

CERTIFICATE

OFF. REC: 1531 PC1875

1451355

THIS IS TO CERTIFY THAT:

An Amendment to the Declaration of Condominium of Casa Ybel Beach and Racquet Club, Phase G, a Condominium, according to the Declaration of Condominium thereof, recorded in the Public Records of Lee County, Florida, in Official Records Book 1478 at Page 2171, et seq., was duly adopted and approved, pursuant to the requirements of said Declaration of Condominium by more than fifty-one percent (51%) of the total vote of the members of Casa Ybel Beach and Racquet Club Condominium Association, Inc., at the annual meeting of Casa Ybel Beach and Racquet Club Condominium Association, Inc., held on February 5, 1981. Said Amendment is attached hereto and made a part hereof as Exhibit "A".

EXECUTED at Sanibel Island, Florida, this 13 day of

April, 1981.

Signed, sealed and delivered in the presence of:

James Peeri
James Mitchell

CASA YBEL BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

(Corporate Seal)

STATE OF FLORIDA)
) SS:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me by Allen Teabrock and R. Rauschke President and Secretary respectively of CASA YBEL BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation on behalf of the said corporation this 13 day of April, 1981.

James Peeri
NOTARY PUBLIC

MY COMMISSION EXPIRES:
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES ON 12/31/81

RECORDED - 1531 - 1451355
BY C. WEAVER, JR. D.C.

EXHIBIT A

AMENDMENT TO
DECLARATION OF CONDOMINIUM
OF

CASA YBEL BEACH AND RACQUET CLUB, PHASE G, A CONDOMINIUM

The Declaration of Condominium of CASA YBEL BEACH AND RACQUET CLUB, PHASE G, a Condominium, recorded in Official Records Book 1478, at Page 2171, et seq., of the Public Records of Lee County, Florida, is amended as follows:

1. Article IX is amended to read:

MAINTENANCE FEE FOR UNITS
COMMITTED TO INTERVAL OWNERSHIP

All Owners of Unit Weeks in Units committed to Interval Ownership shall pay a "maintenance fee". The maintenance fee shall include the following items, if applicable:

The Unit's share of common expenses, as set forth in Paragraph VIII, above;

Repair and upkeep of the Unit for normal wear and tear (example - repainting interior walls);

Repair and replacement of furniture, fixtures, appliances, carpeting and utensils;

Casualty and/or liability insurance on the Unit;

Utilities for the subject Unit;

Personal property, real estate, and any other applicable taxes not billed directly to the Owners of the Unit Weeks in the Unit;

Recreational facilities memberships for the Unit;

Any other expenses incurred in the normal operations and maintenance of the Unit which cannot be attributed to a particular Unit Week Owner.

The maintenance fee shall be prorated among all Owners of Unit Weeks in a specific Unit by applying a fraction, the numerator of which is the number of Unit Weeks owned by a specific Owner, the denominator of which is fifty-one (51), to the total of all such expenses. The foregoing shall not apply to any Unit Week conveyed to the Association.

Notwithstanding any other provision of Article IX, the Board of Directors may at their option, make a determination to exclude from the maintenance fee all or part of the personal property, real estate, and any other applicable taxes not billed directly to the Owners of the Unit Weeks in any Unit committed to Interval Ownership. In the event the Board of Directors makes such a determination, then the Owners of Unit Weeks shall be separately assessed for said taxes based upon the formula provided for herein for the proration of the maintenance fee.

2. Article XV is amended to read:

INSURANCE PROVISIONS

1. INSURANCE

A. Purchase of Insurance: The Association shall obtain the insurance described herein together with such other insurance as the Association deems necessary in and for the interest of the Association, all Unit Owners and their Mortgagees, as their interests may appear. The premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as part of the common expense. The named insured shall be the Association, individually and as Agent for the Unit Owners, without naming them, and as Agent for their mortgagees.

Provision shall be made for the issuance of Mortgage endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Such policies shall provide that payments for losses hereunder by the insurer shall be made to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee or upon the written request of the Developer with such party as the Developer shall designate. All Institutional Mortgagees who own and hold a first mortgage on a Condominium Unit or Unit Week shall have a right to receive a certified copy of the insurance policy(s) which are obtained pursuant to this Article XV, and the party responsible for obtaining said policy(s) shall (a) cause certified copies of said policy(s) to be delivered to all Institutional Mortgagees upon receipt of same, (b) cause to be delivered to all Institutional Mortgagees, not later than 30 days prior to the expiration of any insurance policy, a certified copy of a binder or certificate of the insurer evidencing the replacement thereof and not later than 15 days prior to the expiration of such policy(s), a certified copy of the new policy(s), and (c) cause to be delivered to all Institutional Mortgagees, evidence as to the payment of all premiums due on insurance policies obtained, pursuant to this Article XV. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

B. Coverage:

(1) Casualty. All buildings and improvements upon the Condominium Property shall be insured in an amount which shall be not less than eighty (80%) percent of the full insurable value (actual replacement value), and all personal property included in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors of the Association in accordance with generally accepted insurance practices. Such coverage shall afford protection against:

- (a) Loss or damage by fire, flood, lightning and such other risks as are included in coverage of the type known as the broad form of supplemental or extended coverage; and
- (b) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Property, including but not limited to, vandalism and malicious mischief.

(2) Public Liability including personal injury and property damage, insurance applicable to the Condominium Property in such amounts as shall be determined annually by the Board of Directors of the Association.

(3) Insurance On Units Committed to Interval Ownership. The Board of Directors of the Association, shall obtain casualty and liability insurance, as needed, on all Units committed to Interval Ownership, in such amounts and with such coverage as shall be determined annually by the Board of Directors which shall include, but not be limited to additional living expense coverage. The named insured shall be the Association, individually and as agent for all off the Unit Week Owners in each such Unit, without naming them, and as agent for their mortgagees. The premiums shall be a part of the maintenance fee. All losses thereunder shall be payable to the Insurance Trustee hereinafter designated. All such proceeds shall be used for the purpose of repair or replacement of any loss, or in the event such loss is not to be repaired or replaced, as determined elsewhere, to be divided among all Owners of Unit Weeks in such Unit in accordance with Exhibit No. 6, to the Declaration. Any deficit or overage in such proceeds, after repair or replacement, shall be divided among all such Owners of Unit Weeks in that Unit in accordance with Exhibit No. 6, to the Declaration. Deficits shall be treated as part of the maintenance fee next due.

(4) Workmen's Compensation policy to meet the requirements of law.

(5) Such Other Insurance as the Board of Directors of the Association shall determine from time to time desirable.

C. Premiums: Premiums upon insurance policies other than insurance policies on Units committed to Interval Ownership, as provided for herein, purchased by the Association, shall be paid by the Association as a common expense.

D. Insurance Trustee; Shares of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the insurance trustee, which shall be designated by the Board of Directors and which shall be any bank or trust company in Florida with trust powers. The insurance trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

(1) Common Elements. Proceeds on account of damage to Common Elements - an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(2) Condominium Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

- (a) When the Building is to be Restored - For the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.
- (b) When the Building is Not to be Restored - An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(3) Mortgagees. In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

E. Distribution of Proceeds: Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(1) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provision made therefor.

(2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners. Remittance to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such Mortgagee.

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(4) Certificate. In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their respective shares of the distribution.

F. Association as Agent: The Association is hereby irrevocably appointed Agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit 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.

G. Notice of Insurance Coverage: In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association will give Notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend.

H. Inspection of Insurance Policy: A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

II. RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. Determination to Reconstruct or Repair: If any part of the Common Elements or any building containing Condominium Units shall be damaged by casualty, the damaged Property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(1) Certificate. The insurance trustee may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged Property is to be reconstructed or repaired.

B. Plans and Specifications: Any reconstruction or repair required by this Article XV, must provide for an equal number of Units if the damaged improvement is a building containing Condominium Units, and shall 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 specifications approved by the Board of Directors of the Association and if the damaged Property is a building containing Condominium Units, such approval shall be by the Owners and Institutional Mortgagees of not less than 50% of the Common Elements, including the Owners and Institutional Mortgagees of all damaged Units, which approval shall not be unreasonably withheld. All reconstruction or repairs shall be in accordance with applicable law, regulation, local ordinance or the action of a governmental authority having jurisdiction. The Association shall use its best efforts to overcome any prohibition on reconstructing or repairing a damaged improvement including, without limitation, resort to administrative and/or judicial remedies, unless the Association's legal counsel shall have rendered an opinion to the Association that the likelihood of success of such action is remote. If reconstruction or repair of a damaged improvement containing Condominium Units is prohibited, and the Condominium Units contained therein are not tenantable, the Condominium will be terminated as elsewhere provided. In the event insurance proceeds are insufficient to cover the expenses of reconstruction, the Board of Directors shall levy a special assessment against the Unit Owners to cover any deficit.

C. Responsibility: If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. Estimates of Costs: Immediately after a determination is made to rebuild or repair damage to Property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments: The amount by which an award of insurance proceeds to the insurance trustee is reduced on account of a deductible clause in an insurance policy shall be assessed

against all Unit Owners in proportion to their shares in the Common Elements. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners, in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Elements.

F. Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) **Association.** If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than \$25,000.00, then the sums paid upon such assessments shall be deposited by the Association with the insurance trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(2) **Insurance Trustee.** The proceeds of insurance collected on account of a casualty, and the sums deposited with the insurance trustee by the Association from collection of assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) **Association - Lesser Damage** - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$25,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors, provided, however, that upon request to the insurance trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

(b) **Association - Major Damage** - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$25,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

- (c) Unit Owner - The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the insurance trustee to the Unit Owner, or if there is a mortgage endorsement as to such Unit, then to the Unit Owner and mortgagee jointly, who may use such proceeds as they may be advised.
- (d) Surplus - It shall be presumed that the first monies disbursed in payment of costs and reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial Owner which is not in excess of assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.
- (e) Certificate - Notwithstanding the provisions herein, the insurance trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessments shall be deposited by the Association with the insurance trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Owners. Instead, the insurance trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid; provided, that when a mortgagee is herein required to be named as payee, the insurance trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

3. Article XIX is amended to read:

TERMINATION

A. If fifty-one (51%) percent of the Unit Owners and holders of all liens and mortgages affecting any of the Condominium Parcels execute and duly record an instrument terminating the Condominium Property, or if there exists a prohibition on the reconstruction or repair of a damaged improvement containing Condominium Units which are not tenantable, as required by Article XV, said Property shall be deemed to be subject to termination and thereafter owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owner shall then become the percentage of the undivided interest previously owned by such Owner in the Common Elements upon termination of the Condominium.

B. It is understood that in the year 2019, the Purchasers of Units committed to Interval Ownership shall become tenants in common. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days, prior to the actual date of such conversion to tenancy in common, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, a vote shall be taken to decide the disposition of the Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, the Owners, by a majority vote, may vote to continue their intervals, in which case the restrictive covenants set forth below will be adopted as covenants running with the land for a period of ten (10) years. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days, prior to the actual expiration of said ten year period, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. The Owners may then vote to continue the intervals for an additional 10 year period. This process shall be repeated as the end of each successive 10 year period approaches. Should less than a majority of the Owners vote to continue the intervals at any such meeting, then the Board of Directors of the Association shall take the necessary steps to discontinue the Interval Ownership program at the Condominium, at which time the Board of Directors of the Association and each Owner of a Unit Week in a Unit committed to Interval Ownership shall have the right to take such action as is permitted by this Declaration and laws of the State of Florida. This shall include, but not be limited to, filing suit in a court of competent jurisdiction in Lee County, Florida for partition of the Units, if permitted by applicable law.

In the event the Owners vote to continue their Unit Weeks as provided above, then each Owner shall have the exclusive right to occupy his Unit, and as between Owners to use and enjoy the Common Elements of the Condominium, and the rights and easements appurtenant to his Unit during his Unit Weeks (and, in the case of Developer, during all Unit Weeks not theretofore conveyed, and to authorize others so to do, together with the non-exclusive right in common with all other Owners, but only when acting through the Association), to maintain and repair the Units during maintenance

weeks. No Owner shall occupy his Unit, or exercise any other rights of Ownership with respect to his Unit other than the rights herein provided to him, during any other Unit Weeks unless expressly so authorized by the Owner entitled to occupy the Unit during such Unit Weeks or during any maintenance week except when acting through the Association. Each Owner shall keep his Unit and all furnishings in good condition and repair during his Unit Weeks, vacate the Unit at the expiration of his Unit Weeks, remove all persons and property therefrom excluding only furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Association.

Subject to the laws of the State of Florida, no Owner or other person or entity acquiring any right, title or interest in a Unit shall seek or obtain through any legal procedures, judicial partition of the Unit or sale of the Unit in lieu of partition at any date prior to the expiration of each successive ten (10) year period voted by a majority of the Owners. If, however, any Unit Weeks shall be owned by two or more persons as tenants in common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Unit Weeks in lieu of partition as between such co-tenants or joint tenants.

4. In all other respects said Declaration of Condominium remains unchanged.

JUL 28 4 23 PM '81
RECORDED
LEE COUNTY, FLORIDA
RECORDS DEPARTMENT

W. P. Bennett
CLERK OF COURT