



CFN 2010R0183838
 OR BK 27219 Pgs 1812 - 18217 (10pgs)
 RECORDED 03/18/2010 14:56:21
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

This instrument was prepared by:

Name: Juan J. Mayol, Jr., Esq.
 Address: Holland & Knight LLP
 701 Brickell Avenue
 Suite 3000
 Miami, Florida 33131

A/20



(Space reserved for Clerk of Court)

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned owner, B & F MARINE, INC., a Florida corporation (the "Owner"), holds the fee simple title to that certain 1.032± acre parcel of land in Miami-Dade County, Florida (the "County"), located on the southeast corner of S.W. 40th Street (Bird Road) and S.W. 72nd Avenue (the "Property"), which is legally described in Exhibit "A" to this Declaration; and

WHEREAS, the Owner has filed an application with the Department of Planning and Zoning (the "Department") in Miami-Dade County, which application is currently pending under Public Hearing Application No. Z2006000323 (the "Application") which was originally seeking the approval of a district boundary change from BU-1A and RU-1 to BU-2 along with non-use variances of setbacks, lot coverage, floor area ratio, and wall requirements in order to allow the development of the subject property with a commercial building. However, these requests were denied without prejudice by Community Zoning Appeals Board 12 and the applicant has appealed the decision of the CZAB 12 to the Board of County Commissioners for the purpose of seeking a district boundary change from "BU-1A" and "RU-1" to "BU-1A."

Jc.

NOW, THEREFORE, IN ORDER TO ASSURE the County that the representations made by the Owner during its consideration of the Application will be abided by, the Owner freely, voluntarily, and without duress, hereby makes the following Declaration of Restrictions (the "Declaration") covering and running with the Property:

1. **Site Plan.** Prior to the issuance of a building permit for the redevelopment, expansion or change of existing use of the existing commercial building located at 4001 SW 72 Avenue, existing single family residence located at 7185 SW 41 Street and single family residence located at 7161 SW 41 Street the Owner shall submit to the Department an application for an Administrative Site Plan Review (ASPR) in accordance with Section 33-251.5 of the Code of Miami-Dade County (the "Code") under a unified site plan and zoning legend, except that no ASPR shall be required prior to the issuance of a building permit(s) in connection with the repair or continued use of the aforementioned existing commercial building and two single-family residence structures on the Property as allowed under the Zoning Code for legally non-conforming structures. Any plans submitted with the ASPR application in accordance with Section 33-251.5 of the Code of Miami-Dade County for the redevelopment, expansion or change of use of the entire Property under a unified site plan and zoning legend shall include the following:

(a) That openings on the exterior facades of any parking garage, except openings designed to provide vehicular and pedestrian ingress and egress, be outfitted with an architectural mesh or grill screening material. Said screening material and design scheme shall be submitted to and meet the approval of the Director.

(b) That street trees along the rear (south) property line shall be 18-feet in height at the time of planting.

(c) That all outdoor lighting fixtures shall be located, oriented, adjusted and shielded such that the lighting is deflected, shaded and focused away from adjacent property in accordance with Section 33-4.1 of the Code.

2. Prohibited and Restricted Uses

Notwithstanding the approval of the Application, the following uses shall be prohibited on the Property:

(a) Liquor package stores, as would otherwise be permitted by Section 33-247(31) of the Code;

(b) Private Clubs, as would otherwise be permitted by Section 33-247(35) of the Code of Miami-Dade County (the "Code");

(c) Pubs and bars, as would otherwise be permitted by Section 33-247(37) of the Code.

In addition, no portion of the premises within the proposed building (regardless of the percentage of total floor area), even if screened to keep such area from the clear view of minors, may be used for the display, sale or rental of videotapes, printed matter, pictures, films, graphic or other materials, which activities require the exclusion of minors pursuant to Chapter 847, Florida Statutes.

3. Miscellaneous.

County Inspection. As further part of this Declaration, it is hereby understood and agreed that any official inspector of Miami-Dade County, or its agents duly authorized, may have the privilege at any time of entering and inspecting the use of the Property to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded, at Owner's expense, in the public records of the County and shall remain in full force and effect and be binding upon the undersigned Owner, and its heirs, successors and assigns until such time as the same is modified or released. The restrictions contained within this Declaration, while in effect, shall be for the benefit of, and constitute limitations upon, all present and future owners of the Property, and for the benefit of Miami-Dade County and the public welfare. Owner, and its heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change this Declaration in whole, or in part, provided that such change has first been approved by the County.

Modification, Amendment, Release. This Declaration may be modified, amended or released as to the Property, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property including jointers of all mortgagees, if any, provided that the same is also approved by the Board of County Commissioners or Community Zoning Appeals Board of Miami-Dade County, Florida, whichever by law has jurisdiction over such matters, after public hearing.

Should this Declaration be so modified, amended or released, the Director of the Miami-Dade County Department of Planning and Zoning, or the executive officer of the successor

agency to the Department, or in the absence of such director or executive officer, by her/his assistant in charge of the Department or such successor agency in her/his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants set forth in this Declaration. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his/her/its attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

Authorization for Miami-Dade County to Withhold Permits and Inspections. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the County is hereby authorized to withhold, in connection with the Property, any further permits, and refuse to make any inspections or grant any approvals with respect to the Property, until such time as this Declaration is complied with.

Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

Presumption of Compliance. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County, and inspections made and approval of occupancy given by the County, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply

with the intent and spirit of this Declaration.

Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion.

Recording. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida, at the cost of the Owner following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by her/his assistant in charge of the office in her/his absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

Acceptance of Declaration. Acceptance of this Declaration does not obligate the County in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the Board of County Commissioners and/or any appropriate Community Zoning Appeals Board retains its full power and authority to with respect to the Property to deny each such application in whole or in part and to decline to accept any conveyance or dedication.

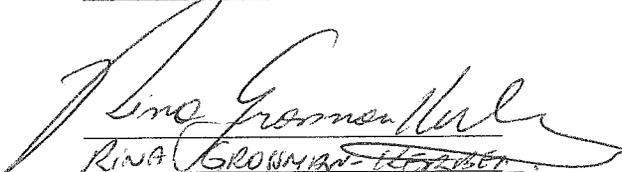
Owner. The term "Owner" shall include the Owner, and its heirs, successors and

**JOINDER BY MORTGAGEE
CORPORATION**

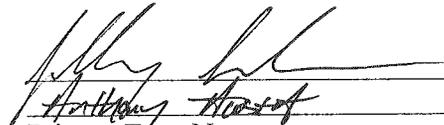
The undersigned, Regions Bank and Mortgagee under that certain Mortgage from B & F Marine, Inc., a Florida corporation, recorded in Official Records Book 24659, Page 2041, in the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Declaration of Restrictions, does hereby consent to the execution of this Declaration of Restrictive Covenants by B & F Marine, Inc., a Florida corporation, and agree that in the event Mortgagee or any other party shall obtain title to the property through foreclosure or deed-in-lieu of foreclosure, this Declaration of Restrictions shall be binding upon the entity obtaining title as the then owner of such property.

IN WITNESS WHEREOF, these presents have been executed this 28th day of AUGUST, 2009.

WITNESSES:

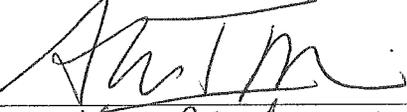


Rina Gromman-Hess
Print or Type Name



Anthony Hines
Print or Type Name

Regions Bank

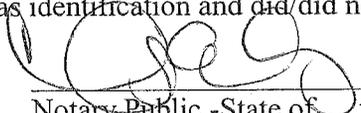
By: 

Title: Vice President
Print name: ALAN IRWIN
Address: 2800 Ponce De Leon Blvd.
Coral Gables, FL 33134

(Corporate Seal)

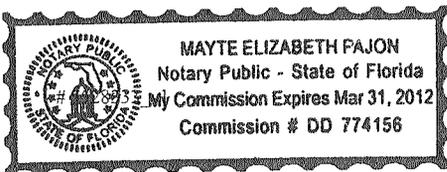
STATE OF FLORIDA)
) SS
COUNTY OF Dade

The foregoing instrument was acknowledged before me this 28th day of August, 2009 by ALAN J. IRWIN, of Regions Bank, on behalf of the corporation. He/She is personally known to me or has produced FDL, as identification and did/did not take an oath.



Notary Public - State of FLORIDA
Print Name MAYTE ELIZABETH FAJON
My Commission Expires:

3/31/2012



**JOINDER BY MORTGAGEE
CORPORATION**

The undersigned, Loyal Properties Corporation, a Florida corporation and Mortgagee under that certain Mortgage from B & F Marine, Inc., a Florida corporation, recorded in Official Records Book 24784, Page 4995, in the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Declaration of Restrictions, does hereby consent to the execution of this Declaration of Restrictive Covenants by B & F Marine, Inc., a Florida corporation, and agree that in the event Mortgagee or any other party shall obtain title to the property through foreclosure or deed-in-lieu of foreclosure, this Declaration of Restrictions shall be binding upon the entity obtaining title as the then owner of such property.

IN WITNESS WHEREOF, these presents have been executed this ___ day of _____, 2009.

WITNESSES:

Teresa Ruiz
Teresa Ruiz
Print or Type Name

George Leal
George Leal
Print or Type Name

Loyal Properties Corporation

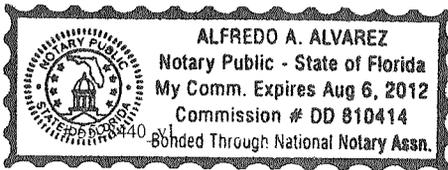
By: *[Signature]*
Title: PRESIDENT
Print name: Norberto Leal
Address: 4221 SW 75 Ave
Miami, FL 33155

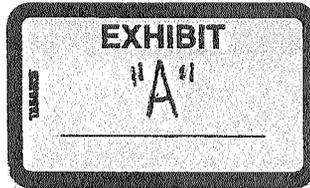
(Corporate Seal)

STATE OF FLORIDA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 21 day of AUGUST, 2009 by NORBERTO LEAL, PRESIDENT, of Loyal Properties Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____, as identification and did/did not take an oath.

Alfredo Alvarez
Notary Public -State of FLORIDA
Print Name ALFREDO A. ALVAREZ
My Commission Expires: AUGUST 6, 2012





RECEIVED
206-383
NOV 08 2006

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.

BY AV

LEGAL DESCRIPTIONS:

0 B & F MAYNE - RETAIL STORE:
4001 SW 72ND AVE.

THE WEST 112.0 FT OF TRACT 2, OF "AMENDED PLAT OF BIRD ROAD ESTATES, SECTION TWO," ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 33, AT PAGE 19, OF THE PUBLIC RECORDS OF DADE Co, FLORIDA LESS THE NORTH 15 FT AND LESS ALL THAT PART OF TRACT 2 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC. CONCAVE TO THE SOUTHEAST TANGENT OF THE WEST LINE OF SAID TRACT 2, AND TANGENT TO THE SOUTH LINE OF THE NORTH 15 FT. OF SAID TRACT 2

0 PARCELS 1, 2 & 3:
7155, 7161 & 7185 SW 41ST STREET

PROPERTY ADDRESS:

7155, 7161 AND 7185 S.W. 41st. STREET, MIAMI, FLORIDA 33155

LEGAL DESCRIPTION:

PARCEL 1

ALL OF "QUECK SUBDIVISION", (A RESUBDIVISION OF THE SOUTH 110 FEET OF THE EAST 100 FEET OF TRACT 2, OF THE "AMENDED PLAT OF BIRD ROAD ESTATES, SECTION 2", PLAT BOOK 33, PAGE 19), RECORDED IN PLAT BOOK 66, AT PAGE 85, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING THE SAME PROPERTY DESCRIBED IN THE WARRANTY DEED RECORDED UNDER CLERK'S FILE NO. 77R-279948 IN OFFICIAL RECORDS BOOK 9855, AT PAGE 1509, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL 2

THE EAST 50 FEET OF THE WEST 162 FEET OF THE SOUTH 110 FEET OF TRACT TWO, OF "BIRD ROAD ESTATES, SECTION TWO", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 33, AT PAGE 19, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

PARCEL 3

THE EAST 50 FEET OF THE WEST 212 FEET OF THE SOUTH 110 FEET OF TRACT 2, OF "BIRD ROAD ESTATES AMENDED, SECTION TWO", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 33, AT PAGE 19, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.



STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that this is a true copy of the original filed in this office on March 18 day of March A.D. 2010
WITNESS my hand and Official Seal
HARVEY RUVIN, Clerk of Circuit and County Courts
By Harvey Ruvins #7045 D.C.

MIAMI-DADE COUNTY
OPINION OF TITLE

TO: MIAMI-DADE COUNTY, a political subdivision of the State of Florida

With the understanding that this Opinion of Title is furnished to MIAMI-DADE COUNTY, FLORIDA, as an inducement for acceptance of a Declaration of Restrictions proffered in connection with zoning application Z06-323, it is hereby certified that I have examined a title policy issued by Attorney's Title Insurance Company Policy No. OPM-2884958 (the "Policy"), which Policy covers the period from the BEGINNING through August 3, 2006, at 11:00 p.m.; and an Attorney's Title Insurance Fund computer title update which covers the period of time from the Policy through January 1, 2010 at 11:00 p.m. inclusive of the following described real property located and situated in Miami-Dade County, Florida:

SEE EXHIBIT "A" ATTACHED HERETO.

I am of the opinion that on the last mentioned date, the fee simple title to the above-described property was vested in:

B & F Marine, Inc., a Florida corporation

Subject to the following encumbrances, liens and other exceptions:

1. RECORDED MORTGAGES:

Mortgage executed by B & F Marine, Inc., a Florida Corporation in favor of Regions Bank, dated June 2, 2006, recorded June 22, 2006 in Official Records Book 24659, Page 2041-2065, of the Public Records of Miami-Dade County, Florida, securing the original principal sum of \$1,820,150.00, and

Mortgage executed by B & F Marine, Inc., a Florida corporation in favor of Loyal Properties Corporation, a Florida corporation, dated July 31, 2006, and recorded on August 3, 2006 in Official Records Book 24784, at Page 4995 of the Public Records of Miami-Dade County, Florida, securing the original principal amount of \$1,000,000.00.

2. RECORDED CONSTRUCTION LIENS, CONTRACT LIENS AND JUDGMENTS:

NONE

3. GENERAL EXCEPTIONS:

- (a) All taxes for current and subsequent years.
- (b) Rights of persons other than the above owners who are in possession.
- (c) Facts that would be disclosed upon accurate survey.

- (d) Any unrecorded labor, mechanics' or materialmen's liens.
- (e) Zoning and other restrictions imposed by governmental authority.

4. SPECIAL EXCEPTIONS:

- (a) Mortgage executed by B & F Marine, Inc., a Florida corporation, in favor of Regions Bank, dated June 2, 2006, recorded June 22, 2006, in Official Records Book 24659, Page 2041-2065, of the Public Records of Miami-Dade County, Florida, securing the original principal sum of \$1,820,150.00.
- (b) Easements, dedications, restrictions, setback(s) and other matters as stated and shown on the plat recorded in Plat Book 33, Page 19, of the Public Records of Miami-Dade County, Florida.
- (c) Agreement as recorded in Official Records Book 14431, Page 2729.
- (d) Covenant in favor of Miami-Dade County, as recorded in Official Records Book 14431, Page 2726.
- (e) Unity of Title, recorded in Official Records Book 14431, Page 2723, and Partial Release, as recorded in Official Records Book 14721, Page 386.
- (f) Unity of Title, as recorded in Official Records Book 10767, Page 44.
- (g) Ordinance No. 87-78, recorded in Official Records Book 13559, Page 414.
- (h) UCC Financing Statement, recorded June 22, 2006, in Official Records Book 24659, Page 2066, of the Public Records of Miami-Dade County, Florida.
- (i) Industrial Use Affidavits as recorded in Official Records Book 416, at Page 177 and Official Records Book 1488, at Page 240, of the Public Records of Miami-Dade County, Florida.
- (j) County Ordinances for Sanitary Sewer Project by instrument filed in Official Records Book 13473, at Page 587 and Official Records Book 13559, at Page 414, of the Public Records of Miami-Dade County, Florida.
- (k) County Resolution for Sanitary Sewer Project Special Assessments, as recorded in Official Records Book 14567, at Page 2772, of the Public Records of Miami-Dade County, Florida.
- (l) Ordinance, as recorded in Official Records Book 11414, at Page 335, of the Public Records of Miami-Dade County, Florida.

- (m) Mortgage executed by B & F Marine, Inc., a Florida corporation in favor of Loyal Properties Corporation, a Florida corporation, dated July 31, 2006 and recorded on August 3, 2006, in Official Records Book 24784, at Page 4995 of the Public Records of Miami-Dade County, Florida, securing the original principal amount of \$1,000,000.00.
- (n) Survey prepared by Aniano J. Garcia, PLSM 5105, dated July 24, 2006, Order No. 06-1176.

Items a - h, as to B&F Marine – Retail Store:
4001 SW 72nd Avenue, Miami, FL 33155

Items i - o, as to Parcels 1, 2, and 3 –
7155, 7161 & 7185 SW 41 Street, Miami, FL 33155

ALL RECORDING INFORMATION REFERS TO THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

It is my opinion that the following party(ies) must join in the agreement in order to make the agreement a valid and binding covenant on the lands described herein.

<u>Name</u>	<u>Interest</u>	<u>Special Exception Number</u>
B & F Marine, Inc., a Florida corporation	Owner	
Regions Bank	Mortgagee	
Loyal Properties Corp.	Mortgagee	

Antonio Veciana, Jr., as president of B & F Marine, Inc., a Florida corporation, is authorized to sign on behalf of said corporation.

It is my opinion that none of the exceptions listed above would affect the recording or the enforceability of the Declaration of Restrictions.

I HEREBY CERTIFY that the legal description contained in this Opinion of Title coincides with, and is the same as, the legal description in the proffered, recordable agreement.

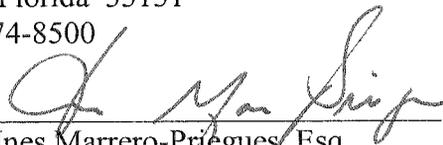
I, the undersigned, further certify that I am an attorney-at-law duly admitted to practice in the State of Florida and a member in good standing of the Florida Bar.

Respectfully submitted this 22 day of January, 2010.

Very truly yours,

HOLLAND & KNIGHT, LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
(305) 374-8500

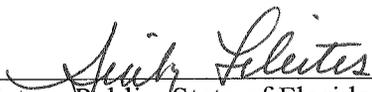
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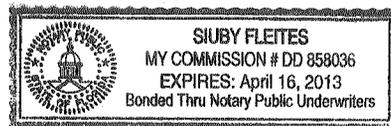

Ines Marrero-Priegues, Esq.
Florida Bar No.: 0864749

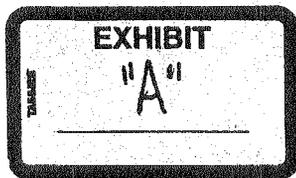
STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 22 day JAN, 2010, by Ines Marrero-Priegues, Esq., who is personally known to me.


Notary Public, State of Florida
My Name, Commission No. & Expiration:





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206-373
NOV 08 2006

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.

BY AV

LEGAL DESCRIPTIONS:

o B & F MARINE - RETAIL STORE:
4001 SW 72ND AVE.

THE WEST 112.0 FT OF TRACT 2, OF "AMENDED PLAT OF BIRD ROAD ESTATES, SECTION TWO," ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 33, AT PAGE 19, OF THE PUBLIC RECORDS OF DADE Co, FLORIDA LESS THE NORTH 15 FT AND LESS ALL THAT PART OF TRACT 2 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC. CONCAVE TO THE SOUTHEAST TANGENT OF THE WEST LINE OF SAID TRACT 2, AND TANGENT TO THE SOUTH LINE OF THE NORTH 15 FT. OF SAID TRACT 2

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