

PREPARED BY AND RETURN TO:
ROBERT W. WATTWOOD, ESQ.
O'Brien, Riemenschneider, Kancilia & Lemonidis, P.a.
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Melbourne, Florida 32901



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AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VENTANA

This Amendment to Declaration of Covenants, Conditions and Restrictions for **Ventana** (the "Amendment") is made as of the 16 day of May, 2000, by **Ventana Development Company, Inc.** (the "Declarant" or "Developer").

WITNESSETH:

WHEREAS, Developer platted certain property into the Ventana Subdivision as described in Plat Book 41, Page 40, Public Records of Brevard County, Florida (the "Subdivision"); and

WHEREAS, the Subdivision was made subject to that certain Declaration of Covenants, Conditions and Restrictions for the Ventana as recorded in Official Records Book 3461, Page 1665, Public Records of Brevard County, Florida, as subsequently amended (the "Declaration"); and

WHEREAS, Developer currently owns and holds lots within the Subdivision and is a voting member in Ventana Owners Association, Inc. (the "Association"); and

WHEREAS, Developer wishes to amend the Declaration and has the power and authority to do so pursuant to Article XIII, Section 13.1 of the Declaration; and

WHEREAS, Developer wishes to confirm this Amendment in writing and record same in the public records; and

WHEREAS, that certain property described in **Exhibit "A"** attached hereto (the "Recreational Tract") is intended for use by Association members for recreational purposes, together with usage in common with the members of the Ashwood Homeowners Association of Brevard, Inc. (the "**Ashwood Lakes Association**"), which association governs the Ashwood Lakes Subdivision located north of and adjacent to the Ventana Subdivision; and Developer wishes to set forth in the Declaration certain terms and conditions related to the use, operation, repair and maintenance of the Recreational Tract.

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Sandy Crawford
Clerk Of Courts, Brevard County

#Pgs: 7	#Names: 2	
Trust: 4.00	Rec: 29.00	Serv: 0.00
Deed: 0.00		Excise: 0.00
Mtg: 0.00		Int Tax: 0.00

NOW, THEREFORE, pursuant to Article XIII, Section 13.1 of the Declaration, Developer hereby modifies the Declaration to add the following Article XVII, Section 17.17:

17.17 Recreational Facilities. That certain real property described in **Exhibit "A"** attached hereto (the "**Recreational Tract**") is intended for recreational usage by the members of the Association (and their guests, tenants and invitees) and by the members of the Ashwood Lakes Association (and their guests, tenants and invitees). The Recreational Tract shall be conveyed by the Developer to the Ashwood Lakes Association as to an undivided one half (1/2) interest and to the Association as to an undivided one half (1/2) interest and may or may not be included in a phase of this Subdivision or a phase of the Ashwood Subdivision. If included in a phase of either subdivision, both the Ventana Association and the Ashwood Lakes Association agree to execute any plat joinder or other documents necessary to effectuate inclusion of the Recreational Tract in such plat. The Recreational Tract shall contain a pool and bathhouse the ("**Pool Facilities**") and may also contain other recreational amenities (the "**Other Recreational Facilities**"). Hereinafter, the pool, bathhouse and any other recreational facilities on the Recreational Tract shall collectively be referred to as the "**Recreational Facilities**".

After the conveyance from the Developer as set forth above, the Common Areas of the Ventana Association and the Ashwood Lakes Association shall each be deemed to include its designated undivided interest in the Recreational Tract and the Recreational Facilities thereon. Notwithstanding the inclusion of an undivided interest in the Recreational Tract and Recreational Facilities as part of each association's respective Common Area, all provisions contained in this Section 17.17 shall control over any conflicting provisions (including Common Area provisions) contained elsewhere in the Declaration or other governing documents.

There shall be a Recreational Facilities Committee (the "**Committee**") established to prepare three (3) budgets: (i) the "**Pool Facilities Budget**" for the costs of maintaining, repairing, operating, insuring, improving, permitting and replacing the Pool Facilities (including but not limited to, repair costs, hazard insurance premiums, liability insurance premiums, maintenance, personal and real property taxes and reserves for replacement); (ii) the "**Other Recreational Facilities Budget**" for the costs of maintaining, repairing, operating, insuring, improving, permitting and replacing the Other Recreational Facilities (including but not limited to, repair costs, hazard insurance premiums, liability insurance premiums, maintenance and mowing fees, personal and real property taxes and reserves for replacement); and (iii) a "**Recreational Facilities Budget**" which shall represent the combined Pool Facilities Budget and the Other Recreational Facilities Budget. The Committee shall operate subject to Roberts Rules of Order. The committee shall consist of five (5) members, three (3) appointed by the Board of Directors of the Ashwood Lakes Association and two (2) appointed by the Board of Directors of the Ventana Association during even numbered budget years, and three (3) appointed by the Board of Directors of the Ventana Association and two (2) appointed by the Board of Directors of the Ashwood Lakes Association during odd numbered budget years. Notwithstanding the foregoing, if a developer remains in control of the board of directors for only one of the two associations, the developer controlled board shall have the continuing right



to appoint the majority (three [3]) of the Committee members in both the even and odd budget years until such time as the developer no longer controls that board.

On or before January 30th of each budget year, the Committee shall submit the Recreational Facilities Budget, including the Pool Facilities Budget and the Other Recreational Facilities Budget, to the respective associations for incorporation into the overall annual budget of each association. Each Association shall pay its respective share of the Recreational Facilities Budget as set forth herein. Commencing with budget year 2000, two thirds (66.67%) percent of the entire Recreational Facilities Budget shall be included in the overall annual budget for Ashwood Lakes Association and one third (33.33%) percent of the entire Recreational Facilities Budget shall be included in the overall annual budget for Ventana Association. Provided, however such percentages are based upon the current ratio of platted lots in the Ashwood Lakes Subdivision and the Ventana Subdivision to the total number of platted lots in both subdivisions. Every year, as of the date of the submittal of the entire Recreational Facilities Budget by the Committee, the percentage shall be adjusted to equal the then current ratio of platted lots in each subdivision to the total number of platted lots in both subdivisions. If the Recreational Facilities Budget is not approved by both Associations, then one hundred ten (110%) percent of the Recreational Facilities Budget for the preceding year (one hundred and ten (110%) percent of the Pool Facilities Budget and one hundred ten (110%) percent of the Other Recreational Facilities Budget) shall be deemed the approved Recreational Facilities Budget for the succeeding budget year and incorporated into the overall annual budgets of the respective associations for the next year. Notwithstanding the foregoing, the Recreational Facilities Budget may not be increased in excess of ten (10%) percent per year, cumulative, without the written consent of the developers of each subdivision. Any surplus funds collected pursuant to the Recreational Facilities Budget shall be used to reduce the Recreational Facilities Budget for the succeeding budget year, or set aside as reserves for Recreational Facilities.

Assessments for Recreational Facilities shall be paid by the individual lot owners (subject to developer exemptions under those circumstances permitted in the respective subdivision declarations) as part of the regular and special (if applicable) assessment scheme set forth in the respective declarations of the two subdivisions.

Each association shall pay its share of the Recreational Facilities budgeted assessments into a checking/money market account (or other mutually acceptable account) held by the Ashwood Lakes Association but separate and apart from its regular assessment account. Such payments will be made by March 1st of each year by each association notwithstanding any assessment payment schedule established by an association permitting members to pay on a monthly, quarterly or annual basis. Ashwood Lakes Association shall have a fiduciary obligation to in good faith issue checks to creditors for Recreational Facilities expenses incurred and account for all expenditures. An authorized officer or agent from each association shall execute contracts for repairs, maintenance, improvements, replacements and other such operational contracts applicable to the Recreational Facilities (except in emergency situations when only one signature will be required). The Recreational Facilities shall be managed by a



Community Association Manager or by other management personnel who must be approved by the developer of each subdivision so long as such developer owns a lot in its respective subdivision.

The Ventana Association does hereby waive any and all rights of partition with respect to the Recreational Tract and does hereby acknowledge that the Ashwood Lakes Association and its developer are intended third party beneficiaries to the provisions contained in this Amendment and shall have the right to enforce these provisions.

Each association is hereby contractually bound to the other to levy and collect its share of the Recreational Facilities Budget and to timely pay its share of those assessments. Failure of either association to levy, collect and pay its share of the Recreational Facilities Budget shall constitute a breach of this contractual agreement. In any action to enforce the terms of this agreement, the prevailing association shall be entitled to recovery of its attorneys' fees and costs, including fees and costs incurred on any appeal, from the non-prevailing association. Neither association may amend the provisions of this section of its Declaration without the approval of the other association, notwithstanding any other provisions contained in the Declaration which purports to permit amendment of the Declaration upon approval of some percentage of the membership votes. However, the developers of each subdivision may mutually amend this section pursuant to their amendment rights contained in their respective declarations.

All Lot Owners shall use the Recreational Facilities only in accordance with the terms of the rules and regulations initially adopted by the developers of both subdivision as revised from time to time by the developers or, after turnover, by the Committee. Any amendments to the rules and regulations by the Committee shall require the approval of not less than four Committee members. The rules and regulations may restrict the time of use, provide for the reservation of certain facilities, and provide limitations on use of the Recreational Facilities by a member's guests and tenants. No Lot Owner will be entitled to any rebate or reduction in his assessments on account of any such restrictions imposed on the use of the Recreational Facilities. The developers of both subdivisions, for themselves and their successors and assigns and their guests or invitees, hereby specifically reserve unto themselves an easement upon and the right, privilege and license of using any or all of the Recreational Facilities and the Recreational Tract in connection with and in support of any operations and activities conducted upon the Recreational Tract or in the respective subdivisions. The developers and their authorized agents, representatives, guests and invitees, so long as the developers own a lot in their respective subdivisions, may not be denied access to the Recreational Tract and Recreational Facilities for use in conjunction with any sales, marketing and administrative activities, including social events and parties on the Recreational Tract and Recreational Facilities.

If any Lot Owner or guest, tenant, licensee, agent, employee, family member or pet of a Lot Owner damages the Recreational Facilities as a result of an intentional act, negligence or misuse, that Owner hereby authorizes such damages to be repaired, and the cost of such repair will be the responsibility of that Owner and will become an additional assessment against that



Lot Owner.

The Developer and the Association shall have the right to suspend the right of any Lot Owner (his tenants, guests or invitees) to use a portion or all of the Recreational Facilities for any period during which he has defaulted in the payment of assessments. The Developer or the Association may also suspend for a period of thirty (30) days, the rights of any Lot Owner (his tenants, guests or invitees) to use the Recreational Facilities and may levy reasonable fines not to exceed \$100.00 per violation, against any such Owner (his tenants, guests or invitees) for violation of the rules and regulations governing the Recreational Facilities. The fine may be levied for each day of a continuing violation with a single notice and opportunity for a hearing, except that no such fine shall exceed \$1,000.00 in the aggregate. Fine or suspension for violation other than nonpayment of assessments, may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before the Committee. If the Committee cannot by majority vote, approve a proposed fine or suspension, it may not be imposed.

Notwithstanding the foregoing, any Lot Owner who purchased a Lot in the Subdivision prior to December 31, 1997 ("1997 Owner(s)") may exempt himself from payment of his pro-rata share of the assessments attributed to the Pool Facilities and the Pool Facilities Budget, so long as: (i) the 1997 Owner has given notice of exercise of exemption rights in writing within 30 days after the date Developer mails to him notice of this exemption option; (ii) the 1997 Owner continues to hold fee simple title to his lot (the exemption will terminate upon transfer of title except to a revocable living trust of which the 1997 Owner is trustee and a beneficiary); and (iii) neither the 1997 Owner nor his guests, invitees and tenants use the Pool Facilities. Any unpaid share of the Pool Facilities Budget attributable to the exempt 1997 Owners shall be deemed Common Expenses collectible from all other Lot Owners.

If a 1997 Owner exercises his exemption option but thereafter uses the Pool Facilities, conveys his lot to another party, or rescinds such exemption, then the 1997 Owner (or his successors) shall be required thereafter to pay his pro-rata share of the Pool Facilities related assessments together with all other assessments accruing against his Lot.

IN WITNESS WHEREOF, the undersigned Developer has executed this _____ Amendment as of the day and year first set forth above.

**VENTANA DEVELOPMENT COMPANY,
INC., a Florida corporation**

Maria G. Bartley
Witness
Print Name: Maria G. Bartley

BY: [Signature]
Timothy McWilliams as its President

[Signature]
Witness
Print Name: James D. Fallace



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STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 16 day of May, 2000, by Timothy McWilliams, as President of Ventana Development Company, Inc., a Florida corporation, on behalf of said corporation who is personally known to me, or who has produced a Florida driver's license as identification.



Marcia A. Bartley
MY COMMISSION # CC904043 EXPIRES
February 4, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

M.A. Bartley
Notary Public
Print Name: Marcia A. Bartley
Commission expires: _____



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