

THIS INSTRUMENT WAS PREPARED BY,
AND AFTER RECORDING RETURN TO:
Jason Hamilton Mikes, Esq
HAMILTON MIKES, P.A
3301 Bonita Beach Road, Suite 200
Bonita Springs, Florida 34134

**CERTIFICATE OF AMENDMENT AND
NOTICE OF NAME CHANGE**

**Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions
for
Leeward Cay at Windstar on Naples Bay**

**Second Amended and Restated Articles of Incorporation
Second Amended and Restated Bylaws
of
Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc.**

I, the undersigned President of Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc , hereby certify that on February 25, 2021, at a duly-called and properly-noticed meeting of the Association members at which a quorum was present, the following amendments to the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions, Second Amended and Restated Articles of Incorporation, and Second Amended and Restated Bylaws were approved by the required percentage of voting interests of the Association

See Exhibit A attached hereto for amendments.

NOTICE IS HEREBY GIVEN THAT THE NAME OF THE ASSOCIATION SHALL BE AMENDED FROM "LEEWARD CAY AT WINDSTAR HOMEOWNERS ASSOCIATION, INC." TO "LEEWARD CAY AT WINDSTAR ON NAPLES BAY HOMEOWNERS ASSOCIATION, INC."

Dated this 9 day of MARCH, 2021.

Witnesses:

**LEEWARD CAY AT WINDSTAR ON NAPLES BAY
HOMEOWNERS ASSOCIATION, INC.**

James M. Frost
By. JAMES M. FROST

Paul Eschholz
By. Paul Eschholz
Association President

Courtney D Andra
By. COURTNEY D ANDRA

(Corporate Seal)

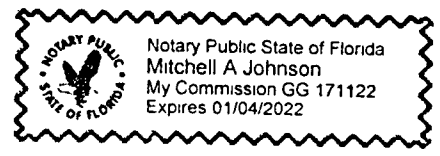
STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 9 day of MARCH, 2021, Paul Eschholz as President of Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc.

[Signature]
Signature of Notary Public

Print Name MITCH JOHNSON

Personally Known OR Produced Identification
Type of Identification Produced _____



NOTARY
CERTIFIED
COPY

NOT A
CERTIFIED
COPY

LEeward CAY

RULES AND REGULATIONS

THE BOARD OF DIRECTORS

**LEeward CAY AT WINDSTAR
ON NAPLES BAY HOMEOWNERS ASSOCIATION, INC**

FEBRUARY 2021

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INTRODUCTION TO LEEWARD CAY AT WINDSTAR ON NAPLES BAY

Uncrowded, unspoiled, and unlike any other private community, Windstar on Naples Bay is a hidden gem including 591 residences spread across 500 wondrous acres of land along the shores of beautiful Naples Bay.

The friendly and active community of Leeward Cay at Windstar on Naples Bay is located in the center of Windstar on Naples Bay. Our neighborhood includes 14 outstanding villa homes and 2 stand-alone houses fronting on our Audubon--Certified Tom Fazio designed golf course and lakes.

Leeward Cay at Windstar on Naples Bay residences have an open and inviting floor plan with sunlit rooms and double two car garages, offering our residents the ultimate Florida lifestyle.

Leeward Cay at Windstar on Naples Bay residents enjoy our own private, community, heated swimming pool and spacious, beautifully landscaped patio area.

Our small, welcoming Leeward Cay at Windstar on Naples Bay neighborhood has its own Board of Directors as well as its own Rules and Regulations, allowing us to function as a well-run, respectful and inclusive community.

Please review our Rules and Regulations and share them with your family members and guests.

Thank you,

The Board of Directors of Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc.

LEEWARD CAY RULES AND REGULATIONS

Private community living is unique. While there are many advantages to belonging to a Homeowners' Association, there are also Rules and Regulations that we all need to follow to be respectful, to be community minded and to allow our community to run smoothly and effectively for the greater good of all our community residents. This document makes clear our joint goals and our community Rules and Regulations which we mutually agree to abide by.

Leeward Cay at Windstar on Naples Bay is a private, residential community. Unit owners are responsible for providing friends, guests, family members, minors, and lessees the Rules and Regulations so that we may all have the same expectations and comply with the same policies. Unit owners are responsible for the compliance to all of the Rules and Regulations for the above--mentioned parties.

Violations of the following Rules and Regulations are to be reported to a member of the Board of Directors who will then reach out to the violating Owner, lessee, or guest for corrective action. Any disagreement over the violation will be reported to the Board of Directors for subsequent action. If an irreconcilable conflict should occur with regard to the interpretation of the Rules and Regulations and the Declaration of Protective Covenants, Conditions and Restrictions and Bylaws, the provisions of the Declaration of Protective Covenants, Conditions and Restrictions and Bylaws will prevail.

These Rules and Regulations for our residences and all common areas are deemed in effect until amended by the Board of Directors of the Homeowners' Association and apply to all owners.

Violations of these Rules and Regulations may subject the Owner to any and all legal remedies available to the Homeowners' Association. The Association is entitled to recover any and all attorney's fees, court fees and costs incurred while pursuing the violation of the Leeward Cay at Windstar on Naples Bay Rules and Regulations or the Declaration of Protective Covenants, Conditions and Restrictions and Bylaws by the Owner in violation of the Rules.

The Board of Directors may adopt or amend previously adopted Rules and Regulations governing the details of the operation, use, maintenance, management and control of Residences and all common areas of the Homeowners Association and any facilities or services made available to the Owners.

Any waivers, consents, or approvals given under these Rules and Regulations by the Board of Directors are revocable at any time and are not a waiver, consent, or approval of similar situations unless notified in writing by the Board of Directors.

CONTACTS

The Board of Directors will post and maintain the names and contact information for each of the Directors, as well as the name and information for our contact at the Property Management Company at the end of this document.

USE OF FACILITIES

The facilities of the Leeward Cay at Windstar on Naples Bay residences are for the exclusive use of the Association members, resident house guests, guests accompanied by a member, and lessees. Any damage to the buildings, pool area, or other common areas or equipment caused by any resident or guests thereof shall be repaired at the expense of the responsible Owner.

PROPERTY DAMAGE

No member, their dependents, their guests nor their lessees shall mark, mar, deface, destroy, engrave, or damage any part of any building. Responsible members shall repair any such damage and be responsible for the expense of the repair. If the Association makes the repair, the expense of the repair will be the responsibility of the Owner, secured by a lien against the parcel as provided in Article IX of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

SOUND TRAVELS

As members of a small and close community, we are both mindful of our neighbors and very aware that sound travels. No Owners, their families, guests, employees, lessees, or pets shall make or permit any disturbing noises that interfere with the rights, comfort, or convenience of any other Owners. Please keep television, music, and sound levels at a considerate level during the day and at an especially respectful level in the evening.

SWIMMING POOL RULES

No Lifeguard Present. Swim at your own risk.
Pool hours are dawn to dusk.
Shower before entering.
Children under age 12 must be supervised by an adult.
Incontinent people in diapers are not allowed in the pool.
No glassware or animals in the fenced pool area
No smoking inside fenced area.
Do not swallow the water; it is recirculated.
Maximum Pool Capacity: 11 persons.
When leaving, take all personal effects and trash.
No loud noises, screaming, or music and radios without headphones.
Pool is reserved for residents and tenants of Leeward Cay at Windstar on Naples Bay, and their guests.
No diving.

PETS

The resident of each residence may keep one (1) pet, of a normal domesticated household type, (such as a cat or dog), provided it is not kept, bred or maintained for any commercial purpose. The following breed of dogs (includes mixes thereof) are prohibited from being kept at Leeward Cay at Windstar on Naples Bay: Akita, Basenji, Chow, Doberman Pinscher, English Mastiff, German Pinscher, German Shepard, any of the Husky breeds, Malamute, Pit Bull, Presa Canario, and Rottweiler. The owner of the pet shall hold the Association, its officers, and directors harmless from any liability or loss arising from the keeping of the pet in said residence. All pets shall be leashed or carried by the pet owner whenever outside the residence. If any pet becomes a source of unreasonable annoyance to other residents, the Board may require its permanent removal from Leeward Cay at Windstar on Naples Bay. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept on any part of Leeward Cay at Windstar on Naples Bay.

Feeding of feral cats, and any wild animals, is prohibited; feral cats are responsible for greatly reducing the population of birds in our Audubon community.

Please also refer to Article 10.4 of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

PEST CONTROL

The Association does not currently provide pest control inside the Residences. Owners may use a pest control company for the interior of the Residence at the Owner's cost and expense. The Association landscaper provides pest control on lawns and common areas.

Please also refer to Article 5.2(D) of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

APPEARANCES/EXTERNAL

The external appearance of the Residences shall be maintained as they were originally designed. The exterior of a Residence and all other areas appurtenant to the Residences shall not be painted, decorated, modified, or in any way alters the exterior appearance of the structure by any Owner in any manner without the Association's prior written consent. The Board of Directors may withhold consent on purely aesthetic grounds within their sole discretion.

No awnings, window guards, light reflective materials, hurricane or storm shutters, no ventilators, fans which vent or air conditioning devices shall be used in or about the residences except those approved in writing by the Association. Any modifications to a lanai, sidewalk or driveway that may change the exterior appearance of the Residence when viewed from the exterior is not permitted without prior written consent from the Association. Personal property of Occupants may not be stored outside the Residence or its appurtenances. The lanais may not be used for storage. No recreational items, i.e. Basketball hoops, volleyball nets, may be placed anywhere on the property without written approval of the Association.

Please also refer to Article VI of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

LEEWARD CAY AT WINDSTAR ON NAPLES BAY ARCHITECTURAL REVIEW BOARD (ARB)

1. Requests to make any exterior changes are to be made on the Architectural Change Request (ACR) form on the Windstar on Naples Bay (WoNB) Master Association website. All drawings, including all elevations, to accompany ACR form. Forms to be submitted between January 5 and April 15. Approved construction is to be done and completed between April 15 and December 15. Please also refer to Article 6.3(B) of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.
2. Identical roofs - color and tile
3. Identical exterior color - to include all trim and garage doors
4. Identical driveways
5. Identical approach ways from driveway to front gate
6. Identical mailboxes
7. Common area landscaping that imparts visual unity of all 16 units
8. Identical garage doors – i.e. same number of panels
9. Any replacements to the pool/lanai caging must be done with bronze metals.
10. Windows – replacements must be impact resistant/compliant to current code and visually similar. Dimensions must be same as existing. No change can be made to structure of building. Windows also must be flush with wall line – same as those which are about to be replaced
11. Front Doors (upon replacement) must be impact resistant/ compliant to current code
12. Sliding Doors (upon replacement) must be impact resistant and compliant with current code
13. Privacy Walls (between buildings and in back of buildings) if repair or replacement needed, must be same dimensions as existing
14. Lighting – The outside lights by garage doors must be identical and to be changed to two identical lights at next painting of the exterior of the Residence. Lights down sidewalk/side of building do not need to be same as front of building.
15. Additions/Changes to exterior structure in compliance with Article 10.8 of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.
16. Ensure that the architectural “column” feature at the end of privacy walls in various places on each Parcel are clearly visible whenever possible.
17. Picket fence (upon replacement) must be harmonious or hidden by vegetation.
18. Exterior Shutter installations must be approved by the Leeward Cay at Windstar on Naples Bay ARB.

LC Skylight Architectural Standards

1. When replaced, skylights must be flat glass (and not domed polycarbonate).
2. Skylights must meet Miami-Dade County specifications, which means hurricane resistant and is the toughest specification for skylights.
3. Skylight frames must have a bronze factory finish (so do not need to be painted to match roof).
4. Either curb or self-flashing skylights are acceptable.
5. When skylights must be replaced, replace with flat glass, so that all Leeward Cay at Windstar on Naples Bay skylights will be flat glass.

6. As an alternative to replacing the skylights with flat glass, Owners may remove the skylights and roof over the space. Roofing materials must match existing roof tiles in shape and color, so that the removal is unnoticeable from the exterior.

INSURANCE

Our Association carries insurance (including FEMA flood) for the exterior of the buildings and common grounds. Our Association DOES NOT carry insurance for the interior of the Residences. Each Owner is responsible for insuring the personal property within his or her own Parcel and Residence, including all floor, wall and ceiling coverings, built-in cabinets and appliances, water heaters, air conditioning and heating equipment, electrical fixtures, and all such other alterations made to the parcel or common areas by the owner or predecessors in title.

Owners may also obtain a flood insurance policy through FEMA for the interior of the Residences and contents.

Please also refer to Article VII of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

WASTE MANAGEMENT

All garbage and recycling must be deposited in the appropriate garbage containers supplied to the members by the refuse company that services our community. These garbage containers must be stored in each resident's garage. Containers may be placed curbside at the end of the resident's driveway after 6 PM the day prior to collection and returned to the resident's garage as soon as possible after pickup occurs, by no later than 6 PM the day of pickup. No flammable, combustible, nor explosive materials shall be kept in any Residence nor in garage except for those suitable for normal household use.

Garbage is collected on Mondays and Thursdays.

Recycling is collected on Mondays

Yard debris is collected on Mondays – in bundles or in yard debris paper bags.

LANDSCAPING & IRRIGATION

Landscaping services, including mowing, pruning, fertilization and landscaping protection from insects and diseases, are provided by a professional landscaping company at regular intervals. A yearly schedule of all landscaping services by all providers is established by the Leeward Cay at Windstar on Naples Bay Board Member responsible for landscaping and distributed to residents on request. An irrigation company services the community's sprinkler system, and a tree company prunes some of the tallest trees in the community. Owners shall not cut down any trees. The Association is committed to preserving the community's vegetation and wildlife habitat. If a resident has an issue, s/he should either contact a board member or our management company to deal with the issue. A resident should not approach employees directly because they have given tasks to complete at each visit. Requests for tree removal may be made to the Board of Directors or the Association's management company. Groundskeepers are not authorized to remove trees at the request of an Owner.

PRIVACY AREAS

For the 14 villas, the privacy area includes the courtyard in front of the master bedroom as well as the path leading from the side gate, running along the length of the house to the end of the Residence.

For the 2 stand-alone homes, the privacy area starts where the path curves up the side of the garage, to the back door, as well as past the front door the length of the Residence to the corner nearest the lake.

The Association's landscaping company prunes all areas, including the fronts and backs of Residences. However, residents are responsible for the plantings and maintenance of all plant material within the privacy areas. An Owner may maintain the plantings in the rear of the Residence, upon the request of an Owner and approval by the Board Member/Landscape Liaison. An Owner may not reduce his or her proportionate share of the common expenses by voluntarily electing to maintain plantings in the rear of the Residence provided by the Association as a common expense. Trees may not be planted in privacy areas. Over time, tree roots undermine privacy walls and tree leaves become a nuisance.

Hot tubs are permitted in courtyards. Noise emanating from the hot tub must not become a nuisance to neighbors.

Residents may not hire the Association's landscaper to maintain their privacy areas. Any change the plantings in front or rear of the Residences, requires prior Board approval and will be performed at the Owner's cost and expense. The landscaping committee has approved plants that provide harmony in the community and follows the guidelines for plantings along Yacht Harbor Drive.

Guidelines for Owners Changing Landscaping Outside of Privacy Areas on Yacht Harbor Drive

In Leeward Cay at Windstar on Naples Bay, landscaping outside of the privacy area is a common expense of the Association. Basic landscaping improvements and maintenance, such as removing dead plants and treating disease in these areas, are the responsibility of the Association, as a common expense. However, Owners who desire to change the Yacht Harbor Drive plantings, is an expense of the Owner.

These guidelines are intended to provide homeowners guidance if you decide that investing in some "nonessential" changes will improve the appearance and potentially increase the value of your property. No simple list of recommended plants can guarantee that those landscaping changes will improve property value. No list can substitute for an evaluation of a specific site which would take into account how the scale, texture, rate of growth, and color fit with existing plantings. In addition, the homeowner or their professional landscaper will want to consider the site's sun/shade, drainage, in-season appearance, and other elements before choosing plants.

However, these guidelines can reflect the experiences of other Leeward Cay at Windstar on Naples Bay Owners, the recommendations from various landscaping books and professionals over the years, and realistically consider the abilities of the affordable landscape maintenance company hired by the Association. Accordingly, the goal is that the plants and design an Owner chooses:

- Are low maintenance (not requiring special skills to thrive)
- Are in harmony with our community's Florida snowbird landscape

- Have no unusual ongoing requirements for irrigation (many plants require special care until they are established, thus it is recommended that planting take place between April 15 and October 15---so nature, not the Owner, will water every day until established.)

One goal is to avoid increases in our community maintenance and irrigation costs. Since escalating Association assessments can have a negative impact on property values, choosing the wrong plants for the wrong spot could actually diminish property values, rather than improve them.

Design Approach: keeping our Yacht Harbor Drive landscaping in harmony, but not cookie-cutter boring:

- **Treat each structure as a design unit.** Avoid any stark demarcation in landscaping where the Villas attach.
- **Do not change the shape of beds.** In addition to conflicting with the refresh design, this risks irrigation breaks, can increase mowing/edging time and mulch costs.
- **Do not add trees to grow over 15 feet.** The Association hires a specialized expert who charges per tree. The landscape architect hired by the Association suggests new tree placements.
- **Plant only varieties that are at their best in-season.** Some refer to these as "snowbird plants".
- **Make sure new plants receive the special treatment necessary to get established and thrive.**
- **Avoid most annuals.** Many annuals planted in the fall are performing poorly by April.
- **Be careful not to over-do one plant.** Consider how much is already planted in our community.
- **Do not plant a bed of unique, single specimens.** The refresh tried for broad layers of color and texture.
- **Plant the right plant in the right spot.**

FISHING IN Leeward Cay at Windstar on Naples Bay LAKES

Fishing by Leeward Cay at Windstar on Naples Bay residents with their family guests is only allowed from the bank directly in back of the resident's property. Trespassing onto neighbors property is prohibited. Children under 18 must be supervised by an adult when near the lakes. Fishing and other activities along the lake banks are at your own risk due to alligators and other wildlife.

Fishing is prohibited in the effluent lake, which is the second lake on the left on Yacht Harbor Drive and near the Leeward Cay sign, and from banks that abut golf course property.

PORTABLE GENERATORS

In case of extended power cuts, please exercise care if using a portable generator. Portable generators must be placed outside far away from courtyards, neighbors, and positioned so that exhaust fumes are

directed away from people and building air intakes. Manufacturers recommends having ABC-type fire extinguisher handy and putting carbon monoxide alarms inside house. Please consider your neighbors.

VEHICLE PARKING/RESTRICTIONS

Each residence contains a double automobile garage which cannot be enclosed nor converted to any other use. Residents' vehicles must be parked overnight inside each garage, with the doors closed. Vehicles are not permitted to be parked overnight on the street. Visitor vehicles that are temporary are permitted to be parked in a resident's driveway as long as they do not block access to the resident's garage. Trucks, recreational vehicles, boats, trailers, racing cars and commercial vehicles including commercial vans are prohibited to be parked overnight. The Board shall have the right to tow any vehicle not in compliance with Article 10.9 of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions and this Rule at the sole cost and expense of the owner or operator of the vehicle. Payment of such cost and expense shall be secured by a continuing lien on the Owner's Dwelling Unit in the same manner as Assessments.

Prior Board approval is required should there be a need to park a car in a driveway. This accommodation is only for a maximum of one car, not for golf carts, boats, trailers, and others as mentioned in above paragraph.

Please indicate if the need is permanent (e.g. disability, car too big to fit in etc.) or temporary (e.g. hip replacement, garage floor being painted or during an interim period while moving in or out).

Please also refer to Articles 10.7 and 10.9 of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

SOLICITATION

There shall be no solicitation by any person anywhere within Leeward Cay at Windstar on Naples Bay -- for any cause, charity, or any purpose unless specifically authorized by the Board of Directors.

ROOFS

Only authorized persons, such as but not limited to installers, lanai and roof repair and maintenance personnel, and window washers are permitted on the roof. No other persons are permitted on the roofs.

LEASING

The maximum number of times any unit may be leased in a calendar year is three times. No lease is permitted for a period of less than thirty days. No lease may be for a period of more than one year. A residence owner may lease only his entire residence. No subleasing or assignment of lease rights by the lessee is allowed. Owners must submit to the Board of Directors or its designee a lease application for approval for each rental of their unit, regardless of the length of the lease or rental at least ten days prior to such lease or rental.

Listing or otherwise advertising a Residence for rent for less than the term set forth above shall be deemed a violation of the Governing Documents and proof that the Owner and any prospective tenants intend to

conduct themselves in a manner inconsistent with the covenants and restrictions of the community. As such, daily and/or weekly lease terms are not permitted. The Owner shall be subject to fines and have their right to lease their Residence suspended.

Please also refer to Article XII of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

EMERGENCIES/EMERGENCY ACCESS

Any member planning to be absent from their residence for three weeks or more must designate an individual or company that will be available and willing to be responsible to take care of the Owner's Residence should damage occur in an emergency during the Owner's absence. The Owner is responsible for furnishing the name and contact information of the individual or company to the President of the Association prior to leaving. To facilitate entry into each Residence in case of emergency, each Owner is responsible for leaving a key and/or access codes and entry instructions

RESIDENCE CARE DURING ABSENCE

When a Residence is vacant for more than three days, set the air conditioner and humidistat to prevent mold and mildew. Ceiling fans may be left on to increase air circulation.

OBSTRUCTIONS/SIGNS

Sidewalks, entrances, driveways, stairways and passages must be kept clear of all obstructions. No radio or television antennas, satellite dishes or electrical wiring of any kind shall be affixed to the exterior or roof of a residence without the approval of the LC ARB and approved by the Board of Directors. No sign, notice or advertisement shall be inscribed or exposed on or at any window, or other part of the residence except such signs as approved in writing by the Association; nor shall anything be projected out of any window in the residence without similar approval. The Association allows one residential real-estate "For Sale" sign on the owner's property of not more than one, square foot. No other signs, notices or advertisements are permitted.

Please also refer to Articles 10.6 and 10.12 of the Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions.

PENALTIES FOR NON-OBSERVATION OF COVENANTS AND BYLAWS

As our Covenants state on page 1, 2nd paragraph, the purchase or lease of a property in Leeward Cay constitutes an acceptance of our Covenants and Bylaws and an agreement to abide by their terms. Thus we have a very small, upscale community, whose premier consideration is for the greater good of our neighborhood as a whole. It is obviously the desire of the neighborhood that all of us respect our Covenants to ensure neighborliness, visual harmony, and increase in our real estate investment.

Should an owner or lessee not abide by our Covenants and Bylaws, some of the various remedies are to be found in the Covenants and Bylaws on the pages listed below:

Subject	Article	Section	Page	Covenants or Bylaws
Maintenance	V	5.3 – 5.5	7-8	Covenants
Architectural Control	VI	6.3 (C)	9-10	Covenants
Insurance	VII	7.4	11	Covenants
Enforcement	XIV	14.1-4	32	Covenants
Compliance & Default; Remedies	8	8.1 (A) (B)	11-12	Bylaws

Should you be in doubt regarding our rules, please contact a Board Member for clarification early on so that you do not infringe. Should you seem to violate a Covenant or Bylaw, you will receive a phone call from a Board Member or an ARB Member explaining the violation and hoping that you will remedy the situation within a certain time frame. The Board will work with you on conforming to our rules, as it is in no one's interest to incur remedial sanctions and other enforceable consequences.

Please feel free to call a Board Member with any questions, comments or concerns.

Thank you for the opportunity to present the Rules and Regulations for the Leeward Cay community.

Welcome to Leeward Cay at Windstar!

Respectfully yours,
 The Board of Directors of Leeward Cay at Windstar Homeowners Association, Inc.

 Paul Eschholz President

 Date

LEEWARD CAY HOMEOWNERS ASSOCIATION

BOARD OF DIRECTORS

Paul Eschholz, President, Landscape Liaison
4703 Yacht Harbor Drive
peschhol@uvm.edu 239 732 7763

Jim Frost, Treasurer
4551 Yacht Harbor Drive
jmfrost19@comcast.net 239 692 9369

Roger Purdie, Secretary/ARB Rep
4753 Yacht Harbor Drive
roger.purdie@sympatico.ca 239 234 6719

Steve Dorozenski Association Manager – Newell Property Management Corporation
5435 Jaeger Road #4, Naples, FL 34109 239 514 1199 Fax 239 514 0636

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
LEEWARD CAY AT WINDSTAR ON NAPLES BAY HOMEOWNERS ASSOCIATION, INC.**

**SUBSTANTIAL REWORDING OF AMENDED AND RESTATED ARTICLES OF INCORPORATION – SEE
CURRENT AMENDED AND RESTATED ARTICLES OF INCORPORATION FOR CURRENT TEXT**

These are the Second Amended and Restated Articles of Incorporation for Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc., originally filed with the Florida Department of State on January 17, 1989, under Charter Number N30204. Amendments included have been added pursuant to Chapter 617, Florida Statutes, the Florida Not For Profit Corporation Act.

ARTICLE I

NAME: The name of the corporation is LEEWARD CAY AT WINDSTAR ON NAPLES BAY HOMEOWNERS ASSOCIATION, INC., sometimes hereinafter referred to as the "Association". The Board of Directors may, from time to time, change the designation of the principal office, the mailing address of the corporation, the registered office and the registered agent, in the manner provided by law.

ARTICLE II

PURPOSE AND POWERS: This Association will not permit pecuniary gain or profit nor distribution of its income to its members, officers or Directors. It is a nonprofit corporation formed for the purpose of establishing a corporate residential community homeowners' association which, subject to Chapter 720, Florida Statutes, the Homeowners' Association Act (the "Act"), a Declaration of Covenants, Conditions and Restrictions as recorded in the Public Records of Collier County, Florida and has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles, the Bylaws of corporation, and with said Declaration of Covenants, Conditions and Restrictions, and shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including but not limited to the power:

(A) To fix, levy, collect and enforce payment by any lawful means all charges, assessments, or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property or the corporation;

(B) To make, amend and enforce reasonable rules and regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Lots, Common Areas, Common Property, and Association Property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration;

(C) To sue and be sued, and to enforce the provisions of the Declaration, these Articles, and the Bylaws of the Association;

(D) To contract for the management and maintenance of the Common Areas and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;

(E) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Properties;

(F) To dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless an instrument has been signed by two-thirds (2/3rds) of the voting interests agreeing to such dedication, sale or transfer,

(G) To borrow money, and with the prior approval of two-thirds (2/3rds) of the voting interests, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(H) To purchase insurance upon the Common Property and insurance for the protection of the Association, its Officers, Directors, Committee Members, and Members as Owners;

(I) To maintain, repair, replace, reconstruct, add to, and operate the Common Property and any other property acquired or leased by the Association.

(J) To acquire (by gift, purchase, or otherwise) own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property as may be necessary or convenient in the administration of the Association and the operation of the community;

(K) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the Bylaws, the Rules and Regulations, and other applicable laws, and the policies of the Association;

(L) To employ personnel to perform the services required for proper operation of the community;

(M) To exercise any and all powers, rights and privileges which a corporation organized under Chapter 617 of the Florida Statutes may now or hereafter have or exercise; subject always to the Declaration and Bylaws as amended from time to time; and

The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration, these Articles, the Bylaws, and the Act. All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration, these Articles of Incorporation and the Bylaws.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS: Membership and Voting Rights shall be as set forth in the Bylaws of the Association.

ARTICLE IV

TERM; DISSOLUTION: The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of the voting interests. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purpose similar to those for which this Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization which is devoted to purposes similar to those of this Association.

ARTICLE V

BYLAWS: The Bylaws of the Association may be altered, amended or rescinded in the manner provided therein.

ARTICLE VI

AMENDMENTS: These Articles may be amended in the following manner:

(A) **Proposal of Amendments.** An amendment may be proposed by the President of the Association, the Directors, or by 30% of the entire Voting Interests.

(B) **Proposed Amendment Format.** Proposals to amend existing Articles of Incorporation shall contain the full text of the Article to be amended. New words shall be underlined and words to be deleted shall be struck through. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF ARTICLE. SEE ARTICLE NUMBER _____ FOR PRESENT TEXT."

(C) **Notice.** Written notice setting forth the proposed amendment or a summary of the changes shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

(D) **Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds of the entire Voting Interests. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, or conflicts between the Governing Documents may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

(E) **Effective Date.** An amendment when adopted shall become effective after being recorded in the Public Records of Collier County, Florida according to law and filed with the Secretary of State according to law.

ARTICLE VII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting on the members of the Association and shall serve at the pleasure of the Board.

ARTICLE VIII

INDEMNIFICATION:

(A) **Indemnity.** The Association shall indemnify any Officer, Director, or Committee Member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director, Officer, or Committee Member of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, unless (1) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he or she did not act in good faith or in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (2) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person failed to act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their Officers, Directors, and Committee Members as permitted by Florida law. In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association.

(B) **Defense.** To the extent that a Director, Officer, or Committee Member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding

referred to above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(C) Advances. Reasonable expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or Committee Member to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as authorized by this Article. However, if the Board, by majority vote, determines that the person seeking advancement did not act in good faith or in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, the Association shall not be obligated to pay for any expenses incurred before the final disposition of the subject action.

(D) Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or Committee Member and shall inure to the benefit of the heirs and personal representatives of such person.

(E) Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his status as such, whether or not the Association would have the duty to indemnify him or her against such liability under the provisions of this Article.

SECOND AMENDED AND RESTATED BYLAWS

OF

**LEEWARD CAY AT WINDSTAR ON NAPLES BAY
HOMEOWNERS ASSOCIATION, INC.**

**SUBSTANTIAL REWORDING OF AMENDED AND RESTATED BYLAWS – SEE CURRENT AMENDED AND
RESTATED BYLAWS FOR CURRENT TEXT**

These are the Second Amended and Restated Bylaws of Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc., a Florida not-for-profit corporation formed for the purpose of administering Leeward Cay at Windstar on Naples Bay, which is located in Collier County, Florida, upon the lands described in the Declaration of Protective Covenants, Conditions and Restrictions for Leeward Cay at Windstar on Naples Bay.

1. GENERAL. These are the Second Amended and Restated Bylaws of Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc., hereinafter the "Association", a corporation not for profit under the laws of Florida as a community association for the purpose of operating a residential community. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 Principal Office. The principal office of the Association shall be at such location within Collier County, Florida as may be determined from time to time by the Board of Directors.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 Definitions. The definitions set forth Article I of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Leeward Cay at Windstar on Naples Bay, to which these Bylaws are attached as Exhibit "E", shall apply to terms used in these Bylaws, unless the context clearly requires another meaning.

2. MEMBERS.

2.1 Qualifications. The members of the Association shall be the record owners of legal title to the sixteen (16) residential parcels within Leeward Cay at Windstar on Naples Bay. If a parcel is subject to an agreement for deed, the buyer shall be deemed the owner of the parcel for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events.

(A) Recording in the public records of a deed or other instrument evidencing legal title to the parcel in the member.

(B) Delivery to the Association of a copy of the recorded Deed or other instrument evidencing title.

(C) Delivery to the Association, if required, of a written designation of primary occupant.

2.2 Voting Interests. The members of the Association are entitled to one (1) vote for each parcel owned by them. The total number of voting interests of the Association shall be sixteen (16), which represents the total number of residential parcels in Leeward Cay at Windstar on Naples Bay. The vote of a parcel is not divisible. If a parcel is owned by one natural person, the owner's right to vote shall be established by the record title to the parcel. If a parcel is owned jointly by two or more natural persons, that parcel's vote may be cast by any one of the record owners. If two or more owners of a parcel do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a parcel is other than a natural person(s), the vote of that parcel shall be cast by the parcel's primary occupant. No individual may cast a vote assigned to a Lot if the voting rights assigned to the Lot are suspended pursuant to the terms of the Governing Documents and/or Florida law.

2.3 Approval or Disapproval of Matters. Whenever the decision or approval of a parcel owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of the parcel in 2.2 above, unless the joinder of all record owners is specifically required.

2.4 Change of Membership. A change of membership in the Association shall be established by the new member's membership becoming effective as provided in 2.1 above. At that time the membership of the prior owner shall be terminated automatically.

2.5 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3. MEMBER'S MEETINGS; VOTING.

3.1 Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year. The annual meeting shall be held on the date and time and place designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by members having at least twenty five percent (25%) of the voting interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meeting; Waiver of Notice. Notice of all members' meetings must state the time, date, and place of the meeting. Notice of special meetings must include a description of the purpose or purposes for which the meeting is called. The notice must be mailed to each member at his address as it appears on the books of the Association, unless waived in writing, or may be furnished by

personal delivery. The member is responsible for providing the Association with any change of the members' address. The Association shall only be obligated to mail or deliver notice to one location, no matter how many persons own a Unit, and no matter how many other residences such Owner may have. In the absence of written direction to the contrary, notices will be given to the address of the Unit. Hand delivery and electronic notice of membership meetings is permissible. Officers required to give notice may delegate the actual giving of notice to another person, such as an Assistant Officer or managing agent. The notice must be mailed or delivered at least fourteen (14) days prior to the date of the meeting. If ownership of a parcel is transferred after notice has been mailed, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting. A member may also waive notice of any meeting at any time, by written waiver.

3.4 Quorum. A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership.

3.5 Vote Required. The acts approved by a majority of the votes cast by eligible voters at a meeting at which a quorum has been attained shall be binding upon all parcel owners for all purposes, except where a different vote requirement is imposed by law or by any provision of the governing documents.

3.6 Proxy Voting. Members may cast their votes at a meeting in person or by proxy. Members and proxyholders may participate in Association meetings via telephone conference or other means of remote participation, if permitted by the Association. Absent a resolution of the Board to the contrary, the President of the Association shall have the authority to determine whether Members or holders of proxies should be allowed to participate in any particular meeting of the Membership by telephonic conference, or other means of remote participation. In order for a proxyholder to participate telephonically or remotely in an Association meeting, a copy of the proxy must be provided to the Association before the start of the meeting. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be writing, dated, signed by the person authorized to cast the vote for the parcel, specify the date, time and place of the meeting for which it is given and the original must be delivered to the Secretary by the appointment time of the meeting or adjournment thereof. No proxy shall be valid if it names more than one person as the holder of the proxy, by the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. Holders of proxies need not be members. A photographic, photostatic, facsimile, electronic, or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

3.7 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a later time to vote of the majority of the voting interest present, regardless of whether a quorum has been attained. When a meeting is so adjourned it shall not be necessary to give further notice of the time and place of its continuance if such are announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted when the meeting is reconvened, but only if a quorum is then present.

3.8 Order of Business. The order of business at members' meetings shall be substantially as follows:

- (A) Call of the roll or determination of quorum
- (B) Reading or disposal of minutes of last members meeting
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (annual meeting only)
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.9 Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members or their authorized representatives at all reasonable times. The Directors may adopt reasonable rules regarding the frequency, time, location, location, notice, and manner of record inspections and any copying.

3.10 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with the Articles and Bylaws as a general, nonbinding guide in the conduct of Members' meetings, Board meetings, and Committee meetings to ensure fairness, impartiality, and respect for minority views without unduly burdening majority rights. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived. The failure or alleged failure to adhere to Roberts' Rules of Order, shall not be used as a basis to legally challenge any action of the Association.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles and Bylaws, shall be exercise by the Board, subject to approval or consent of the parcel owners only when such is specifically required.

4.1 Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be three (3). In order to provide for a continuity of experience by establishing a system of staggered terms of office, the directors shall designate from among themselves one (1) director whose term of office shall expire at the next annual election, one (1) director whose term shall expire at the annual election after the next annual election and one (1) director whose term shall expire at the annual election after the next two-annual elections. Thereafter, all Directors shall be elected for three (3) year terms. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in Section 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in Section 4.4 below.

4.2 Qualifications. Each Director must be a residential parcel owner or primary occupant or the spouse of a residential parcel owner or primary occupant. Persons who have been convicted of any felony in this State or in a United States District or Territorial Court, or who have been convicted of any offense in another jurisdiction that would be considered a felony if committed in this State, are not eligible to serve on the Board, unless such felon's rights have been restored for a period of at least five years as of the date on which such person seeks election to the Board. A person who is more than 90 days delinquent in the payment of any fee or fine, or special or regular Assessment, that is more than \$1,000, or any other monetary obligation is not eligible for Board membership. All Directors will be elected for a three year term.

4.3 Nominations and Elections. At each Annual Meeting the members shall elect, by a written ballot which the member personally casts, either by hand, electronic delivery or by mail, as many Directors as there are regular terms of Directors expiring or vacancies to be filled. Any eligible person may nominate himself or herself to be nominated as a candidate for the Board of Directors. The search committee, if any, may submit its candidates for the office of Director in time to be included with the notice of the annual meeting. Directors shall be elected by a plurality of the votes cast, in person or by proxy at the annual meeting. In the election of Directors, there shall be appurtenant to each parcel as many votes as there are Directors to be elected. No member may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. The candidates receiving the highest number of votes shall be declared elected. A tie vote shall be broken by agreement among the candidates who are tied, or by lot.

4.3.1 Not less than 60 days before a scheduled election, the Association shall provide to each Member entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than 40 days before the scheduled election. Not less than 14 days before the election, the Association shall mail or deliver a second notice of the election to all Members entitled to vote therein, together with a written secret ballot containing the names of all properly pre-qualified candidates, which that shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

4.4 Resignation; Vacancies on the Board. Any Director may resign at any time by giving written notice to the Association, and unless otherwise specified therein, the resignation shall become effective upon receipt. If the office of any Director becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, the members shall elect successors at a special meeting.

4.5 Removal of Directors. Any or all Directors may be removed, with or without cause, by a majority vote of the voting interests either by a written petition or at any meeting called for that purpose. If a meeting is held or petitions are filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by twenty five (25%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given. If removal is effected by petition, the vacancy or vacancies shall be filled

as provided in Section 4.4 above. If removal is effected at a meeting, any vacancies created thereby shall be filled by the members at the same meeting. Any Director who is removed from office is not eligible to stand again for election to the Board until the next annual election, and must turn over to the Association within 72 hours any and all records and other property of the corporation in his possession. If a Director who is removed does not relinquish his office or turn over records as required, the circuit court in the county where the Association has its principal office may summarily order the Director to relinquish his office and turn over corporate records upon application of any member. In any such action, the prevailing party shall be entitled to recover its attorney's fees and costs.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed and announced by the Directors at the annual meeting at which they were elected.

4.7 Other Meetings. Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, electronic mail, telephone or telegram at least forty-eight (48) hours before the meeting. If closed circuit television is available, the Board may use same for posting notices, as permitted by law.

4.8 Notice to Owners. Meetings of the Board of Directors shall be open to members except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege, the notices of all Board meetings, together with an agenda, shall be posted conspicuously in the community at least forty-eight (48) hours in advance of each Board meeting, except in an emergency. Members may not designate third persons, through power of attorney or otherwise, to attend Board meetings unless agreed to otherwise by the Board. The Member's right to attend Board meetings includes the right to speak with reference to all designated agenda items. The Board may, however, adopt reasonable rules governing the frequency, duration, and manner of Member's statements. Unless otherwise provided by the Board, each Member is entitled to speak for three minutes with reference to each designated agenda item. The Board may adopt reasonable rules governing the recording of meetings of the Board and the membership. Notice of any Board meeting where assessments are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of assessments.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.10 Quorum of Directors. A quorum at a Board meeting shall be attained by the presence in person of a majority of all Directors. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the governing documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted

in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest, and the vote by each Directors present on each matter voted upon shall be recorded in the minutes of each meeting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election or removal of officers

4.12 Adjourned Meetings. The majority of those present at any meeting of the Board of Directors, regardless of whether a quorum has been attained, may adjourn the meeting to be reconvened at a specified later time. When the meeting is reconvened, provided a quorum is present, any business that might have been transacted at the meeting originally called may be transacted.

4.13 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

4.14 Director's Fees and Reimbursement of Expenses. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers shall be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees, including a search committee, as the Board may deem necessary and convenient for the efficient and effective operation of Leeward Cay at Windstar on Naples Bay. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Any appointment committee shall be open to members and the committee shall notice and hold its meetings with the same formalities as are required for Board meetings. Committees vested with the power to approve or disapprove architectural decisions with respect to a specified parcel of residential property owned by a member of the community may not work by proxy or secret ballot.

4.16 Emergency Powers. In the event of any "emergency" as defined in Paragraph 4 16(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, 617.0303, and 720.316, Florida Statutes, as amended from time to time.

- (A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.
- (B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so,
- (C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.
- (D) The Board may change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an

annual meeting in a particular calendar year, as long as the annual meeting is held no more than 18 months after the prior annual meeting date.

- (E) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.
- (F) The Board may adopt emergency Assessments with such notice deemed practicable by the Board.
- (G) The Board may adopt emergency Rules and Regulations governing the use and occupancy of the Lots, Common Areas, Common Property, and Association Property, with notice given only to those Directors with whom it is practicable to communicate.
- (H) Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.
- (I) These emergency Bylaws supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.
- (J) An "emergency" exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence or imminent occurrence of a catastrophic event, such as a hurricane, earthquake, act of war, civil unrest or terrorism, or other similar event. An "emergency" also exists during the period of time that civil authorities have declared that a state of emergency exists in, or have ordered the evacuation of, the area in which the Condominium is located, or have declared that area a "disaster area."

5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President, and a Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed with or without cause of vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board may from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be *ex-officio* a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts and documents requiring the seal of the Association, except where such are

permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3 Vice-President. The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the governing documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

5.5 Treasurer. The Treasurer shall have the custody of Association fund and securities and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all moneys and other valuable effects in the name and the credit of the Association in such depositories as are selected by the Board of Directors. He shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whether they may require it, an account of all transactions and of the financial condition of the Association. The Treasurer shall prepare an annual budget of estimated revenues and expenses to present to the Board of Directors for approval. Any of the foregoing duties may be performed by an Assistant Treasurer, if any, has been designated.

5.6 Compensation of officers. No compensation shall be paid to any officer for services as an officer of the Association. The provision does not preclude the Board of Directors from employing officers as employees or agents of the Association.

6. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1 Depository. The Association shall maintain its funds in such federally insured accounts in financial institutions authorized to do business in Florida that carry FDIC insurance or equivalent insurance, provided that such insurance is backed by the full faith and credit of the United States of America, as shall be designated from time to time by the Board. Withdrawal of moneys from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes.

6.2 Accounts of the Association. The Association shall maintain its accounting books and records according to generally accepted accounting principles. There shall be an account for each parcel. Such account shall designate the name and mailing address of each parcel owner, the amount

and due date of each assessment or charge against the parcel, the amounts paid, date of payment and the balance due.

6.3 Budget. The Treasurer shall prepare and the Board of Directors shall adopt a budget of Association estimated revenues and expenses for each coming fiscal year. Once adopted, the Association shall provide to each member a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and revenue and expense classifications. The estimated surplus or deficit as of the end of the current year shall be shown and all fees or charges for recreational amenities shall be set out separately.

6.4 Reserves. The Board may establish in the budget one or more restricted reserve accounts for capital expenditures and deferred maintenance. Contingency reserves for unanticipated operating expenses shall be included, if at all, in the operating portion of the budget. These funds may be spent for any purpose approved by the Board. The purpose of reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the annual budget.

6.5 Assessments. Regular annual assessments based on the adopted budget shall be paid in quarterly installments in advance, due on the first day of January, April, July and October of each year. Written notice of any increase in annual assessments shall be sent to all members prior to the beginning of the year the increase takes effect, but failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget for a new fiscal year has not been adopted, or if notice of any increase has not been made, at the time the first monthly payment for that year is due, it shall be presumed that the amount of such installment is the same as the last prior monthly payment, and shall be continued at such rate until a budget is adopted and new monthly installments are calculated at which time an appropriate adjustment shall be added to or subtracted from each parcel's next due monthly installment.

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws including but not limited to making payments under the mortgage for the recreation facility. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The total of all special assessments made coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any special assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

6.7 Fidelity Bonds. The President, Treasurer, and all other persons who are authorized to sign checks, shall be bonded in such amounts as may be required by the Board of Directors. The premiums on such bonds shall be paid by the Association.

6.8 Financial Reports. Not later than sixty (60) days after the close of each fiscal year, the Board shall prepare and distribute to the owner of each Parcel a financial report showing in reasonable detail the financial statements prescribed in conformity with generally accepted accounting principles or a cash basis financial report of actual receipts and expenditures showing the amount of receipts and expenditures by classification and the beginning and ending cash balances of the Association.

6.9 Audits. A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all owners.

6.10 Application of Payments and Co-Mingling of Funds. All moneys collected by the Association may be co-mingled in a single fund or divided into two or more funds, as determined by the Board of Directors. All payments on account by a parcel owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges and regular or special assessments, in such manner and amounts as the Board may determine.

6.11 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each year.

7. RULES AND REGULATIONS; USE RESTRICTIONS. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Lots, Common Areas, Common Property, and Association Property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration. Copies of such rules and regulations shall be furnished to each parcel owner.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in of the Declaration the following provisions shall apply:

8.1 Fines; Suspensions. The Board of Directors may levy fines and/or suspensions against members, or a member's tenants or guests or both who commit violations of Chapter 720, Florida Statutes, the provisions of the governing documents, or the rules and regulations, or who condone such violations by their family members, guests or lessees. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law. Suspensions of the use of common areas and facilities may be imposed for a reasonable period of time to deter future violations. The procedure for imposing fines and/or suspensions shall be as follows:

- (A) **Notice.** The party against whom it fine and/or suspension is sought to levied or imposed shall be afforded and opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:
- (1) A statement of the date, time and place of the hearing;
 - (2) A specific designation of the provisions of Chapter 720, Florida Statutes the governing documents or the rules which are alleged to have been violated;
 - (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
 - (4) The possible amounts of any proposed fine and/or possible use rights of common areas or facilities to be suspended.

- (B) **Hearing.** At the hearing the party against whom the fine and/or suspension may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) Parcel owners appointed by the Board, none of whom may then be serving as Directors or officers or who are employees of the association, or the spouse, parent, child, brother or sister of an officer, director or employee. If the committee, by majority vote, does not agree with the proposed fine, and/or suspension, it may not be levied or imposed. If the committee agrees with the proposed fine, and/or suspensions, the Board of Directors shall levy same.

8.2 Correction of Health and Safety Hazards. Any violations of Association rules which creates conditions of the property which are deemed by the Board of Directors to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and the cost thereof shall be charged to the parcel owner and shall be secured by a continuing lien against the Lot.

9. AMENDMENT OF BYLAWS. Amendments to the Bylaws shall be adopted in the following manner:

9.1 Proposal of Amendments An amendment may be proposed by the President of the Association, the Directors, or by 30% of the entire Voting Interests.

9.2 Proposed Amendment Format. Proposals to amend existing Bylaws shall contain the full text of the Section to be amended. New words shall be underlined and words to be deleted shall be struck through. [If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment stating, "SUBSTANTIAL REWORDING OF BYLAWS. SEE BYLAW NUMBER _____ FOR PRESENT TEXT."

9.3 Notice. The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

9.4 Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds of the entire Voting Interests. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, or conflicts between the Governing Documents, may be executed by the Officers of the Association, on Board approval, without need for Association membership vote.

9.5 Effective Date. An amendment when adopted shall become effective after being recorded in the Collier County Public Records according to law.

10. MISCELLANEOUS.

10.1 Gender; Number. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

10.2 Severability. If any portion of these Bylaws is void or becomes unenforceable, the remaining provisions shall remain in full force and effect.

10.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Covenants, or the Association's Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

NOA
CERTIFIED
COPY

**SECOND AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
LEEWARD CAY AT WINDSTAR ON NAPLES BAY**

**SUBSTANTIAL REWORDING OF AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS – SEE CURRENT AMENDED AND RESTATED DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR CURRENT TEXT**

On August 4, 1996, the Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Leeward Cay at Windstar on Naples Bay, was recorded in Official Record Book 2212, at Page 1168 *et seq.*, of the Public Records of Collier County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration (hereinafter “Leeward Cay at Windstar on Naples Bay” of the “Property”) is legally described in Exhibit “A” to the original Declaration. That Exhibit is hereby incorporated by reference. No additional land is being added by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a unit or any other ownership interest in the Property, or the lease, occupancy, or use of any portion of a unit or the Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

**ARTICLE I
DEFINITIONS**

The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 “**Assessments**” means any charge imposed by the Association on any or all Owners including without limitation Common Assessments, Special Assessments, Reconstruction Assessment, Capital Improvement Assessment, as authorized by the Governing Documents.

1.2 “**Articles**” and “**Bylaws**” as used herein, means the Articles of Incorporation and the Bylaws of Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc., as amended from time to time.

1.3 “**Association**” means Leeward Cay at Windstar on Naples Bay Homeowners Association, Inc., a Florida corporation not for profit, which is the entity responsible for Leeward Cay at Windstar on Naples Bay.

1.4 “**Board**” means the representative body which is responsible for the administration of the Association’s affairs.

1.5 **“Charge”** means any legal or equitable indebtedness or sums owed to or due to the Association, incurred by, or on behalf of, an Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

1.6 **“Common areas”** means all property subject to this Declaration not included within the numbered parcels. The legal description of the common areas is described in Exhibit “C” to this Declaration.

1.7 **“Common expenses”** means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common expenses of the Association include the costs of operating the Association, the cost of administration, maintenance, operation, repair and replacement of the common areas, other expenses declared by the governing documents to be common expenses, and any other valid expenses or debts of the common property as a whole or the Association which are assessed against the parcel owners.

1.8 **“Common surplus”** means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues over the common expenses.

1.9 **“Declaration of Covenants”** means this Declaration, as amended from time to time.

1.10 **“Family”** or **“Single Family”** shall refer to any one of the following:

- (A) one natural person, his spouse or domestic partner, if any, and their custodial children and dependent parents of said parties, if any; or,
- (B) not more than two natural persons not meeting the requirement of (a), who do and plan to indefinitely and continuously reside together as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family.

The reference to “natural” herein is intended to distinguish between an individual and corporation or other artificial entity. “Family member” is a person who resides in a Unit as part of the Owner’s Family, but is not a title holder.

1.11 **“Governing documents”** means and includes this Declaration, the Articles and Bylaws, and all recorded exhibits thereto, as amendment from time to time. The term also includes the documents described below.

1.12 **“Guest”** means any person who is not the parcel owner or a lessee or a member of the owner’s or lessee’s family, who is physically present in, or occupies the residence on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.13 "**Institutional mortgagee**" means the mortgagee (or its assignee) of a mortgage against a parcel, 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, any agency of the United States of America. The term also refers to any holder of a mortgage against, a parcel 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.

1.14 "**Lease**" means the grant by a parcel owner of a temporary right of use of the owner's residence for valuable consideration.

1.15 "**Lien for Charges**" means a lien which is recorded to secure a Charge.

1.16 "**Lot**" or "**Parcel**" means a parcel of land located within the real property described on Exhibit "A" upon which a residence has been permanently placed and affixed and which fee simple title to the parcel has been conveyed to the owner of the residence. No lot or parcel may be subdivided or joined together without the consent of the Association. The Parcels are depicted on Exhibit "B-2".

1.17 "**Occupy**", when used in connection with a residence, means the act of staying overnight in a residence. "**Occupant**" is a person who occupies a residence.

1.18 "**Owner**" or "**parcel owner**" means the record owner of legal title to a parcel and residence.

1.19 "**Primary Occupant**" means the natural person approved for occupancy of a residence when title to the parcel is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person. When used in reference to a parcel owned in one of the forms listed above, the term "primary occupant" shall be synonymous with the term "owner".

1.20 "**Privacy Area**" for the 14 villas means the courtyard in front of the master bedroom as well as the path leading from the side gate, running along the length of the house to the end of the Residence. For the 2 stand-alone homes, the Privacy Area starts where the path curves up the side of the garage, to the back door, as well as past the front door the length of the Residence to the corner nearest the lake.

1.21 "**Properties**" or "**Community**" means all the real property which is subject to this Declaration.

1.22 "**Residence**" means one or more of the sixteen (16) residences within Leeward Cay at Windstar on Naples Bay subject to private ownership, as shown on Exhibit "B" and "B-2". The sixteen (16) residences are comprised of seven (7) two-residence dwellings, with each two-residence dwelling being under a common roof and within a common building but separated by a single eight (8) inch concrete block party wall, which shall be the property line between the dwelling residences, and two (2) single residence dwellings.

1.23 **"Voting Interest"** means the arrangement established in the Declaration by which the Owners of each Unit collectively are entitled to one vote in Association matters. There are 16 Residences, so the total number of Voting Interests is 16.

ARTICLE II
PROPERTY SUBJECT TO DECLARATION

2.1 **Leeward Cay at Windstar on Naples.** The real property subject to this Declaration is the real property described in Exhibit "A", together with any all other real property which may be subjected in the future to the conditions of this Declaration.

2.2 **Windstar.** Leeward Cay at Windstar on Naples Bay is located on land lying within the larger community known as Windstar, which is operated and administered overall by The Windstar on Naples Bay Master Association, Inc., formerly known as The Windstar Condominium Master Association, Inc ("Master Association"). This Declaration shall be interpreted to be supplemental and in addition to the restrictions, covenants, conditions and obligations created by the Declaration of Covenants, Conditions and Restrictions for Windstar, recorded at Official Records Book 1075, Pages 736 *et seq.*, of the Public Records of Collier County, Florida as amended from time to time.

ARTICLE III
ASSOCIATION

3.1 **Membership.** Every owner of a parcel shall be a member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the rules and regulations of the Association, as amended from time to time.

3.2 **Articles of Incorporation.** A copy of the Amendment and Restated Articles of Incorporation of the Association is attached to this Declaration as Exhibit "D".

3.3 **Bylaws.** The Bylaws of the Association shall be the Amended and Restated Bylaws attached to this Declaration as Exhibit "E", as they may be amended from time to time.

3.4 **Delegation of Management.** The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common areas with funds made available by the Association for such purposes.

3.5 **Acts of the Association.** Unless the approval affirmative vote of the parcel owners is specifically made necessary by some provisions of the law or the governing documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the parcel owners. The Officers and Directors of the Association have a

fiduciary relationship to the parcel owners. A parcel owner does not have the authority to act for the Association by reason of being a parcel owner.

3.6 Powers and Duties. The powers and duties of the Association include those set forth in Chapter 617, Florida Statutes, and Chapter 720, Florida Statutes, and in the governing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the common areas. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the owners.

3.7 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

3.8 Purchase of Parcels. The Association has the power to purchase parcels and to hold, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

3.9 Interests in Real Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 3.8 above, the power to acquire, encumber or convey ownership interests in real property shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Association.

3.10 Disposition of Personal Property. Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the parcel owners.

3.11 Roster. The Association shall maintain a current roster of names and mailing addresses of parcel owners, based upon information supplied by the parcel owners. A copy of the roster shall be made available to any member upon request.

ARTICLE IV **EASEMENTS**

4.1 Appurtenant Easements. The owner of each parcel and residence, their guests, lessees and invitees, shall have as an appurtenance to their parcels a perpetual nonexclusive easement for ingress and egress over, across and through the common areas, for the use and enjoyment of all recreational facilities, such use and enjoyment to be shared in common with the other owners of parcels and residences, their guests, lessees and invitees, subject to the provisions of this Declaration.

4.2 Utility Easements. A perpetual easement shall exist upon, over, under across Leeward Cay at Windstar on Naples Bay for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes,

valves, gates, pipelines, cable television and all machinery and apparatus appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing all owners of parcels and servicing the common areas, all such easements to be of a size, width and location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said property. The Association, through its Board of Directors, has the authority to grant additional such easements, and to modify, move or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the parcels and the common areas.

4.3 Subordination. Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate without the necessity of any other instrument, to any existing easement covering the basic water, sewer and drainage systems installed in the common areas, and any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the common areas.

4.4 Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (A) The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the common areas and providing the services authorized herein, and, in aid thereof, to mortgage said properties;
- (B) The right of the Association to impose rules and regulations governing the use of the common areas and association property as further provided in Section 7 of the Bylaws.
- (C) The right of the Association to a non-exclusive easement over, across and through each parcel as necessary to meet the Association's maintenance responsibilities.

4.5 Any owner of a parcel in the Properties which parcel contains a structure which encroaches upon another parcel, the common areas shall have a valid easement for the encroachment and maintenance of same, as long as it stand and exists.

ARTICLE V **MAINTENANCE**

5.1 Maintenance and Alteration of Residences. Each owner of a parcel and residence shall, at his sole cost and expense, maintain and repair all parts of the residence located upon the residence parcel and those portions of the residence parcel included within the outside Privacy Areas and pool and screening (if applicable) except those parts required herein to be maintained and repaired by the Association, keeping the same in a condition comparable to their condition at the time of their initial construction, except for ordinary wear and tear. No person shall materially alter, or make any substantial additions to, the exterior of any residence or parcel without the prior written approval of the Association, as further provided in Article VI.

5.2 Association Maintenance. The responsibilities of the Association shall include without limitation the following services:

- (A) Maintenance, repair, replacement and operation of all common areas, including, but not limited to, landscaping, trees, plantings, lawns, flowers, irrigation systems, footpaths, and sidewalks in accordance with the rules and regulations and standards adopted by the Association from time to time. The cost shall be a common expense.
- (B) Painting, maintenance and repair of the exterior building surfaces of each residence, including walls and doors. The cost shall be a particular expense to the parcel owner of a particular residence and shall be a charge against the parcel secured against the parcel as provided in Article IX below.
- (C) Maintenance, repair, replacement of landscaping, trees, planting, lawns, flowers, irrigation systems, footpaths, sidewalks, and driveways located upon each residence parcel (except for such items lying within the outside Privacy Areas and pool and screening (if applicable)) in accordance with the rules and regulations and standards adopted by the Association from time to time. The cost shall be a common expense.
- (D) The Association may, but is not required to, supply pest control services for the inside of each residence, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the residences, in which event the owner thereof must either permit the Association's pest control company to enter his residence or must employ a licensed pest control company to enter his residence on a regular basis to perform pest control services and furnish written evidence thereof to the Association. The cost of pest control provided by the Association is a common expense, so the election of an owner not to use the service will not reduce the owner's assessments.

5.3 Enforcement of Maintenance. If the owner of a parcel and residence fails to maintain it as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the parcel and residence, with or without consent of the residence owner. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a material adverse effect on the appearance of the Property. Any expenses so incurred by the Association shall be billed directly to the owner of the parcel and residence to which such services are provided, and shall be a charge against the parcel and residence, secured by a lien against the parcel as provided in Article IX below.

5.4 Right of Entry. Violation of the Governing Documents shall give the Association or its duly authorized agent the right to enter a Lot to summarily abate or remove, at the expense of the

Owner, any structure, thing or condition which violates the Governing Documents. All costs to abate or remove a violation shall be levied as a Charge against the violating Owner in accordance with this Declaration. The Association shall not be liable in any manner for trespass, abatement or removal, and all costs and fees incurred by the Association may be specifically assessed against the violating Owner and shall be treated as a Charge due to the Association.

5.5 Negligence; Damage Caused by Condition in Parcel. Each parcel owner shall be liable for the expenses of any maintenance, repair or replacement of common areas, other parcels and residences, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees. Each owner has a duty to maintain his parcel and residence and personal property therein in such a manner as to prevent foreseeable and reasonably preventable damage to the common areas, other parcels or residences or the property of other owners and residents. If any condition, defect or malfunction shall cause damage to the common areas or to other parcels and residences, the owner of the offending parcel and residence shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair and replacement not paid by insurance. If one or more of the damaged parcels and residences is not occupied at the time the damage is discovered, the Association may enter without prior notice to the owner and take reasonable actions to mitigate damage or prevent its spread. The Association may also repair the damage within the parcel and residence at the parcel owner's expense (with the prior consent of the owner) but is not obligated to do so.

5.6 Duty to Report. Each Owner must promptly report to the Association, its Board or its property manager, any defect, maintenance, repair, and/or replacement to the exterior building surfaces of the Residence, including evidence of any defect or needed repairs that is apparent from within the interior of the Residences.

ARTICLE VI

ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE COMMUNITY

6.1 Improvements Requiring Approval. No building, structure, pool, enclosure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way alters the exterior appearance of any structure, residence, lot, parcel, or common area, be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by the Association. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. If approved by the Association, all applicable Local, State, and Federal regulations and permitting must be complied with.

Awnings, window guards, light reflective materials, hurricane storm shutters, ventilators, fans which vent or air conditioning devices require prior written consent from the Board. Modifications to the lanais, sidewalks, or driveways that change the exterior appearance of the structure require prior written consent from the Board. Recreational items such as basketball hoops and volleyball nets require prior approval from the Board.

6.2 The ARB. The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Board (the ARB), which shall consist of at least three (3) members. One (1) member must be a Director and the other two (2) need not be members of the Association. All members of the ARB shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. The Board shall in good faith attempt to appoint at least one (1) architect or building contractor to the ARB. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors.

6.3 Powers and Duties. The ARB shall have the following powers and duties:

- (A) To recommend, from time to time, to the Board of Directors of the Association the creation of or modification and/or amendments to the Architectural Planning Criteria. The Architectural Planning Criteria shall set forth such things as landscape material, color and building material which the ARB finds acceptable. Any Architectural Planning Criteria or modifications or amendments thereto shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present. Notice of the adoption, modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such adoption, change or modification, shall be delivered to each member of the Association. However, receipt of notice of a Board meeting or of a copy of any adoption or modification or amendment to the Architectural Planning Criteria shall not constitute a condition precedent to the effectiveness or validity of such change or modification.
- (B) To require submission to the ARB of two (2) complete sets of all proposed plans and specifications for any improvement, structure of any kind or any other work which in any way alters the exterior appearance of any structure, residence, lot, parcel, or common area, including without limitation, any building, fence, well, swimming pool, tennis court, enclosure, sewer, drain, disposal system, decorative building, landscape device, object or other improvement, the construction or placement of which is proposed upon the Property. To required submission of proposed plans and specifications between January 5th and April 15th of each year and to require all approved construction to be performed and completed between April 15th and December 15th of each year. The ARB may also require submission of samples of building materials proposed for use in any parcel, and may require such additional information as may reasonably be necessary to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria.
- (C) To approve or disapprove any improvement or structure of any kind, including, without limitation, any building, fence, wall, screen enclosure, drain or disposal

system, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the Property, and which is visible from the outside of any residence. All recommendations of the ARB shall be submitted in writing to the Board of Directors of the Association, and evidence thereof may be made by a certificate, in recordable form, executed under seal by the President or Vice President of the Association. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board of Directors of the Association within thirty (30) days of the decision, for a review thereof. The determination of the Board upon reviewing any such decision shall in all events be final.

- (D) To adopt a schedule of reasonable fees for processing requests for ARB approval of proposed improvements. Such fees, if any, shall be paid to the Association at the time that plans and specifications are submitted to the ARB.
- (E) To adopt a procedure for inspecting approved changes during and after construction to insure conformity with approved plans.

ARTICLE VII **INSURANCE**

In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

7.1 Association; Required Coverage. The Association shall maintain adequate property insurance covering all of the building (as the term "building" is defined by Section 718 111(11)(b), Florida Statutes, as amended from time to time), the common areas and all association property. The Association shall also provide adequate general liability insurance. The amounts of coverage shall be determined annually by the Board of Directors. The insurance carried by the Association shall afford at least the following protection:

- (A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.
- (B) **Flood.** In amounts deemed adequate by the Board of Directors, as and if available through the National Flood Insurance Program.
- (C) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the parcel owners as a group to a parcel owner.
- (D) **Automobile.** Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles when used for Association business, in

such limits of protection and with such coverage as may be determined by the Board of Directors.

(E) **Compensation.** The Association shall maintain Workers' Compensation insurance if required by law.

7.2 By the Owner. Each owner is responsible for insuring the personal property within his own parcel and residence, including all floor, wall and ceiling coverings, built-in cabinets and appliances, water heaters, air conditioning and heating equipment, electrical fixtures, and all such other alterations, additions and improvements made to the parcel or the common areas by the owner, his agents, or his predecessors in title. Each owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance. Each owner is also responsible for providing liability insurance for the swimming pool which is located upon his parcel (if applicable).

7.3 Duty the Reconstruct. If any residence or other improvements located on any parcel and residence are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, shall utilize and conform with the original foundation and appearance of the original improvements except as otherwise approved by the Board of Directors.

7.4 Failure to Reconstruct. If the owner of any parcel and residence fails to commence or complete construction to repair or replace any damage or destroyed improvements within the time periods provided for in Section 7.3 above, the Association shall give written notice to the owner of his default. If after thirty (30) days the owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the owner of the parcel and residence shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the parcel to secure payment.

7.5 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under this Declaration, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

7.6 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and parcel owners.

7.7 Description of Coverages. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by parcel owners or their authorized representatives upon request.

7.8 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association parcel owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

7.9 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the owners and their mortgages as their interests may appear, and all the proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the owners and their respective mortgagees in the following shares:

- (A) **Common Areas.** Proceeds on account of damage to common areas shall be held in as many undivided shares as there are parcels, the shares of each owner being the same as his share in the common areas.
- (B) **Parcels.** Proceeds on account of damage within the residences and parcels shall be held in undivided shares based on the prorated amount of damage within each damaged residence and parcel as a percentage of the total damage within all parcels.
- (C) **Mortgagee.** If a mortgagee endorsement has been issued as to a parcel, the shares of the mortgagee and the owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against parcel or parcels, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

7.10 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the owners in the following manner:

- (A) **Reconstruction or Repair by Association.** If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to parcel owners and their mortgagees being paid jointly to them.

- (B) **Reconstruction or Repair by Owner.** If the damage for which the proceeds are paid is to be reconstructed or repaired by the individual owners, the Association shall disburse to said owners those proceeds held on the owners' behalf, upon satisfactory proof the necessary work has or will be performed.

7.11 Association as Agent. The Association is hereby irrevocably appointed as agent for each parcel owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the residences, parcels or common area.

7.12 Damage to Common Areas. Where loss or damage occurs to the common areas or association property, it shall be mandatory for the Association to repair, restore and rebuilt the damage cause by the loss, and the following procedures shall apply:

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.
- (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common areas the Association shall promptly, upon determination of the deficiency, levy a special assessment against all parcel owners for the deficiency. Such special assessments need not be approved by the parcel owners. The special assessments shall be added to the funds available for repair and restoration of the property.

ARTICLE VIII **PARTY WALL AGREEMENTS**

8.1 Party Wall Agreements. Prior to conveyance of the above-described residences, Developer shall build or cause to be built dwelling residences which will have a common wall with the residence of one or two adjacent residence(s). The common walls, or party walls, shall be built upon the property line separating the respective residences. These common walls shall be known as party walls and shall be subject to this agreement, which agreement shall be binding upon all subsequent owners of residences in LEEWARD CAY AT WINDSTAR ON NAPLES BAY and shall be a covenant running with the land.

Each owner of a residence in LEEWARD CAY AT WINDSTAR ON NAPLES BAY which has a wall common to the structure of such residence and the structure of an adjacent residence shall at all times be jointly responsible for the maintenance, repair and rebuilding of such party wall with the owner of such adjacent residence. Each such owner shall at all times maintain, use and care for such wall in manner such as to be consistent and compatible with the use and maintenance of said party wall by the adjacent owner. Reciprocal easements are hereby granted and reserved on each adjacent residence for the party wall and within said party wall for the maintenance of any water line, sewer lines, electrical conduit, wires, TV cables or other utilities or similar apparatus and for the support, maintenance and repair of the common roof. Nothing shall be attached to or within said wall which may interfere with the rights of the adjacent owner in and to said wall for the purpose of support of the adjacent structure

and the continued right enclosure thereof. In the event it should be determined that such party wall has been constructed in a location other than directly on the property line, then the owner of the adjacent residence shall be deemed to have granted an easement and license to the other residence owner for the continued use of such party wall and the use and occupation of any lands between the property line and said party wall, if any, as though said party wall were erected directly on the property line.

In the event of damage or destruction to said party wall from any cause whatsoever, other than the negligence or willful misconduct of only one of the owners of the party wall, then the adjacent owners at their joint expense shall repair and rebuild said party wall. If such maintenance, repair or construction is required to be done solely because of the negligence or the willful misconduct of only one of the owners using the party wall, then any expense incidental to the maintenance, repair or construction shall be borne solely by such wrongdoer. If any residence owner shall refuse to promptly repair or rebuild the party wall or pay his share of such cost of repair or replacement, then the other owner may have such wall repaired or reconstructed and shall be entitled to a lien on the residence of the owner so failing to pay his share, which lien may be effectuated by filing a demand for such lien with the LEEWARD CAY AT WINDSTAR ON NAPLES BAY Association which shall perfect said lien in the same manner as liens of the LEEWARD CAY AT WINDSTAR ON NAPLES BAY Association are perfected. If a parcel owner shall give or shall have given a mortgage upon his parcel, then the Mortgagee shall have the full right at its option to exercise the rights of the mortgagor as owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the Mortgagee for repair or construction hereunder which have not been reimbursed to said Mortgagee by the adjacent owner.

8.2 Termination, Modification. The provisions of this Article VIII pertaining to party walls shall not be terminated under Article IX(D) or subject to modification under Article IX(E). The provisions of this Article VIII may be terminated or modified only by an instrument in writing signed by the owners of all of the parcels in LEEWARD CAY AT WINDSTAR ON NAPLES BAY and their mortgagees, which writing must be recorded in the Public Records of Collier county, Florida.

ARTICLE IX **ASSESSMENTS**

The provisions of this Article shall govern assessments payable by all owners of parcels and residences, for the common expenses of the Association not directly attributable to one of the parcels and residences.

9.1 Covenant to Pay Assessments. Each owner of a parcel and residence by the act of becoming an owner covenants and agrees, and each subsequent owner of any parcel and residence (including any purchaser at a judicial sale), by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (A) the parcel's pro-rata share of assessments based on the annual budget adopted by the Association,
- (B) the parcel's pro-rata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments; and

- (C) any charges property levied against individual owner(s) without participation from other owners.

Assessments and charges shall be established and collected as provided herein and elsewhere in the governing documents. The owner of each parcel and residence, 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 provided in Section 9.10 below, whenever title to a parcel and residence is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges 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. No owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the common areas, by abandonment, or otherwise. Except as provided elsewhere in the governing documents as to Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No parcel owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his parcel and residence. No owner can withdraw or receive distribution of his share of the common surplus or Association reserves, except as otherwise provided herein or by law.

9.2 Purposes of Assessments. The assessment levied by the Association shall be used for the purposes of promoting the security, health, safety and general welfare of the owners and residents of Leeward Cay at Windstar on Naples Bay; to operate, maintain, repair, improve, construct, reconstruct and preserve, on a not for profit basis the common areas owned by the Association for the benefit of its members, their guests, tenants and invitees, and to perform all other duties and responsibilities of the Association as provided in the governing documents. If the Board of Directors contracts for basis cable television programming services bulk for all residences within Leeward Cay at Windstar on Naples Bay, the cost of such services shall be a common expense of the Association. Common expenses also include the funds necessary to provide reserve accounts for:

- (A) renovation or major repairs to the common areas; and
- (B) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

9.3 Specific Assessment. In addition to the annual assessment authorized above and special assessments authorized in the Bylaws, the Association may levy from time to time specific assessments. Specific assessments are other fees or charges, including fines, against the Owner of a specific parcel for services as provided to the parcel by the Association at the request of the Owner or as required to enforce the provisions in this Declaration, Articles of Incorporation, Bylaws and Rules and Regulations ("Charges")

9.4 Resale Capital Contribution Assessment. Each new Owner, upon acceptance of conveyance of record title to a Residence in the Leeward Cay Community, shall pay a one-time specific assessment to fund a working capital account for the Association in an amount not to exceed one quarterly assessment. The exact amount of this specific assessment shall be established from time to

time by the Board of Directors, in its sole discretion, at a duly-called and properly-noticed meeting of the Board of Directors at which a quorum is present and shall be set forth in a written Board resolution.

9.5 Share of Assessments. The owners of each parcel and residence shall be liable for a one sixteenth (1/16th) share of the annual and special assessments levied by the Association for common expenses of the Association.

9.6 Lien. The Association has a lien on each parcel and residence for unpaid past due assessments and charges, together with interest, late payment penalties and reasonable attorneys fees incurred by the Association in enforcing this lien. The lien is perfected by recording a Claim of Lien in the public records of the County, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments and charges, interest, costs and attorneys fees which are due and which may accrue or come due after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

9.7 Foreclosure of Lien. The Association may bring an action in its name to foreclosure its lien for unpaid assessments or charges by the procedures and in the same manner as is provided in Chapter 720, Florida Statutes, as amended from time to time, for the foreclosure of a lien upon a condominium parcel for unpaid assessments. The Association may also bring an action at law against any owner liable for unpaid charges or assessments. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney's fees in connection with any appeal of such action.

9.8 Priority of Liens. The Association's lien for unpaid charges or assessments shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when recorded. Any lease of a residence shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

9.9 Application of Payments; Failure to Pay; Interest. Assessments, charges and installments thereon paid on or before fifteen (15) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest). Assessments, charges and installments thereon shall become due, and the residence owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, late payments fees, court costs and attorney's fees, and then to delinquent charges or assessments. The Association may refuse to accept a partial payment which bears a restrictive endorsement and such will be the equivalent of no payment. No payment by check is deemed received until the check has cleared.

9.10 Attachment of Rental Income When Parcel is Delinquent Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the Tenant with copy to Owner) from Lots in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, late fees, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Lot in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the Governing Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

9.11 Acceleration. If any special assessment or installment of a regular assessment as to a residence becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the parcel and residence's assessments for the fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.

9.11.1 Suspension of Voting and Use Rights. If any Special Assessment or installment thereof or regular Assessment as to a Residence becomes more than ninety (90) days past due, the Association shall have the right, as permitted under Chapter 720, Florida Statutes, if an Owner is more than ninety (90) days delinquent in paying any charge, Assessment or fine, to suspend the rights of the Owner or the Owner's tenant, guest, or invitee, to use Common Areas and facilities and/or suspend the Owner's voting rights in the Association until any delinquent charge, Assessment, fine or other monetary obligation is paid in full. During any suspension of voting rights, the total number of Voting Interests in the Association shall be reduced accordingly, but it shall not affect the basis for which Common Expenses are shared or Common Surplus is owned. Notwithstanding the foregoing, the Association may not suspend an Owner's right to have vehicular and pedestrian ingress to and egress from the Residence, including but not limited to the right to park or have utility services to the Residence.

9.12 Certificate As To Assessments. Within fifteen (15) days after request by a parcel owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the parcel owner with respect to the parcel and residence have been paid. Any person other than the parcel owner who relies upon such certificate shall be protected thereby.

9.13 Lien for Charges. Except as prohibited by law, there is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to an Owner and which is

not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall Owner alterations or items of Owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its Common Area maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

9.14 Liens and Encumbrances against Units. The Association shall have the right to satisfy any delinquent lien or other security interest against a Residence, excepting first mortgages, which are superior to the Association's lien including without limitation upon ad valorem taxes. The Association shall have no obligation to satisfy such liens nor ascertain their existence. Prior to paying off a lien against a Residence, the Association shall give the Owner reasonable notice and opportunity to remove the lien. Any such payments made by the Association will be secured by a Lien for Chargers.

9.15 Other Remedies. The Board of Directors shall have the authority to impose such other remedies or sanctions permitted by the Act pertaining to non-payment of monetary obligations to the Association. Without limitation, same include suspension of use rights in Common Areas and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; denial of lease approval requests; and acceleration.

9.16 Mortgage Foreclosure. Unless otherwise provided by law, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a parcel and residence as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall not be liable for the share of common expenses or assessments attributable to the parcel and residence, or chargeable to the former owner of the residence, which came due prior to the mortgagee's acquisition of title. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a residence by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of his ownership.

ARTICLE X **USE RESTRICTIONS**

The following rules and standards shall apply to Leeward Cay at Windstar on Naples Bay and shall be enforced by the Association pursuant to Article XIV hereof:

10.1 Residences. Each residence shall be occupied by only one family at any time. Each residence shall be used as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any residence. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library in his residence, from keeping his personal, business or professional records in his residence, or from handling his personal, business or professional telephone calls or written correspondence in and from his residence. Such uses are expressly declared customarily incident to residential use.

10.2 Occupancy By Guests. There is no restriction on the length of stay of guests, whether related or unrelated to the owner.

10.3 Minors. All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

10.4 Pets. The resident of each residence may keep one (1) pet, of a normal domesticated household type (such as a cat or dog), provided it is not kept, bred or maintained for any commercial purpose. The following breed of dogs (including mixes thereof) are prohibited from being kept at Leeward Cay at Windstar on Naples Bay: Akita, Basenji, Chow, Doberman Pinscher, English Mastiff, German Pinscher, German Shepard, any of the Husky breeds, Malamute, Pit Bull, Presna Canarios, Rottweiler. The owner of the pet shall hold the Association, its officers and directors harmless from any liability or loss arising from the keeping of the pet in said residence. All pets shall be leashed or carried by the pet owner whenever outside the residence. If any pet becomes a source of unreasonable annoyance to other residents, the Board may require its permanent removal from Leeward Cay at Windstar on Naples Bay. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept on any part of Leeward Cay at Windstar on Naples Bay. Feeding of feral cats, and any wild animals is not permitted.

10.5 Nuisances. No owner shall use his parcel and residence, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another residence, or which would not be consistent with the maintenance of the highest standards for a first class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each parcel and residence shall be consistent with existing laws and the governing documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

10.6 Signs. No person may post or display "For Sale" or "For Rent" signs anywhere within Leeward Cay at Windstar on Naples Bay other than one "For Sale" sign of not more than one, square foot may be displayed upon a parcel at a location approved by the Board of Directors. Prior Board approval is required for signs, notices, advertisements, or projections that will be visible from the exterior of the residence.

10.7 Garages. Each parcel includes an automobile garage. No garage shall be permanently enclosed or converted to any other use.

10.8 Structures. No Structure of a temporary character, trailer, house trailer, tent, shack, garage, barn or outbuilding shall be used on any parcel at any time either temporarily or permanently. For each of the fourteen (14) attached residences, no building additions (including but not limited to screen or glass enclosures) added to the rear of the residence may extend more than eleven (11) feet beyond the rear of the residence as originally construed nor rise any higher than four (4) feet above the residence evestrough. For purposes of this paragraph, the "rear of the residence" shall be measured from the line extending from the exterior surface of the rear wall of the kitchen as originally constructed to the party wall as originally constructed, said line being parallel to and coincident with the line formed by the exterior surface of the rear wall of the kitchen and perpendicular to the party wall. For each of the two (2) single residence dwellings, no building additions (including but not limited to screened or

glass enclosures) added to the rear of the residences may encroach into any existing trees or extend past the end of, nor rise any higher than, the additions in place on the single residence parcels existing on April 15, 1996. In addition, no addition to any residence may interfere with a neighboring owner's sight line looking back out of the neighbor's residence in an arc of 120 degrees. For purposes of this paragraph, the "arc of 120 degrees" which may not be obstructed by any building addition shall be measured from that certain point that is located equidistant from the wall of the kitchen as originally constructed and the party wall was originally constructed, and on that certain line as previously described that is parallel to and coincident with a line extending from the exterior surface of the rear wall of the kitchen and perpendicular to the party wall. Any building additions existing as of April 3, 2014 which extend beyond the 11 foot restriction, or the arc of 120 degrees restriction shall be grandfathered such that they may be maintained, repaired and replaced by the owner thereof without the necessity of conforming with such restrictions, so long as the extent of the nonconformity is not increased. The grandfathering provision shall also apply to allow the addition of a screen cage to an existing pool if the existing pool extends beyond the 11 foot restriction or the arc of 120 degrees restriction, but only to the extent reasonably necessary to enclose the existing pool.

10.9 Vehicles. Resident's vehicles must be parked overnight in an enclosed garage. Vehicles that do not fit in the garage are not permitted to be parked overnight on the driveway parcels or in the common areas. Garage door must be kept closed at night. Prior Board approval is required should there be a need to park a vehicle in a driveway. This accommodation is only for a maximum of one vehicle, not for golf carts, boats, trailers, etc. Those of a visitor which are only temporary in nature, may be parked in the driveway parcels or common area overnight, provided, they do not interfere with property of neighbors and do not block the accessibility of resident's garages. Trucks, recreational vehicles, boats, trailers, racing cars and commercial vehicles including commercial vans are prohibited to be parked overnight on the driveway parcels or in the common areas. The Board shall have the right to tow any vehicle not in compliance with this Section at the sole cost and expense of the owner or operator of the vehicle. Payment of such cost and expense shall be secured by a continuing lien on the Owner's Dwelling Unit in the same manner as Assessments.

10.10 Swimming Pools. Any swimming pool located on a residence parcel shall be for the exclusive use of the occupants of the residence and their guests and invitees. No individual pool shall be made available for use by the general public.

10.11 Unmanned Aerial Vehicles. The use of unmanned aerial vehicles ("UVA") and remotely piloted aircrafts ("RPA"), commonly known as drones, are not permitted in Leeward Cay at Windstar on Naples Bay.

10.12 General.

- (A) No towels, garments, rugs, etc. may be hung from windows, railings or other parts of the residences. No clotheslines or drying yards shall be located so as to be visible from neighboring residences.
- (B) No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the premises

and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon.

- (C) No noxious or offensive activity shall be carried on within Leeward Cay at Windstar on Naples Bay, or upon any part, portion or tract thereof, nor shall anything be done which may be or become a source of unreasonable nuisance or annoyance to the neighborhood or its residents.
- (D) No rubbish, trash, garbage or other waste materials shall be kept or permitted at the exterior of any residence. Trash, garbage and other waste shall be kept only in sanitary containers which shall be kept in a clean and sanitary condition and kept in the residence garage.
- (E) No well shall be drilled and no septic tank shall be installed, used or maintained on the property.
- (F) No radio or television antennas, satellite dishes or electrical wiring of any kind shall be installed on the Lots without written permission of the Board of Directors. It is the intent of these restrictions to comply with the Federal Communications Commission's Over-the-Air Reception Device (OTARD) Rule. Nevertheless, the Board desires to protect the Association Property and avoid unnecessary expense for owners by ensuring, prior to installation, that:
 - direct broadcast satellite dishes (DBS) are less than one meter in diameter and multi-channel, multi-point distribution service devices (MMDS) are less than one meter in diameter or diagonal measurement;
 - DBS and MMDS are only installed in exclusive use areas, in locations that are not visible from any street and in a location to minimize annoyance or inconvenience to other residents of the community if this the placement would still permit reception of an acceptable quality signal. Antennae may not extend beyond the plane of the imaginary lot line; and,
 - All antennae shall be painted to blend in to the background against which it is mounted, so long as the paint does not interfere with an acceptable quality signal.
- (G) Extreme care shall be exercised to minimize noises so as not to disturb other persons. Loud or disturbing noises that interfere with the rights, comfort, and convenience of other Owners and occupants shall not be permitted.
- (H) Personal property of occupants may not be stored outside the residence or its appurtenances. Lanais may not be used for storage.

- (I) If a portable generator is needed during extended periods of time without electricity, portable generators must be placed outside away from the Residences.

ARTICLE XI
OWNERSHIP OF PARCELS AND RESIDENCES

11.1 Forms of ownership:

- (A) A parcel and residence may be owned by one natural person.
- (B) **Co-ownership.** Co-ownership of parcels and residences is permitted. If the co-owners are other than husband and wife, the Board shall be entitled to require the owners to designate one (1) natural person as "primary occupant". The use of the parcel and residence by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant must be approved in advance by the Board of Directors. No more than one such change will be approved in any twelve (12) month period.
- (C) **Ownership by Corporations, Partnerships or Trust.** A parcel and residence may be owned in trust, or by a corporation, partnership or other entity which is not a natural person. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the residence may be used as short-term transient accommodations for several individuals or families. A trustee, or corporation, partnership or other entity as a parcel owner shall be required to designate one (1) natural person to be the "primary occupant". The use of the parcel and residence by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant must be approved in advance by the Board of Directors. No more than one such change will be approved in any twelve (12) month period.
- (D) **Designation of Primary Occupant.** Within thirty (30) days after the effective date of this provision, each owner of a parcel and residence which is owner in the forms of ownership state in preceding subsections (B) and (C) shall designate a primary occupant in writing to the Association. If any parcel owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.
- (E) **Life Estate.** A parcel and residence may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be the only Association member from such parcel and residence, and occupancy of the parcel and residence 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 parcel and residence. Any consent or approval required of 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 co-owners for purposes of determining voting and occupancy rights and shall be subject to Subsection (B), above.

11.2 Transfers.

- (A) **Sale or Gift.** No parcel and residence owner may dispose of a parcel and residence or any ownership interest in a parcel and residence by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) **Devise or Inheritance.** If any parcel owner acquires his title by devise or inheritance, his right to occupy or use the parcel and residence shall be subject to the approval of the Board of Directors under Section 11.3 (A)(2) below. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.
- (C) **Other Transfers** If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the parcel and residence before being approved by the Board of Directors under the procedures outlines in Section 11.3 below.
- (D) **Committee Approval.** To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an *ad hoc* committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

11.3 Procedures.

- (A) **Notice to Association.**
- (1) **Sale or Gift.** An owner intending to make a sale or gift of his parcel and residence or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.

(2) **Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the parcel and residence following the procedures in this Section or Section 12.

(3) **Failure to Give Notice.** If no notice is given, the Board of Directors, as 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 parcel and residence, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) **Board Action.** Within twenty (20) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or the Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) **Disapproval.**

(1) **With Good Cause.** Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:

(a) The person seeking approval (which shall hereinafter include all proposed Occupants) has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for:

- i. a capital, first or second degree felony involving violence to persons within the past ten (10) years; or
- ii. a first or second degree felony involving illegal drugs within the past ten (10) years; or

- iii. any drug offense involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, pleas or release occurred; or
 - iv. a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction, plea, or release occurred;
- (b) The person seeking approval has been labeled a sexual offender or sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;
 - (c) The person seeking approval is currently on probation or community control for felony involving violence to another or damage to or theft of property;
 - (d) The person seeking approval has a record of financial irresponsibility, including without limitation prior foreclosures or bad debts such that the Board reasonably concludes that the applicant is unable to meet his financial obligations to the Association;
 - (e) The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed Occupants) intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Property;
 - (f) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this Neighborhood or other residences as a Tenant, Occupant, Guest or Owner;
 - (g) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in Leeward Cay at Windstar on Naples Bay as a tenant, parcel owner or occupant of a residence;
 - (h) The transfer to the person seeking approval would result in that person owning more than two (2) parcels in Leeward Cay at Windstar on Naples Bay;
 - (i) The parties to the proposed transfer have failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or

(j) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

(k) All Assessments and other Charges against the Unit have not been paid in full, unless the Association has reasonable assurances that said amounts will be paid out of the closing proceeds.

(2) Without Good Cause. Approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3 (A)(3), then within thirty (30) days after the Board meeting at which the transaction was disapproved, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the parcel and residence at the same price, and upon substantially the same 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, 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 state-certified property 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 shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurred last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

(3) If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, the original proposed purchaser shall be deemed approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

11.4 Exception. The provisions of Section 11.2 and 11.3 are not applicable to the acquisition of title by a first mortgage who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

11.5 Unapproved Transfers. Any sale or transfer of ownership which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall not be concluded; and if it is concluded in disregard of this Section, shall be void or voidable by the Association unless subsequently approved in writing by the Board.

11.6 Fees Related to the Sale of Parcel and Residences. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a parcel and residence, the Association may charge the owner a preset fee for processing the application, such fee not to exceed \$100.00 per applicant.

ARTICLE XII **LEASING OF RESIDENCES**

In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of residences by their owners shall be restricted as provided in this section. All leases of residences must be in writing. A residence owner may lease only his entire residence, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person. This section shall apply to all types of occupancy for which the occupant has paid consideration including but not limited to leases and licenses.

Listing or otherwise advertising a Residence for rent for less than the term set forth in Article 12.2 below shall be deemed a violation of these Governing Documents and proof that the Owner and any prospective tenants intend to conduct themselves in a manner inconsistent with the covenants and restrictions of the community. As such, daily and/or weekly lease terms are not permitted. The Owner shall be subject to fines and have their right to lease their Residence suspended.

12.1 Procedures.

- (A) **Notice by the Parcel Owner.** An owner intending to lease his residence shall give to the Board of Directors or its designee, written notice of such intention at least ten (10) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a pre-condition to approval.
- (B) **Tenant Conduct; Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide, or be deemed to provide that the tenants have read and agreed to be bound by this Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations as the same may be amended from time to time (the "Governing Documents"). The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Governing Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Governing Documents or Florida law. If a tenant, other Residential Unit

occupant, guest or invitee fails to abide by the Governing Documents, the Owner(s) shall be responsible for the conduct of the tenants, occupants, guests and invitees and shall be subject to all remedies set forth in the Governing Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The Owner shall have the duty to bring his tenant's conduct (and that of the other unit occupants, guests and invitees) into compliance with the Governing Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Owner fails to bring the conduct of the tenant into compliance with the Governing Documents in a manner deemed acceptable by the Association, the Association shall have the authority to act as agent of the Owner to undertake whatever action is necessary to abate the tenants' noncompliance with the Governing Documents (or the other noncompliance of other occupants, guests or invitees), including without limitation the right to institute an action for eviction against the tenant in the name of the Association in its own right, or as agent of the Owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions, from the Owner which shall be secured by a continuing lien in the same manner as assessments for common expenses as set forth above. Any uniform lease or lease addendum will provide, or be deemed to provide that the Association shall have the authority to direct that all rental income related to the Residential Unit be paid to the Association until all past due and current obligations of the Association have been paid in full, including but not limited to all past due Assessments, charges, other monetary obligations, late fees, interest, attorneys' fees and cost and expenses of collection.

- (C) **Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval of a lease or renewal or extension thereof, to require that a prospective lessee or Owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the Common Property or Association Property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes, as amended from time to time.
- (D) **Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have ten (10) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.
- (E) **Disapproval.** A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made.

Appropriate grounds for disapproval shall include, but not limited to, the following:

- (1) All Assessments, fines and other Charges and monetary obligations against the Unit and/or Unit Owner have not been paid in full;
- (2) the parcel owner has a history of leasing his residence without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his residence;
- (3) the real estate company or rental agent handling the leasing transaction on behalf of the residence owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval,
- (4) The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicate that the person seeking approval intends to conduct himself in a manner inconsistent with the Governing Documents. By way of example, but not limitation, a Tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Governing Documents and may constitute grounds for denial;
- (5) The person seeking approval (which shall hereinafter include all proposed Occupants) has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for;
 - i. a capital, first or second degree felony involving violence to persons within the past ten (10) years; or
 - ii. a first or second degree felony involving illegal drugs within the past (10) years; or
 - iii. any drug offence involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, plea or release occurred; or
 - iv. a felony involving sexual batter, sexual abuse, or lewd and lascivious behavior regardless of when that conviction, plea or release occurred;
- (6) The person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;

- (7) The person seeking approval is currently on probation or community control for a felony involving violence to another or damage to or theft of property;
 - (8) the prospective lessee has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this community as a Tenant, Occupant or Guest;
 - (9) the prospective lessee evidences a strong probability of financial irresponsibility
 - (10) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules; or
 - (11) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.
 - (12) the owner fails to give proper notice of his intention to lease his residence to the Board of Directors.
- (F) **Failure to Give Notice or Obtain Approval.** If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the parcel owner.
- (G) **Applications; Assessments.** Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying Association assessments may not be delegated to the lessee.
- (H) **Committee Approval.** To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members.

12.2 Term of Lease and Frequency of Leasing. No residence may be leased more often than three (3) times in any calendar year, with the minimum lease term being thirty (30) days. The first day of occupancy under the lease shall determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

12.3 Occupancy By Guests or Tenants. There is no restriction on the length of stay of guests, whether related or unrelated to the tenant.

12.4 Regulation by Association. All of the provisions of the governing documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a residence as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the governing documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

ARTICLE XIII **AMENDMENTS; TERMINATION**

13.1 Duration: The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date the original Declaration was recorded. Upon the expiration of said thirty (30) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, at least two-thirds (2/3rds) of the votes cast at a duly held meeting of members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, be given at least forty-five (45) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

13.2 Amendments by Members: Except as otherwise provided herein or by law, this Declaration may be amended at any time by affirmative vote of at least two-thirds (2/3rds) of the voting interests of the Association at a meeting called for the purpose. 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 identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by the President or Vice-President of the Association with

the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

ARTICLE XIV
ENFORCEMENT; GENERAL PROVISIONS

14.1 Enforcement. Enforcement of these covenants, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors and assigns, or by any owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any residence to enforce any lien created by these covenants. Failure of the Association or any owner to enforce any covenant, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

14.2 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated his right of use in and to the common areas, as well as to any other person occupying any residence under lease from the owner or by permission or invitation of the owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of an owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants, at any time.

14.3 Litigation. Enforcement actions for damages or for injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought by any owner, or the Association against:

- (A) the Association;
- (B) a parcel owner;
- (C) anyone who occupies or is a tenant or guest in a residence; or
- (D) any officer or Directors of the Association who willfully and knowingly fails to comply with these provisions.

14.4 Attorney's Fees: In any legal proceeding arising out of an alleged failure of a guest, tenant, parcel owner, officer, Directors or the Association to comply with the requirements of the law, or the governing documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

14.5 No Election of Remedies. All rights, remedies and privileges granted to the Association or parcel owners under the law and the governing documents shall 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 any other rights, remedies, or privileges that may be available.

14.6 Notices. Any notice required to be sent to any member or owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby give, when mailed, with the proper postage affixed to the last known address of the owner appearing in the records of the Association, or to the address of the member's residence. Notice to one of two or more co-owners of a residence shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address.

14.7 Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

14.8 Interpretation. 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.

14.9 Not for profit Status. Notwithstanding anything contained herein to the contrary, the Association will performed no act nor undertake any activity inconsistent with its not for profit status under applicable state or federal law.

14.10 Use of Singular and Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

14.11 Headings. The headings used in the governing documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provision of these documents.

LEGAL DESCRIPTION

All of Tract L of Windstar, a subdivision recorded in Plat Book 14, pp. 11-15, Public Records of Collier County less and except the real property described in the following recorded instruments:

- OR Book 1726, page 49
- OR Book 1544, page 2046
- OR Book 1691, page 2267
- OR Book 1726, page 43
- OR Book 1563, page 229
- OR Book 1624, page 1334
- OR Book 1528, page 1534
- OR Book 1729, page 1431
- OR Book 1726, page 51
- OR Book 1497, page 1718
- OR Book 1491, page 800
- OR Book 1526, page 606
- OR Book 1524, page 260
- OR Book 1720, page 822
- OR Book 1726, page 53
- OR Book 1726, page 1425

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