shall run with the land and shall be binding upon Developer and upon all parties having or acquiring any right, title or interest in and to the Property.

**ARTICLE I
DEFINITIONS**

1.1 **Association.** DARWIN PLAZA ASSOCIATION, INC., a Florida not-for-profit corporation, its successors and assigns.

1.2 **Board.** The Board of Directors of the Association.

1.3 **Common Spaces.** Those portions of the Property that will be conveyed or dedicated to the Association from time to time by the Developer, including all streets, roadways, walkways, drainage and sprinklers, appurtenant lighting, easements, retention and/or detention areas and surface water management systems as more particularly being dedicated on the Plat of DARWIN PLAZA recorded in the St. Lucie County, Florida, public records, and any other areas that the Board hereinafter determines to maintain under the terms of this Declaration, including without limitation, any easements for a sprinkler system. Notwithstanding the foregoing, neither the Developer nor the Board shall have the right to convey, dedicate or determine to maintain as Common Spaces any portion of the Property which is not owned by the Developer or the Board, and no such portion of the Property which is not owned by the Developer or the Board shall be deemed Common Spaces without an express written agreement of the owner of such Property or the reservation of such Property as Common Spaces in the deed of conveyance.

1.4 **Declaration.** Shall mean and refer to this Declaration of Restrictions for DARWIN PLAZA.


1.5 **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.

1.6 **Plat.** Shall mean and refer to the Final Plat of DARWIN PLAZA, recorded in Plat Book 38, Pages 31 and 31A on March 20, 2000 in the St. Lucie County, Florida,

Page 1 of 9

JOANNE HOLMAN, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
File Number: 1797813 OR BOOK 1291 PAGE 1127
Recorded: 04/07/00 13:27

RETURN TO:

Michael W. Simon, Esq. 
SIMON, SIGALOS & SPYREDES, PA
4800 NORTH FEDERAL HIGHWAY
SUITE 100-D
BOCA RATON, FLORIDA 33431
561-447-0017

public records.

1.7 Institutional First Mortgages. 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, approved by Developer, and agency of the United States Government, or Developer, which holds a first mortgage of public record on any Parcel, and the holder of any mortgage of public record given or assumed by Developer, whether a first mortgage or otherwise, and their successors.

1.8 Member. The record owner of a Parcel.

1.9 Occupants. Any person, persons, business entities, their agents and employees occupying an office on a Parcel as owner, tenant, licensee or otherwise.

1.10 Parcel. Any one of the building sites shown on the Plat recorded, or to be recorded, in the St. Lucie County, Florida, public records, as the same may be amended from time to time.

ARTICLE II MUTUALITY OF BENEFIT AND OBLIGATION

2.1 Intent and Purpose. The Restrictions are made for the mutual and reciprocal benefit of each and every Parcel and are intended to create equitable servitudes upon each of the Parcels in favor of the other such Parcels; to create reciprocal rights between respective owners of said Parcels; and to create privity of contract and estate between the grantees of the Parcels, their heirs, successors and assigns.

ARTICLE III COVENANT AND ASSESSMENTS

3.1 Creation of Lien for Assessments. All Parcels shall be subject to a continuing lien for assessments levied by the Association in accordance with the provisions of the Restrictions and for any other charge owed by a Member to the Association under the Restrictions. The annual assessments and charges, together with interest thereon, and the costs of collection thereof, including reasonable attorney's fees, as hereinafter provided, shall be charged on and shall be a continuing lien on the Parcels against which such assessments or charges are made. All Parcels shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered, subject to all of the terms and provisions of the Restrictions applicable to Parcels including, but not limited to, the continuing lien herein described.

3.2 Purpose of Assessments. The assessments levied by the Association shall be used for maintaining repairing and replacing the Common Spaces, including the common streets, roadways, walkways and surface water management system, drainage easements, retention areas, the irrigation system, other common area lighting, and appurtenant lighting located upon the Property; providing for the payment of taxes and insurance on all property of the Association, and repair, replacement and additions thereto; and for the purpose of carrying out the functions, purposes, responsibilities, and duties of the Association. Provided, however, if and when any of the facilities located on the Common Space are dedicated to, and accepted by, the City of Port St. Lucie, the Association shall be relieved of any and all obligations arising hereunder with respect to any such facility so dedicated and accepted.

3.3 Date of Annual Assessments. At its first meeting the Board of Directors of the

Association shall determine the annual assessments for the balance of the current year, levy the annual assessment against each Parcel responsible for the payment of the same, and as soon as practicable, notify the Members owning the Parcels of the amount and date on which the assessments shall be payable. Thereafter, each year at its annual meeting, the Board of Directors shall establish the amount of the annual assessments, and the date on which the same shall be paid, including whether payable in advance, monthly, semi-annually, or in such other installments as it deems appropriate. When any Parcel has been dedicated to condominium ownership, the Association shall collect the assessment payable with respect to such Parcel from the condominium association created to manage the Parcel instead of collecting individually from the Occupants of the condominium units, and the condominium association shall be considered to be the Member. The Association shall, without charge, on written request of any Member or Institutional First Mortgagee, furnish a certificate signed by an officer or duly authorized agent setting forth the assessments levied against the Parcel and whether same have been paid.

3.4 Apportionment of Assessment. Upon the sale of the first Parcel, the Developer and the Owner of the first Parcel sold shall split all of the costs on a 75%/25% basis, respectively. Upon the sale of the second Parcel, the annual assessment shall be apportioned among the owners of the Parcels in the same proportions that the area of each Parcel bears to the aggregate area of all Parcels within the Property.

3.5 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. The Assessment, together with the interest thereon and the costs 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 appropriate Member. 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 shall also record a claim of lien in the Public Records of St. Lucie County, setting forth the amount of the unpaid Assessment, the rate of interest due thereon, and the costs of collection thereof. 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 Member. There shall be added to the amount of the Assessment the cost of such action, including attorneys' fees, and in the event a judgement is obtained, such judgement shall include interest on the Assessment, as above provided, the 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.

3.6 Subordination of Lien to Mortgages. Regardless of the effective date of the lien of any Assessment made by the Association, such Assessment lien shall be subordinate and inferior to the lien of the mortgage of any Institutional First 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 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 Members. The written opinion of the

Association that the Assessment lien is subordinate to a mortgage lien shall be dispositive of any question of subordination.

ARTICLE IV
PROPERTY RIGHTS OF MEMBERS

4.1 Easement of Enjoyment and Privilege to Use. Every Member shall have a non-exclusive right and easement in common with others for the use and enjoyment of the Common Spaces, and such easement shall be appurtenant to and shall pass with the Parcel owned by such Member.

4.2 Reservation of Rights in Association. All the rights, easements and privileges granted in Article IV are expressly subject to:

(a) The right of the Association to adopt and promulgate reasonable rules and regulations pertaining to the use of Common Spaces and relating to the preservation of the property of the Association and the safety and convenience of the users thereof, which shall promote the best interests of the Association and the Members; and

(b) The right of the Association to grant easements and rights-of-way as it shall deem necessary in its sole judgement, convenient or appropriate for the proper servicing and maintenance of the Common Spaces.

4.3 Easements for Utilities and for Ingress and Egress. Easements including without limitation, easements for installation and maintenance of utilities, for road right of Ways for an ingress and egress, and for water management and drainage facilities are reserved and dedicated as shown on the Plat. No structure, plants, or other material that may damage or interfere with the installation and maintenance of utilities, or that may change the direction of flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements, shall be placed or permitted to remain within these easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which the Association, a public authority or utility company is responsible.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS

5.1 Membership. Every owner of a Parcel within the Property shall, by virtue of such ownership, be a Member of the Association. Membership shall be appurtenant to, and may not be separated from the ownership of a Parcel.

5.2 Voting Rights. Each Parcel shall be entitled to a vote equal to the number of square feet of area within said Parcel. Votes shall be cast in the manner provided in the Articles of Incorporation.

ARTICLE VI
AMENDMENT OF DECLARATION

6.1 Amendment. This Declaration may be amended upon the recordation of an appropriate instrument in the Public Records of St. Lucie County, subject however, to the following provisions:

(a) Except as provided hereinbelow, an amendment initiated by any party

other than Developer must obtain the approval of at least two-thirds (2/3) of the Members; provided, however, that until such time as the Developer relinquishes control of the Association all amendments must include the express written joinder and consent of Developer which may be granted or withheld by the Developer, in its sole judgement.

(b) This Declaration may be amended upon the initiation of Developer, at any time, for the purpose of subjecting additional real property to the provisions hereof and for the purpose of complying with the requirements of government authorities and lenders, without the joinder of consent of Owners, Institutional First Mortgagee, or any other party.

(c) No amendment or change to this Declaration or to the exhibits hereto shall affect the surface water management system, including the water management portions of the Common Spaces, without the written consent of the South Florida Water Management District, which consent shall be executed with the same formalities required for deeds and recorded with the amendment. The surface water management permit issued by the South Florida Water Management District is attached hereto as Exhibit "B".

(d) No amendment or change to this Declaration or to the exhibits hereto shall affect or impair the validity or priority of a first mortgage held by an Institutional First Mortgagee encumbering a Parcel or affect or impair the rights granted herein to Institutional First Mortgagee, without the written consent thereto by the Institutional First Mortgagee owning and holding the mortgage encumbering the Parcel, which consent shall be executed with the same formalities required for deeds and recorded with the amendment.

(e) No amendment or change to this Declaration or to the exhibits hereto shall be effective without the written consent thereto by the Association, which consent shall be executed with the same formalities required for deeds and recorded with the amendment.

(f) Notwithstanding anything to the contrary contained herein, until turnover of the control of the Association, Developer shall have the right, without the joinder or consent of Owners, Institutional First Mortgagee, or any other party, to amend, alter, modify, change, cancel, rescind or revoke any of the provisions of this Declaration; provided, however, that any amendment which would affect the surface water management system, including the water management portions of Common Spaces, must include the express written consent of the South Florida Water Management District, if required, which consent shall be executed with the same formalities required for deeds and recorded with the amendment, and further provided that the Developer does not have the unilateral right to amend the Declaration in any way which would affect the provisions relating to the subordination of Assessment liens to mortgages which is set forth in Section 3.6 above.

(g) 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.

ARTICLE VII USE RESTRICTIONS

7.1 Restrictions on Use of Parcels. All parcels within the Property shall be subject to the following restrictions, which each Owner or Occupant covenants to observe.

7.1.1 Commercial Use. All Parcels shall be used only in accordance with the uses permitted under the Zoning Laws of St. Lucie County, Florida, as the same may be amended from time to time.

7.1.2 Nuisances. No use or practice which is an interference with the peaceful possession and proper use of the Property by the Owners or Occupants shall be allowed. No Owner or Occupant shall commit or permit any nuisance or any immoral or illegal activity in or about the Property. For greater clarification, no Owner or Occupant 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 Occupants, or allow any such noise or disturbance to be made on or about his Parcel.

7.1.3 Garbage and Trash Containers. Garbage containers, if any, shall be kept in sanitary containers or garbage compactor units, in a clean and sanitary condition, in complete conformity with sanitary regulations. Each Owner or Occupant shall contract for garbage collection and all garbage containers shall be stored in an enclosed area located within the Parcel not visible from the adjacent Parcel/street. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted as to any Parcel. The Developer prior to the time to Developer relinquishes control of the Association, and the Association, after the Developer relinquishes control of the Association, reserves the right to approve and/or designate the location of all garbage containers and compactor units.

7.1.4 Temporary Structures. No structure or object of a temporary character such as, but not limited to, tents, sheds, or sheds or temporary or accessory buildings or structures, shall be erected, kept or maintained on any Parcel, without the written consent of the Board.

7.1.5 Access to Parcels. Whenever the Association is permitted or required by this Declaration to enter upon 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.

7.1.6 Antennae. No radio, television or other electronic antennae, aerial or satellite receiving dish, or other reception or transmission device may be erected or maintained anywhere on the Common Spaces or the exterior of any improvement or upon any Parcel, (unless installed by Developer or the Association) or unless approved by the Developer prior to the time the Developer relinquishes control of the Association, and by the Association, after the Developer relinquishes control of the Association, and further provided same are not visible from the street and any adjacent parcel.

7.1.7 Signs. Except in connection with development, or sales of property throughout DARWIN PLAZA by Developer, 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 Spaces, without the prior written approval of the Board. All signs shall conform to the City of Fort St. Lucie Sign Code.

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

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

7.1.10 Additional Protective Covenants. Developer may include in any contract or deed for any Parcel, additional protective covenants and restrictions not inconsistent with those contained herein.

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7.1.11 Architectural restrictions. No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Parcels, nor shall any exterior addition, change, or alteration be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association. In the event the Board fails to approve or disapprove the design and location within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

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

ARTICLE VIII GENERAL PROVISIONS

8.1 Duration. The Members and their grantees, successors, and assigns by acquiring title to a Parcel covenant and agree that no termination of this Declaration shall be made for a period of twenty-five (25) years from the date of recordation of this Declaration. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the subject property and inure to the benefit of Developer, the Association, the Members, Institutional Mortgagees and their respective legal representatives, heirs, successors and assigns for said period. After this period, the Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such twenty-five (25) year term or any such ten (10) year extension there is recorded amongst the Public Records of the County, an instrument signed by at least eighty percent (80%) of all Institutional Mortgagees holding mortgages encumbering the Parcels agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of twenty-five (25) years or the ten (10) year extension thereof during which the termination instrument is recorded.

8.2 Termination. This Declaration may be terminated during any ten (10) year extension period upon the affirmative written consent of eighty percent (80%) of the Members, and upon the affirmative written consent of all Institutional Mortgagees holding mortgages encumbering Parcels.

If this Declaration is terminated in accordance herewith, it is hereby declared by the Developer, and each and every owner of a Parcel by acquiring title to his Parcel covenants and agrees, that the termination documents shall require:

(a) That all Parcels shall continue to be used solely as for the purposes and uses permitted under the PUD.

(b) All Common Spaces shall be owned and held in equal shares by the Members as tenants in common, and each Member shall remain obligated to pay his pro rata share of expenses to continually maintain the Common Spaces.

If the Association is terminated, the property consisting of the surface water management system operated and maintained as part of the Common Spaces shall be conveyed to an appropriate agency of local government, and if not accepted thereby, then it

must be conveyed to a similar non-profit corporation.

8.3 Notices. Any notice required to be sent to any person pursuant to any provision of the restrictions will be effective if such notice has been deposited in the United States Mail, postage prepaid or sent by certified mail, return receipt requested, or by a recognized overnight courier which furnishes proof of delivery upon request, addressed to the persons for whom it is intended at his last known place of business or to such other address as may be furnished to the Secretary of the Association. The effective date of the notice shall be the date of mailing.

8.4 Severability. Whenever possible each provision of the Restrictions shall be interpreted in such a manner as to be effective and valid, but if any provision of the Restrictions or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision that can be given effect without the invalid provision or application, and to this end, the provisions of the Restrictions are declared to be severable.

8.5 Enforcement. In the event of a violation or breach of any of the Restrictions contained herein by any Member or Occupant or their guest, lessee, agent, or employee, the Developer, the Association, and the Members, or any of them shall have the right to proceed at law or in equity to compel compliance with the terms of the Restrictions or to prevent the violation or breach. The failure to enforce any rights, reservations, or restrictions shall not be deemed a waiver of the right to do so thereafter, as to the same breach or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. Notwithstanding anything to the contrary contained herein, internal disputes arising in connection with the repair or maintenance of the Common Spaces among the Members and the Association shall be submitted to binding arbitration under the rules of the American Arbitration Association or such other rules as the parties shall mutually agree to, with an architect being the arbitrator.

8.6 Disputes and Construction of Terms. In the event of any dispute arising under the Restrictions or in the event of any provision of the Restrictions requiring construction, the issue shall be submitted to the Board of Directors of the Association. The Board of Directors shall give all persons who note interest in the issue an opportunity to be heard after reasonable notice, and the Board shall, when appropriate, render its decision in writing, mailing copies thereof to all parties who noted their interest.

8.7 Assignment of Developer's Rights. Developer reserves the right to assign all or any portion of its rights and privileges under this Declaration, in part or in whole, to any other person or entity who acquires all or any portion of the Property.

8.8 Control by Developer. Anything contained herein to the contrary notwithstanding, Developer shall have the right to retain control of the Association until Developer has closed the sale of all Parcels within the Property or until such earlier time as it is determined by Developer, in Developer's sole discretion. At the time of turnover of control of the Association, the Association shall record a Notice of Turnover in the public records of St. Lucie County. So long as Developer retains control of the Association, Developer shall have the right to appoint all members of the Board of Directors and to approve the appointment of all officers of the Association, and no action of the membership of the Association shall be effective unless and until approved by Developer in its sole discretion.

IN WITNESS WHEREOF, the Developer has caused these covenants to be properly executed in its name by its respective duly authorized officers, and recorded in the Public Records of St. Lucie County, Florida.

Signed, sealed and delivered
In the presence of:

GARRY N. MAIETTA

MARIE PIESTOR

Sylvia L. Hester
Witness Sylvia L. Hester

Barbara Chacey
Witness Barbara Chacey

S & S INVESTMENTS, a New Jersey
Partnership

By: Jeffrey H. Sands
Its: Managing General Partner

HERMAN M. JEFFER

STATE OF NEW JERSEY
COUNTY OF MERCER

The foregoing instrument was acknowledged before me this 15th day of March, 2000, on behalf of the partnership, by Jeffrey H. Sands, as Managing General Partner of S & S INVESTMENTS, a New Jersey Partnership, who is personally known to me or has produced as identification.

(NOTARY SEAL)

Carolyn D. Wilman
Notary Public of New Jersey
My Comm. Exp.: August 11, 2002

Carolyn D. Wilman
Name: _____
Typed, printed or stamped
I am a Notary Public of the State
of _____ having a commission number
of _____ and my commission
expires _____

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 28th day of Feb., 2000, by HERMAN M. JEFFER, who: [] is personally known to me, or [] has produced _____ as identification, and who did take an oath.

(NOTARY SEAL)



Sylvia L. Hester
MY COMMISSION # C005449 EXPIRES
January 28, 2002
POWERED BY THE STATE OF FLORIDA, INC.

Sylvia L. Hester
Name: _____
Typed, printed or stamped
I am a Notary Public of the State
of _____ having a commission
number of _____ and my commission
expires _____