

**RE: FLAMINGO SOUTH TOWER - PROTECTING INDEPENDENT OWNERS**

Website: [FlamingoFree.com](http://FlamingoFree.com)

Contact: [flamingofree@gmail.com](mailto:flamingofree@gmail.com)

Hello from Bob Primavera and Cliff Swint, your independent board members at the Flamingo South Tower.

We continue to receive complaints from independent owners about the recent unsolicited email, text and phone communications sent by AIR/AIMCO. Once again, please note that these communications were not authorized by the South Tower Condo Association or our Board of Directors.

As stated previously, these unsolicited communications concern a legal maneuver by the developer AIR/AIMCO to amend the South Tower's founding condominium documents to place AIR/AIMCO on the path toward complete and permanent control of the South Tower Condo Association and its Board of Directors.

- **Question:** What should you do now?
- **Answer:** Nothing – simply do not vote or sign anything that is given to you by AIR/AIMCO or their lawyers.

Nevertheless, we believe that independent owners should always be informed.

Luckily, the independent owners of the South Tower include many smart if not brilliant individuals. The independent owners include attorneys, financial professionals, and business professionals. Just as important, the independent owners include those with plain common sense, and a long memory of how AIR/AIMCO conducted itself when it previously controlled the South Tower and its Board until late-2021.

The independent owners have reviewed the amendment proposed by AIR/AIMCO. Their analysis and FAQs are provided below. We believe you will find this information enlightening. You may also access this information at the following website setup by the independent owners:

[FlamingoFree.com](http://FlamingoFree.com)

As always, feel free to contact Bob (516-458-4206) and Cliff (917-232-1591) your independent board members, to discuss any of your concerns.

## **INDEPENDENT OWNER ANALYSIS**

The following is the independent owners' analysis of the proposal by AIR/AIMCO to amend the South Tower's founding condominium documents, presented in the simplest form possible. For more detailed information, see the independent owner's FAQ section below.

After reviewing this, we think you will agree – you should not vote or sign anything given to you by AIR/AIMCO or their lawyers.

In sum, the proposed AIR/AIMCO amendment provides for the following:

### **Independent owners lose control of and representation on the Board of Directors**

- AIR/AIMCO takes immediate control of the Board of Directors, forever.
- Independent owners lose all control of the Board of Directors, forever.
- An AIR/AIMCO-board will represent the interests of AIR/AIMCO, not independent owners.
- Independent owners lose all representation on the Board of Directors, forever, as transfer of Board-control to AIR/AIMCO is permanent.
- Independent owners will no longer be able to elect any individual to the Board of Directors, and therefore, the Board will no longer represent the interests of independent owners.
- AIR/AIMCO may seek to appoint all employees of AIR/AIMCO to an AIR/AIMCO-Board, without appointing any owners.
- Any so-called owner protections are illusory, as these protections may always be controlled or circumvented by AIR/AIMCO (see more on this below).
- The AIR/AIMCO-Board grants AIR/AIMCO a multi-million-dollar management contract, which lasts forever, and we independent owners will have to pay for it.

### **Independent owners lose financial control of the South Tower**

- Independent owners lose financial control, forever.
- A new and permanent AIR/AIMCO-Board would determine everything that independent owners pay – e.g., annual budget, special assessments, management contract, etc.

- The AIR/AIMCO-Board will make all financial decisions for the South Tower, and if the independent owners disagree, they will have little recourse.
- Competitive bidding among independent management companies to manage the South Tower no longer exists, and the ability to change management companies ceases forever, because AIR/AIMCO will receive a multi-million-dollar management contract, which lasts forever, that the independent owners must pay for.

**No guarantee of any ability to control much less decrease costs**

- AIR/AIMCO does NOT pay any money directly to owners - don't be fooled.
- AIR/AIMCO does NOT guarantee that they can control any costs.
- AIR/AIMCO only attempts to control what they refer to as "Controllable Costs," which is not all costs, and specifically excludes many costs including insurance, deferred maintenance (e.g., roof repair), capital improvements, and numerous other costs.
- The AIR/AIMCO reference to \$1,250 per unit is merely a hypothetical reduction in "Controllable Costs," not an actual or guaranteed cost reduction, and certainly not an amount paid to any owner.
- AIR/AIMCO does NOT guarantee they can control insurance costs because insurance is excluded from the "Controllable Costs" that they will only attempt to control.
- AIR/AIMCO does NOT guarantee against future increases in your monthly maintenance, and since they take no responsibility for even attempting to control many costs, independent owners' monthly maintenance costs are likely to increase.
- AIR/AIMCO does NOT guarantee against special assessments, but rather the AIR/AIMCO-board will decide exactly what assessments independent owners pay including: (1) special assessments decided and levied by the new AIR/AIMCO-Board, and (2) special assessments levied by the AIR/AIMCO parent company pursuant to the REA (the contract that governs the relationship between the South Tower and AIR/AIMCO).
- Not only does AIR/AIMCO not guarantee they will be able to control any costs, but they will only attempt to control "Controllable Costs" for 5 years. After 5 years, AIR/AIMCO has no further obligation, but retain control of the South Tower and its Board forever.

- AIR/AIMCO is attempting to buy control of the South Tower and its Board, permanently, and the purchase will be made with the funds of independent owners. The only risk to AIR/AIMCO is that they pay the South Tower Association up to but no more than \$562,000 per year for 5 years, if AIR/AIMCO is unable to reduce costs by this same amount or more, but this amount will be paid with the funds that independent owners must pay to AIR/AIMCO under the management contract. After 5 years, however, AIR/AIMCO has no further risk, financial or otherwise. In the end, AIR/AIMCO will have bought complete control of the South Tower and its Board, forever, using the independent owners' own money.

### **Conflicts of interest for AIR/AIMCO**

- The AIR/AIMCO-Board grants AIR/AIMCO a management contract, which lasts forever, that independent owners pay for.
- While the terms of the management contract awarded to AIR/AIMCO are negotiated by a committee of non-AIR/AIMCO owners, the AIR/AIMCO-Board not only selects the owners on the committee but is able to replace those owners at will.
- The AIR/AIMCO-Board would supervise the AIR/AIMCO management company, or, in other words, AIR/AIMCO would supervise itself.
- The AIR/AIMCO-Board would be able to rubber-stamp-approve all special assessments levied on independent owners by the AIR/AIMCO-parent company under the REA (the contract that governs the relationship between the South Tower and AIR/AIMCO), or, in other words, AIR/AIMCO would supervise itself.
- An AIR/AIMCO-Board would have no incentive to enforce the provisions of the REA, the contract that governs the relationship between the South Tower and the AIR/AIMCO, against AIR/AIMCO.
- The AIR/AIMCO-Board would have the power to excuse and forgive any damage caused by tenants of AIR/AIMCO owned units (e.g., the \$500,000 in elevator damage caused by one AIR/AIMCO tenant).
- The AIR/AIMCO-Board would have the power to turn the South Tower into a construction zone, thereby allowing AIR/AIMCO to mass-renovate all their units, the

resulting construction and noise making the units of independent owners unlivable and/or unrentable.

### **Illusory protections for independent owners**

- Any alleged protections to independent owners afforded by a committee of non-AIR/AIMCO owners are non-existent since the AIR/AIMCO-Board not only selects the owners on the committee but is able to replace those owners at will.
- Any alleged protections provided by the requirement of a vote of non-AIR/AIMCO owners are non-existent. Not only would the independent owners need to live in a constant state of readiness to attend all such meetings, but the owners would live in constant fear of missing such a meeting, for example an unexpected or ill-timed meeting (e.g., at 2am Christmas day or Yom Kippur).
- All protections afforded under the REA would become non-existent for independent owners, since an AIR/AIMCO-Board is unlikely to enforce those provisions against AIR/AIMCO.
- If an AIR/AIMCO-Board were to breach the terms of any governing condominium document, the only recourse for independent owners would be to sue the Board, subjecting the owners to significant legal fees (plus the risk of losing and paying the Board's legal fees).
- If AIR/AIMCO were to breach the terms of the REA, an AIR/AIMCO-Board is unlikely to attempt to enforce the terms of the REA. And while it is unclear if independent owners could sue AIR/AIMCO to enforce the REA, litigation with a multi-billion-dollar corporation such as AIR/AIMCO would subject owners to significant legal fees (plus the risk of losing and paying the legal fees of AIR/AIMCO).

### **Renovations and Maintenance**

- The AIR/AIMCO-Board will always decide the special assessments that the independent owners must pay.
- If any renovations or beautifications are made to the South Tower, the independent owners will pay for it via a special assessment levied by the AIR/AIMCO-Board. There is no such thing as a free lunch.

- As maintenance to items such as the roof, deferred maintenance and capital improvements are made, independent owners may pay for it via an assessment levied by the new AIR/AIMCO-Board.
- AIR/AIMCO controlled the South Tower and its Board of Directors for over a decade ending in late-2021 and, during that time, they neglected most maintenance and repair issues, such as the roof, fire safety system, HVAC and others. These same practices are likely to continue under another AIR/AIMCO-Board.
- An AIR/AIMCO-Board is likely to ignore maintenance and repair issues at the South Tower, in order to decrease costs and increase profits for AIR/AIMCO.

### **Decreased property values**

- AIR/AIMCO control will decrease the value of all South Tower condo units, not increase condo unit values.
- In the 2 years since an arbitrator terminated AIR/AIMCO control over the South Tower, South Tower property values have increased by about 50%. In contrast, all South Tower properties were undervalued by at least 30-40% during the prior period of control under AIR/AIMCO.
- When a developer such as AIR/AIMCO controls a condominium such as the South Tower, real estate agents tell their clients not to buy at that condominium, thereby further decreasing property values.

### **Termination of the South Tower Condominium**

- AIR/AIMCO is attempting to make it easier to terminate the South Tower condominium and force independent owners to sell their homes/investments at a reduced value.
- The original and current condominium declaration for the South Tower condominium can only be terminated by the agreement and vote of all (100%) owners.
- However, the AIR/AIMCO amendment reduces this threshold immediately.
- And further amendments are a possibility. For example, once AIR/AIMCO controls 66 2/3% of all votes (they already control at least 260 units, or at least 46% of the units, and are actively acquiring more), they may pass another amendment to attempt to reduce the termination threshold even further.

## **The new apartment tower proposed by AIR/AIMCO**

- AIR/AIMCO previously attempted to construct a new apartment tower on the Flamingo property, which would have subjected the independent owners to a special assessment (according to their attorney Michael Larkin) and increase owners' costs (under the REA).
- The City of Miami Beach terminated this apartment tower project when it learned that AIR/AIMCO was suing the South Tower to force them to consent to this new apartment tower, at the time referring to AIMCO/AIR as a bad corporate citizen.
- The legal team for AIR/AIMCO including current AIR/AIMCO director (and attorney) Ken Diamond, also threatened to sue the then Board members personally, if they refused to consent to this new apartment tower.
- In the future, the AIR/AIMCO-board would have the power to rubber-stamp the approval of any such construction and force the independent owners to pay for it. If the independent owners disagreed with such an approval, they would have little recourse.

## **Quality of life issues**

- The South Tower was controlled by an AIR/AIMCO-Board until late-2021 and, during that time, neglected maintenance and repair issues such as the roof, HVAC, fire safety system, and other systems.
- An AIR/AIMCO-Board would have the power to turn the South Tower into a construction zone, allowing AIR/AIMCO to mass-renovate their units, the accompanying construction noise making the units of independents owners unlivable and/or unrentable.
- An AIR/AIMCO-Board would have the power to operate the South Tower as a commercial apartment rental complex rather than a condominium for individual owners.
- An AIR/AIMCO-Board is likely to ignore maintenance and repairs to the South Tower, to enable AIR/AIMCO to reduce their costs and thus increase their profits.

## **Single-Company Risk**

- Allowing AIR/AIMCO to control the South Tower exposes the South Tower to all the risks, financial and otherwise, to which AIR/AIMCO is exposed, or what is typically referred to as the unwanted exposure to "Single-Company Risk."

- There is significant risk to being closely associated with a single real estate developer such as AIR/AIMCO, especially in time of rising interest rates, which typically negatively affect real estate developers.
- As of October 1, 2023, the AIR REIT (AIRC) is priced at 30.70, about 43% down from its all-time high, and below its initial opening day price of 37.25, suggesting a problematic business model for AIR/AIMCO.



## **FREQUENTLY ASKED QUESTIONS**

For even more detail and better understanding of the issues, the independent owners have prepared the following Frequently Asked Questions. Let us know if you have any questions.

After reviewing the following questions, we think you will agree – you should not vote or sign anything given to you by AIR/AIMCO or their lawyers.

## **GENERAL HISTORY**

### **➤ Who is AIR, AIMCO and Flamingo South Acquisitions (also known as “FSA”)?**

It’s hard to keep up because they keep changing their name, but all these names can be used to refer to the same legal entity. AIMCO is the corporation that originally developed the Flamingo property. A couple years ago AIMCO divided itself into two (2) parts and called the parts AIMCO and AIR. Today, it is unclear to what extent AIMCO and AIR remain intermingled, so we now refer to them as AIR/AIMCO. Flamingo South Acquisitions (FSA) is simply the legal entity that officially owns about 260 condominium units in the South Tower – it has sometimes been controlled/owned by AIMCO and at other times by AIR.

### **➤ Why is AIR/AIMCO doing this?**

It’s all about control and money. Legally, AIR/AIMCO is a developer that is prohibited from controlling the South Tower or its Board of Directors. But now, the AIR/AIMCO lawyers want to use the independent owners to try and circumvent this legal restriction – thus, do not sign anything given to you by AIR/AIMCO or their lawyers. If AIR/AIMCO could regain control of the South Tower and its Board of Directors, they would have tremendous power. For example, AIR/AIMCO would be able to operate the South Tower as an apartment rental building instead of a condominium, they would make all financial decisions for the independent owners, they would decide what special assessments independent owners should pay, and they would be on

the path to terminating the South Tower condominium and converting it into an apartment complex. Remember, do not sign anything that is given to you by AIR/AIMCO or their lawyers.

➤ **Didn't AIR/AIMCO previously control the South Tower and its Board of Directors?**

Yes. AIR/AIMCO controlled the South Tower and its Board of Directors for almost a decade that ended in late 2021, when an arbitrator removed them from control, ruling that AIR/AIMCO was a developer and prohibited from controlling the South Tower Condo Association or its Board of Directors. If you are an independent owner that has suffered a special assessment, or experienced a lack of maintenance at the South Tower, all of this was caused by a previous AIR/AIMCO-Board that controlled the South Tower for almost a decade.

➤ **When AIR/AIMCO previously controlled the South Tower and its Board of Directors, did the AIR/AIMCO-Board have board meetings?**

Not often, and in some years little more than the annual meeting. Thus, the independent owners had little to no say in how the South Tower was operated. Of course, any future AIR/AIMCO-Board would operate the same. As they say, a tiger does not change its stripes!

➤ **How did we get where we are today?**

Simply put, AIR/AIMCO went too far when they previously controlled the Board of Directors and the South Tower. In 2019, the AIR/AIMCO parent company levied a \$7.7 million assessment against the independent owners, and the AIR/AIMCO-Board at the South Tower paid most of it, even though several attorneys were of the opinion that the independent owners did not owe the money, and an audit revealed the amount was inflated. Then, in 2021, the AIR/AIMCO-Board cancelled the annual election, preventing the independent owners from voting, thereby allowing the AIR/AIMCO-board members to stay in power indefinitely. Soon after cancelling the election, the AIR/AIMCO-Board moved to approve the construction of a new AIR/AIMCO apartment tower on the Flamingo property, which would have resulted in a special assessment and increased monthly costs for all independent owners. AIR/AIMCO even sued the South

Tower to try and force it to consent to the new AIR/AIMCO construction. Luckily, when the City of Miami Beach learned how AIR/AIMCO was treating the South Tower, they denied the AIR/AIMCO application to build the new tower, at the time referring to AIR/AIMCO as a “bad corporate citizen.” In the end, the independent owners at the South Tower were forced to spend tens of thousands of dollars to hire a law firm and file an arbitration to recall and replace the AIR/AIMCO-board members with independent owner board members. That arbitration also resulted in the legal ruling that AIR/AIMCO is now prohibited from controlling the South Tower Condo Association or its Board of Directors.

➤ **Did AIR/AIMCO ever prevent the independent owners from voting at an annual election?**

Yes, they did. In 2021, the AIR/AIMCO-Board committed the ultimate sin of cancelling the annual election, thereby preventing the independent owners from voting, which allowed the AIR/AIMCO-Board to stay in power. Then, immediately after cancelling the election, the AIR/AIMCO-Board moved to approve the construction of a new AIR/AIMCO apartment tower on the Flamingo property, which would have resulted in a special assessment and increased monthly costs on all independent owners. To stop this improper behavior by the AIR/AIMCO-Board, the independent owners at the South Tower were forced to spend thousands of dollars to hire a law firm and recall and replace the AIR/AIMCO-board members with the current independent owner board members.

➤ **Did AIR/AIMCO neglect maintenance and repair issues when they previously controlled the South Tower and its Board of Directors?**

Yes, absolutely. The prior AIR/AIMCO-Board spent 3 years trying to install a new roof but wasted the entire budget on only 1/3 of the roof (even this portion of the roof was not entirely completed), while ignoring the remaining 2/3 of the roof. The prior AIR/AIMCO-Board also failed to repair the HVAC system and replace the Fire Safety System which is at the end of its service life (finding replacement parts can take months, as they can only be found on Ebay.com).

Although there is too much to discuss here, there are several other systems in the South Tower that the prior AIR/AIMCO-Board neglected.

➤ **Do Bob Primavera and Cliff Swint, the current independent owners on the Board of Directors, have a plan to correct the neglect caused by AIR/AIMCO?**

Yes, Bob and Cliff have a comprehensive plan to correct the neglect caused by the prior AIR/AIMCO-Board. Not only has repair of the roof already begun but our insurance company has reviewed and approved the plan (i.e., our insurance company is happy). As for all other neglected matters, Bob and Cliff have put together a comprehensive plan and timeline to correct all issues by the end of 2024.

➤ **Does control of a condominium by a developer like AIR/AICMO decrease property values?**

Yes, it does. During the previous decade long control of the South Tower by AIR/AIMCO, all South Tower condominium units were undervalued by at least 30-40% compared to surrounding buildings. However, in the 2 years since AIR/AIMCO lost control over the South Tower and its Board, South Tower property values have increased by about 50%.

➤ **How does the real estate industry view control of the South Tower by a developer such as AIR/AIMCO?**

We encourage you to talk with your local real estate agent. When AIR/AIMCO controlled the South Tower, real estate agents told their clients NOT to buy at the South Tower, which of course helps to reduce property values at the South Tower.

➤ **Do decreased property values benefit a developer like AIR/AIMCO?**

Yes, probably. AIR/AIMCO already owns 260 condominium units in the South Tower and is actively buying more. If property values are reduced, AIR/AIMCO can continue to buy condominium units at lower prices.

➤ **Is it possible to end the litigations between the South Tower and AIR/AIMCO?**

Yes, but it all depends on AIR/AIMCO. First, AIR/AIMCO needs to stop suing the South Tower. In the last two years, AIR/AIMCO has sued the South Tower three (3) times and all these lawsuits have been dismissed. Luckily, the South Tower has good insurance and an excellent legal team. Second, AIR/AIMCO has requested mediation in the Tax Arbitration, so maybe Bob and Cliff can resolve this case soon provided AIR/AIMCO is willing to be reasonable. Finally, the remaining two lawsuits for the improper \$5.3 million assessment and an accounting of our parking revenue could also be resolved, but AIR/AIMCO must be reasonable and willing to work with the South Tower and its independent owners. In sum, resolution depends on AIR/AIMCO.

## **WHAT IS THE AIR/AIMCO AMENDMENT?**

➤ **Why does AIR/AIMCO want this amendment?**

Not only does this amendment put AIR/AIMCO on the path to complete control of the South Tower and its Board of Directors, but it eliminates many of the protections for independent unit owners. For example, it not only renders the votes of the independent owners almost worthless, but it makes it easier for a developer like AIR/AIMCO to terminate the South Tower condominium and force independent unit owners to sell their units at a reduced rate.

➤ **What does the amendment proposed by AIR/AIMCO actually do?**

As always, the devil is in the details, certainly not in the AIR/AIMCO marketing campaign. First, AIR/AIMCO is given complete and permanent control of the South Tower and its Board of Directors. Second, the AIR/AIMCO-Board grants AIR/AIMCO a multi-million-dollar management contract, which lasts forever, which the independent owners will have to pay for. Thus, independent unit owners lose control of decisions plus financial control over their homes and investments. Finally, AIR/AIMCO states that they will control certain “Controllable Costs”, but not all costs, and certainly not insurance costs. But again, the details are what matter. AIR/AIMCO provides no guarantee that they can or will control costs, and if they cannot, they will simply pay a certain amount to the South Tower Association each year for 5 years. In other words, it appears that AIR/AIMCO is simply trying to purchase control of the South Tower and its Board of Directors, stretching the purchase price over 5 years, and financing the purchase with the money paid to them by the independent owners under the management contract.

➤ **What happens after 5 years?**

After 5 years, AIR/AIMCO has no further financial obligation to the independent unit owners. Thus, AIR/AIMCO will be able to do whatever they want. However, AIR/AIMCO retains control of the South Tower and its Board of Directors, forever. AIR/AIMCO also retains its multi-million-dollar management contract with the South Tower, forever.

➤ **Does AIR/AIMCO pay any money to independent unit owners?**

Absolutely not. AIR/AIMCO never pays any money to any unit owners.

➤ **Does AIR/AIMCO grant itself a contract to manage the South Tower?**

Absolutely. AIR/AIMCO grants itself a multi-million-dollar management contract, which lasts forever, that the independent owners must pay for.

➤ **What would Management of the South Tower look like?**

AIR/AIMCO would fire the current First Service management team and, most likely, the AIR/AIMCO team in the South Tower would take over. If independent owners needed anything, they would have to travel to the Center Tower and wait in line with all the AIR/AIMCO apartment renters. Furthermore, since this AIR/AIMCO management team could never be replaced, independent owners should not expect anything but poor service.

➤ **Do independent owners lose control of their homes and investments?**

Yes, they do. If AIR/AIMCO were to gain control of the South Tower and its Board of Directors, they would gain complete control of all decisions, and all financial control, over the homes and investments of all independent unit owners.

➤ **Does AIR/AIMCO guarantee against increases in monthly costs or special assessments?**

Absolutely not. AIR/AIMCO absolutely does not guarantee against an increase in your monthly maintenance. AIR/AIMCO also does not guarantee against increases in insurance costs. AIR/AIMCO also does NOT guarantee against special assessments in the future. Rather, the AIR/AIMCO-Board would decide exactly what assessments independent owners pay including: (1) special assessments decided and levied by the new AIR/AIMCO-Board, and (2) special assessments levied by the AIR/AIMCO parent company pursuant to the REA (the contract that governs the relationship between the South Tower and AIR/AIMCO).

➤ **Does this amendment include conflicts of interest for AIR/AIMCO?**

Yes, almost too many to discuss. First, an AIR/AIMCO-Board awards AIR/AIMCO a multi-million-dollar management contract. Second, an AIR/AIMCO-Board would be able to rubber-stamp-approve all special assessments levied on independent owners by the AIR/AIMCO-parent company under the REA. Third, an AIR/AIMCO-Board would have no incentive to enforce the

provisions of the REA against AIR/AIMCO, the contract that governs the relationship between the South Tower and the AIR/AIMCO. Fourth, an AIR/AIMCO-Board would have the power to excuse and forgive any damage caused by tenants of AIR/AIMCO owned units (e.g., the \$500,000 in elevator damage caused by one AIR/AIMCO tenant). And yes, there are other conflicts, but we think that is too many already.

➤ **Are there any protections for independent owners?**

No, not really. While the terms of the management contract awarded to AIR/AIMCO are supposedly negotiated by a committee of non-AIR/AIMCO owners, the AIR/AIMCO-Board not only selects the owners on the committee but is able to replace the owners at will.

➤ **Couldn't independent owners force AIR/AIMCO to honor the terms of our condo documents, their amendment and/or the REA?**

Not unless an owner is independently wealthy and has years of time. First, to enforce our condo declaration and/or bylaws, independent owners would have to sue the AIR/AIMCO-Board, but the AIR/AIMCO-Board would be able to keep the owner in court for years, easily costing the owner hundreds of thousands of dollars. Second, if AIR/AIMCO were to breach the terms of the REA, an AIR/AIMCO-Board is unlikely to enforce the terms of the REA against the AIR/AIMCO parent. And while it is unclear if independent owners could sue the AIR/AIMCO parent in order to enforce the REA, litigation with a multi-billion-dollar corporation such as AIR/AIMCO would subject owners to years of litigation and legal fees that could easily run into the hundreds of thousands of dollars (plus the risk of losing and having to pay the legal fees of AIR/AIMCO).



- **Does this amendment make it easier for AIR/AIMCO to terminate the South Tower condominium and force independent unit owners to sell their units and move out.**

Absolutely. Under our current condominium declaration, the South Tower condominium can only be terminated by the agreement and vote of all (100%) owners. The AIR/AIMCO amendment not only reduces this threshold immediately but makes it easier for AIR/AIMCO to reduce it even further in the future.

- **Does AIR/AIMCO guarantee that maintenance issues are always taken care of?**

Absolutely not. When AIR/AIMCO previously controlled the South Tower and its Board of Directors, they neglected many maintenance issues. We should expect nothing different from AIR/AIMCO in the future. As they say, a tiger does not change its stripes!

- **Would AIR/AIMCO renovate the South Tower?**

We don't know, but if AIR/AIMCO did renovate, independent unit owners would pay for it, most likely through a special assessment. There is no free lunch. Worse, if AIR/AIMCO were to control the South Tower, they would have the power to ignore the independent owners, and instead decide exactly what renovations would be done and exactly what special assessments the independent owners must pay.

## **NEW APARTMENT TOWER TO BE BUILT BY AIR/AIMCO**

- **Does AIR/AIMCO plan to build a new apartment tower on the Flamingo property?**

Yes. Two years ago, AIR/AIMCO attempted to construct a new apartment tower on the Flamingo property, which would have subjected the independent owners to a special assessment (according to their attorney Michael Larkin) plus increase owners' monthly maintenance costs (under the REA). This is an important project for AIR/AIMCO and is highlighted on many of their investor materials and/or SEC filings. If AIR/AIMCO were to regain control of the South

Tower and its Board of Directors, they would have the power to rubber-stamp-approve this new apartment tower and force the independent owners to pay for it. If the independent owners disagreed, they would have little to no recourse.

➤ **Why did the City of Miami Beach NOT approve the AIR/AIMCO apartment tower?**

The City of Miami Beach decided not to approve this new apartment tower when it learned that AIR/AIMCO was suing the South Tower to force it to consent to this project, the City at the time referring to AIR/AIMCO as a “bad corporate citizen.” In addition to suing the South Tower, the legal team for AIR/AIMCO including the current AIR/AIMCO director (and attorney) Ken Diamond, also threatened to sue several owners and board members personally, if they refused to consent to this new apartment tower. Shame on you AIR/AIMCO.

## **QUALITY OF LIFE**

➤ **What about construction noise?**

If AIR/AIMCO gained control of the South Tower and its Board of Directors, they would have the power to mass-renovate their 260 units at one time, thereby turning the South Tower into a construction, the accompanying construction noise making the units of independents owners unlivable and/or unrentable. This is what happened in the Center Tower when AIR/AIMCO decided to renovate. When AIR/AIMCO wanted to renovate the North Tower, they simply kicked all of their tenants out.

➤ **Would the South Tower be operated as an apartment building or a condominium?**

If AIR/AIMCO gained control of the South Tower and its Board of Directors, they would have the power to operate the South Tower as a commercial apartment rental building rather than as the high-end condominium that most independent owners want and are looking for.

➤ **What about maintenance issues?**

If AIR/AIMCO were to gain control of the South Tower and its Board of Directors, they would have the power to ignore maintenance and repairs to the South Tower, such as the roof, HVAC, fire safety system and many others, thereby enabling AIR/AIMCO to reduce costs and thus increase their profits.

➤ **Could AIR/AIMCO take ownership of the South Tower Marina?**

Previous board members have informed us independent owners that AIR/AIMCO wanted the South Tower to transfer at least part of the South Tower Marina to AIR/AIMCO, without any compensation to the South Tower. Apparently, AIR/AIMCO expected this transfer to happen, since they installed “Water Sports Rental” signs near the Center/North Towers and purchased actual water sports equipment. If AIR/AIMCO were to control the South Tower or its Board of Directors, they would have the power to complete such a transfer of our Marina to the detriment of all independent unit owners.

## **COMPANY-RISK AND AIR/AIMCO**

➤ **Is there any financial or market risk to the South Tower being too closely associated with AIR/AIMCO?**

Absolutely. There is nothing unusual about a real estate developer experiencing financial difficulty or even bankruptcy, especially in a rising interest rate environment. If AIR/AIMCO were to experience financial difficulties, AIR/AIMCO could seek to cut back on maintenance and other necessary spending at the South Tower, especially if this would reduce the costs associated with their owning 260 or more units.

➤ **Is there a risk if AIR/AIMCO has financial problems and AIR/AIMCO also controls the South Tower and its Board of Directors?**

Absolutely. There are too many risks to list but take one example. Currently, if a unit-owner stops paying his or her monthly maintenance, which does sometime happen, the Board of Directors, if necessary, can foreclose on the unit and sell the unit in the marketplace. But if a non-paying unit owner were also to control the Board of Directors, there would be little incentive for the Board of Directors to foreclose on his own delinquent units, to the detriment of all independent owners at the South Tower.

➤ **What about interest rate risk?**

Rising interest rates are always a risk for real estate developers, and we are in a rising interest rate environment. If rising interest rates pose a problem for AIR/AIMCO, we independent owners don't want AIR/AIMCO at the same time controlling the South Tower or its Board of Directors.