

003427

PREPARED BY McCLURE, CALLAGHAN & ATKINS TM 03500-00-00-017A0  
COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING ALL  
PARCELS IN SOUTHWIND ESTATES

THIS DECLARATION made this 13<sup>th</sup> day of December, 2004 by  
DARREN J. KADY and DEBORAH A. KADY, hereinafter called  
Declarants,

W I T N E S S E T H:

WHEREAS, Declarants are the owners of real property shown on  
a plat made by Roger W. Ray & Assoc., Inc., dated July 20, 2004  
and recorded in the Clerk's Office of the Circuit Court of  
Albemarle County, Virginia in Deed Book 2816, pages 275-281; and

WHEREAS, the Declarants intend to further subdivide the  
property so that Southwind Estates will consist of eight (8)  
lots.

WHEREAS, Declarants desire to provide for the preservation  
of the values and amenities in said subdivision and, to this end,  
desire to subject the real property described on said plat to the  
covenants, restrictions and easements, hereinafter set forth,  
each and all of which is and are for the benefit of said property  
and each owner of a portion thereof; and

WHEREAS, Declarants have deemed it desirable, for the  
efficient preservation of the values and amenities within said  
subdivision, to create an Architectural Review Board assigned the  
non-exclusive powers of administering and enforcing these  
covenants and restrictions.

NOW THEREFORE, Declarants declare that the real property on

said plat and all division thereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions (sometimes referred to as "covenants and restrictions") hereinafter set forth.

#### ARTICLE I

#### ADMINISTRATION

##### A. DESIGN GUIDELINES -PURPOSE

Southwind Estates is planned as a distinctive and unique community. In order to establish and maintain a consistent character for the community, and to insure that homes are well designed, constructed and landscaped, Design Guidelines (hereafter referred to as "Guidelines") have been developed. The intent of the Guidelines is to accommodate individual taste to the extent possible, while ensuring that overall property values within the community are protected.

##### B. ADMINISTRATION

To administer the Guidelines, Darren J. Kady will serve as appointed Architectural Review Board (hereinafter referred to as "ARB"). If Darren J. Kady ceases to act as the ARB then Deborah A. Kady shall serve in his place and stead. When both Darren J. Kady and Deborah A. Kady cease to act as ARB then the majority of the owners, with one vote per lot, shall elect the ARB.

##### C. ITEMS REQUIRING APPROVAL

Prior to beginning construction or installation, ARB approval is required for any improvements placed on constructed on a lot, including, but not limited to, the following:

1. Construction of a new home
2. Modifications or additions to an existing home
3. Construction of secondary structures
4. Landscaping and landscape changes
5. Fences
6. Pools
7. Basketball goals, swing sets or play equipment
8. Driveway and parking areas
9. Terraces
10. Garden walls
11. Exterior colors
12. Awnings
13. Exterior lighting
14. Retaining walls

Alterations in the exterior appearance of any building, fence or other structure, including exterior color or finish, require ARB approval.

D. PLAN REVIEW FOR FINAL APPROVAL

1. At least one (1) set of plans and all related data must be submitted to the ARB and will be retained by the ARB as part of its records. Should the owner desire plans be returned with comments, a minimum of two (2) sets must be submitted. While the ARB has up to thirty (30) days to respond to submissions, it is the policy of the ARB to respond as quickly as possible. The Owner and/or Owner's representative will be notified of the ARB's action in one of the following ways:

- i. Approved as submitted
- ii. Approved subject to stated conditions; or

iii. Disapprove with comments

2. Submission Forms

A Southwind Estates ARB Submission Form

(Attachment 1) must accompany each plan submitted to the ARB. A single Submission Form may be used for final house plans, site plan and landscape plan for a new home. However, if house plans and a landscape plan for a new home are submitted at separate times, then a Submission Form must accompany each submission.

3. Plan Review Fees

The review of final house plans for a new home requires the payment of \$150.00 to Southwind Estates. This payment should accompany the submission of final house plans, and approval will not be given until the fee has been paid.

4. Final Site Plans and House Plans

The ARB will review plans submitted in accordance with the established Guidelines on a weekly basis until all issues are resolved to the satisfaction of the ARB, and final plans approved. A site plan must accompany house plans before final approval is granted for either. A landscaped plan may be submitted at this stage or deferred until later. Review and approval of plans by the ARB DOES NOT constitute approval of requirements of Albemarle County or of the structural and engineering sufficiency of the plans, and the ARB, its members, or Southwind Estates assume no liability or responsibility

therefor.

5. Plan Modifications

Any modifications or additions to approved plans, including material or color changes, must be submitted to the ARB for approval prior to implementation. A limit of five modifications are allowed at no additional charge. There will be a \$50.00 charge per modification change thereafter.

6. Pre-construction Requirements

Prior to the start of construction, site plan and house plan approval must be obtained in writing. Additionally, the Owner, or his agent, must meet on his lot with a representative from the ARB to review the stake out of the approved site plan. Each corner of the house should be clearly marked by a stake and the driveway defined with flagging tape. Any other areas to be cleared should also be clearly marked with flagging tape.

7. Landscape Plan Review

1. A landscape plan must be submitted, approved in writing by ARB, and installed prior to issuance of a Certificate of Compliance. In the event inclement weather postpones installation of landscaping until after occupancy, an appropriate amount, to be determined by the ARB, will be held in escrow by an agent designated by the ARB until the landscaping work is completed.

ii. Height of the grass on the lawn cannot exceed 4 inches. The fields must be cut at a minimum of twice a year. If these guidelines are not met, the homeowners' association will cut the grass and the cost will be the obligation of the homeowner.

#### 8. Final Inspection

i. Following the completion of all site work, house construction, landscaping, other construction or installation activities, and site clean up, the ARB will perform a final inspection. In this inspection the ARB will confirm:

1. The siting of the house, driveway, walkways, retaining walls, and other items, as well as materials used to conform with the approved site plan and any approved modifications.

2. The exterior of the house, including materials and colors, and architectural details conform with the approved house plans and any approved modifications.

3. The landscaping conforms with the approved landscaping plan and any approved modifications.

ii. Should all work conform with approved plans and provided conditions contained in the Construction Agreement are met, the ARB shall issue a Certification of Compliance. Should construction not conform with approved plans or if conditions contained in the construction agreement are not met,

the ARB will inform the Owner or their agent of items needing attention.

9. Certificate of Compliance

Upon satisfactory completion of the final inspection and receipt of all appropriate fees the ARB will issue a Certificate of Compliance. The ARB requires at least 48 hours notice before the Certificate of Compliance can be issued in order to complete the final inspection.

10. Any resident not conforming and leaving uncorrected conditions for more than 60 days will be subject to a daily fine of \$100.00 beginning on the 61<sup>st</sup> day of violation to be paid to the ARB.

NOTE: ARB reserves the right to decide upon the trimming and/or removal of any natural growth that may obstruct, now or in the future, the view or create a hazard. For any resident of Southwind Estates the resident requesting the obstruction or hazard removed will be responsible for all costs incurred to remove and clear obstructions, if required.

For trees damaged by storm, ice or other natural cause or diseased trees, the owner may remove, trim or otherwise modify as needed. This does not apply to trees that provide privacy or separation between estates as discussed below.

If any existing trees form a living wall that provides privacy or separation between estates and are greater than 3

inches in diameter and located on parcels on the lower section of Southwind Estates, ARB approval is needed prior to removal. If removal takes place without ARB approval a fine will be levied in the amount of not less than \$500.00 nor more than \$1,000.00 per tree, with the exception of the construction of the residences and driveways approved by the ARB that may access houses or structures to be constructed.

## ARTICLE II

### PLAN REQUIREMENTS

#### A. Site Plan

1. A site plan must be submitted at a scale of 1" = 10' and must include the following:

- a. Section and lot number
- b. Owner's name
- c. Name of person or company who prepared the plan
- d. Date plan prepared
- e. Utility and drainage easements
- f. Building setback lines
- g. All proposed structures, including decks, porches, stoops, terraces, HVAC equipment, outbuildings and play equipment
- h. Driveway, walks, parking and/or service courts, fences, swimming pool and pool equipment, site lighting, retaining walls, and any other elements visible from outside home
- i. Topographic contour lines at two (2) foot intervals indicating areas of significant grade changes and natural drainage areas.
- j. The area is to be cleared and areas of existing vegetation to remain. Selected trees to remain in areas of general clearing should be indicated.

NOTE: If there are no significant grade changes no contour



lines need to be shown and should be so stated.

B. House plans

An architectural seal is highly encouraged for all house plans but is not required. Specific information to be submitted with house plans includes the following:

1. Section and lot number
2. Owner's name
3. Name of person or company who prepared the plan
4. Date plan prepared
5. House elevations at a scale of 1/4" = 1" with notes indicating all exterior finishes and materials, accurate grade lines, and any attached elements, such as decks and retaining walls.
6. Floor plans at a minimum scale of 1/8" = 1' scale. While the ARB does not approve floor plans, they are often utilized in suggesting revisions to the exterior elevations.
7. Architectural details for exterior doors, windows, porches and entrance features are encouraged and may be required by the ARB prior to final approval. If required, they must be at a minimum scale of 3/4" = 1'.
8. Elevations for any secondary structures such as garages, storage buildings, etc., at the same scale and providing the same information as the house plans

C. Landscape Plan

A landscape plan must be submitted at a scale of 1" = 10' either as additional information on a copy of the approved site plan or as a transparent overlay of the approved site plan, i.e., on tracing paper. The landscape plan must include the following:

1. Section and lot number
2. Owner's name
3. Name of person or company who prepared the plan

4. Date plan prepared
5. Existing areas of vegetation, including existing trees in cleared areas
6. Areas to be grassed, mulched or left natural
7. The number, plant name, size and location of plants to be installed. This is a general outline as the type, size and quantity of available plants may not be available at the time of installation.
8. The species of the plant material installed must be listed as well as the size of the plant material. For trees, the caliper of the trunk, as well as the height of the tree must be listed.
9. The lot boundary lines and house footprint, along with driveway, walks, patios, decks, retaining walls, fences and other landscape items
10. Topographic contour lines at two (2) foot intervals indicating areas of significant grade changes and natural drainage areas
11. Utility and drainage easements.
12. The Landscape Plan may also indicate areas of future planting. In addition, general planting of individual plants and trees (that do not block the view of other lot owners) after the initial installation is complete may be installed at the owner's discretion. It is the owner's responsibility to consult with the other owners prior to planting a tree or trees that may have the potential of blocking the other owner's view.

NOTE: If there are no significant grade changes, no contour lines need to be shown and should be so stated.

### ARTICLE III

#### DESIGN GUIDELINES

The following general design guidelines are offered to property owners and their designers as a planning guide. The guidelines should be followed, and exceptions will be granted

only where strict adherence would result in hardships.

General, the relationship of the house to the street shall be considered less important than other constraints such as views, topography, trees and breezes. It is not as important that the house be parallel to the street as it is for the house to be fitted naturally into the site, taking advantage of views and unique vegetation while minimizing the impact on green space or the adjoining property. Preserving the existing terrain, using natural vegetation and minimizing disturbance of the natural setting should be focal points for landscaping.

A. Site Improvements

1. House

When siting houses, care should be taken to preserve existing natural vegetation and topography. The existing terrain shall be left Undisturbed wherever possible.

2. Driveways

- i. Where a pipe is required at the entrance to accommodate drainage, a 15" diameter by 24' long corrugated metal pipe (CMP) must be used, and flared metal ends are required.
- ii. Where required, the CMP must be installed before site work begins.
- iii. Driveways should be considered from the standpoint of safety access upon the main road and ease of grade, minimizing the amount of required clearing.
- iv. Driveways must be paved with asphalt or other surfaces approved by ARB for at least thirty (30) feet from the road. After thirty (30) feet the area shall be part of the lawn or landscaping.

### 3. Walks

- i. Walkways must be 8' from the house in order to accomodate landscaping between the walkway and the foundation
- ii. Walkways must be of concrete or brick, slate or similar asphalt, corrugated materials set concrete
- iii. Walkways may not be material loosely placed on top of stone, dust or dirt or constructed of wood or gravel
- iv. Walkways may not go to the street but must have entrance from the driveway

### 4. Retaining Walls

- i. If attached to the house, retaining walls must be the same material as the foundation
- ii. If a retaining wall is judged to be a safety hazard, a railing approved by the ARB may be required.

### 5. Trash Receptacles/Outdoor HVAC Screening

All outdoor HVAC units and trash receptacles must be visually screened from the street and neighbors with a picket fence or a similar architectural element approved by the ARB. The ARB will review placement of these units to ensure than their screening conforms to community standards.

### 6. Exterior Lighting

Landscape lighting is encouraged but requires ARB approval

### 7. Fences

- i. The ARB, or its designated representative, will review each fence application on an individual basis, and in its sole discretion will determine whether the fence will be approved. All fence proposals must include a foundation survey showing the current location of existing structures with the proposed fencing area shown.
- ii. Invisible fences will be 2' inside the property line

8. House (a minimum of 3500 square feet of finished space is required)

i. Foundations

The owner and builder should strive to minimize exposed foundation walls. Exposed foundations shall be covered with brick, stone or stucco in a complimentary color to the house and accepted by the ARB. Uncovered concrete, painted parged block or wood materials are unacceptable.

ii. Roof

- A. Roof pitches must be 7/12 or greater. Any exception must be approved by the ARB.
- B. Wood shingles or shakes, architectural asphalt shingles, sheet metal, copper and slate roofs are acceptable. Asphalt roof colors must be dark brown, dark gray or black. A cooper roof may be allowed to finish naturally, and raised seem metal roofs must be dark in color.

iii. Siding

In order for harmony on the site it is suggested that brick, stone or stucco shall be used on all residences whenever possible. Hardiplank, stone, cedar, cypress or redwood siding may be used as an exterior finish in certain trim areas only where brick, stone or stucco cannot be used.

iv. Windows/Doors/Trim/Shutters

Metal windows and doors must be painted or backed enamel finish. No natural metal finish such a aluminum finishes windows, storm doors, or doors are to be used. Window screens and storm doors must be white, anodized bronze or match the trim or body color of the house. The style of storm doors must be approved by the ARB. Window casing must be 3-1/4' minimum and wood sills must be 2-1/2' on the front elevations of the house. On a brick house, bull-nosed brick

will be allowed in lieu of 2-1/2' wood sills. Shutters are not required on houses. However, if used they must be operational with hardware (i.e. "S" guards). Vinyl shutters are allowed with proper installation of hardware (hinges and hooks). Shutters must be half the width of the window in site.

v. Garages

- A. Front loading garages are discouraged except in situation where the lot width or grade conditions make site loading undesirable or impossible.
- B. A three-car garage integral to the house, or detached, on the first floor level is required for any house in Southwind Estates.

vi. Front Porch

- A. Preferred flooring and steps finished with slate, brick, exterior tile or finished masonry
- B. Wood flooring on front porches must be paint grade material and be painted unless otherwise approved by ARB. Wood front porch steps must have risers. The construction must be paint grade wood and treads and risers must be painted. Wood porches must be supported with columns of brick or of the approved foundation material (if not brick), and the areas between the columns enclosed with lattice or in another manner acceptable to the ARB.

vii. Gas Fireplace

- A. If the fireplace is on the front of the house and out boarded, it must have a full chimney. If the fireplace is in boarded, no vent pipes will be permitted on the front of the house or on the front portion of the roof.
- B. If the fireplace is on the side of the house and not in boarded, a full chimney is required. If the fireplace is in

boarded a vent will be permitted either through the side of the house or through the rear portion of the roof (i.e., the back roof of the house). If vented through the roof, the vent must be painted to match the roof color or painted black. If vented through the side, the vent must be painted to match the siding, or if the siding is brick, the vent must be painted black.

- C. If the fireplace is on the rear of the house, the same rules apply as to the side of the house, except that the ARB will consider alternative designs for the purpose of creating special Architectural elements. For instance, glass surrounds of a gas fireplace will be considered to the rear of the homes.
- D. Composition of full chimney shall meet approval of the ARB.

viii. Decks

If wood, deck supports should be a minimum of 6x6 posts and solid stained or painted. Other supports, such as brick pillars, are encouraged.

ARTICLE IV

OTHER REQUIREMENTS

A. Fuel tanks or similar storage receptacles may be installed only within a main building, accessory building or buried underground. Propane tanks for grills that are hand carried off site for replacement or refill do not have to be buried but will be treated as a part of the grill.

B. Freestanding storage sheds, workshops, garages, lean-to or other outbuildings must be designed and located as an integral part of the house, service yard and landscape designs. The same

approval process is required for such out buildings as is required for the house.

C. Dog houses, playhouses, gazebos and other such structures must be painted or stained to blend with the house and/or natural landscaping. Approval of such structures by the ARB, including their location, is required.

D. No free standing television antenna, satellite dish, radio receiving or transmitting antenna shall be constructed or permitted on any lot or exterior of any dwelling except satellite dishes less than 30' in diameter. The locations of those satellite dishes permitted must be approved by the ARB.

E. Horses are allowed on 6 acre parcel minimum.

F. Residents are to provide their own mailbox. Mailbox and post must be approved by the ARB.

G. Recreational vehicles, boats, trailers, large trucks or other such items are not permitted to be parked on streets or exposed lots.

H. No clothing, laundry or wash shall be aired or dried on the exterior of any home.

I. Maintenance of the road shall be provided by ARB until such time as VDOT takes over maintenance of the road.



ARTICLE V

CONSTRUCTION REQUIREMENTS

Trash and Construction Debris

A. Each construction site must have an appropriate type trash container located on the premises. The area must be kept neat and free of litter and debris. Trash and construction debris will not be accepted at trash sites in Southwind Estates.

B. Construction activities may not start until after 7:00 A.M. Monday - Saturday only.

C. A gravel surface to the construction area must be maintained at all times to keep mud from being tracked to adjacent streets.

D. Damage to street shoulder occurring as a result of construction must be corrected by the Owner and/or Builder.

E. Prior to the start of construction all utility companies must be contacted by the Owner and/or Builder to mark the location of underground utilities. Areas disturbed to connect utilities must be restored by the Owner.

F. Silt fences are required during the construction period and are the responsibility of the Owner and/or Builder to install, maintain and remove.

ARTICLE VI  
MISCELLANEOUS .

A. The main road for Southwind Estates shall be a state maintained road.

B. Each owner shall allow both private and public easements as necessary for the development of eight (8) lots in Southwind Estates as designed by the ARB and approved by the County of Albemarle.

C. Each owner shall allow contractors to work on their property and have access to whatever is needed to accomplish the state road and to maintain this state road in the future.

ARTICLE VII  
RESTRICTIONS

A. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out buildings shall be used on any lot at any time as a residence, either temporarily or permanently. Provided, however, during any construction on a lot or the road, the contractor shall be permitted to erect a temporary mobile field office to facilitate construction.

B. Except for existing overhead lines all utility services and lines shall be installed underground from the road to the house.

C. Lots 1, 3, 4, 5, 6, 7 and 8 shall not be further subdivided. Provided, however, adjoining lot owners, for mutual

benefit, may rearrange their common boundary lines, as long as no addition lots are thereby created and each of the resulting rearranged lots retains a minimum of ninety percent of its original area.

D. No lot owner shall install or maintain any dusk to dawn security lights, street lights or pole lights, commonly known as sodium vapor or mercury vapor lights, or any other type of similar area floodlighting. This prohibition shall not restrict the installation and use of reasonably placed walkways and porch lights as long as the same are positioned so as not to constitute a nuisance to adjoining properties.

E. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

F. Trash, garbage, rubbish and other wastes shall not be kept on any lots except in sanitary containers. No dumpsters may be employed, except during periods of construction. Neither shall any building materials be stored on any of the said lots for a period of greater than six months prior to the starting of approved construction upon such lots. All sanitary containers must be stored at a location where they are not visible from any dedicated streets or other residences within the subdivision except on pick-up days.

G. Declarants reserve the right to grant privileges,

easements, rights of way and franchises over and upon the streets, however designated, for the construction, maintenance and repair of utilities and roads, and the right to grant specific easements, fifteen feet in width, along all lot lines for placement and maintenance of underground utilities. For purposes of this paragraph, cable television service shall be considered a utility. In addition, all lots shall be subject to storm drainage easements as shown on said plat.

H. The construction of a dwelling or any other building on any lot must be completed within eighteen (18) months from the date construction commenced.

I. Except as provided herein, only domestic house pets and horses shall be permitted to reside upon the lots of the subdivision. Under no circumstances shall any kennels, feed lot operations, pigs, goats, sheep, peacocks, guineas, chickens or similar animals or fowl, be kept on Lots 1, 3, 4, 5, 6, 7 and 8. Each lot owner shall insure that all animals kept shall not become a nuisance to the adjoining lot owners. All animals must be maintained on the property of their owner at all times and must be under control by the use of fencing, leashes, etc., so as to prevent them from entering the property of another unattended.

J. A vegetative cover must be established on every lot in its entirety as soon as practicable after completion of construction of the dwelling on the said lot.

K. No track bikes, off road vehicles, three or four wheel ATVs or similar vehicles nor motorcycles, except as road vehicles, may be operated on Lots 1, 3, 4, 5, 6, 7 and 8. Also, gardening and lawn equipment may be operated on any lots. Construction equipment may be operated during the time of construction or repair and maintenance.

L. All vehicles shall be parked so as not to constitute a nuisance to adjoining landowners. All unlicensed vehicles, non-operatable vehicles, tractors and similar equipment must be stored indoors or in locations where they are not visible from any dedicated street or other lots.

M. No chain link, barbed wire, woven wire or other metal fences shall be erected on Lots 1, 3, 4, 5, 6, 7 or 8. No fence located between the house and the street shall exceed 4 feet in height. All existing fencing is exempt. However, once existing fencing is removed it cannot be replaced without ARB approval. Maintenance of existing fencing is permissible.

N. Lots shall be maintained in a neat manner so as not to constitute a nuisance.


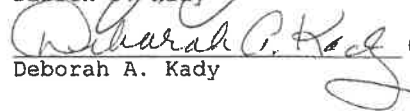
O. Should any lot owner violate any of the covenants herein it shall be lawful for any person or persons owning any real estate situated in said subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants, either to prevent him

or them from so doing or to recover damages for such violation. In addition to any other damages to injunctive relief obtained, the party substantially prevailing in such action shall recover his personal attorneys' fees.

P. Declarants reserve unto themselves the right to amend, modify or add to these protective covenants as to any lots still owned by them.

Q. Invalidation of any one or more of these covenants shall in no way affect any of the other covenants herein which shall remain in full force and effect.

WITNESS the following signatures and seals:

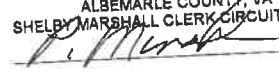
 (SEAL)  
Darren J. Kady  
 (SEAL)  
Deborah A. Kady

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Henrico, to-wit:

The foregoing instrument was acknowledged before me by DARREN J. KADY and DEBORAH A. KADY this 2 day of March, 2005.

My commission expires: 01/31/08.

  
Notary Public

RECORDED IN CLERKS OFFICE OF  
ALBEMARLE ON  
March 03, 2005 AT 10:33:53 AM  
\$0.00 GRANTOR TAX PD  
AS REQUIRED BY VA CODE §56.1-802  
STATE: \$0.00 LOCAL: \$0.00  
ALBEMARLE COUNTY VA  
SHELBY MARSHALL CLERK CIRCUIT COURT  
 DC