

**Declaration of Restrictions, Limitations, Conditions and
Agreements**

BIRD KEY SUBDIVISION

(Arvida Corporation is the assignee of the rights of Arvida Realty Co. in the following declaration of restrictions, limitations, conditions and agreements.)

THIS DECLARATION Is made and dated this 15th day of October, 1959, by ARVIDA REALTY CO., a Florida Corporation, having its office and principal place of business in the City of Boca Raton, Florida, hereinafter referred to as Subdivider, its successors or assigns,

WITNESSETH:

WHEREAS, Arvida Realty Co. as Subdivider, intends to improve and develop, grant, sell and convey for residential uses and purposes certain lands located in Bird Key as shown on the plat thereof recorded in Plat Book 11 at Pages 20-20F, inc., of the public records of Sarasota County, Florida, and

WHEREAS, it is desired to establish protective covenants covering the said subdivision for the benefit and protection of said area.

NOW, THEREFORE, in consideration of the acceptance hereof by the several purchasers and grantees (his, her, their or its heirs, executors, administrators, personal representatives, successors and assigns, and all persons or concerns claiming by, through or under such grantees) of deeds to lots in said tract of land, said ARVIDA REALTY CO. hereby declares to and agrees with each and every person who shall be or who shall become owner of any of said lots, that said lots, in addition to the ordinances of the City of Sarasota, Florida, shall be and are hereby bound by the covenants set forth in these presents and that the properly described in these restrictions shall be held and enjoyed subject to and with the benefit and advantage of the following restrictions, limitations, conditions and agreements, to-wit:

I. **OWNERSHIP:** No lot, nor any part thereof, nor any other portion of the property shown on the plat of BIRD KEY SUBDIVISION, according to the plat thereof as recorded in Plat Book 11 at Pages 20-20F, inc., of the public records of Sarasota County, Florida, except Tracts A and B, including the Yacht Club, boat slips site and gate entrance properties, shall be conveyed or leased to anyone other than a member in good standing of The BIRD KEY IMPROVEMENT ASSOCIATION, INC. Tracts A and B are designed as the yacht club, the boat slips site and gate entrance properties, and are not, therefore, subject to the terms and conditions of the Declaration of Restrictions, Limitations, Conditions and Agreements. It is a condition of the estate conveyed that the grantee of any deed shall not rent, lease, give, convey or in any other manner transfer the property

conveyed to him to any person not at the time of such transfer, lease, gift or conveyances, a member of the BIRD KEY IMPROVEMENT ASSOCIATION, INC. It is specifically understood and agreed that a similar condition will be made by the Subdivider in all other conveyances of similar property in the BIRD KEY SUBDIVISION, the purpose of this and such other conditions being to insure, to all grantees and all other members of the BIRD KEY IMPROVEMENT ASSOCIATION, INC., that their properties in said subdivision shall at all times be occupied by a colony of congenial persons and further, for the purpose of benefiting lands, owned by the Subdivider and developed under the same general plan with the grantees of lots in the above-described subdivision.

All grantees of conveyances to lots in the above-described subdivision expressly stipulate and agree for themselves and their heirs, executors, administrators, legal representatives and assigns that in the event proceedings are instituted to foreclose any mortgage on property conveyed in BIRD KEY SUBDIVISION, the Subdivider and its successors or assigns shall have the right to redeem from the mortgage for the amount due thereon or to purchase said property at the foreclosure sale for the amount set forth to be due by the mortgagee in the foreclosure proceedings; and should the mortgagor fail to redeem from such mortgage and, in case of such redemption by the Subdivider, the Subdivider, its successors or assigns so redeeming, shall take and have absolute fee simple title to the property redeemed, free from any claim or right of any grantee, his heirs or assigns or the mortgagor, and every person or concern claiming by, through or under him or it. Nothing herein contained in these reservations and restrictive covenants shall preclude a mortgage institution, banker, a savings and loan association or an insurance company, or any other recognized lending institution from owing a mortgage on any lot or property situated in BIRD KEY SUBDIVISION, and such mortgage institution, banker, savings and loan association, insurance company or other recognized lending institution shall have an unrestricted, absolute right to take title to the property in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof, and the laws of the State of Florida, and to bid upon said property at the foreclosure sale, provided said mortgage institution, banker, savings and loan association, insurance company or other recognized lending institution owning said mortgage shall give to ARVIDA REALTY CO., its successors or assigns, or the BIRD KEY IMPROVEMENT ASSOCIATION, INC., or any member thereof, individually or collectively, fail to purchase said mortgage together with any costs incident thereto from such mortgagee or shall fail to redeem said mortgage, then and in that event, the mortgagee taking title on said foreclosure sale or taking title in lieu of foreclosure sale, may acquire said property and occupy the same and sell and resell the same without complying with the restriction limiting the ownership of said property to members of the BIRD KEY IMPROVEMENT ASSOCIATION, INC.

Any deed or conveyance, directly or indirectly, or any will or judicial proceedings in violation of this covenant, restriction or limitation shall be void and of no effect. No lot or any part thereof or any portion of the property shown on the plat of BIRD KEY IMPROVEMENT ASSOCIATION, INC. shall be leased, used or occupied by anyone other

than a member of the BIRD KEY IMPROVEMENT ASSOCIATION, INC., and their immediate family. The provisions of this covenant shall not apply to bona fide domestic servants domiciled upon the premises where they are employed

2. **BUILDING PLANS:** For the purposes of further insuring development of the lands in the subdivision as a residential area of high standard, the Subdivider reserves the right to control the buildings and structures placed on each lot.

Whether or not provision therefor is specifically stated in any conveyance of record made by the Subdivider, the owner or occupant of each and every lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building, wall, swimming pool, boat house, dock, aerial, antenna or other structure shall be placed upon said lot unless and until the plans and specifications therefor and the plot plan have been approved in writing by the Subdivider, its successors or assigns. Each building, wall, swimming pool, boat house, dock, aerial, antenna or other structure shall be placed on the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans and specifications by the Subdivider may be based upon any ground, including purely aesthetic grounds which in the sole and uncontrolled discretion of the Subdivider shall seem sufficient. No alteration in the exterior appearance of the building or structures shall be made without like approval. All buildings or other structures must be designed by an architect registered in the State of Florida. The Subdivider herein reserves the right to designate the BIRD KEY IMPROVEMENT ASSOCIATION, INC., through its Board of Governors and its Architectural Committee, or committees, to act for said Subdivider in the approval or rejection of said plans for the enforcement of this restriction, and the said BIRD KEY IMPROVEMENT ASSOCIATION, INC. shall have all power and authority as reserved to this Subdivider for the administration and carrying out of this reservation and restriction. Such authority shall continue and remain vested in said BIRD KEY IMPROVEMENT ASSOCIATION, INC., until such time as the Subdivider, its successors or assigns, shall cancel the same in writing by an instrument equal in dignity to this Declaration of Restrictions, Limitations, Conditions and Agreements. In the event that for any reason the powers granted herein to said BIRD KEY IMPROVEMENT ASSOCIATION, INC. are terminated by court order or otherwise, then the same shall automatically re-vest in the Subdivider, its successors or assigns.

Should the Subdivider, through the BIRD KEY IMPROVEMENT ASSOCIATION, INC. or otherwise, or its successors or assigns, fail to approve or disapprove the plans and specifications submitted to it by the owner of a lot or lots within the subdivision within thirty (30) days after written request therefore, then such approval shall not be required, provided, however, that no building or other structure shall be erected or be allowed to remain on any lot which violates any of the covenants or restrictions herein contained.

3. **SINGLE FAMILY RESIDENCES EXCLUSIVELY:** No building shall be allowed or erected on any lot in said subdivision except on (1) single family dwelling house, all for

the use and occupancy of one (1) family and attendant domestic servants only, provided that no such building shall exceed two (2) stories in height. All garages, porte cocheres, storage areas, tool cabins, garden houses, etc., must be attached to said dwelling house and be constructed so as to constitute one building only. Said dwelling house shall occupy a floor area of actually and fully enclosed building, exclusive of attached garage or porte cochere, of not less than 1,650 square feet for waterfront homes and not less than 1,500 square feet for non-waterfront homes.

4. **SETBACK LINE:** No building shall be erected upon any lot so that any part of said building shall be closer than thirty (30) feet to any front boundary line of said premises, which line extends along street or highway, or so that any part of said building is closer than ten (10) feet to any side lot line or closer than fifteen (15) feet to any rear lot line, or ten (10) feet to any other boundary line of said premises. Those lots which back up to a waterway shall not be closer than thirty (30) feet from the seawall line of said premises. Where lots have curved property lines, setback distance shall be taken at right angles with tangents to the curve. All other setbacks shall measure at right angles to the property line. No building shall be erected on a corner so that the setback from the street on which the building faces is less than thirty (30) feet or so that the setback from the side street is less than twenty (20) feet.

5. **EXCEPTIONS TO SETBACK RESTRICTION:** Terraces, walls, fences low platforms or steps, swimming pools and similar low, unroofed and unscreened construction may be erected outside the setback lines, provided that such construction shall not interfere with the exposure or view or reasonable privacy of adjoining or facing properties, and shall be determined by the Subdivider shall be in compliance with the prevailing city zoning regulations. No construction of this type may be erected without written approval of the Subdivider. No structure, wall, fence or hedge over four (4) feet in height shall be constructed, erected, placed, planted, set out, maintained or permitted upon any lot within twenty-five (25) feet of any boundary line thereof which extends along any street or other public way or faces on the waterway or over six (6) feet in height within ten (10) feet of any other boundary line of any lot, except that this restriction shall not apply to any portion of said dwelling house, the location of which shall be governed by the provisions of Restriction 4 above.

6. **EASEMENTS:** The Subdivider herein reserves, for itself, its successors or assigns, a five foot easement along the rear of each lot for public utility purposes, and a similar reservation on or in the three (3) foot strip along the sidelines of each lot. The Subdivider reserves the right to assign any and all easements presently existing or hereinafter granted for the installation of utilities or other uses by it deemed necessary for the service of said lands, and any walls, fences, paving, planting or other improvements placed thereon by subdivider or its assigns, at the expense of the owner of any lot. Where there is located on one or more lots, or portions thereof, a single residence under a single ownership, then the three (3) foot easement shall not be located along the sidelines of each lot but along the sidelines of the combination of lots or portions thereof.

7. **UNDERGROUND WIRING:** No lines or wires for communication or the transmission of current shall be constructed, placed or permitted to be placed upon any lot unless the same shall be contained in conduits, and as to any part or parts of said wires or lines which shall be without the dwelling house, the same shall be constructed or placed and maintained underground.

8. **UNRESTRICTED USE OF BOATS, SEAWALLS, BOAT SLIPS:** No seawall, dock, or boat slip, piers or mooring post shall ever be placed or constructed upon any lot unless the same shall be constructed according to plans, specifications, elevations, types and designs approved by the Subdivider, its successors or assigns, in writing. Should the Subdivider fail to approve or disapprove of said plans within thirty (30) days after written request therefor has been made, then such approval shall not be required. No vessel or boat shall be anchored offshore in any of the waterways adjacent to the subdivision so that the same shall in anywise interfere with navigation. No boat house shall be constructed on or adjacent to any of the waterfront lots in the subdivision, nor shall any boat canal be dug or excavated in any of the waterfront lots without the same being approved by the Subdivider, its successors or assigns.

The interior waters of the various canals transversing portions of the subdivision shall not be used or navigated by anyone who is not an owner, lessee or occupant of a lot in the subdivision or a guest or member of the family of such owner, lessee or occupant. No lot shall be increased in size by filling the water on which it abuts.

9. **RE-SUBDIVIDING:** No lot or contiguous group of lots shall ever be re-subdivided or replotted in any manner which would bring about a greater number of lots than that shown on the plat of the above-described subdivision for the same area. A residential site may consist of one (1) or more lots; all of one lot, one lot and a part of a contiguous lot or lots; or any other combination of contiguous parts of lots which shall form one plot of land suitable for use as a site for a residence, provided that It extends from the fronting street to an existing real property line or canal, but no site which changes the lot as originally planned, shall have a front or rear dimension of less than is contained in the smallest adjoining lot shown on the original plat of the subdivision.

10. **NUISANCE:** Nothing shall be done on any lot which may be or become an annoyance or nuisance to the neighborhood. No horses, cattle, swine, coats, poultry or fowl shall be kept on any lot. No advertising sign of any character shall be displayed or placed upon any of the premises or lots in said division, including "For Rent" or "For Sale" signs. No manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever will be conducted or carried on upon any lot or any part thereof, or in any building or other structure erected thereon. No trash shall be allowed to accumulate so as to be a detriment to the subdivision or a fire hazard. In the event that any owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse pile or other unsightly growth of objects, then the subdivider, its successors or assigns, may enter upon said lands and remove the same and the said Subdivider does

hereby grant, until further notice, to the BIRD KEY IMPROVEMENT ASSOCIATION, INC, the right to enforce this provision which seeks to eliminate nuisances of all nature, kind and description. All garage doors shall be closed except as are required to be opened for purposes of ingress and egress. The use of any garage, carport, driveway or parking area which may be in front of, adjacent to or a part of any lot in said subdivision as a habitual parking place for commercial vehicles is prohibited. The use of any driveway or parking area which may be in front of, adjacent to or a part of any lot as a habitual parking place for boats or trailers is prohibited. The parkway located between the pavement and the lot line of each lot shall not be used for the parking of private or commercial vehicles or boats or trailers. The terms "Commercial Vehicles" shall include all automobiles, trucks and vehicular equipment, as well as station wagons, which shall bear signs or shall have printed on the sides of same reference to any commercial undertaking or enterprises. The habitual violation of the parking regulations set forth in this paragraph shall be deemed a violation of the use and nuisance restrictions of this Declaration.

11. **SUBDIVIDER'S OPTION TO PURCHASE IF SOLD:** In the event any grantee of any lot in the BIRD KEY IMPROVEMENT ASSOCIATION, INC. desires to sell the same, together with its improvements, if any, the property shall be offered for sale to the Subdivider at the same price at which the property is about to be sold and said Subdivider shall have fifteen (15) days within which to exercise its option to purchase said property. Should the Subdivider fail or refuse within the said fifteen (15) days after receipt of written notice, to exercise its option to purchase such property at the price and terms at which it is about to be sold, then the owner of said property shall have the right to sell property subject to each and every restriction, limitation, condition and agreement herein contained. Each grantee shall notify the Subdivider of the name of his prospective purchaser, his residence address and his business and social affiliation.

12. **MAINTENANCE OF PARKWAYS:** The owners of the lots in the said subdivision shall be responsible for the maintenance of parkways located between their lot lines and streets upon which said lots face. The owners thereof shall likewise maintain their hedges, plants and shrubs in a neat and trim condition at all times.

13. The subdivider, its successors or assigns, hereby reserves the right to enter into agreements with the grantee of any lot or lots (without the consent of the grantees of other lots adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth which refer to setback lines, square footage content, areas of improvement, easements, underground wiring, use of boats, seawalls and boat slips, option to purchase, mortgage redemption privileges, building plans, signs, architectural committee, maintenance of parkways, garbage disposal, clotheslines, and any such deviation which shall be manifested by agreement in writing shall not constitute a waiver of any such condition, restriction, limitation or agreement as to the remaining lots in said subdivision, and the same shall remain fully enforceable as to all other lots located in the said subdivision by the original Subdivider, its successors or assigns, and the

grantees of other lots except as against the lot where such deviation is permitted. Subdivider reserves the right to use property owned by it for a period of two (2) years in conflict with the restrictions contained herein.

14. **GARBAGE DISPOSAL AND CLOTHESLINES:** The grantee will provide sanitary disposal for all garbage and rubbish. Such disposal shall be either underground or in concrete binds, fully enclosed and covered.

The grantee shall not place upon his premises clotheslines which may be visible either from the street or from the rear of said premises, and, in particular, where said properties back on waterways. Such clotheslines must be enclosed in a hedge or other protective enclosure, the nature and form of said clothesline and protective enclosures to be approved by the Subdivider as a part of the plans for the improvements to be located on the property.

15. **DURATION OF RESTRICTIONS:** The foregoing agreements, covenants, restrictions and conditions shall constitute an easement and servitude upon and in the lands conveyed in BIRD KEY SUBDIVISION, running with the land, and shall remain in full force and effect for fifty (50) years from the date hereof, at which time they shall automatically extend for successive periods of ten (10) years each unless by a vote of the majority of the then owners of the residential lots of this subdivision, it is agreed to change them in whole or in part.

16. **REMEDIES FOR VIOLATIONS:** In the event of a violation or breach of any of these restrictions by any person or concern claiming by, through or under the subdivider, or by virtue of any judicial proceedings, the Subdivider and the owners of the lots in the subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Subdivider shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, 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. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect.

17. **SUBDIVIDER MAY ASSIGN:** ARVIDA REALTY CO. may assign any and all its rights, powers, obligations and privileges under this instrument to the BIRD KEY IMPROVEMENT ASSOCIATION, INC., or to any other corporation, association or person.

18. **ASSIGNMENT OF RIGHTS, POWERS, OBLIGATIONS AND PRIVILEGES:**
Effective November 25, 1980, Arvida Corporation assigned to BIRD KEY IMPROVEMENT ASSOCIATION, INC., all of its rights, powers, obligation and privileges under the above restrictions to BIRD KEY IMPROVEMENT ASSOCIATION, INC., all according to the Agreement recorded in Official Record Book 1407, page 1235 in the Public Records of Sarasota County, Florida. Copy of the Agreement may be inspected in the office of the Association.