

THE SURF CLUB OF MARCO
AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM

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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
THE SURF CLUB OF MARCO, A CONDOMINIUM**

RECITALS:

In a Declaration of Condominium recorded at O.R. Book 1011, Pages 1316, *et seq.* of the Collier County Public Records on March 15, 1983; as subsequently amended, the Condominium developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that certain property situated in Collier County, Florida, more particularly described therein. The submission of the land to the condominium form of ownership by that document is and will remain effective. It is the desire of the Unit Owners, however, to operate with modernized documents free of internal conflicts and obsolete references to the developer. By adoption of this Amended and Restated Declaration of Condominium, the Association members hereby adopt certain amendments to the Declaration of Condominium and hereby restate the Declaration of Condominium and its Exhibits in its entirety. By adoption of this Amended and Restated Declaration of Condominium, the members of the Association ratify governance of the property under the condominium form of ownership and the provisions of Chapter 718, Florida Statutes, as amended from time to time.

AS AUTHORIZED BY THE PROVISIONS OF THE CONDOMINIUM ACT,
TIMESHARE ESTATES HAVE BEEN CREATED IN THE CONDOMINIUM.

ARTICLE I

1. **Name.** The name by which this condominium is to be identified is THE SURF CLUB OF MARCO, A CONDOMINIUM (hereinafter referred to as “Condominium”).

2. **Definitions.** The terms used in this Declaration and in the exhibits hereto, including the Articles of Incorporation, By-Laws, and the Management Agreement, shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires:

A. **Act or Condominium Act:** The Florida Condominium Act (Chapter 718 of the Florida Statutes), as it may be amended from time to time.

B. **Articles:** The Amended and Restated Articles of Incorporation of The Surf Club of Marco, Inc., as attached hereto as Exhibit “C”.

C. Assessments: A share of the funds required for the payment of Common Expenses, which from time to time are assessed against the Unit Owner, and such additional sums which may be assessed directly against the Unit.

D. Association: The Surf Club of Marco, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.

E. Association Property: That type of property including, but not limited to, all furnishings, fixtures and personal property contained within each Unit committed to interval ownership that are not the property of individual Owners, along with any and all real or personal property acquired by the Association, from time to time, for the use and benefit of the Unit Owners.

F. Board or Board of Directors: Means the Board of Directors of The Surf Club of Marco, Inc.

G. By-Laws: The Amended and Restated By-Laws of The Surf Club of Marco, Inc., as attached hereto as Exhibit "D".

H. Charge: Any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit 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 Condominium Documents.

I. Condominium Documents: This Amended and Restated Declaration of Condominium, the Amended and Restated Articles of Incorporation attached as Exhibit "C"; and the Amended and Restated By-Laws attached hereto as Exhibit "D".

J. Condominium Parcel: A Unit together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

K. Condominium Property: The land and personal property that are subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

L. County: The County of Collier, State of Florida.

M. Declaration or Declaration of Condominium: This instrument, and as it

may be amended from time to time.

N. Management Agreement: The agreement which provides for the duties and obligations of the Managing Entity.

O. Managing Entity: The person or entity responsible for the operating and maintaining the Condominium in accordance with the provisions of this Declaration, exhibits attached hereto and the Management Agreement.

P. Owner: Means the person, persons or entity owning a Time-share Estate.

Q. Rules and Regulations: Those rules and regulations promulgated by the Board of Directors, from time to time, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and limited common elements, subject to any limits set forth in this Declaration.

R. Time-share Estate: The period of time during a year when an Owner has the ownership interest in the Unit which, for this Condominium, will not be less than seven (7) continuous days as defined in Article IV of this Declaration, together with a remainder over in fee simple as tenant in common with all other Owners of time-share estates in that particular Unit, in the proportion set forth in Article IV of this Declaration.

S. Unit: That part of the Condominium separately identified in Article IV of this Declaration and designated on the Plot Plan (attached hereto as Exhibit "B" to this Declaration).

T. Unit Owners or Owners of a Unit: The Owners of all Time-share Estates in one particular Unit.

U. Voting Interest: The arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one (1) vote in the Association matters.

ARTICLE II

Operation. The operation of the Condominium shall be by the Association, THE SURF CLUB OF MARCO, INC., a corporation not-for-profit incorporated under the laws of the State of Florida. The Association shall operate pursuant to the provisions of this Declaration, the Articles (attached hereto as Exhibit "C"), the By-Laws (attached hereto as Exhibit "D"), and the Rules and Regulations promulgated by the Board of Directors from time to time.

ARTICLE III

1. **Statement of Condominium Declaration.** Deltona-Marco Properties, II, Inc. (a wholly-owned subsidiary of The Deltona Corporation) submitted the property described in Exhibit "A" hereto and as described above to the condominium ownership in accordance with Florida Statutes.

2. **Survey and Improvements.** Attached hereto and made a part hereof as Exhibit "B" is the Plot Plan containing a graphic description of the improvements constructed upon the Land, with a Certificate of Surveyor showing where units are located. Also indicated on the Plot Plan, attached hereto and made a part hereof as Exhibit "B", is an area designated as future parking area which area has been set aside in accordance with an agreement entered into with Collier County now assumed by the City of Marco Island. Should the City of Marco Island decide that the additional parking space is needed, the cost of constructing the parking area shall be assessed against all Owners as a special assessment in accordance with Section 8.4 of the By-Laws of the Association.

ARTICLE IV

1. **Timesharing Estate Ownership.** Units in the Condominium are being created and sold as Time-share Estates as defined in Article I of this Declaration and as defined in the Condominium Act. Each Unit is divided into fifty-two (52) Time-share Estates as identified and defined in Paragraph 2 of this Article. The Owner(s) of each Time-share Estate shall own the Time-share Estate conveyed to him, subject to the terms and conditions contained in the Declaration of Condominium and the Exhibits attached hereto, until December 31, 2040 at which date the Time-share Estate and the condominium form of ownership shall terminate unless the Condominium is sooner terminated in accordance with the provisions of this Declaration or unless the time-share regime of the Condominium is extended by agreement of the Unit Owners. Upon the termination of the Condominium, the Owner(s) of a Time-share Estate shall become tenants in common in the fee ownership of the Unit with all other Owners of all other Time-share Estates in that Unit and shall be entitled to all rights afforded to joint owners of property. In the event that the time-share regime is extended by agreement of the Unit Owners, the Owner(s) of a Time-share Estate shall own a one fifty-first (1/51) undivided interest in the Unit in which the Time-share Estate is located.

2. **Identification of Buildings, Units and Time-share Estates.**

A. The Condominium consists of forty-four (44) Units in one eight (8) story building as designated on the Plot Plan (Exhibit "B"). For the purpose of identification, each Unit has been numbered and assigned a condominium unit number identical to the identification

number shown on the graphic description of the improvements attached hereto and made a part hereof as Exhibit "B", and said Units are identified as follows:

Building One	Lobby Floor:	109 and 111
	Second Floor:	201, 203, 205, 207, 209, 211
	Third Floor:	301, 303, 305, 307, 309, 311
	Fourth Floor:	401, 403, 405, 407, 409, 411
	Fifth Floor:	501, 503, 505, 507, 509, 511
	Sixth Floor:	601, 603, 605, 607, 609, 611
	Seventh Floor:	701, 703, 705, 707, 709, 711
	Eighth Floor:	801, 803, 805, 807, 809, 811

Each Unit shall consist of fifty-two (52) Time-share Estates; however, one Time-share Estate shall be owned by the Association for maintenance purposes. Time-share Estates for Units shall be the seven (7) continuous days commencing at noon on Saturday and ending at noon on the next Saturday, except that Time-share Estate No. 52 may be fourteen (14) days in certain years, as hereinafter provided. Time-share Estate No. 1 is the seven (7) days commencing at noon the first Saturday in each year and ending at noon on the following Saturday. Time-share Estate No. 2 is the next seven (7) days commencing at noon on the Saturday that Time-share Estate No. 1 ends. Additional Time-share Estates follow in numerical order at the end of the prior Time-share Estate until Time-share Estate No. 52, which begins at noon on the Saturday that Time-share Estate No. 51 ends and continues until noon on the first Saturday of the following year.

3. Easements. Each Unit shall have and be subject to and have appurtenant thereto nonexclusive easements in the Common Elements designated for such purposes as ingress to, egress from, utilities services for, and support, and maintenance and repair of each Unit, and in the other Common Elements for use according to their respective purposes. If any part of the Common Elements encroaches upon any Unit or parking stall, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. The Association shall have the right, to be exercised by its authorized officers or agents, to enter each Unit, from time to time, during reasonable hours as may be necessary for the operation of the Association or for making necessary repairs therein necessary to prevent damage to any Unit

or the Common Elements.

4. Common Elements.

A. The Common Elements shall include the land and all other parts of the Condominium which are not within the above-described Units, and tangible personal property required for the maintenance and operation of the Condominium.

B. Each Unit shall have appurtenant thereto an undivided interest as hereinafter set forth, in the Common Elements of the Condominium. The fee title to each Time-share Estate shall include both the Time-share Estate and the equal undivided interest in the Common Elements; and said undivided interest shall be deemed to be conveyed or encumbered with its respective Time-share Estate even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the time-share estate. Any attempt to separate the time-share estate from the undivided interest in the Common Elements appurtenant to each time-share estate shall be null and void.

C. The Common Elements shall remain undivided and no Owner shall bring any action for partition.

D. The Owners of the respective Units agree that if any portion of a Unit or Common Element encroaches upon another, a valid easement for the encroachment and the maintenance of same so long as it stands, shall and does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, the Owners of the Units agree that encroachments of the parts of the Common Elements or the Units, as aforescribed, due to construction, shall be permitted, and that a valid easement for said encroachment and maintenance thereof shall exist.

5. Ownership of Common Elements. The collective Owners of each Unit shall own an undivided one forty-fourth (1/44) interest in and to the Common Elements.

ARTICLE V

Maintenance, Alteration and Improvement.

1. The Association shall maintain, repair and replace at the Association's expense all portions of the Condominium including the Common Elements and Units, except that an Owner shall be responsible for the cost to repair and/or replace any part of the Condominium or Unit damaged by such Owner, the Owner's guest, invitees or licensees, which damage is intentionally caused, caused by each person's negligence, or a result of abuse or misuse.

2. No Owner shall: (a) make or cause to be made any addition, alteration, decoration, painting, repair, replacement or change to the Common Elements or Unit; (b) place any sign, advertisement or notice of any type on any part of the Condominium; or (c) erect any antenna or aerial, except in each instance, with the prior written consent of the authorized officer(s) or agent(s) of the Association.

3. The Association shall not make any material alterations or substantial additions to the Condominium except by a vote of a majority of the Owners present in person or by proxy at a regular or special meeting of Owners called for that purpose. For purposes of this provision, it shall not constitute a material alteration or substantial addition for the Board of Directors to perform any of its rights or obligations with respect to Association Property as described in Section 8 of this Article V.

4. The Board shall determine the color scheme of all portions of the Condominium.

5. The Association, by the authorized officer(s) or agent(s), may enter into a contract with any firm, person or corporation for the maintenance, management, operation, or repair of the Condominium or any part of the Condominium or any part of the Condominium including the Unit, and may join with other associations in contracting with the same firm, person or corporation for the maintenance, operation, and/or repair of the Condominium or any part of the Condominium including the Unit.

6. In the event an Owner makes any additions, alterations, decorations, painting, repairs, replacements, or change to the Common Elements or Unit without the required consent or otherwise violates or threatens to violate the provisions of this Article, the Association shall have the right to proceed in a court of competent jurisdiction for any injunctive to seek compliance with the provisions of this Article. In lieu, thereof, and in addition thereto, the Association shall have the right to levy a charge against the Time-share Estate of the Owner responsible, for such sums as may be necessary to restore the property.

7. Notwithstanding the foregoing provisions of this Article, the obligations and duties of the Association may be carried out by the Managing Entity in accordance with the provisions of the Management Agreement.

8. The Board of Directors, from time to time, without the vote of the Unit Owners, has the right and obligation to acquire, maintain, repair, alter, rearrange, improve, remove, replace, sell, transfer, convey, or otherwise dispose of any or all Association Property, as the same exists from time to time. All expenses associated with such actions by the Board of

Directors representing such Association Property shall be Common Expenses (or if such Association Property is contained in a Unit committed to interval ownership shall be assessed as Maintenance Fees or a charge). This right shall be deemed to apply to Section 3 of this Article V.

ARTICLE VI

1. Common Expenses and Common Surplus. The Common Expenses of the Condominium shall be assessed against the Owners as set forth in the By-Laws. Should there be a surplus, such surplus shall be shared by Owners, subject to the provisions of Chapter 617, Florida Statutes. Both Common Expenses and Common Surplus shall be shared by Owners of each Unit according to their undivided interest in the Common Elements and in the Unit as set forth in Article IV of this Declaration.

2. Assessments and Charges. Each Owner shall pay an amount as hereinafter specified to the Association for the usual and ordinary expenses associated with the operation, maintenance, repair, replacement and restoration of the Condominium, its Common Elements and units. Said sum or sums are hereinafter referred to as the "Assessments."

A. Each Owner, commencing with the year title to the Time-share Estate is transferred, shall pay an annual assessment to the Association in an amount assessed by the authorized officer(s) or agent(s) of the Association pursuant to a properly approved annual budget. Each Owner shall be responsible for a share of the Common Expenses equal to the Owner's undivided interest in the Unit as set forth in Article IV of this Declaration. The total undivided interest of the Owners of each Unit shall equal each Unit's undivided interest in the Common Elements of the Condominium as set forth in Article IV of this Declaration. Said share shall be paid to the Association in the manner provided for in the By-Laws.

B. In addition to assessments, each Owner shall be obligated to pay any Expense, other than Common Expenses classified as "Assessments", hereinafter referred to as "Charges", as applicably attributable to the Owner's Time-share Estate or use of the Condominium Property or facilities available to time-share estate occupants, including, but not limited to, ad valorem taxes, special assessments, personal property taxes, charges incurred as a result of the use of the facilities, charges for extraordinary repairs or maintenance, and departure charge.

C. The determination and collection of assessments and charges against Owners shall be pursuant to Section 8 of the By-Laws and subject to the following provisions:

(1) Assessments and charges that are unpaid for over thirty (30) days after

due may bear interest at the highest legal rate and may be assessed a late fee; all payments on account shall be first applied to interest and then to the assessment and charge payment first due. The Board may implement more lenient dates for imposition of interest and late fees, from time to time, by majority vote.

(2) The Association shall have the right to place a lien on a Time-share Estate for any unpaid assessments and/or charges, with interest thereon. Such lien shall also secure reasonable attorney's fees incurred by the Association incident to the collection of such assessment and charges or enforcement of such lien. Said lien shall be effective from and after the date of its recording in the manner provided in the Condominium Act, and shall have priorities established by the Condominium Act.

(3) In addition to the other rights available to the Association provided for in these documents, the Association shall have the right to refuse to permit an Owner, the Owner's invitees, licensees or tenants the use of the Time-share Estate or use of the Common Elements of facilities of the Condominium, unless and until all assessments and/or charges have been paid as hereinafter provided.

(4) Liens for assessments and/or charges may be foreclosed in the manner provided for in the Condominium Act, including non-judicial foreclosure. In any foreclosure of a lien for assessments and/or charges, the Owner of the Time-share Estate subject to the lien may be required to pay reasonable rental for the Time-share Estate, and the lienor may be entitled to the appointment of a receiver to collect such rent. The Association shall have the power to bid on the mortgage and convey the same. Nothing herein, however, shall be construed to prevent maintenance of a suit to recover a money judgment for unpaid assessments and/or charges, and the maintenance of such a suit shall not be deemed a waiver of the lien securing same.

(5) When the first mortgagee of the mortgage of record or other purchaser of a Time-share Estate obtains title to the Time-share Estate as a result of a foreclosure, or a result of a deed given in lieu of foreclosure, such acquirer of title, his or her successors and assigns; shall not be liable for the share of assessments or charges due to the Association pertaining to such Time-share Estates, which became due prior to acquisition of title as a result of such foreclosure, unless such share is secured by a claim of lien for assessments and/or charges that are recorded prior recording of a foreclosed mortgage. Such unpaid share of assessments and/or charges shall be deemed to be Common Expenses collectable from all of the Owners including such acquirer, and his or her successors and assigns. A first mortgagee acquiring title to a Time-share Estate as a result of foreclosure or a deed in lieu of foreclosure, may not, during the period of its ownership of such Time-share Estate, whether or not such time-share is occupied, be excused from the payment of some or all of the Common Expenses and charges coming due during the period of such ownership.

(6) Except as provided in (5) above, no Owner may be excused from the payment of the Owner's proportionate share of the Common Expense or charges unless all Owners are likewise proportionately excused from such payment.

D. No Owner may exempt him or herself from liability for the Owner's contribution toward the Common Expenses, assessments or charges by waiver of the use and enjoyment of any Common Elements, or by the abandonment of the Owner's Time-share Estate.

ARTICLE VII

Insurance.

1. The Association shall obtain and maintain at all times the insurance listed below. The named insured in all insurance policies upon the Condominium Property shall be the Association individually and as agent for the Owners, without naming them, and first mortgagees of the Time-share Estates as their interests may appear. All original policies shall be held by the Association and certificates of insurance shall be furnished to first mortgagees and to other mortgagees upon request.

A. **Liability Insurance:** Public liability insurance covering all parts of the Condominium including the Common Elements and the Units and insuring the Association and the Owners as their interest appear, in such amounts as the Association by its authorized officer(s) or agents(s) may determine from time to time, provided that the minimum amount of coverage shall be \$500,000. Premiums for such insurance shall be chargeable as a Common Expense to be assessed against any paid by each of the Owners in the proportions set forth above in Article IV.

B. **Casualty Insurance:** Casualty insurance insuring against vandalism, malicious mischief, fire, windstorm and extended coverage insurance, insuring all of the insurable improvements upon the land and all personal property included in the Common Elements and units for a minimum of eighty percent (80%) of the full replacement value, together with such other insurance as the Board deems necessary. Premiums for such insurance shall be chargeable as a Common Expense to be assessed against and paid by each of the Owners in the proportion set forth above in Article III. The Board shall annually make an analysis to determine replacement costs for the ensuing year.

C. Such other insurance as the Board shall determine from time to time to be desirable.

2. Premiums for such insurance shall be chargeable as a Common Expense to be assessed against and paid by each of the Owners in the proportions set forth in Article IV.

3. In the event a loss occurs for which proceeds of insurance policies are received, payments under the policies shall be disbursed and expended in the following manner:

A. As soon as a loss occurs, the Association may (but is not obligated to) designate a bank or trust company having trust powers chartered in Florida and having an office in Collier County, Florida as the Insurance trustee to receive payment of proceeds of such insurance policies. The Association shall request the insurance company to make the draft in payment of the claim, to the Association and Insurance Trustee jointly. The authorized officer(s) or agent(s) of the Association shall endorse the draft to the Insurance Trustees, which shall deposit the funds into a special account to be used and/or paid as hereinafter provided.

B. If the damage for which the proceeds are paid is to be repaired or reconstructed, the Insurance Trustee shall pay the proceeds to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, each Owner's share being the same as the undivided interest in the Unit and in the Common Elements appurtenant thereof. Such proceeds shall be paid to Owners and their mortgagees jointly.

C. If it is determined in manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners by the Insurance Trustee, each Owner's share being equal to the undivided interest in the Unit and in the Common Elements appurtenant thereto. Remittances shall be paid to Owners and their mortgagees jointly.

4. The Association is irrevocably appointed agent for each Owner and for each holder of a mortgage or other lien upon a Time-share Estate and for each Owner of any other interest in the Condominium Property, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

5. Owners may obtain insurance coverage at their own expense for their personal liability and living expense.

ARTICLE VIII

Reconstruction or Repair after Casualty.

1. If any part of the Condominium Property shall be damaged by casualty, a decision as to whether or not it shall be reconstructed or repaired shall be determined in the following manner:

A. Lesser Damage: If Units to which at least fifty percent (50%) of the Common Elements are appurtenant are found by the Association to be tenantable after the casualty, the damaged property shall be reconstructed or repaired by the Association.

B. Major Damage: If Units to which more than fifty percent (50%) of the Common Elements are appurtenant are found by the Association to be not tenantable after the casualty, a decision as to whether the damaged property will be reconstructed or repaired or the Condominium terminated shall be determined in the following manner:

(1) Immediately after the casualty, the Board shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(2) Immediately the determination of the amount of insurance proceeds, the Board shall give notice to all Owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of the insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of the insurance proceeds.

(3) If reconstruction and repair costs per unit week (not including Association-owned weeks) do not exceed the available insurance proceeds plus the then annual maintenance fees for operating and reserve funding for each unit week (not including Association-weeks) the property shall be reconstructed and repaired in accordance with paragraph 4 below.

(4) If the reconstruction and repair costs per unit week (not including Association-owned weeks) exceed the insurance proceeds plus the then annual maintenance fee for operating and reserve funding for each unit week (excluding Association-owned weeks), the Board shall give notice to all Owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds; and such notice shall announce a meeting of Owners to be held within sixty (60) days from the mailing of such notice. If the reconstruction and repair is approved at such meeting by

the Owners of eighty percent (80%) of the Common Elements, the damage to property shall be reconstructed and repaired; or if not so approved, the Condominium shall be terminated without agreement and any proceeds from insurance plus the sale of the Condominium property shall be distributed as provided in Article XIII of this Declaration. Such approval may be expressed by personal vote at the meeting, or by proxy developed by the Board, or in writing filed with the Association at or prior to the meeting at an address to be provided in the notice. This writing may be transmitted by regular U.S. Mail, or by third party carrier, by personal delivery, by facsimile transmission, or by any electronic means provided for in the notice. All expenses of this process shall be assessed against all Owners in proportion to their share in the Unit and in the Common Elements.”

2. Any reconstruction of repair must be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached hereto as exhibits; or if not, then according to plans and by the Owners of not less than eighty percent (80%) of the Common Elements, including the Owners of damaged Units and Owners of Units whose plans are intended to be altered, which approvals shall not be unreasonably withheld.

3. If the damage is the responsibility of a Time-share Estate Owner as provided in Article V hereof, then the Owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility for reconstruction and repair after casualty shall be that of the Association.

4. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payments of the costs thereof are insufficient, notwithstanding anything to contrary contained herein, assessments shall be made against all Owners in sufficient amount to provide funds for the payment of such costs. Such assessments shall be in proportion to the Owner’s share in the Unit and in the Common Elements.

ARTICLE IX

1. **Condemnation.** In any case at any time or times the Condominium property or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all proceeds paid for or on account of such taking shall be payable to the Association as trustee for all Owners and mortgagees according to the loss or damage to their respective interests in the Condominium Property, as follows:

A. If such taking does not reduce or make untenable any of the Units, said proceeds shall be used promptly to replace or restore improvements taken upon the affirmative vote eighty percent (80%) of the Owners. In the event eighty percent (80%) in number and in

common interest of the Owners do not approve the replacement and restoration of the property so taken, the proceeds shall be distributed to the Owners in proportion to the impairment of their respective interests.

B. If such taking reduces or makes tenantable any of the Units in the building, the proceeds shall be distributed to the Owners and the mortgagees affected by such taking jointly and in proportion to the impairment of their respective interest. The shares in the Common Elements appurtenant to the Units which continue as part of the Condominium shall be equitably adjusted to distribute the ownership of the Common Elements among the reduced number of Units and Owners of such Units.

C. If such taking reduces or makes untenable Units in the building, the proceeds shall be distributed by the Association in the same manner as insurance proceeds as provided above unless eighty percent (80%) in number and in common interest of the Owners vote to restore or replace the portions of the Condominium Property so taken. In the event the Owners approve the restoration and replacement of said property, the Association shall disburse the award to contractors engaged in such replacement and restoration in appropriate progress payments; provided, however, any such replacement or restoration must be according to the plans and specifications approved by the Association and by the Owners of not less than eighty percent (80%) in number and in common interest of the Condominium. If the award is not sufficient to pay the cost of such replacement and restoration, then additional assessments may be made against Owners as provided in the By-Laws.

ARTICLE X

1. Use Restrictions. The Owner of a Time-share Estate shall occupy and use the Time-share Estate as a dwelling for the Owner, the members of the Owner's family, invitees, licensees, and tenants, as provided herein, and as further provided in the House Rules referenced in Section 2 of this Article X, and for no other purposes. The Owner or occupant shall not permit or suffer anything to be done or kept in the time-share estate which will increase the rate of insurance on the Condominium Property or which will obstruct or interfere with the rights of other Owners or annoy them by unreasonable noise, smells or otherwise; nor shall the Owners or occupants commit or permit any nuisances, immoral or illegal acts in or about the Condominium Property. Further use restrictions shall be established within the sole discretion of the Board, and may be modified from time to time as determined by the Board.

2. House Rules. Reasonable regulations concerning the use of the Condominium Property may be made and amended from time to time by the Board or Managing Entity with consent of the Board. Copies of such regulations and House Rules shall be furnished by the Managing Entity to all Owners and occupants of the Condominium upon check-in.

ARTICLE XI

1. **Managing Entity.** The Association may, from time to time, enter into an agreement with such persons, firms or entities for the management of the Condominium and for the fulfillment of the obligations of the Association. Each Owner, the Owner's successors and assigns, shall be bound by the terms of the Management Agreement or any other management agreements entered into by the Association and shall abide by the rules and regulations imposed by the Managing Entity as authorized by the terms of this Declaration or the exhibits attached hereto.

2. **Termination of Management Agreement by Owners.** If at any time the Association or any Owner(s) feels that the Managing Entity is not properly carrying out the obligations required of it in managing the Condominium or that it is not acting in the best interest of the Condominium, the Association or the Owners, the Association may discharge the Managing Entity with or without cause in the manner provided for in Section 721.14, Florida Statutes, as amended from time to time.

3. **Provisions of Management Agreement.** Any management agreement entered into by the Association shall provide for the management of the Condominium in accordance with the provisions and obligations as set forth in this Declaration, the exhibits attached hereto and the Condominium Act. The provisions of any new or renegotiated management agreements may be changed by the Association or by a vote of Owners, to provide for such additional matters as may be necessary or desirable in the performance of the management of the Condominium. Any such management agreement can be for such duration as the Association deems to be in the interest of the Condominium or can provide for termination upon written notice.

ARTICLE XII

1. **Ownership of Time-share Estates.** As provided for in the By-Laws, the Secretary of the Association shall maintain a list of the names and mailing addresses of Owners, which shall constitute a roster of Owners. The roster shall be maintained from evidence of ownership furnished to the Association from time to time to substantiate the holding of membership and from changes of mailing addresses furnished from time to time. Each Owner shall furnish to the Association a copy of the recorded evidence of the Owner's title substantiating the Owner's ownership of a Time-share Estate. Any transfer of ownership of a Time-share Estate may require the payment of the reasonable costs, as determined by the Board, to cover the cost of changing the records of the Association and to verify the status of assessments and charges due with regard to the Time-share Estate, but shall not exceed the maximum permitted by law. Except as otherwise provided in this Declaration, the Articles of

Incorporation, By-Laws or Rules and Regulations, subsequent Owners of Time-share Estates shall be obligated to pay all outstanding assessment and charges due with respect to the Time-share Estate purchased by such person. The Association shall have the right to place a lien on any Time-share Estate for any assessments of charges, including the charge of membership charge as provided for herein, which are outstanding, as provided for in Article VI of this Declaration and/or Section 8 of the By-Laws.

2. **Use of Time-share Estates.** Time-share Estates shall be used in accordance with the provisions of this Declaration, the By-Laws and the Rules and Regulations as those documents presently exist or as they may hereafter be amended or changed.

3. **Holding Over After End of Time-share Estates.** If any occupant of a Unit fails to vacate the Unit on or before the checkout time provided for in the Rules and Regulations, the Managing Entity or the Association shall take such action as it deems necessary to have such person(s) removed from the Unit. However, should an occupant of a Unit become ill or unable to vacate the Unit for some reason which is beyond their control, the Association shall use its best efforts to secure alternative accommodations for the person(s) who is entitled to occupy the Unit but is unable to do so because of the holding over of a prior occupant. In such instance, such holdover shall only be charged the actual costs and expenses of providing other accommodations to the person(s) who is entitled to use the Unit. In all instances where the person(s) who is entitled to use a Time-share Estate is unable to do so for any reason whatsoever, including but not limited to the holding over of a prior occupant or the damage or destruction of the Unit, the Association shall use its best efforts to find alternate accommodations for such person(s) who is entitled to occupy a Time-share Estate but who is unable to do so. Such accommodations shall be as near in value as is possible to obtain, to that which the person(s) is entitled to occupy. The Association and the Managing Entity shall be entitled to permit such person(s) who are unable to occupy a Time-share Estate for the reasons set forth herein, the use of another Unit or Time-share Estate that is not expected to be occupied because the person(s) entitled to use the Time-share Estate has given notice that he will not occupy the Unit, has failed to give notice that he would occupy the Unit, or because assessments and charges remain unpaid.

ARTICLE XIII

Termination.

1. If it is determined in the manner provided in Article VIII that the Condominium shall not be reconstructed from major damage, the condominium plan of ownership will be thereby terminated without further agreement.

2. Otherwise, the Condominium may be terminated upon the affirmative vote of at

least eighty percent (80%) of the Owners and with the approval of at least eighty percent (80%) of the holders of all liens and encumbrances affecting any of the Time-share Estates. The proposed termination shall be submitted to a vote at a meeting of the Owners. Notice of the proposed termination shall be stated in the notice of the meeting.

3. Immediately after consent of eighty percent (80%) or more of the Owners has been obtained, every Owner shall immediately convey by Warranty Deed to the Association all of said Owner's right, title and interest to the Owner's Time-share Estate and to the Condominium, provided the appropriate Association officers and employees have been adequately bonded. Thereupon, all Owners shall become tenants in common in the Condominium Property and shall receive payment for the Owner's interest in the Condominium Property as hereinafter provided. The Association or any member shall have the right to enforce such conveyance by seeing specific performance in a civil court.

4. The Board of Directors shall then sell all of the property, upon terms approved by a majority of all Owners and first mortgagees, at public or private sale. Upon the sale of said property, the costs, fees and charges for effecting said sale, the cost of liquidation and dissolution of the Association, and all obligations incurred by the Association in connection with the management and operation of the property up to and including the time when distribution is made to the Owners, shall be paid out of the proceeds of said sale, and the remaining balance (hereinafter referred to as "net proceeds of sale") shall be distributed to the Owners in the manner set forth below.

5. The distributive share of each Owner in the net proceeds of sale, though subject to the provisions hereinafter contained, shall be determined by multiplying the net proceeds of the sale by a fraction in which the numerator will be the amount of the real estate tax assessment as shown on the most recent tax statement, regarding the fair market value of that unit week, and the denominator will be the aggregate of the amount shown on the most recent real estate tax assessment regarding fair market value of all owned unit weeks. For purposes of this Article, unit weeks owned by the Association shall not be included in the aggregate value to be set forth as the denominator. The provisions herein above and hereinafter contained for determining the distributive share of each Owner will prevail over the provisions of Article IV.

6. Upon the termination of each Owner's share, as above provided for, the Association shall pay out of each Owner's share all mortgagees and other liens encumbering said Time-share Estate in accordance with their priority. Upon such payments being made, all mortgagees and lienors shall execute and record satisfactions or releases of their liens against said Time-share Estates, regardless of whether the same are paid in full. Any lien remaining unpaid shall be transferred to the undivided share in the Condominium Property attributable to the Time-share Estate originally encumbered by the lien in its same priority. Thereupon, the

Board of Directors shall proceed to liquidate and dissolve the Association and distribute the remaining portion of each distributive share, if any, to the Owner(s) or lienors entitled thereto. If more than one person has any interest in a Time-share Estate, the Association shall pay the remaining distributive share allocable to such Time-share Estate to the various Owners of such Time-share Estate, expecting that if there is dispute as to the validity, priority or amount of mortgages or liens encumbering a Time-share Estate, then payment shall be made jointly to all Owner(s) of such Time-share Estate and the holders of the mortgages and liens encumbering the said Time-share Estate.

7. As evidence of the Owners' resolution to terminate, passed by the required vote or written consent of the Owners, the President and Secretary of the Association shall effect and place in the Public Records of Collier County, Florida, an affidavit stating that such resolution was properly passed or approved by the Owners and shall also record the written consent, if any, of first mortgagees to such termination.

8. After such an affidavit has been recorded and all Owners have conveyed their interest in the time-share estate and in the Condominium to the Association and the Association has conveyed the property to the purchaser, the title to said property thereafter shall be free and clear from all restrictions, reservations, covenants, conditions and easements set forth in this Declaration and the exhibits attached hereto, and the purchaser and subsequent grantees of any of said property shall receive title to said lands free and clear thereof.

9. This section concerning termination cannot be amended without the affirmative vote of eighty percent (80%) of all Owners and holders of all liens and encumbrances affecting any of the Time-share Estates.

ARTICLE XIV

Voting Rights. Owners of each Time-share Estate, except for the Time-share Estates owned by the Association, whether for maintenance purposes or otherwise, as members of the Association, shall have one (1) vote for each Time-share Estate owned by such Owner; provided, however, in the event that a Time-share Estate is owned by more than one person, the persons owning said Time-share Estate are entitled to cast a single vote in the manner provided in the By-Laws. Association owned weeks, whether for maintenance or otherwise, shall not be entitled to vote. Those Units owned by the Association, whether for maintenance purposes or otherwise, that are not entitled to vote, shall not be included in the total number of unit weeks for determining a quorum or for determining the number of votes needed for or against a particular proposal.

ARTICLE XV

Method of Amendment of Declaration.

1. This Declaration may be amended at regular or special meeting of the Owners of this Association called and convened in accordance with the By-Laws of the Association in the following manner:

A. Notice of subject matter of proposed amendment shall be included in the notice, if any, of the meeting at which the proposed amendment is considered. The method of delivery of proposed amendments shall be any manner permitted under the By-Laws.

B. A resolution for the adoption of a proposed amendment may be adopted by a vote of sixty-six and two-thirds percent (66 2/3%) 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. In other words, if a quorum is present and voting, the voting shall be valid, and the amendment shall carry if two-thirds (2/3rds) of those voting have voted in favor of the amendment. If at any time, Florida law mandates a vote by a higher percentage of the voting interests, that law shall control for so long as it is in effect. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote. The amendment shall be adopted upon it receiving a simple majority of those votes cast by the Board.

Provided, however, that no amendment shall discriminate against any Owner nor against any Time-share Estate or any Unit or class or group of Units, unless the Owners so effected shall consent.

2. **Automatic Amendment.** These Articles shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium. Whenever Chapter 718, Florida Statutes, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Articles, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to these Articles as the Board deems necessary to comply with such operational changes as may be enacted by future amendment to Chapters 607, 617 and 718, Florida Statutes, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

3. An amendment properly adopted shall be evidenced by attaching the amendment to a certificate certifying that the amendment was duly adopted, which certificate shall be

executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and the amendment are recorded in the Public Records of Collier County, Florida.

ARTICLE XVI

Miscellaneous Provisions.

1. All restrictions, reservations, covenants, conditions and easements contained in this Declaration shall constitute covenants running with the land and shall run perpetually unless terminated as provided herein and shall be binding upon all Owners and in consideration of receiving and by acceptance of grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions hereof, and by the Articles of Incorporation, By-Laws, Rules and Regulations, and the Management Agreement.

2. Wherever a director, officer, employee or agent of the Association is required by this Declaration or the By-Laws attached hereto, to be bonded, the Association shall pay all expenses arising out of the procurement and maintenance of such bonds.

3. If any provisions of this Declaration or of the exhibits attached hereto, or of the Condominium Act, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Declaration, the exhibits attached hereto, or the Condominium Act, and the application of any such provisions, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

4. Whenever notices are required to be sent hereunder, the same may be sent to the Owners, at the discretion of the Board of Directors or an officer of the Association, either by regular mail with a post office certificate of mailing as proof of such mailing or by certified mail to their last known address given to the Association by such Owner. Notices to the Association or to the managing entity, shall be delivered by certified mail to the principal office of the Association as set forth in the By-Laws. All notices shall be deemed and considered sent when mailed. Any party may change the party's mailing address by written notice.

5. Each Owner shall be governed by and shall comply with the terms of this Declaration, the Articles of Incorporation, By-Laws, Rules and Regulations, the Management Agreement and the Condominium Act. Should the Association find it necessary to bring court action to enforce compliance with the law, this Declaration and/or the exhibits attached hereto, upon a finding by the court that the violation complained of is willful, the Owner so violating shall reimburse the Association for reasonable attorney's fees incurred by it in bringing the

action, as determined by the court, together with the court costs.

6. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the singular shall include the plural, and the plural shall include the singular. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation of the Condominium.