

PREPARED BY AND RETURN TO:  
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**CERTIFICATE OF AMENDMENT TO THE DECLARATION OF  
CONDOMINIUM OF SOUTHWINDS A, A CONDOMINIUM**

**WHEREAS**, the Amended Declaration of Condominium of Southwinds A, a Condominium and exhibits are recorded in Official Record Book 1167, at Page 2286, and amended in its entirety by that Amended and Restated Declaration as recorded in Official Record Book 1431, at Page 0757, Public Records of Indian River County, Florida;

**WHEREAS**, Section 21.3 of the Amended and Restated Declaration provides that the Amended and Restated Declaration may be amended by the vote of not less than a majority of the entire membership of the Board of Directors and by not less than 75% of the voting interests of the members of the Association owning units in Southwinds A, a Condominium;

**WHEREAS**, at a Board meeting held March 23, 2006, not less than a majority of the entire membership of the Board of Directors voted to approve of the amendments to the Amended and Restated Declaration of Condominium for Southwinds A, a Condominium as set forth in Exhibit "1" to this certificate;

**WHEREAS**, at a membership meeting held on March 23, 2006, not less than 75% of the voting interests of the members of the Association owning units in Southwinds A, a condominium did vote to approve of the amendments to the Amended and Restated Declaration in the particulars as set forth in Exhibit "1" to this certificate;

**WHEREAS**, the certificate of the amendment and Exhibit "1" shall be filed in the Public Records of Indian River County, Florida.

**NOW, THEREFORE**, the Amended and Restated Declaration of Condominium of Southwinds A, a Condominium shall be amended in the particulars as stated in Exhibit "1" attached hereto; these amendments shall run with the real property known as Southwinds A, a Condominium, and shall be binding on all parties having any right, title, or interest in the said real property or any part thereof, their heirs, successors, assigns, tenants, guests and visitors, and except as otherwise amended hereby, shall remain unchanged and in full force and effect.

**CERTIFICATE OF ADOPTION OF AMENDMENTS**

I HEREBY CERTIFY that the amendments attached to this Certificate have been



Exhibit "1"

AMENDMENTS TO THE AMENDED AND RESTATED DECLARATION OF  
SOUTHWINDS A, A CONDOMINIUM

As used herein the following shall apply:

A. Words in the text which are lined through with hyphens (----) indicate deletions from the present text.

B. Words in the text which are underlined indicate additions to the present text.

1. **The introductory clause to Section 11.1 of the Amended and Restated Declarations shall be amended to read as follows:**

"11.1 Association Maintenance. In addition to other provisions contained elsewhere in this Declaration, the following Properties shall be protected, maintained, repaired and replaced by the Association at the expense of the Association (or the particular Condominium (Southwinds A or B), (as the case may be)), as an item of common expense."

2. **Section 11.4.C.1 of the Amended and Restated Declarations shall be amended to read as follows:**

"1. Shutters. The only type and color of shutter allowed is a hurricane shutter which is of the two roll down types prevailing in the Condominiums on the Effective Date of this Declaration. Commencing as soon as possible but in no event later than July 1, 2007, each Owner within Southwinds A shall install, at the Owner's expense, on all exterior windows and glass doors, impact glass or fully operable hurricane shutters thereon, which are rated to meet the 2004 Florida Building Code in effect January 1, 2006, or to meet the then-existing codes, whichever is greater; provided however, (i) if such shutters or impact glass are not installed by July 1, 2007, the Owner shall be deemed to be in compliance with this section if the Owner has as of that date signed a binding contract to install same as soon as they are available and delivered a copy of the contract to the Association; and (ii) with respect to any Unit which on July 1, 2007 has operable roll-down hurricane shutters installed, but which do not meet the foregoing criteria, the requirement imposed by this section shall become applicable when any of the shutters are replaced or become inoperable as to require major repair or replacement. All shutters must be of a roll-down type and consistent in color and appearance with existing Southwinds A hurricane shutters."

3. **Section 11.5 of the Amended and Restated Declarations shall be amended to read as follows:**

"11.5. Alterations and Improvements by the Association. Subject to the provisions of Sections 16 and 17 below, the following shall apply: The Association shall have the right to make or cause to be made alterations or improvements to the common elements and Association property which are approved by the Board of Directors. However, if the cost of same shall exceed 5% of the annual budget for the particular Condominium (inclusive of its share of the Association budget), cumulatively in a budget year, then the alteration or improvement may not be made unless approved in writing by the Owners of ~~75%~~ 60% of the Units in the Condominium whose common elements are altered or improved, except that as to Association property, the written approval required shall be by the Owners of ~~75%~~ 60% of all Units in both Condominiums if the cost exceeds 5% of the total annual budget for all Condominiums and the Association. In order to bind a Unit under this Section 11.5, only one Owner of a Unit need execute the written consent.

A. Proviso. Notwithstanding the foregoing to the contrary, in the event any alteration or improvement is also necessary or beneficial in the maintenance, repair, replacement or protection of the Properties or Owners or Occupants, then such alteration or improvement shall not require the ratification or approval of the Owners."

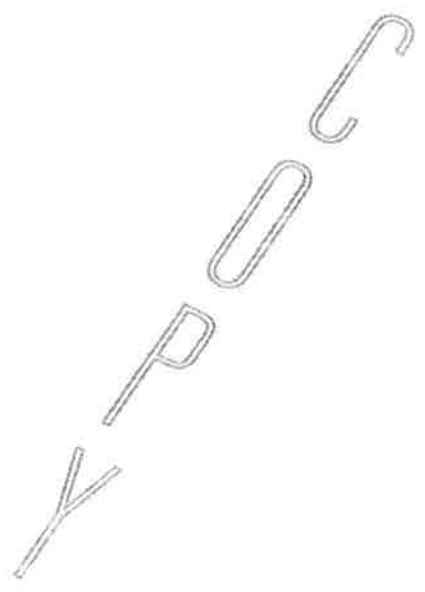
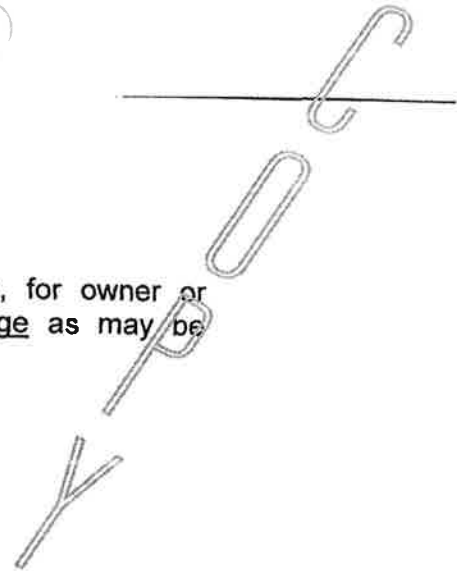
4. **Section 12.6 of the Amended and Restated Declarations shall be amended to read as follows:**

"C. The following applies only to Southwinds A, A Condominium: Upon the issuance of a hurricane, tropical storm watch or the forecast of high winds, (i) all movable objects must be cleared from porches, balconies and terraces; (ii) all porch, balcony and terrace ceiling fans (motors and blades) must be removed; and (iii) all hurricane shutters must be rolled down in a fully deployed position. Furthermore, Owners and Occupants must remove all furniture, and movable objects from porches, balconies and terraces prior to their leaving for any extended period and in all cases, at all times that the Unit is unoccupied between July 1<sup>st</sup> and November 30<sup>th</sup> of each year. Any Owner or Occupant who fails to abide by the foregoing shall entitle but not require the Association to enter upon the porch, balcony or terrace and/or the Unit and remove same, take action required by the foregoing whereupon the Association shall levy a Charge against the Owner concerned, which Charge shall be collectible as Charges are collected under this Declaration."

5. **Section 15.2 of the Amended and Restated Declarations shall be amended to read as follows:**

"15.2 Owners. Each owner ~~may~~ shall obtain insurance at his or her own expense, affording coverage of such scope and amount as is reasonable in the circumstances prevailing upon his or her interests in the Units and

personal property and for his or her personal liability, for owner or mortgagee title insurance, and such insurance coverage as may be required by law."



**NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATIONS. SEE ENTIRE ORIGINAL DECLARATIONS FOR PRESENT TEXT.**

**AMENDED AND RESTATED DECLARATIONS**  
**OF CONDOMINIUM OF SOUTHWINDS A, A CONDOMINIUM AND SOUTHWINDS**  
**B, A CONDOMINIUM**

KNOW ALL PERSONS BY THESE PRESENTS:

THE AMENDED DECLARATION OF CONDOMINIUM MERGING SOUTHWINDS PHASES 2, 3, 4, 5 AND 6 CONDOMINIUMS AND ESTABLISHING SOUTHWINDS A, A CONDOMINIUM was recorded on August 26, 1997 at Official Record Book 1167, Page 2286, Public Records of Indian River County, Florida; and the AMENDED DECLARATION OF CONDOMINIUM MERGING SOUTHWINDS PHASES 1, 7, 8 AND 9 CONDOMINIUMS AND ESTABLISHING SOUTHWINDS B, A CONDOMINIUM was recorded on August 26, 1997 in Official Record Book 1167, Page 2440, Public Records of Indian River County, Florida. Those Amended Declarations of Condominium are hereby amended in part and restated in their entirety.

**Section 1. SUBMISSION TO CONDOMINIUM OWNERSHIP.** These Amended and Restated Declarations of Condominium are made by the Southwinds at the Moorings Association, Inc., a Florida corporation not for profit. The land described in these Declarations and the improvements located on the land have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by these Declarations. Furthermore, the two condominiums whose Declarations are being amended in their entirety shall remain separate and distinct and are not being merged hereby.

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**THIS INSTRUMENT PREPARED BY:**  
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**Section 2. NAMES AND ADDRESS.** The names of the condominiums subject to these Amended and Restated Declarations of Condominium are as follows: Southwinds A, A Condominium and Southwinds B, A Condominium. The mailing address for these condominiums is c/o Vista Properties Management, Inc., 100 Vista Royale Boulevard, Vero Beach, Florida 32963.

**Section 3. DEFINITIONS.** The following definitions shall apply in these Declarations and in the Articles of Incorporation and By-Laws, unless the context otherwise requires:

3.1 "Articles" means the Articles of Incorporation, as amended from time to time.

3.2 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Units. Assessments shall be levied against each Owner in a percentage, equal to that Owner's undivided share in the common elements and common surplus.

3.3 "Association" means Southwinds at the Moorings Association, Inc., a Florida corporation not for profit, its successors, assigns and legal representatives.

3.4 "Association Certificate" means a certificate of the Association in recordable form signed by the president or vice-president and secretary or assistant secretary of the Association.

3.5 "Association Property" means all property, real or personal, owned or leased by the Association, or dedicated by a recorded subdivision plat to the Association for the use and benefit of the Owners.

3.6 "Building and Improvements" means the structures and improvements on the Properties.

3.7 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs.

- 3.8 **"By-Laws"** mean the By-Laws, as amended from time to time.
- 3.9 **"Common Elements"** means all portions of the condominium property of each Condominium not included within the Units, but not Association property. The skylights which are part of the original construction of the buildings are part of the common elements.
- 3.10 **"Condominiums"** mean Southwinds A, A Condominium and Southwinds B, A Condominium. The term "Condominium" shall also mean both Condominiums unless the context requires reference to one Condominium only.
- 3.11 **"Condominium Act"** means the condominium act in existence on the date of recording of this Declaration, unless the context states otherwise.
- 3.12 **"Condominium Documents"** means and includes these Declarations and all recorded exhibits, including Articles of Incorporation and By-Laws, as amended from time to time.
- 3.13 **"County"** means Indian River County, Florida.
- 3.14 **"Declaration"** means collectively, the Amended and Restated Declarations of Southwinds A, A Condominium and Southwinds B, A Condominium, as amended from time to time.
- 3.15 **"Fixtures"** means those items of tangible personal property which by being physically annexed or constructively affixed to the Unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.
- 3.16 **"Guest"** means any person who: (a) is physically present in, or occupies the Unit at the invitation of the Owner or other legally permitted occupant, without requirement to contribute money, perform services or provide any other consideration to the Owner or lessee in connection with such presence of occupancy; (b) is not the Owner or lessee of the Unit on which he or she is present; and (c) is not



a member of the family of the Owner or lessee of the Unit in which he or she is present. Notwithstanding the foregoing, an Owner or lessee of the Unit in which he or she is present shall be considered a Guest if he or she is not a permanent occupant of that Unit. Furthermore, a member of the family of the Owner or lessee of a Unit shall be considered a Guest unless he or she is a permanent occupant of such Unit.

3.17 "Institutional Mortgagee" means the holder (or its assignee) of a mortgage against a Unit, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Unit which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns. "Institutional First Mortgagee" means the foregoing, but is limited to the holder of a first mortgage. "Institutional Mortgage" means a mortgage held by an Institutional Mortgagee.

3.18 "Lease" means the grant by an Owner of a temporary right of use of the Owner's Unit for valuable consideration.

3.19 "Limited Common Elements" means and refers to those common elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as specified in this Declaration.

3.20 "Member" or "Member of the Association" means a record Owner of a Unit, subject to the provisions of Section 14.1.B below, but shall not include persons who hold an interest merely as security for the performance of an obligation.

3.21 "Occupy" shall mean and refer to the act of being physically present in a Unit for two (2) or more consecutive days, including staying overnight. "Occupant" is a person who occupies a Unit. A "permanent occupant" means an Owner or lessee of a Unit or a member of such Owner's or lessee's family who regularly resides in such Unit.

3.22 "Original Declarations" shall mean and refer to the Amended Declaration of Condominium Merging Southwinds Phases 2, 3, 4, 5 and 6 Condominiums and Establishing Southwinds A, A Condominium, as recorded in Official Record Book 1167, Pages 2286 through 2239, Public Records of Indian River County, Florida; and the Amended Declaration of Condominium Merging Southwinds Phases 1, 7, 8 and 9 Condominiums and Establishing Southwinds B, A Condominium, as recorded in Official Record Book 1167, Pages 2440 through 2503, Public Records of Indian River County, Florida; as amended prior to this date.

3.23 "Owner" or "Unit Owner" means the record Owner, whether one or more persons or entities, of the fee simple title to any Unit, but excludes those having such interests merely as security for the performance of an obligation.

3.24 "Plans and Specifications" means the plans and specifications prepared for the Buildings and Improvements.

3.25 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more Units in the Condominium than any other Institutional Mortgagee, such determination to be made by reference to the number of Units encumbered, and not by the dollar amount of such mortgages.

3.26 "Properties" means the Condominium Property of each Condominium (Units, common elements and limited common elements) and Association property.

3.27 "Rules and Regulations" means those rules and regulations promulgated from time to time by the Board of Directors, governing the use of the Properties, including the Units, and the operation of the Association.

3.28 "Unit" means and refers to that portion of the Condominium property which is subject to exclusive ownership.

3.29 "Voting Interest" means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in Association matters.

**SECTION 4 DESCRIPTION OF CONDOMINIUM PROPERTY AND IMPROVEMENTS: SURVEY AND PLANS.**

**4.1 Entire Condominiums.**

- A. Southwinds A, A Condominium: This Condominium consists of that property legally described in Exhibit "A-1" attached to and made a part of this Declaration. There are five three-story apartment buildings consisting of 81 Units, common elements and limited common elements.**
- B. Southwinds B, A Condominium: This Condominium consists of that property legally described in Exhibit "A-2" attached to and made a part of this Declaration. There are four buildings consisting of 15 Units, common elements and limited common elements.**

**4.2 Survey and Plot Plans. Attached to each Original Declaration as Exhibits "D" and "E" is a survey of the land and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements; along with which is attached a certificate of a surveyor. Together with this Declaration, the foregoing are in sufficient detail to identify each Unit, the common elements and limited common elements and their relative locations and dimensions.**

- A. Those Exhibits including certificate of surveyor (located in Official Record Book 1167, Pages 2326 through 2439, inclusive, Public Records of the County) for Southwinds A, A Condominium are rerecorded and attached to and made a part of these Declarations as Exhibit "B-1".**
- B. Those Exhibits including certificate of surveyor (located in Official Record Book 1167, Pages 2479 through 2503, inclusive, Public Records of the County) for Southwinds B, A Condominium are**

rerecorded and attached to and made a part of these Declarations as Exhibit "B-2".

4.3 Unit Boundaries. Each Unit shall include that part of the building which has as its boundaries the following:

- A. Horizontal Boundaries. The upper and lower boundaries of the Units shall be:
1. Upper Boundary - The plane along the underside of the unfinished undecorated slab or lower surface of the roof if there is no slab of the uppermost story including the slab above the porch area of the Unit.
  2. Lower Boundary - The plane along the upperside of the unfinished undecorated slab of the lowermost story including the courtyard, terrace or balcony area of the Unit.
- B. Vertical Boundaries. The vertical boundaries shall be the interior surfaces of the perimeter walls of the Unit including the interior surfaces of the Unit's courtyard, terrace, balcony or balcony walls and doors, atrium area in Building 2 of Southwinds A, A Condominium, entrance doors and windows, all of which abut the exterior of the building or common elements; extended to the horizontal boundaries.
- C. Apertures as Part of Unit. Where there are apertures in any boundary, including, without limitation, windows and doors, the boundaries shall extend to the exterior surfaces of such aperture, and their frameworks. Surfaces made of screening, glass or glass fixed to metal framing, exterior screens, windows, window frames, sliding glass doors and their frames, casings and tracks, door thresholds, and hurricane shutters, are included within the Unit and shall not be deemed common elements.

- D. Personal Property of the Owners. Any improvement added to the common elements, limited common elements, or building exteriors which is/are not part of the original construction of the building shall retain the character of personal property of the particular Owner.

In cases not specifically covered in this Section 4.3 or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in Exhibits "B-1" and "B-2" to this Declaration shall control in determining the boundaries of a Unit, except that the provisions of Section 4.3.C above shall control over the boundaries set forth in those Exhibits.

**SECTION 5. EASEMENTS.** Each of the easements and easement rights referred to in this Section 5, is reserved through the Properties and is a covenant running with the land in the Condominiums, and notwithstanding any other provisions of this Declaration, shall survive the removal of any of the Properties from the Condominium. None of the easements specified in this Section 5 may be encumbered by any leasehold or lien other than those on the Units. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements. The following easements lie:

5.1 Encroachments. If any Unit encroaches upon any of the common elements or Association property for any reason other than the intentional act of an Owner, or if any common elements or Association property encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

5.2 Ingress and Egress. Easements over the common elements and Association property for ingress and egress, to Units and public ways, and to each Condominium.

5.3 Maintenance, Repair and Replacement. Easements through the Units, common elements and Association property for maintenance, repair and replacements.

5.4 Utilities. Easements through the common elements and Association property and Units for conduits, ducts, plumbing, chimney flues, wiring and other facilities for the furnishing of services to other Units and the common elements.

5.5 Public Services. Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the Condominium property.

5.6 Right of Way Easement. For burial of cables, wire, cable terminals, splicing boxes and pedestals granted by The Moorings Development Company to Southern Bell Telephone and Telegraph Company, recorded at Official Record Book 719, Page 1022, Public Records of the County.

**SECTION 6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.**

6.1 Condominium Parcels. Each Unit is described and located on Exhibit "B-1" for Southwinds A, A Condominium and "B-2" for Southwinds B, A Condominium.

A. The Owner(s) of each Unit in Southwinds A, A Condominium Apartments shall own that undivided share in the common elements and the common surplus, such that each Unit's share is equal (1/81).

B. The Owner(s) of each Unit in Southwinds B, A Condominium Apartments shall own that undivided share in the common elements and the common surplus, such that each Unit's share is equal (1/15).

6.2 Appurtenances to Each Unit. The Owner of each Unit shall have certain rights and own a certain interest in the Condominium property, including without limitation the following:

- A. An undivided ownership share in the land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- B. Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and By-Laws of the Association, attached to this Declaration as Exhibits "C" and "D", respectively.
- C. The exclusive right to use the limited common elements reserved for the Unit, and the right to use the common elements.
- D. An exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- E. Other appurtenances as may be provided in this Declaration and its exhibits.

Each Unit and its appurtenances constitute a "Condominium Parcel".

6.3 Use and Possession. An Owner is entitled to exclusive use and possession of his Unit. He is entitled to use the Properties in accordance with the purposes for which they are intended, but no use of the Unit or of the Properties may unreasonably interfere with the rights of other Owners of other persons having rights to use the Properties. No Unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the Properties, including the Units, shall be governed by the Condominium Documents as they may be amended from time to time and by the Rules and Regulations promulgated from time to time by the Board of Directors.

6.4 Special Provision Regarding Use When the Unit is Leased. When a Unit is leased, a tenant shall have all use rights Association property and common

elements otherwise readily available for use generally by Owners, and the Owners shall not have such rights except as a Guest. Nothing in this Section 6.4 shall interfere with the access rights of the Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Board of Directors of the Association shall have the right to adopt Rules and Regulations to prohibit dual usage by an Owner and a tenant of the Association property and common elements otherwise readily available for use generally by Owners.

#### **SECTION 7. COMMON ELEMENTS.**

7.1 Common Elements Defined. The common elements are as defined in Section 3.9 above.

7.2 Restraint Upon Separation and Partition of Common Elements. The undivided share of ownership in the common elements and common surplus appurtenant to a Unit cannot be conveyed or encumbered separately from the Unit and shall pass with the title to the Unit, whether or not separately described. No action shall lie for partition of the common elements.

#### **SECTION 8. LIMITED COMMON ELEMENTS.**

8.1 Description of Limited Common Elements. Certain common elements have been designated as limited common elements, reserved for the use of a particular Unit or Units, to the exclusion of the other Units. The limited common elements and the Units to which their use has been designated are as described in this Declaration. The following common elements are hereby designated as limited common elements:

- A. Parking Spaces. The parking space(s) in each Condominium are designated on Exhibits "B-1" and "B-2" to this Declaration, which spaces are identified with the number of the Unit to which it is appurtenant.
- B. Airconditioning/Heating Equipment and Lines; Other Items. The airconditioning/heating equipment, connections and lines and any



plumbing, wiring, piping and ductwork serving only one Unit, which is situated within the common elements are a limited common element of the Unit served thereby. Any portions of the shut off valve and breaker box serving only one Unit and located within the common elements, are a limited common element of the Unit served.

- C. Swimming pools and pool decks within the courtyards in Southwinds B: Courtyards/front (loggia), side and back, as well as any pools and pool decks situated within the courtyards of Units in Southwinds B, which are considered part of the common elements, are a limited common element of the Unit served.

8.2 Exclusive Use; No Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the Unit or Units to which it is designated or assigned. The right of exclusive use to each limited common element passes with title to the Unit(s), whether or not separately described, and cannot be separated from it/them.

**SECTION 9. ASSOCIATION**. The operation of the Condominium is by the SOUTHWINDS AT THE MOORINGS ASSOCIATION, INC., a Florida corporation not for profit, which shall perform its functions pursuant to this Declarations and the following:

9.1 Articles of Incorporation. The Articles of Incorporation of the Association shall be the Amended and Restated Articles of Incorporation attached as Exhibit "C", as amended from time to time.

9.2 By-Laws. The By-Laws of the Association shall be the Amended and Restated By-Laws attached as Exhibit "D", as amended from time to time.

9.3 Membership and Voting Rights. The membership of the Association shall be as provided in the Articles of Incorporation and By-Laws. The Owners of each Unit shall collectively be entitled to that vote as more fully provided in the Articles of Incorporation and By-Laws.

**9.4 Limitation on Liability.**

- A. Notwithstanding its duty to maintain and repair certain Properties, the Association shall not be liable to the Owners for injury or damage caused by Properties for which the Association has responsibility to maintain. In the event that any portion of the Properties for which the Owner has maintenance responsibility under this Declaration, or any real or personal property of the Owner, shall be damaged in the course of the Association's maintenance, repair or replacement of those Properties for which the Association has responsibility, the Owner shall bear the full risk of loss. The only exception under this Section 9.4.A is where the Association (whether for itself or its contractor) is guilty of negligence or intentional misconduct which causes the loss, in which case the Association bears the risk of loss created by same (with any available contribution from the contractor or others). This Section 9.4.A shall also apply where the loss results in the course of the Association's reconstruction and repair after casualty.
- B. The Association shall in no event be liable for any damages resulting from an Owner's breach of his maintenance, repair and replacement responsibility under this Declaration.

**9.5 Purchase, Conveyance, Leasing and Mortgaging of Real Property.** The Association shall be permitted to acquire title to real property (exclusive of Units in the Condominiums) and convey same upon the prior vote of a majority of the entire voting interests of the Members of the Association. The authority of the Association to purchase Units is as set forth in the Articles of Incorporation. The Association shall be permitted to lease real property with the approval of the Board of Directors only. The Association may mortgage real property subject to the limitations of Section 3.2.C.2 of the Articles of Incorporation, which section is for this purpose incorporated herein by reference.

**SECTION 10. ASSESSMENTS, CHARGES AND LIENS.** The Association has the power to levy and collect assessments against each Unit and Owner in order to

provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including both annual assessments for each Unit's share of the common expenses as set forth in the annual budget, and special assessments for any proper common expenses. The Association may also levy Charges against individual Unit(s) and Owner(s) for any amounts, other than for common expenses, which are properly chargeable against such Unit and Owner under the Condominium Documents.

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement, protection or insurance of the Properties, the expenses of operating the Association, fines levied by governmental authority, manager's apartment, gatehouse and any other expenses properly incurred by the Association for the Condominiums, including any amounts budgeted for the purpose of funding reserve accounts. Common expenses may include the cost of cable television and telecommunication services, as well as such pest control in the Units as the Association may provide from time to time.

10.2 Share of Common Expenses. Each Owner (collectively) and each Unit in each Condominium shall be liable for that share of the common expenses with respect to that Condominium which are not shared equally by all Units in both Condominiums as provided for in Section 7.1.A of the By-Laws, equal to each Owner's share of ownership of the common elements as stated in Section 6.1 above.

10.3 Ownership. Assessments collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Unit. No Owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided in the Condominium Documents or by law.

10.4 Who is Liable for Assessments. The Owner of each Unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as otherwise provided in Section 10.8.A below, whenever title to a Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor, regardless of when incurred, without

prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

10.5 No Waiver or Excuse From Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common element, by abandonment of the Unit on which the assessments are made, by interruption in the availability of the Unit or the common elements or Association property for any reason whatsoever, or by dissatisfaction with the Association and/or its operation and policies. No Owner may be excused from payment of his share of the common expenses unless all Owners are likewise proportionately excused from payment, except as otherwise provided by the Condominium Act.

10.6 Application of Payments; Failure to Pay; Interest; Late Fees. Assessments and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the rate established by the Board of Directors from time to time, but not to exceed the highest lawful rate which is not usurious at the particular time which shall also apply as the postjudgment interest rate, calculated from the date due until paid; and may result in the imposition of a late fee as established by the Board of Directors from time to time, but not to exceed the maximum amount permitted by the Condominium Act from time to time. (Currently, the maximum is the greater of \$25.00 or five (5%) percent of the late payment). Assessments and installments thereon shall become due, and the Owner shall become liable for the assessments or installments, on the date established in the By-Laws or otherwise set by the Board of Directors of the Association for payment. All payments on account shall be applied in the following order irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment: To interest, late fees, costs and attorneys' fees, and annual and/or special assessments first due and owing. If payment is made by check which fails to clear, then the Owner shall be considered not to have made payment.

10.7 Liens. The Association has a continuing lien (per the Condominium Act) on each Unit securing payment of past due assessments, including late fees so long as not prohibited by the Condominium Act at the particular time, and including interest and attorneys' fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or

after a lien foreclosure suit or other lawsuit. Any Claim of Lien recorded shall state the legal description of the Unit, the name of the record Owner, the assessments past due and the due dates. The Claim of Lien is effective from and has those priorities as stated in the Condominium Act as amended from time to time and is in effect until barred by law. The Claim of Lien secures all unpaid assessments, applicable late fees, interest, costs and attorneys' fees coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

**10.8 Priority of Lien; Liability of Mortgagees and Other Lienholders; Leases.**

- A. Rights of Mortgagees and Other Lienholders. The liability and priority of mortgagees and other lienholders and successors in title to Units as result of a mortgage or lien foreclosure shall be as provided in the Condominium Act as amended from time to time.
- B. Leases. Any lease of a Unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

**10.9 Foreclosure of Lien; Action at Law.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided for in the Condominium Act and may also bring an action to recover a money judgment for unpaid assessments without waiving any lien rights. In addition to any assessments due, the Association shall be entitled to recover interest, and all costs of collection, including court costs and paralegal and attorneys' fees. Late fees are recoverable at law, and as part of the claim of lien unless prohibited by the Condominium Act from time to time. Whenever the Association shall bring a lien foreclosure action, the Association shall be entitled to the appointment of a receiver, which may be the Association, to collect the rent. Such receiver shall be appointed pursuant to a court order in the foreclosure action. If some person other than the Association acts as receiver, then the cost of the receiver shall be borne by the party which did not prevail in the lawsuit. Homestead shall not be a defense to a mortgage foreclosure action.

**10.10 Certificate As To Assessments.** The Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the Owner with respect to the Unit have been paid, within fifteen (15) days after request by an Owner or mortgagee. Any person other than the Owner who relies upon such certificate shall be protected thereby.

**10.11 Charges.**

- A. Defined.** Each Unit and Owner shall be liable for Charges levied by the Association against the Unit and Owner, with the due date as per invoice from the Association. Charges shall be deemed to include but not be limited to: maintenance or other services furnished by the Association for the benefit of an Owner; damages; and any other sums other than assessments which are referred to as Charges in the Condominium Documents. At no time shall a Charge be deemed an assessment under the Condominium Act or under the Condominium Documents.
  
- B. Who is Liable for Charges.** The Owner of each Unit, regardless of how title was acquired, is liable for all Charges coming due while he is the Owner. Multiple Owners are jointly and severally liable.
  
- C. Application of Payments; Failure to Pay; Late Fees; Interest.** Charges paid on or before the date due shall not bear interest, but all sums not so paid shall bear interest at the highest lawful rate which is not usurious accounts at the particular time which shall also apply to postjudgment interest rate, calculated from the date due until paid; but all sums not so paid shall bear interest at the rate established by the Board of Directors from time to time, but not to exceed the highest rate allowed by law on open accounts at the particular time, calculated from the date due until paid; and may result in the imposition of a late fee as established by the Board of Directors from time to time, but not to exceed the maximum amount permitted by the Condominium Act from time to time. (Currently, the maximum is the greater of \$25.00 or five

(5%) percent of the late payment). All payments on account shall be applied in the following order irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment: To interest, late fees, costs and attorneys' fees, and annual and/or special assessments first due and owing. If payment is made by check which fails to clear, then the Owner shall be considered not to have made payment.

- D. Collection of a Charge. The Association may bring an action to recover a money judgment for the unpaid Charges and shall be entitled to recover interest, late fees, and all costs of collection, including court costs and attorneys' fees, including those incurred in connection with appellate, bankruptcy and administrative proceedings.

**SECTION 11. MAINTENANCE, REPAIR AND REPLACEMENT; MAINTENANCE STANDARDS; ALTERATIONS AND IMPROVEMENTS.** Responsibility for the protection, maintenance, repair and replacement of the Properties, and maintenance standards shall be as follows:

11.1 Association Maintenance. In addition to other provisions contained elsewhere in this Declaration, the following Properties shall be protected, maintained, repaired and replaced by the Association at the expense of the Association (or the particular Condominium (Southwinds A or B), (as the case may be), as an item of common expense:

- A. Units. The following portions of the Units:

1. Southwinds A, A Condominium:

- (a) All concrete slabs, load-bearing columns and load-bearing walls or other portions contributing to the support of the building, and all exterior building walls and fixtures on the building exteriors.

- (b) The main entry door, inclusive of framing/casing and threshold, but exclusive of hardware.
- (c) Painting/staining of the entry doors and window frames, including mullions.
- (d) Railing and painting of stucco walls on patios and balconies.
- (e) In addition to that contained in Subsection 1(c) above: In Buildings 2, 3, 5 and 6 only: Atrium area: Only painting of the walls of the atrium area; same includes the railings in Building 2.

2. Southwinds B, A Condominium:

- (a) All surfaces, exterior and interior, of the wall, fence and gate in the courtyard. [Scrivener's Note: This applies to the courtyard wherever situated].
- (b) Tree trimming in the courtyard when the tree is higher than the height of the wall/fence bounding the courtyard; all other courtyard interior landscaping is the responsibility of the Owner.
- (c) All concrete slabs, load-bearing columns and load-bearing walls or other portions contributing to the support of the building, and all exterior building walls and fixtures on the building exteriors.
- (d) The main entry door, inclusive of framing/casing and threshold, but exclusive of hardware.
- (e) Painting/staining of the entry doors and window frames, including mullions.



(f) Railing and painting of stucco walls on patios and balconies.

B. Common Elements and Association Property. All common elements and Association property.

C. Limited Common Elements. The limited common elements referenced in Section 8.1.A above, except not the key switch and motor assembly of the underground parking in Buildings 2, 3, 5 and 6; and the limited common elements referenced in Section 8.1.B above. The limited common elements referenced in Section 8.1.C above shall not be the responsibility of the Association.

D. Exterminating. The Association shall be responsible to provide pest control to the common elements. In the event that in order for the Association to discharge its duty under this Section 11.1.D, the building must be "tented", the Association shall be responsible only for the cost of the actual tenting, and not for an Owner's or occupant's incidental expenses such as food and lodging, and not for any losses to property within the Unit due to the tenting process. All Owners and occupants shall be responsible to remove themselves, their pets and their perishable items upon reasonable notice by the Association, in order for tenting to be effected. Any Owner (for himself and/or for his tenants and other occupants) who fails to so cooperate shall be liable to the Association for damages caused by delays and otherwise. The Association shall be entitled to a preliminary injunction order requiring compliance with this Section 11.1.D.

11.2 Owner Maintenance. Each Owner is responsible, at his own expense, for the maintenance, repair, and replacement of the following Properties:

A. Units. All portions of the Unit, whether the maintenance, repair or replacement is ordinary or extraordinary; except as otherwise

provided to be the responsibility of the Association under Section 11.1.A above.

B. Limited Common Elements. That portion of the limited common elements referenced in Section 11.1.C. above to not be the responsibility of the Association.

C. Miscellaneous Covenants and Understandings of Each Owner.

1. Each Owner must perform promptly all maintenance, repairs and replacement which is necessary to ensure a high quality condition and appearance and/or which if not performed would affect any of the Properties, including any Unit(s) belonging to any other Owner(s).
2. Each Owner shall be liable for any damages or costs incurred which arise due to his/her failure to perform the maintenance, repair and replacement responsibilities under this Section 11.
3. Each Owner shall promptly report to the Association or its agents any defect or need for repair on the Properties for which the Association is responsible to maintain, repair and replace under this Declaration.
4. No Owner shall do anything which would adversely affect the safety or soundness or cause damage to the common elements or any other portion of the Properties for which the Association is obligated to maintain under this Declaration. The opinion of the Board of Directors shall control in determining whether the safety or soundness of the Properties is adversely affected or damage might be caused to such Properties.

5. Except for the first floor Units: Any Owner wishing to install any hard surface flooring materials (including but not necessarily limited to ceramic tile, marble and wood) in areas other than the kitchen and baths, is required to insure that a sound control underlayment system is used which insulates against noise transmission. Installation of the sound control underlayment system shall include provisions for a perimeter isolation material which will insure that impact noises are not transmitted into other Unit(s) either directly through the floor or by flanking through the surrounding walls.
6. Each Owner is responsible for the expense of all decorating within his own Unit, including painting, wall papering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other interior furnishings and interior decorating.

11.3 Maintenance Standards for Owners and Residents. The maintenance obligations of the Owners and residents under this Declaration shall be performed to ensure a first class and high quality appearance of the Condominium at all times. Each Owner must perform promptly all maintenance, repairs and replacement for which the Owner is responsible, which are necessary to ensure such first class and high quality appearance. No Owner or resident shall impede or otherwise perform or interfere with the maintenance responsibilities of the Association under this Declaration. Each Owner and resident shall be governed by maintenance standards which may be adopted from time to time by the Association. The following constitutes maintenance standards for the Owners and residents, which the Board of Directors of the Association is empowered to supplement from time to time without having to amend this Declaration:

- A. Windows and Glass Doors. Broken or cracked glass shall be immediately replaced for safety concerns as well as cosmetic reasons.

- B. Screens and Screen Frames. Torn, cut or otherwise damaged screening and damaged screen frames shall be replaced with new materials as reasonably soon as possible after the damage occurs. Screen frames shall remain freshly painted at all times.
- C. Painted Surfaces. Painted surfaces that show fading, peeling or blistered paint must be repainted so as to ensure a high quality appearance. Surfaces that are painted or stained shall be kept free of stains and discolorations of any kind.
- D. Hurricane Shutters. Hurricane shutters shall be fully operative at all times and shall not appear broken or inoperative, nor shall they appear substantially worn, discolored or faded.

11.4 Alterations and Improvements by the Owners and Residents.

- A. Limited Rights of Owners and Residents in Southwinds A, A Condominium: A uniform scheme and appearance of the buildings has been established. The Association desires to uphold this uniform scheme and appearance. Therefore, the rights of the Owners and residents to make alterations and improvements to the exteriors of the building; and outside of the building; and alterations, improvements, decorations and changes on the interiors of the Units which can be viewed from outside of the Units; are very limited. **THEREFORE, IF THIS DECLARATION FAILS TO PERMIT AN OWNER OR RESIDENT TO MAKE AN ALTERATION OR IMPROVEMENT WHICH FALLS WITHIN THE SCOPE OF THE IMMEDIATELY PRECEDING SENTENCE, THEN SAME SHALL NOT BE PERMITTED. IF IT DOES FALL WITHIN THE SCOPE, SAME SHALL BE PERMITTED ONLY IF THE ALTERATION OR IMPROVEMENT FALLS WITHIN THE GUIDELINES REFERRED TO IN SECTION 11.4.C BELOW (AS AMENDED BY THE BOARD OF DIRECTORS FROM TIME TO TIME [AND WHICH ARE CONSISTENT WITH SECTION 11.4.C BELOW]), AND UNLESS OTHERWISE STATED, ONLY UPON THE PRIOR WRITTEN APPROVAL OF THE BOARD OF DIRECTORS.**

B. Rights of Owners and Residents in Southwinds B, A Condominium: No alteration or improvement to the exteriors of the building or outside of the building, nor alterations, improvements, decorations and changes on the interiors of the Units which can be viewed from the outside of the Units, shall be permitted without the prior written approval of the Board of Directors. The architectural standards which are binding upon Owners and Occupants applicable to Southwinds B, A Condominium, are as set forth in Section 11.4.D below, which standards may be amended by the Board of Directors from time to time so long as they are consistent with Section 11.4.D below. Even though an architectural standard is listed, the prior written approval of the Board of Directors still must be sought and obtained.

C. Architectural Standards for Southwinds A, A Condominium: The following constitute architectural standards for Southwinds A, A Condominium only, applicable to the Owners and Occupants. **THE FOLLOWING ARE THE ONLY PERMITTED ALTERATIONS AND IMPROVEMENTS AS REFERRED TO IN SECTION 11.4.A ABOVE, WHICH UNLESS OTHERWISE STATED, MUST RECEIVE THE PRIOR WRITTEN APPROVAL OF THE BOARD OF DIRECTORS:**

1. Shutters. Commencing as soon as possible but in no event later than July 1, 2007, each Owner within Southwinds A shall install, at the Owner's expense, on all exterior windows and glass doors, *impact glass* or fully operable hurricane shutters thereon, which are rated to meet the 2004 Florida Building Code in effect January 1, 2006, or to meet the then-existing codes, whichever is greater; provided however, (i) if such shutters or impact glass are not installed by July 1, 2007, the Owner shall be deemed to be in compliance with this section if the Owner has as of that date signed a binding contract to install same s soon as they are available and delivered a copy of the contract to the Association; and (ii) with respect to any Unit which on July 1, 2007 has operable roll-down hurricane shutters installed, but which do not meet the foregoing criteria, the requirement imposed by this section shall become applicable when any of the shutters are replaced or become so inoperable as to require major repair or replacement. All shutters must be of a roll-down type and consistent in color and appearance with existing Southwinds A hurricane shutters.

2. Windows. Reflective material/window tinting is/are permitted on the windows so long as the color is clear, smoked brown or gray. At no time shall aluminum foil be permitted on the inside or outside of the windows. Window treatments must be white or off-white when viewed from the exterior side.
3. Screen Doors. Screen doors are permitted only so long as they are white in color and are of a style prevailing in the Condominium on the Effective Date of this Declaration.
4. Entry Door. Objects may be placed flush to the entry door in the cut-in entry area in Building 4 of Southwinds A, A Condominium only.
5. Walls. Objects on walls are limited to the atrium area in Buildings 2, 3, 5 and 6 of Southwinds A, A condominium; the cut-in entry area of Building 4; and the porch/terrace/balcony area.
6. Porches/Terraces/Balconies. Enclosures of same are prohibited. Lights and fans installed in same must be white in color. No personal property shall be hung over or attached to any railings of the balconies/terraces/porches, except for one portable U.S. flag, or holiday decorations for the duration of the holiday only.
7. Airconditioning/Heating Units. Airconditioning/heating units may be replaced without any particular criteria, except that wall airconditioning and heating units are prohibited.
8. Clotheslines. No clothesline or similar device shall be allowed on any portion of the Condominium property nor shall clothes be hung anywhere in view; the foregoing was prohibited by Exhibit "C" attached to the Original Declarations.

9. **Signs.** No signs of any type shall be maintained, kept or permitted on any of the Properties, including Unit (interior or exterior) such that they may be viewed from the common elements, limited common elements or other Units. **Exceptions:** The following shall not violate this Section 11.4.C.9:

A. Official notices of the Association.

B. Signs on permitted vehicles under Sections 12.4.B.1, 2, 3 and 4 below.

C. The following with prior Board written consent pursuant to Section 11.4.C above:

1. Vehicle bumper stickers and parking decals which do not indicate any Unit is for sale or for rent; and one sign advertising the vehicle for sale.

2. One handicap and one security sign.

10. **Antennae and Satellite Dishes.** The only antennae and satellite dishes permitted shall be those that are protected by federal law. In no event shall any restrictions imposed in this Section 11.4.C.10 impair a viewer's ability to receive an acceptable signal or impose any unreasonable delay or expense, as recognized by the administrative rules adopted from time to time by the Federal Communications Commission ("FCC") and any applicable cases or administrative rulings as exist from time to time. Until federal law or the applicable FCC cases and rulings change, which changes are automatically incorporated into this Declaration without the need to amend in the future, a satellite dish or

antenna installation must be situated entirely within the boundaries of the Unit, or entirely within the limited common elements as described in Section 8.1.B of this Declaration; the installation may be affixed to the boundaries of said limited common elements. Notwithstanding any provision contained in this Declaration to the contrary, the approval of the Board of Directors of the Association will not be required for installations referred to under this Section 11.4.C.10. No other satellite dishes or antennae are permitted.

11. Tiling: Hard Surface Flooring. Tiling of the atrium area in Buildings 2, 3, 5 and 6 of Southwinds A, A Condominium and tiling of balconies/terraces/porches in both Condominiums shall not be permitted without prior Board approval. Except for first floor units, any Owner wishing to install any hard surface flooring materials (including but not necessarily limited to ceramic tile, marble and wood) in the Unit in areas other than the kitchen and baths, is required to insure that a sound control underlayment system is used which insulates against noise transmission. Installation of the sound control underlayment system shall include provisions for a perimeter isolation material which will insure that impact noises are not transmitted into other Unit(s) either directly through the floor or by flanking through the surrounding walls.

12. Common Elements. No Owner or Occupant may make any alterations, additions or improvements to the common elements.

D. Architectural Standards for Southwinds B, A Condominium: The following constitutes architectural standards for Southwinds B, A Condominium only, applicable to the Owners and Occupants. **THE**



**PRIOR WRITTEN APPROVAL OF THE BOARD OF DIRECTORS  
MUST STILL BE OBTAINED EVEN THOUGH A STANDARD IS  
LISTED BELOW:**

1. **Shutters.** Hurricane shutters may be installed on units in Southwinds B provided prior written approval of the type, color and other relevant characteristics is obtained from the Board of Directors.
2. **Windows.** Reflective material/window tinting is/are permitted on the windows so long as the color is clear, smoked brown or gray. At no time shall aluminum foil be permitted on the inside or outside of the windows. Window treatments must be white or off-white when viewed from the exterior side.
3. **Screen Doors.** Screen doors are permitted only so long as they are white in color and are of a style prevailing in the Condominium on the Effective Date of this Declaration.
4. **Airconditioning/Heating Units.** Airconditioning/heating units may be replaced without any particular criteria, except that wall airconditioning and heating units are prohibited.
5. **Signs.** No signs of any type shall be maintained, kept or permitted on any of the Properties, including Unit (interior or exterior) such that they may be viewed from the common elements, limited common elements or other Units. **Exceptions:** The following shall not violate this Section 11.4.D.5:
  - A. Official notices of the Association.

- B. Signs on permitted vehicles under Sections 12.4.B.1, 2, 3 and 4 below.
- C. The following with prior Board written consent.
  - 1. Vehicle bumper stickers and parking decals which do not indicate any Unit is for sale or for rent; and one sign advertising the vehicle for sale.
  - 2. One handicap and one security sign.
- 6. Antennae and Satellite Dishes. The only antennae and satellite dishes permitted shall be those that are protected by federal law. In no event shall any restrictions imposed in this Section 11.4.D.6 impair a viewer's ability to receive an acceptable signal or impose any unreasonable delay or expense, as recognized by the administrative rules adopted from time to time by the Federal Communications Commission ("FCC") and any applicable cases or administrative rulings as exist from time to time. Until federal law or the applicable FCC cases and rulings change, which changes are automatically incorporated into this Declaration without the need to amend in the future, a satellite dish or antenna installation must be situated entirely within the boundaries of the Unit, or entirely within the limited common elements as described in Section 8.1.B of this Declaration; the installation may be affixed to the boundaries of said limited common elements. Notwithstanding any provision contained in this Declaration to the contrary, the approval of the Board of Directors of the Association will not be required for installations referred to under this Section 11.4.D.6. No other satellite dishes or antennae are permitted.

7. Common Elements. No Owner or Occupant may make any alterations, additions or improvements to the common elements.

E. Removal of Interior Partition Wall. If any Owner desires to remove any interior partition wall, same shall be permitted so long as the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein. However, if a permit from a governmental entity is required, the Owner shall provide a copy of same to the Association prior to the start of the work; it is understood that the Association is not liable for an Owner's non-compliance with the permit(s) or any building codes.

11.5 Alterations and Improvements by the Association. Subject to the provisions of Sections 16 and 17 below, the following shall apply: The Association shall have the right to make or cause to be made alterations or improvements to the common elements and Association property which are approved by the Board of Directors. However, if the cost of same shall exceed 5% of the annual budget for the particular Condominium (inclusive of its share of the Association budget), cumulatively in a budget year, then the alteration or improvement may not be made unless approved in writing by the Owners of 60% of the Units in the Condominium whose common elements are altered or improved, except that as to Association property, the written approval required shall be by the Owners of 60% of all Units in both Condominiums if the cost exceeds 5% of the total annual budget for all Condominiums and the Association. In order to bind a Unit under this Section 11.5, only one Owner of a Unit need execute the written consent.

A. Proviso. Notwithstanding the foregoing to the contrary, in the event any alteration or improvement is also necessary or beneficial in the maintenance, repair, replacement or protection of the Properties or Owners or Occupants, then such alteration or improvement shall not require the ratification or approval of the Owners.

**SECTION 12. USE RESTRICTIONS.** The use of the Properties shall be in accordance with the following provisions as long as the Condominium exists:

**12.1 Occupancy of Units.**

- A. General. Each Unit shall be occupied by Owners and tenants and their family members and Guests, invitees and employees, as a residence and for no other purpose, subject to any other provision in this Declaration and in the Rules and Regulations relating to use of the Unit.

**12.2 Subdivision.** No Unit may be subdivided into more than one Unit. Only entire Units may be sold, leased or otherwise transferred.

**12.3 Pets and Animals.**

- A. The following shall apply to Southwinds A, A Condominium: No tenant or Occupant residing in a Unit along with a tenant, and no Guest or visitor of a tenant or Occupants residing in a Unit along with a tenant, and no Guest or visitor of an Owner or Occupants residing in a Unit along with an Owner, shall be permitted to have any pet or animal. Owners or Occupants residing with the Owner shall be permitted to have pets and animals as a privilege, but no Guests or visitor of same shall be permitted to bring any pet or animal into the Condominium. The following pets and animals which are permitted under this Section 12.3.A, are as follows:

1. Animals and pets shall be restricted to cats, birds in cages, all in reasonable numbers, fish in tanks, and hamsters, small reptiles and the like in terrariums. No such pet or animal shall be bred or kept for commercial purposes.

- B. The following shall apply to Southwinds B, A Condominium: No tenant or any Occupants residing in a Unit along with a tenant

shall be permitted to have any pet or animal in a Unit. The following restrictions apply as to permitted pets and animals for Owners and Occupants residing in a Unit along with the Owner, which shall be permitted only as a privilege:

1. *Animals and pets shall be restricted to dogs, cats, birds in cages, all in reasonable numbers, fish in tanks, and hamsters, small reptiles and the like in terrariums. No such pet or animal shall be bred or kept for commercial purposes. Pets brought into a Unit by a visitor or Guest shall be permitted so long as the pet or animal falls within the foregoing classifications.*

C. The following shall apply as to permitted pets and animals under this Section 12.3:

1. When outside of the Unit, all permitted pets and animals must be accompanied by an attendant who shall have such pet or animal firmly held by collar and leash. No pet or animal shall be permitted to run at large outside the Unit.
2. The Owner/custodian of each animal and pet and/or the individual walking same, shall be required to clean up after the pet/animal.
3. The pet/animal owner and the Owner of the Unit involved shall be strictly liable for damages caused by the pet/animal to the Properties.
4. Any pet/animal owner's privilege to have a pet/animal reside in the Condominiums shall be revoked if the pet/animal shall create a nuisance or shall become a nuisance.

- D. Exception. The provisions of this Section 12.3 shall yield where necessary to meet the needs of handicapped persons pursuant to fair housing laws.
- E. Grandfather Clause. Any person having a pet in residence on the date of recording of the Original Declaration (August 26, 1997) which is violative of this Declaration shall be permitted to have same in residence. Furthermore, any person having such a pet shall be permitted to replace the pet or animal with the same type of pet or animal of any breed, without being in violation of these Declarations.

12.4 Vehicles and Parking.

- A. Prohibited Vehicles or Items. This Subsection A lists prohibited vehicles or items ("Prohibited Vehicles"), which are prohibited anywhere on the Properties, unless such vehicle or item is also listed in Subsection B below, in which case it shall then be permitted: Motorcycles, dirt bikes or other two-wheeled motorized vehicles; mopeds and other self-powered bicycles; trucks, whether covered or uncovered, whether with a bed top or without; agriculture vehicles; dune buggies, swamp buggies and all terrain and off-road vehicles; any trailer or other device transportable by vehicular towing; semis, tractors or tractor trailers; buses; limousines; travel trailers; commercial vehicles as defined below; vehicles which are an eyesore; motorcycle delivery wagons; campers; recreational vehicles; mobile homes or mobile houses; truck mounted campers attached or detached from the truck chassis; motor homes or motor houses; motor vehicles not having any bodies whatsoever, or incomplete bodies; passenger automobiles that have been converted to a different type of motor vehicle by replacing the original body or by modifying the exterior of the vehicle; vehicles that are noisy, unsightly or junkers, or which have flat or missing tires; vans and sports utility vehicles,

unless permitted by Section 12.4.B.5 below; and boat and boat trailers; and other such motor vehicles.

B. Exceptions to A above. The following shall not be considered Prohibited Vehicles, subject to other provisions in this Declaration or in the Rules and Regulations of the Association not inconsistent with this Section 12.4, and only provided that the vehicle can fit totally within the confines of the parking space.

1. Moving vans for the purpose of loading and unloading, and only during reasonable hours.
2. Vehicles, regardless of classification, necessary for the maintenance, care or protection of the Properties, during regular business hours, and only for the time period during which the maintenance, care or protection is being provided.
3. Service and delivery vehicles, servicing the Properties, regardless of classifications, during regular business hours and only for that period of time to render the service or delivery in question.
4. Police and Emergency vehicles.
5. Certain vans and sports utility vehicles which are permitted. A two-axle van or two-axle sports utility vehicle which is not a commercial vehicle as defined below; which contains windows on the rear of the vehicle, on both sides of the vehicle adjacent to the first row of seating, and (if any) also at least one set of windows on each side of the vehicle beyond the windows adjacent to the first row of seating, which car fits wholly within the confines of a parking space.

**C. Classifications and Definitions.**

1. The most current edition of the N.A.D.A. Official Used Car Guide ("Guide") shall determine the classification of whether a vehicle is in fact a truck or van. If the Guide does not contain reference to a particular vehicle, then the manufacturer's classification shall control. If publication of the Guide shall be discontinued, an equivalent publication shall be selected by the Board of Directors to be used to determine vehicle classifications hereunder. Except as otherwise provided as to certain vans and sports utility vehicles under Subsection 8.5 above, a State registration or title classification shall have no bearing on determination of the classifications under this Section 12.4.
2. A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, (e.g., the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo). Actual use of the vehicle shall yield to its outward appearance. A vehicle with a covered sign or logo shall still be considered to be a commercial vehicle. A vehicle with a removable sign or logo shall not, with the sign/logo removed, be considered to be a commercial vehicle unless it meets the definition of "commercial vehicle" even without the sign or logo.
3. A "truck" shall mean any motor vehicle which is classified as a truck in accordance with Subsection C.1 above.
4. A "van" shall mean any motor vehicle which is classified as a truck in accordance with Subsection C.1 above, and



which is recognized by the manufacturer to be a type of a van, and which has two (2) axles.

**D. The following additional regulations apply:**

1. No repair (including changing of oil) of a vehicle shall be made within the Condominium except for minor repairs necessary to permit removal of a vehicle. However, washing, waxing, or the changing of tires of a vehicle are permitted.
2. No motor vehicle which is of the type of vehicle which is unregistrable or which is not currently registered and licensed shall be driven or operated on any of the Properties at any time for any reason.
3. No motor vehicle, including moving vans, shall be parked at any time on the grass/swales within the Condominium (except for landscaping equipment at the direction of the Board of Directors).
4. Except where safety dictates otherwise, horns shall not be used or blown while a vehicle is parked, standing in or driving through parking areas. Racing engines and loud exhausts shall be prohibited.
5. No vehicle may be parked such that it blocks any sidewalk, except where otherwise necessary by moving vans and only for loading and unloading.
6. Vehicles must be parked head-in, only, completely to bumper stops.
7. All vehicles must appear in working order; no vehicles on blocks, jacks or ramps, shall be permitted.

8. There will be times where vehicles must be removed from the parking areas to accommodate maintenance, repairs or replacement of the parking areas in the Condominium. Upon reasonable notice from the Association that the foregoing will occur, each Owner shall remove his/her vehicle for the time period requested, or become in violation of this Section 12.4. A vehicle which is not removed as required by this subsection shall be considered a Prohibited Vehicle under this Section 12.4.
  9. Vehicle washing is permitted only in designated areas, with water restriction rules imposed by governmental authority to be observed.
  10. No Owner or lessee, or their family members, Guests and invitees shall park in a limited common element parking space assigned to another Unit.
  11. Garage parking doors shall be kept closed except for ingress and egress.
- E. Alternative/Concurrent Remedies. Whether or not the Association exercises its right to have the vehicle so towed, the Association shall nonetheless have the right to seek compliance with this Section 12.4 by injunctive and other relief through the courts; and/or any other remedy conferred upon the Association by law or the Declaration, Articles of Incorporation and By-Laws. The Association's right to tow shall in no way be a condition precedent to any other remedies available to the Association incident to the enforcement of this Section 12.4.
- F. Grandfather Provision. Any vehicle which was allowed by the Declaration prior to the recording of this Amended and Restated Declaration which is now prohibited by this amendment is

grandfathered in and shall not be considered a Prohibited Vehicle under this Section 12.4. However, no such vehicle may be modified or replaced with a vehicle which fails to comply with this Section 12.4.

- G. Remedy of Towing. If upon the Association's compliance with Section 715.07, Florida Statutes and applicable County Ordinances, as amended from time to time, an offending vehicle Owner does not remove a Prohibited Vehicle or improperly parked vehicle from the Condominiums, the Association shall have the option and right to have the vehicle towed away at the vehicle Owner's expense. In the event that the Association incurs an expense with the tow and the vehicle owner fails to pay such costs upon demand, the owner for himself/ herself as the owner of the vehicle or for his/her family, lessees, guests, employees, visitors, etc. as owner(s) of the vehicle shall be liable for the costs as a Charge, which shall be collectible by the Association as Charges are collected under this Declaration.

12.5 Nuisances, Ordinances and Laws. No Owner, occupant or Guest shall use any of the Properties, or permit same to be used, in any manner which is unreasonably disturbing, detrimental or a nuisance to the Owner(s), occupant(s) and Guest(s) of other Unit(s), or which would not be consistent with the maintenance of the highest standards for a first class residential development, nor permit the Properties to be used in a disorderly or unlawful way, nor which will produce an insurance risk for the Association or other Owners or occupants. The use of each Unit shall be consistent with existing ordinances and laws and the Condominium Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

- A. Flammable materials, other than that which may be used for normal household purposes, may not be stored on the Properties.

12.6 Use of Balconies, Terraces and Porches.

- A. Nothing shall be placed in or on the balconies, terraces and porches that could fall or cause injury.
- B. Nothing shall be swept, poured, tossed or shaken from any balcony, terrace or porch, nor shall dirt or refuse be swept or thrown from any portion of same. No balcony, terrace or porch shall be hosed or scrubbed in such a manner as to cause water to drain from same to another balcony, terrace or porch of another Unit.
- C. The following applies only to Southwinds A, A Condominium: Upon the issuance of a hurricane, tropical storm watch or the forecast of high winds, (i) all movable objects must be cleared from porches, balconies and terraces; (ii) all porch, balcony and terrace ceiling fans (motors and blades) must be removed; and (iii) all hurricane shutters must be rolled down in a fully deployed position. Furthermore, Owners and Occupants must remove all furniture, and movable objects from porches, balconies and terraces prior to their leaving for any extended period and in all cases, at all times that the Unit is unoccupied between July 1<sup>st</sup> and November 30<sup>th</sup> of each year. Any Owner or Occupant who fails to abide by the foregoing shall entitle but not require the Association to enter upon the porch, balcony or terrace and/or the Unit and take action required by the foregoing whereupon the Association shall levy a Charge against the Owner concerned, which Charge shall be collectible as Charges are collected under this Declaration.

**12.7 Use and Care of Common Areas by Owners and Residents.** The following shall apply to Owners and Residents:

- A. Public passage ways, hallways, elevators and stairways shall not be obstructed nor used for any purpose other than for ingress to or egress from Units and common elements and Association property. Bicycles, shopping carts, baby carriages, scooters or similar vehicles shall not be placed in or allowed to stand in commonly used areas within the common elements and Association property. Clothing items, umbrellas, umbrella stands, doormats, clothes racks, furniture, works of art and any other items of personal property shall not be placed in commonly used areas in the Condominium. Except for hanging objects on the walls as permitted by Section 11.4.C.5 above and approved by the Board of Directors under Section 11.4 above.

- B. No garbage or trash containers, supplies or other articles shall be placed in elevators, passage ways, hallways or stairways.
- C. No barbecuing is allowed in Southwinds A, A Condominium and in the common elements of Southwinds B, A Condominium.

12.8 No Business Activity. No business or commercial activity or enterprise of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on the Properties, including Units. Provisos. Notwithstanding the foregoing to the contrary:

- A. Any business which qualifies as an authorized home occupation under the applicable zoning code shall be permitted, except that the home occupation under Section 9.12.06.B.9 of the Indian River County code in effect on the Effective Date shall be prohibited. Furthermore, a day care or child care facility or operation (regardless of age) shall not be permitted, irrespective of whether same is a home occupation.
- B. The business of operating the Association shall not be considered as business activity under this Section 12.8.

12.9 Trash and Garbage. No trash shall be discarded on any part of the Condominium property except in trash chutes or in designated dumpsters. Dumpsters are not to be used for disposal of furniture, appliances, carpeting, Christmas trees and any other large objects. Grease and cooking oil shall not be poured into the garbage disposal or sink drain. All garbage and rubbish (excluding glass bottles, newspapers) must be securely tied in plastic bags. Trash chutes shall not be used between the hours of 9:00 p.m. and 8:00 a.m. Disposal of carpet, appliances, concrete, tile, and similar items in trash chutes or trash dumpsters shall be prohibited; it is up to the Owner or Occupant to remove such material off the Properties.

12.10 Use of Units in Absence of the Owner or Lessee; Guest Use.

- A. Absence of Owner or Lessee. No Guest shall be entitled to gain admittance to any Unit during the absence of its Owner or lessee unless such admittance has been authorized by the Owner or lessee and which authorization is received by the Association in advance of the intended stay, advising the Association as to the relationship of the person, and the dates of arrival and departure. The foregoing applies even though the Guest seeking to gain admittance possesses a key to the Unit. The Owner or lessee shall be deemed "absent" where the Owner or lessee does not stay overnight along with the family member.
- B. Presence of Owner or Lessee. A Guest shall be permitted to occupy a Unit in the presence of the Owner or lessee, even without notification to the Association. An Owner or lessee shall be deemed "present" in the Unit where the Owner or lessee stays overnight along with the Guest.
- C. Forms. The Board of Directors is authorized to adopt forms for use in connection with notification under this Section 12. 10.

12.11 No Solicitation. No business solicitation whatsoever is permitted in the Condominium, whether or not such solicitation is for the benefit of a non-profit organization, whether in person or by hand delivery of letters, without the permission of the Association. This shall not preclude an Owner from inviting a person or firm to enter the Condominium for the purpose of contracting business with the Owner.

12.12 Open Houses and Auctions for the Sale of Units. In the event of an open house or auction relating to the sale of a Unit, there shall be no more than ten persons other than the Owner in attendance at same at any one time.

**SECTION 13. LEASING OF UNITS.** An Owner may lease only his entire Unit, and then only in accordance with the Declaration, after receiving the approval of the Association as provided for in this Section 13. Reference to "leasing" in this Section 13 shall also include rental. Prior approval is also required in connection with any lease renewal and in connection with any change in occupancy under, during or along

with a lease. A lease or rental shall exist if any form of consideration (whether for services, employment or otherwise) is paid or exchanged. Any lease, lease renewal or change in occupancy under, during or along with a lease is referred to in this Section 13 as a "Transfer".

13.1 Procedures.

- A. Notice by the Owner. An Owner shall give to the Board of Directors or its designee written notice of an intended Transfer at least thirty (30) days prior to the proposed Transfer and occupancy thereunder, together with the name and address of the proposed lessee(s), an executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require the personal appearance of any lessee(s), and his/her spouse and any other intended occupants, as a condition of approval.
  
- B. Approval. After the required notice and all information, transfer fee, and appearances requested have been provided, the Board shall approve or disapprove the proposed Transfer within thirty (30) days. If the Board neither approves nor disapproves within this time period, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a letter of approval to the Owner.
  
- C. Disapproval. A proposed Transfer shall be disapproved only if a majority of the whole Board so votes, and in such case the Transfer shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, any one or more of the following:
  - 1. The Owner is delinquent in the payment of assessments at the time the application is considered, and the Owner does not bring the delinquency current (with any interest, late fees.

costs and attorneys' and paralegal fees also due and owing) within a time frame required by the Board of Directors;

2. The Owner has a history of leasing his/her Unit to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his Unit;
3. The real estate company or agent handling the leasing transaction on behalf of the Owner has a history of screening lessee applicants inadequately or recommending undesirable lessees;
4. The application on its face appears to indicate that the person seeking approval and/or intended occupants intend(s) to conduct himself/themselves in a manner inconsistent with the covenants and restrictions applicable to the Condominiums and/or Rules and Regulations of the Association;
5. The prospective lessee or other intended occupants have been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
6. The prospective lessee or other intended occupants have a history of conduct which evidences disregard for the rights or property of others;
7. The lessee or other intended occupants, during previous occupancy, have evidenced an attitude or disregard for the covenants and restrictions applicable to the Condominiums and/or Rules and Regulations of the Association;



8. The lessee(s) or intended occupants have failed to provide the information or appearances required to process the application in a timely manner, or provided false information during the application process; or the required transfer fee is not paid; or
9. The Owner fails to give proper notice of his intention to lease his Unit to the Board of Directors.

Notice of disapproval shall be sent or delivered in writing to the Unit Owner.

- D. Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease.
- E. Unapproved Transfers. Any Transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board of Directors. The Association shall have the right to remove any occupant(s) and personal belongings by injunctive relief or by other means provided in this Declaration should this Section 13 be violated.
- F. Application Form. The Association is vested with the authority to prescribe an application form such as may require specific personal, social, financial, and other data relating to the intended lessee(s), and occupants, as may reasonably be required by the Association in order to enable the Association to reasonably investigate the intended lessee(s), and occupants within the time limits extended to the Association for that purpose as set forth in this Section 13. The application shall be complete and submitted to the Association along with and as an integral part of the notice of intended Transfer.

G. Transfer Fee. The Board of Directors is empowered to charge a fee in connection with and as a condition for the approvals set forth in this Section 13; in the amount not to exceed the maximum allowed by applicable law from time to time. So long as and only so long as prohibited by law at the particular time, there shall be no transfer fee in connection with the renewal of a lease, with the same lessee, if the renewed lease term immediately follows the expiration of the previous lease term.

H. Certain Exceptions. Section 13.1 shall not apply to a transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such Section 13.1 apply to a transfer, sale or lease by an Institutional Mortgagee that so acquires its title. Nor shall such Section require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

1. Proviso. This Section 13.1.H shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Condominium Act and all other provisions of the Condominium Documents and Rules and Regulations of the Association; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of this Section 13.1.

13.2 Contents in Lease Agreement. Every lease as of the Effective Date of this Declaration, whether oral or written shall contain, and if it does not contain, shall automatically be deemed to contain, the following:

- A. The lessee and all occupants shall abide by all provisions of the Condominium Documents and reasonable Rules and Regulations, as amended from time to time, the failure of which shall constitute a material default and breach of the lease.
- B. Any assessments or Charges, together with interest, late fees, costs and attorneys' fees, due and owing by the Owner/landlord shall be paid by the lessee directly to the Association, so long as the Association notifies the Owner/landlord and lessee of such sums due and owing, and lessee shall not be in breach of the lease for making such payments and deducting same from the rent due and owing to the landlord; the foregoing shall not change the fact that the Owner shall remain primarily liable for the payment of any and all such sums to the Association until same are paid in full.
- C. The parties recognize that the Association, as agent for the landlord/Owner, has the power to evict the tenants and occupants under Chapter 83, Florida Statutes, for violations of the Condominium Documents and reasonable Rules and Regulations, as amended from time to time.

13.3 Minimum and Maximum Terms. The minimum term for any lease shall be thirty (30) consecutive days and the maximum term for any lease shall be twelve (12) consecutive months.

13.4 Frequency of Leasing. No leasing shall be made more often than once in any twelve month period. For purposes of calculation, a lease shall be considered as made on the first day of the lease term. Notwithstanding the foregoing to the contrary, any Owner owning a Unit in Building 5 only as of the recording date of the Original Declaration (August 26, 1997) may lease his or her Unit with no limitation on frequency for the duration of such Owner's ownership.

13.5 Subleasing; Renting Rooms. Subleasing of a Unit shall be absolutely prohibited. Furthermore, no rooms shall be rented in any Unit. The intention is that only entire Units may be rented, and Units may not be sublet.

**SECTION 14. OWNERSHIP AND TRANSFER OF OWNERSHIP OF UNITS.** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of the ownership of a Unit shall be subject to the following provisions so long as the Condominium exists, which provisions each Owner of a Unit agrees to observe.

14.1 Forms of Ownership.

- A. General. There is no limitation on ownership of a Unit.
- B. Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be the only Association member from such Unit, and the occupancy of the Unit shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and Charges against the Unit. Any consent or approval required of Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as coowners.

14.2 Transfer of Ownership of Units.

- A. Transfers Subject to this Section 14.2

1. Sale or Gift. No Owner may dispose of a Unit or any interest in the Unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
2. Devise or Inheritance. If any Owner acquires his title by devise or inheritance, his/her right to occupy or use the Unit shall be subject to the approval of the Board of Directors.
3. Other Transfers. If any person acquires title in any manner not considered in the foregoing sections (1) or (2), his right to occupy or use the Unit shall be subject to the approval of the Board of Directors (that person having no right to occupy or use the Unit before being approved by the Board of Directors) under the procedures outlined in Section 14.2.B below.

The foregoing is sometimes referred to in this Section 14 as a "Transfer".

**B. Procedures.**

1. Notice to Association.
  - (a) Sale or Gift. An Owner intending to make a sale or gift of his Unit or any interest in the Unit shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days prior to the intended closing date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require the personal appearance of any purchaser (s) or donee(s) and

his/her spouse and other intended occupants, as a condition of approval.

- (b) Devise, Inheritance or Other Transfers. The transferee(s) must notify the Board of Directors of his/her ownership and submit a certified copy of the instrument evidencing his/her ownership and such other information as the Board may reasonably require. The transferee(s) shall have no occupancy or use rights unless approved by the Board.
- (c) Demand. With the notice required in Subsection (1)(a) above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser upon the same price and terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Unit determined as provided below. This obligation of the Association exists only if the written demand is made by the Owner or transferee along with and at the same time as the provision of the Subsection (1)(a) notice.
- (d) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Unit, or making a gift of the Unit, such failure shall create a rebuttable presumption that the seller and the purchaser, or Owner making the gift, intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

2. **Approval.** Within thirty (30) days of receipt of the required notice, transfer fee, personal appearances and information requested, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in an Association Certificate in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within this thirty (30) day time limit, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue an Association Certificate to the transferee.

3. **Disapproval.**

(a) **With Good Cause.** Approval of the Association shall be withheld if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval:

1. The person seeking approval or intended occupants have been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
2. The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
3. The application for approval on its face indicates that the persons seeking approval or intended occupants intend(s) to conduct himself/themselves in a manner inconsistent with the covenants and restrictions applicable

to the Condominiums and/or the Rules and Regulations of the Association;

4. The person seeking approval or intended occupants have a history of disruptive behavior or disregard for the rights or property of others;
5. The person seeking approval or intended occupants have evidenced an attitude of disregard for covenants or restrictions applicable to the Condominium and/or Rules and Regulations of the Association, by his conduct in the Condominiums as a tenant, Owner or occupant of a Unit, or such attitude at the personal appearance before the Board or its designee; or
6. The person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner, or provided false information during the application process.

(b) Without Good Cause. If the Board disproves without good cause, and if the Owner or transferee has made the demand set forth in Section 14.2.B(1)(c) above, then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the Owner or transferee (hereafter "the seller") the name of an approved purchaser who will purchase the Unit upon substantially the same price and terms as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the



contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two MAI appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing; real property taxes and Condominium assessments and Charges shall be prorated for the year of closing and the parties shall bear their own attorneys' fees, if any. The closing shall take place no longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure to close by the seller shall constitute a breach of contract and shall entitle the purchaser to specific performance or damages.

- (c) If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, or if the approved purchaser defaults in his/her purchase, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand an Association Certificate shall be issued.

#### 14.3 General Provisions.

- A. Unapproved Transfers. Any Transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration,

shall be void unless subsequently approved in writing by the Board of Directors. The Association shall have the right to remove any occupant(s) and personal belongings by injunctive relief or by other means provided in this Declaration should this Section 14 be violated.

- B. Application Form. The Association is vested with the authority to prescribe an application form such as may require specific personal, social, financial, and other data relating to the intended purchasers or new owners, and occupants, as may reasonably be required by the Association in order to enable the Association to reasonably investigate the intended purchasers, new owners and occupants within the time limits extended to the Association for that purpose as set forth in this Section 14. The application shall be complete and submitted to the Association along with and as an integral part of the notice of intended Transfer.
- C. Transfer Fee. The Board of Directors is empowered to charge a fee in connection with and as a condition for the approvals set forth in this Section 14; in the amount not to exceed the maximum allowed by applicable law from time to time.
- D. Certain Exceptions. Section 14.2 shall not apply to a transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such Section 14.2 apply to a transfer, sale or lease by an Institutional Mortgagee that so acquires its title. Nor shall such Section require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

1. Proviso. This Section 14.3.D shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Condominium Act and all other provisions of the Condominium Documents and Rules and Regulations of the Association; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of Section 14.2 above.

**SECTION 15. INSURANCE.** The insurance, other than title insurance, that shall be carried upon the Condominium property and the property of the Owners shall be governed by the following provisions:

15.1 Authority to Purchase. All insurance policies (except as hereinafter allowed) shall be purchased by the Association for itself and as agent for the Owners and their mortgagees as their interests may appear.

15.2 Owners. Each owner shall obtain insurance at his or her own expense, affording coverage of such scope and amount as is reasonable in the circumstances prevailing upon his or her interests in the Units and personal property and for his or her personal liability, for owner or mortgagee title insurance, and such insurance coverage as may be required by law.

15.3 Coverage:

A. Casualty. The Building and Improvements and all personal property owned by the Association (exclusive of personal property, additions and/or alterations installed by the Owners and exclusive of wall, floor and ceiling coverings) shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined by the insurance company affording such coverage. Such coverage shall afford protection against:

1. Loss or damage by fire, windstorm and other hazards covered by a standard extended coverage endorsement.

2. Such other risks as from time to time customarily covered with respect to buildings similar in construction, location and use of the buildings, including but not limited to flood insurance, vandalism and malicious mischief.
- B. Public liability and property damage in such amounts and in such forms as shall be required by the Association, including but not limited to legal liability, hired automobile, non-owned automobile, and off-premises employee coverages.
- C. Worker's compensation and unemployment compensation to meet the requirements of law.

15.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses. Deductibles shall be permitted.

15.5 All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their respective interests may appear.

#### **SECTION 16. RECONSTRUCTION OR REPAIR AFTER CASUALTY.**

16.1 If any part of the common elements or Units shall be damaged or destroyed by casualty, the same shall be repaired or replaced unless such damage rendered 75% or more of the Units in a Condominium untenable, and 80% of the Owners of the particular Condominium at a meeting called and held within sixty (60) days of the casualty or thirty (30) days after the insurance claim is adjusted (whichever comes later), vote against such repair or replacement, in which event the proceeds shall be distributed to the Owners in the Condominium and their mortgagees, as their interests may appear, and the Condominium shall be terminated as provided in Section 18 below.

16.2 Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications utilized in construction.

16.3 Estimates of Costs. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property, insofar as reasonably possible, in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

16.4 Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association (including the aforesaid fees and premium, if any) special assessments shall be made against the Owners in such Condominium in sufficient amounts to provide funds to pay the estimated costs for the Condominium.

16.5 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty shall be disbursed in the following manner:

- A. Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an Owner to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed as to limit or modify the responsibility of the Owner to make such reconstruction or repair.
- B. Association. The balance shall be retained by the Association to pay for the reconstruction or repair and all associated costs.

16.6 Insurance Adjustments. Each Owner shall be deemed to have delegated to the Board of Directors his or her right to adjust with insurance

companies all losses under policies purchased by the Association except in any case where all responsibility of reconstruction and repair lies with the Owner, subject to the rights of mortgagees of such Owners.

#### **SECTION 17. CONDEMNATION OR EMINENT DOMAIN:**

17.1 Deposit of Awards with Association. The taking of all or any part of the Properties by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Owners, the Owners shall deposit the awards with the Association; and if any fail to do so, a Charge shall be made against a defaulting Owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that Owner; the Charge shall be collected as provided for in this Declaration.

17.2 Determination Whether to Continue Condominiums. Whether a Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If a Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium Property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the Owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation.

17.5 Taking of Common Elements and Association Property. Awards for the taking of common elements and Association property shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the Owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation, if any. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and the mortgagee(s) of the Unit.

17.6 Priority-Conflict. In the event of any conflict between Section 16 and this Section 17, the provisions of this Section 17 shall control and govern.

**SECTION 18. TERMINATION.** The Condominium shall be terminated, if at all, in the following manner:

18.1 By the agreement of one hundred percent (100%) of the Owners which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such agreement has been recorded according to law. In the event of damage or destruction by casualty as set forth in Section 16 of this Declaration, the required percentage shall be eighty percent (80%).

18.2 Shares of Owners after Termination. After termination of a Condominium, the Owners in that Condominium shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the Unit or Units formerly owned by such Owners shall have mortgages and liens upon the respective undivided shares of the Owners. Such undivided shares of the Owners shall be as by the percentage of ownership of the common elements. All funds held by the Association, except for the reasonably necessary expenses of winding up, shall be disbursed to the Owners in said shares. The costs incurred by the Association in connection with a termination shall be a common expense.

18.3 Following Termination. The property may be partitioned and sold upon the application of any Owner in the particular Condominium. Provided, however, that if the Board of Directors following a termination by unanimous vote, determines to accept an offer for the sale of the property as a whole, each Owner shall be bound

to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

18.4 The Members of the Last Board of Directors shall continue to have such powers as in this Declaration are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

**SECTION 19. COMPLIANCE AND DEFAULT; REMEDIES.**

19.1 Duty to Comply; Right to Sue.

- A. Each Owner, each tenant and other invitee, and the Association, shall be governed by and shall comply with the provisions of the Condominium and Corporate Acts, the Condominium Documents, and the Rules and Regulations. Actions for damages, for injunctive relief, and/or for declaratory relief, for failure to comply may be brought by the Association, by an Owner or by a tenant or other invitee occupying a Unit against:
1. The Association;
  2. An Owner;
  3. Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.
  4. Any tenant leasing a Unit, and any Guest or other invitee occupying a Unit.
- B. Any Owner prevailing in an action between the Association and the Owner and if entitled to recover attorneys' fees, may recover additional amounts determined by a court to be necessary to



reimburse him for his share of assessments levied by the Association to fund its expenses of the litigation.

- C. The Association shall also have any other remedies provided for in the Condominium Documents and law.
- D. The mandatory non-binding arbitration procedures of F.S. 718.1255, as amended from time to time, and the applicable Administrative Rules, shall be followed and shall apply so long as they exist and apply.

**19.2 Association Notice to Correct.** Should any Owner fail to properly discharge his/her maintenance, repair and replacement obligations as provided for in Section 11 above; or shall fail to make and pay for maintenance, repair or replacement as provided for in Section 11 above; and in the judgment of the Board of Directors, same shall result in a condition of unsightliness tending to adversely affect the value or enjoyment of neighboring Owners and residents; or should any Owner violate Sections 11.2, 11.3 or 11.4 above; or should the neglect or the willful misconduct of Owner(s) cause damage which then requires maintenance, repair or replacement by the Association; then the following shall apply:

- A. The Board may (but shall not be required to) provide notice of such condition(s) to the proper Owner(s), demanding that the condition(s) be corrected within thirty (30) days from the date the notice was sent. In the event that the Owner does not rectify the condition at the end of this period, then the Association shall be entitled to contract to have the necessary work performed (and entry onto the Unit), whereupon the cost of this work shall become a Charge against the Owner and Unit concerned (solely or proportionately as the Board shall determine) and collectible as Charges are collected under this Declaration.
- B. Provisos. Notwithstanding any provision to the contrary in this Section 19.2, the following shall apply:

1. The thirty (30) day notice period may be shortened or eliminated if the Board determines that an emergency exists to effect correction.
2. The thirty (30) day notice shall not apply to Section 19.3 below.

**19.3 Negligence: Damage Caused by Condition in Unit.** Each Owner shall be liable to the Association for the expenses of any maintenance, repair or replacement of common elements, limited common elements and Association property made necessary by his act, inaction or negligence, or by that of any member of his family or his Guests, invitees, employees, agents, or lessees. If any condition, defect or malfunction existing in a Unit or other portions of the Properties for which the Owner has maintenance, repair or replacement responsibility under this Declaration, whether caused by the Owner's negligence or otherwise, shall cause damage to the Properties, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas, including all real and personal property, for all costs of repair or replacement not paid by insurance. If the Association effects correction, the cost shall be levied as a Charge against the Owner and Unit and collectible as Charges are collected under this Declaration; the Association may, but is not required to, provide notice to the Owner prior to effecting correction.

**19.4 Association's Access onto the Properties.** The Association, by and through the Board of Directors, officers, or the agents or employees of the Association, has an irrevocable right of access onto the Properties including the Units:

- A. For the purposes of protection, maintenance, repair and replacement of those Properties for which the Association is obligated to protect, maintain, repair and replace.
- B. For the purposes of preventing damage to the common elements or to a Unit or Units.

- C. In the event that an unsanitary or other condition exists which threatens the health or safety of other residents or any condition exists which will cause disrepair or damage to the Properties.

In connection with this Section 19.4, each Owner shall provide the Association with a current workable key(s) and security code(s) if any and new keys and code(s), as necessary.

**19.5 Owners Responsible.** Owners are strictly responsible to ensure that their family members, Guests, agents, lessees, servants, etc. or any occupants of their Units comply with the Condominium Documents and Rules and Regulations; as amended from time to time; and the Statutes which apply; and as such, are responsible and liable to the Association for violations of same by their family members, Guests, agents, lessees, servants, etc. or any occupants of their Units.

**19.6 Waiver of Rights.** The failure of the Association or of an Association member to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future.

**19.7 Costs and Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of an Owner (for himself/herself or for his/her family members, Guests, agents, lessees, servants, etc. or any Occupants of the Unit), or the Association to comply with the Condominium Documents, or the Rules and Regulations, as amended from time to time, or Law, the prevailing party shall be entitled to recover the costs of the proceedings and attorneys' fees, including those incurred in appellate, bankruptcy and administrative proceedings.

**19.8 No Election of Remedies.** All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Condominium Documents or Rules and Regulations of the Association, or law, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from

exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, Rules and Regulations, or at law or in equity.

**19.9 Eviction of Tenants and Occupants.** The Association possesses all rights and remedies of the lessor/Owner under Chapter 83 of the Florida Statutes for the purposes of enforcing against violations of the Condominium Documents and Rules and Regulations, as amended from time to time. The foregoing includes the right of the Association to institute eviction proceedings in Court against the lessees as agent for and on behalf of the lessor/Owner, based on the non-compliances mentioned above. The Association may exercise its rights and remedies under this Section 19.9 without any liability to the lessor/Owner or lessees/ occupants (including, but not limited to, the loss of rent to the lessor/Owner and loss of possession by the lessees/ permanent occupants), except as may be provided for in Chapter 83, Florida Statutes. The lessees and the Owner shall be jointly and severally responsible for the costs and paralegal and attorneys' fees incurred by the Association in connection with this matter, including those incurred in appellate, bankruptcy and administrative proceedings.

**SECTION 20. RIGHTS OF MORTGAGEES.** The following rights shall apply to certain or all mortgagees, in addition to those rights contained elsewhere in the Condominium Documents:

**20.1 Amendments to the Declaration.** Written consent of certain mortgagees of a Unit shall be required for certain amendments to this Declaration; refer to Section 21.5.B below for same.

**20.2 Association Lien Foreclosure.** Certain named mortgagees have certain rights in connection with Association lien foreclosure actions, as provided for in Section 10.8.A above.

**20.3 Redemption.** If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one or more Unit Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale. Any

mortgagee shall have the right to accept title to the Unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the Unit at the foreclosure sale. If the Association or any of its members redeem the mortgage or cure the default, it or they shall have a lien against the Unit for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past due assessment.

**20.4 Right to Inspect Books.** The Association shall make available to Institutional Mortgagees requesting same current copies of the Condominium Documents and Rules and Regulations of the Association, and the official records of the Association which by the Condominium Act, are inspectable by the Owners. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

**20.5 Financial Statement.** Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

**20.6 Lender's Notices.** Upon written request to the Association, any Institutional Mortgagee shall be entitled to timely written notice of:

- A. Any 60-day or longer delinquency in the payment of assessments or charges owed by the Owner of any Unit on which the mortgagee holds a mortgage; and any 30-day or longer default of any other provision in the Condominium Documents by an Owner of any Unit on which the mortgagee holds a mortgage.
- B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- C. Any condemnation or casualty loss that affects a material portion of a Condominium or any Unit.
- D. Any proposed action that requires the consent of a specified percentage of mortgage holders.

E. Outstanding assessments unpaid with respect to the Unit on which the Institutional Mortgagee holds a mortgage.

F. Notice of Association meetings.

20.7 Access. All Institutional Mortgagees shall specifically have a complete right of access to all of the common elements and Association property, for the purpose of ingress and egress to any Unit upon which they have a mortgage loan. Any Institutional Mortgagee shall be entitled to attend meetings of the Association.

20.8 Priority. All provisions of an Institutional Mortgage shall take precedence over the provisions of this Declaration, unless and to the extent that same is viewed to be contrary to or prohibited by applicable law from time to time. No breach of any of the provisions contained in the Declaration shall defeat or adversely affect the lien of any institutional mortgage at any time made in good faith and for a valuable consideration upon any Unit.

20.9 Presumption. Where an Institutional first Mortgage, by some circumstance fails to be a first mortgage but it is evident that it is intended to be a first mortgage, it shall nevertheless, for the purpose of the Condominium Documents deemed to be an Institutional first Mortgage.

## **SECTION 21. AMENDMENT OF DECLARATION.**

21.1 Proposal. Amendments to this Declaration may be proposed by a majority of the entire membership of the Board of Directors or by written petition signed by at least twenty-five percent (25%) of the voting interests of the members of the Association owning Units in the Condominium whose Declaration is being amended. Only one co-owner of a Unit need sign the petition for that Unit.

21.2 Procedure; Notice and Format. In the event that any amendment is proposed by the Board of Directors, then the Board may propose the amendment to be considered at the annual or a special members' meeting. In the event that any amendment was proposed by written petition of the members, then the Board shall have forty (40) days from its receipt of the petition or ten (10) days after its next regular meeting, whichever time period is greater, to certify that the proper number

of owners executed the petition. Once certified, the Board shall call a meeting of the members to vote on the amendments within sixty (60) days after certification of the signatures. An amendment may be considered at the annual or a special members' meeting. The full text of any amendment to the Declaration shall be included in the notice of the members' meeting of which a proposed amendment is considered by the members. New words shall be inserted in the text by underlining and words to be deleted shall be lined through with hyphens; however, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision \_\_\_\_\_ for present text."

21.3 Vote Required. Except as otherwise provided by Florida law, or by specific provision of this Declaration, this Declaration may be amended by concurrence of not less than a majority of the entire membership of the Board of Directors and not less than the following: Not less than 75% of the voting interests of the membership owning Units within the Declaration being amended; to the extent that an amendment to one Declaration has a material and adverse effect upon any of the members or Units in the other Condominium whose Declaration is not being amended, then a majority of the voting interests of all members in that other Condominium must also concur. If the amendments were proposed by a written petition signed by the members pursuant to Section 21.1 above, then the concurrence of the Board of Directors shall not be required.

21.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by any officer of the Association with the formalities of a deed. The Certificate of Amendment shall on the first page state the book and page of the public records where the Declaration is recorded. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County.

21.5 Provisos. Notwithstanding any provision contained in the Condominium Documents to the contrary:

- A. No amendment shall operate to unlawfully discriminate against any Unit or class or group of Units.
- B. No amendment shall diminish or impair any of the rights, privileges, powers and/or options provided in this Declaration in favor of or reserved to record owners of any Institutional Mortgagees unless the particular mortgagee(s) shall join and consent in the execution of the amendment.
- C. No amendment shall change a Unit's proportionate share of the common expenses or common surplus, nor the voting rights or any other appurtenance to any Unit, unless the vote and approvals required by F.S. 718.110(4) are obtained.

**SECTION 22. MISCELLANEOUS PROVISIONS.**

22.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not affect the remaining portions thereof.

22.2 Priorities in Case of Conflict. In the event of conflict between or among the provisions of any of the following, the order of priorities shall be from highest priority to lowest:

- A. The Condominium Act which applies.
- B. Other Florida Statutes which apply.
- C. This Declaration.
- D. The Articles of Incorporation.



E. The By-Laws.

F. The Rules and Regulations and architectural guidelines promulgated by the Board of Directors.

22.3 Interpretation; Construction. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

22.4 Invalidity. In the event any Court shall hereafter determine that any provisions of this Declaration as originally drafted, or as amended, violates the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law, and for such purpose measuring lives shall be that of the (original) incorporators of the Association.

22.5 Captions. The captions in the Condominium Documents are inserted only as a matter of convenience and for ease of reference and in no way define or limit any provision in the Condominium Documents.

22.6 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

22.7 Owners' Affirmative Duties. All Owners are charged with the affirmative duty to keep the Association advised, in writing, of any mailing addresses, as they change from time to time, including a second address for emergency in the event of a catastrophic event. The Owner shall also notify the Association of the name and address of any mortgagees. The Association shall be permitted to rely on the information supplied by Owners in writing.

22.8 Covenant Running with the Land. All provisions of the Declaration and its Exhibits and Rules and Regulations shall, to the extent applicable be perpetual and be construed to be covenants running with the Properties in the Condominium, and all of the provisions of the Condominium Documents and Rules and Regulations shall be binding upon and enure to the benefit of the Owners, Association and their respective heirs, personal representatives, successors and assigns, and shall be binding on all residents, occupants, Guests and invitees to the Properties. None of the provisions contained in the Condominium Documents or in the Rules and Regulations of the Association are intended to create, nor shall be construed as creating, any rights in and for the benefit of the general public.

**SECTION 23. EFFECTIVE DATES**. The Effective Date of the provisions of this Amended and Restated Declaration with Exhibits, including Articles of Incorporation and By-Laws, shall be the date on which this Declaration with Exhibits, including Articles of Incorporation and By-Laws, is recorded in the Public Records of the County. Provided however, that to the extent that any provision in this Declaration contains a use restriction which is in effect the same or similar to that contained in the Original Declaration or any amendment to the Original Declaration, then the Effective Date of such use restriction is the date of recording of the Original Declaration or amendment, as applicable. Further provided however, that if an earlier Effective Date is referenced in this Declaration, then that earlier date shall control as the Effective Date. Finally, an easement created by any Original Declaration which is stated in this Declaration shall have as an Effective Date, the date of recording of the Original Declaration.

**CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM**

THE UNDERSIGNED, being the duly elected and acting president, vice president, secretary, and treasurer of SOUTHWINDS AT THE MOORINGS ASSOCIATION, INC., hereby certify that the foregoing was approved by not less than a majority of the entire membership of the Board of Directors on March 12, 2007 at a special Board Meeting called for the purpose, with quorum present; and was approved by not less than 75% of the voting interests of the entire membership of the Association and 75% of the voting interests of the Owners in each Condominium, which was obtained

at a meeting of the members held on March 17, 2001, called for the purpose, with quorum present.

IN WITNESS WHEREOF, the Association has caused these presents to be executed in its name and its corporate seal to be affixed by its president on the 3<sup>rd</sup> day of August, 2001.

WITNESSES: SOUTHWINDS AT THE MOORINGS ASSOCIATION, INC.

Sign Nikki Monahan

BY: Sign David H. Donnelly  
PRESIDENT

Print Nikki Monahan

Print David H. Donnelly  
Current Address 1250 W. Southwinds Blvd. # 316  
Vero Beach, FL 32963

Sign Amy K. Cavasini

Print Amy K. Cavasini

Sign Nikki Monahan

BY: Sign William L. Mannion  
SECRETARY

Print Nikki Monahan

Print William L. Mannion  
Current Address 1250 W. Southwinds Blvd # 211  
Vero Beach, FL 32963

Sign Amy K. Cavasini

Print Amy K. Cavasini

STATE OF FLORIDA )  
                                                          ) ss  
COUNTY OF INDIAN RIVER )

I HEREBY CERTIFY that on this 3 day of August, 2001, before me personally appeared David H. Donnelly, President, of SOUTHWINDS AT THE MOORINGS ASSOCIATION, INC., a Florida corporation, who is personally known to me or who has produced \_\_\_\_\_ (if left blank,

personal knowledge existed) as identification and who did not take an oath and who executed the aforesaid as his/her free act and deed as such duly authorized officer; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

WITNESS my signature and official seal at Vero Beach in the County of Indian River, State of Florida, the day and year last aforesaid.

NOTARY PUBLIC:

Sign: Barbara J. Peltier

Print: BARBARA J. PELTIER

