

INSTR # 2001052133
OR BK 04660 PG 1551
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RICHARD M. WEISS CLERK OF COURT
POLK COUNTY
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Prepared by and return to:
John P. Collins, Jr.
Attorney at Law
John P. Collins, P.A.
59 Lake Morton Drive
Lakeland, Florida 33801
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This Amendment in part consists of substantial re-wording of the existing Declaration and amendments thereto. See existing Declaration for current text.

AMENDMENT AND RESTATEMENT OF THE DECLARATION OF CONDOMINIUM

IMPERIAL SOUTHGATE VILLAS CONDOMINIUM APARTMENTS SECTION TWO

KNOW ALL MEN BY THESE PRESENTS; That,

WHEREAS, the members of the Imperial Southgate Villas Condominium Apartments, (Section II), Inc., a Florida not for profit corporation, desire to amend, ratify and reconstitute the Declaration of Condominium, as recorded in Official Records Book 1404, page 0938, as amended by Amendments recorded in Official Records Book 1478, page 0787, Official Records Book 1578, page 0193, Official Records Book 1715, page 1236, Official Records Book 3281, page 2021, and Official Records Book 3281, page 2025 (referred to herein collectively as the "Declaration"), said Declaration shall be amended and restated in whole as follows:

ARTICLE I. CONDOMINIUM PROPERTY

The property subject of this agreement shall be condominium property under the Condominium Act of the State of Florida, now in force and affect, and shall be subject to all statutory amendments thereto, and said property shall be known as the **IMPERIAL SOUTHGATE VILLAS CONDOMINIUM APARTMENTS, Section II**, hereinafter referred to as the "Condominium". Said property shall be condominium property subject to condominium ownership pursuant to said Act and shall be operated and managed accordingly.

ARTICLE II. DESCRIPTION

The Condominium Units in this Condominium shall be known as; Units 1 through 100 inclusive, and 4-A; 11-A; 17-A; 22-A; 38-A; 53-A; 54-A; 74-A; 82-A; 85-A; 95-A and 100-A.

ARTICLE III. LOCATION

A survey of the Condominium, a graphic description of the improvements in which the Units are located and of the Units themselves, and a Plot plan showing the relative position of the buildings of the Condominium, appear on Condominium Plat of **IMPERIAL SOUTHGATE VILLAS CONDOMINIUM APARTMENTS, Section Two**, recorded in Condominium Book One, Pages 22 - 24, of the Public Records of Polk County, Florida.

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ARTICLE IV. COMMON AND LIMITED ELEMENTS

There shall be appurtenant to each of the Units an equal ownership of the common elements and the limited common elements. Appurtenant as used herein shall mean that such ownership is incident to unit ownership.

A. The common elements of the Condominium appurtenant to each of the Units shall include the land described above and all improvements thereon, except for Units as shown on the aforementioned Condominium Plat, easements, as may be necessary, through Units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to common elements, installations for furnishing of utility services to the common elements, the property and installations in connection therewith acquired for the furnishing of services to the common elements, and easements for maintenance of common elements.

B. The limited common elements of the condominium appurtenant to each of the Units shall include the land underlying the Unit, all exterior surfaces, walls, roofs, exterior doors, glass, shutters and screen surfaces, carport, storage room, walkway, patio area, porches, and any additions permitted as provided in Article XIII of this Declaration.

C. The Unit consists of the three dimensional air space together with improvements thereon and therein, defined and described in the plat of the Condominium recorded in Condominium Book One, pages 22-24, Public Records of Polk County, Florida, less and except any portion thereof which consists of common elements or limited common elements, together with all air conditioning and heating equipment appurtenant to such Unit.

D. Notwithstanding anything contained herein or in the Condominium Plat, being recorded together herewith to the contrary, it is expressly understood that the common elements and limited common elements shall be subject to easements for the installation and maintenance of public utility lines, street lights, equipment and services, including cablevision, in, on, under or through the common elements and limited common elements of this Condominium, for the benefit of this Condominium and any other or additional Sections of IMPERIAL SOUTHGATE VILLAS CONDOMINIUM APARTMENTS.

ARTICLE V. EXPENSES AND SURPLUS

The common expenses of the Condominium and common surplus of the Condominium shall be divided and apportioned equally among the existing Units. Each unit and unit owner member shall be responsible for its pro rata share of expense as determined and assessed by the Association. When any member shall be in default of the fees due, charges or assessments levied by the Association, they shall be subject to the liability for collection of same provided under the Condominium Act of the State of Florida, including the imposition of a lien against said member's Unit and foreclosure, together with all costs of collection, including a reasonable Attorney's fee.

ARTICLE VI. ASSOCIATION MEMBERSHIP

The Condominium shall be operated and managed through that certain non-profit corporation organized under the Laws of the State of Florida, known as the IMPERIAL SOUTHGATE VILLAS CONDOMINIUM ASSOCIATION (Section II), INC., hereinafter referred to as the "Association", in accordance with the Association's Articles of Incorporation and By-Laws, as they may be amended, from time to time. To the extent conflict exists between this Declaration, and the Association's Articles of Incorporation or By-Laws, the Declaration shall control. To the extent conflict exists between the Association's Articles of Incorporation and By-Laws, the By-Laws shall control. Each Unit owner shall be required to be a member of the Association and shall be subject to all terms contained within the Association By-Laws and Articles of Incorporation.

ARTICLE VII. VOTING AUTHORITY

Each Unit shall be entitled to one vote at the Association meetings as set forth in the Association By-Laws. Said vote shall be cast by the unit owner member. In the event of joint

ownership of a Unit, said unit shall only be entitled to one vote, which shall be cast by one and only one of the joint owners.

ARTICLE VIII. AMENDMENT

This Declaration may be amended by members in the same manner as provided for amendment to the Association By-Laws. No amendment of this Declaration shall be effective unless evidenced by a certificate of the Association, executed with the formalities required of a conveyance of real property and recorded in the Public Records of Polk County, Florida.

ARTICLE IX. INSURANCE AND REPAIR

- A. Each owner shall be responsible for the maintenance and repair of his/her Unit, except that the Association shall have the right to assume part or all of the maintenance of a Unit as necessary in the best interest of the Association.
- B. The Association shall procure and pay for as part of the common expenses, fire and extended coverage insurance for the common and limited element property of the Condominium to the full insurable value of same. Each policy of insurance shall show all institutional mortgagees holding mortgages on a portion of the common elements insured as endorsees of the policy.
- C. The Association shall procure and pay for as part of the common expenses, fire and extended coverage insurance on each individual Unit to the full insurable value of same. Each policy of insurance shall show all institutional mortgagees of said Units as endorsees of the policy.
- D. In the event of destruction of a Unit, either partial or substantial, the owner of said Unit shall be under an obligation to cause the same to be repaired or rebuilt and shall commence and diligently pursue the repair or the rebuilding of such Unit within sixty (60) days from the date of destruction. The insurance proceeds applicable to said Unit shall be promptly applied for by the owner of said Unit and/or the Association as may be required. Said proceeds shall be received by the Association and the institutional mortgagee of said Unit, if any, and held in escrow and applied to the prompt payment of the cost of such repair and building.
- E. In the event that the owner of an affected Unit fails to commence and pursue such repair or rebuilding within the time provided for herein, the Association shall have the right on behalf of and in the unit owner's name to cause the repair or rebuilding to be commenced immediately and diligently at the Unit owner's cost and expense. The insurance proceeds applicable to such Unit shall be subjected to a lien to indemnify the Association for any cost or expense for which it is held responsible by virtue of undertaking such repair or rebuilding.
- F. In the event the insurance proceeds applicable to any repair or rebuilding of a Unit shall not be sufficient to cover the cost of same, the owner of said Unit shall promptly pay the deficiency and, failing to do so, the Association may advance and pay such deficiency on behalf of said owner. To the extent of such payment, the Association shall be entitled to a lien on the owner's Unit and may, in order to collect said lien, pursue foreclosure or any remedy provided for collection of assessments by the Condominium Act of the State of Florida or amendments thereto. In pursuit of such remedy, the Association shall be entitled to collect from such defaulting owner all costs of collection, including a reasonable attorney's fee.

ARTICLE X. RESTRICTIONS

The following restrictions shall apply to and bind the Condominium, Condominium property, Unit, Units and Unit parcels, to-wit:

- (1) All Condominium Units shall be and remain of exterior design, shape, color and appearance as other Condominium Units of the same class or type.
- (2) Occupants of Condominium Units shall not suffer, permit or maintain in their premises loud noises, or obnoxious odors.
- (3) Occupants of Condominium Units shall not keep or maintain pets except for small household pets which will be permitted subject to the Rules and Regulations of the Association as to size, care, maintenance, and control of same.
- (4) Each Condominium Unit shall be used exclusively as a one-family residential dwelling.
- (5) No business or trade shall be permitted to be conducted within or about any Condominium Unit.
- (6) No parcel or Unit shall be sold or leased by any person, party or corporation, without the owner thereof first procuring the consent thereto of the Board of Directors of the Association, which said consent shall be given or withheld based upon the Board's determination of the ability of the proposed Lessee or Grantee to meet the financial obligations of the Unit, and the social desirability of the said proposed Lessee or Grantee. In no event shall a Unit be leased for a term of less than six(6) months.
- (7) Occupants and owners of each Unit shall keep and obey all laws, ordinances, and regulations, of all governmental bodies, divisions or subdivisions, insofar as the same pertain to the control or use of such Unit.
- (8) No Condominium parcel or Unit shall be divided or sub-divided from the realty and no structural alterations or changes shall be made within said Unit without prior approval of the Board of Directors of the Association, as otherwise set forth herein.
- (9) There shall be no wires, television or radio antennas, air conditioners, aerials, satellite dishes, or additional fixtures whatsoever, erected, constructed or maintained on the exterior of the Unit, except for those structures that form a part of the original Unit.
- (10) No clothes line, hangers or drying facilities shall be permitted or maintained on the exterior of any Unit or in or an any part of the common elements, and no clothes, rugs, drapes, spreads or household articles or goods of any sort shall be dried, aired, beaten, cleaned or dusted by hanging or extending same from any window, or patio divider or door.
- (11) No Unit shall be the subject of a partition action in any Court of the State of Florida, and all Unit owners do by their acceptance of a conveyance of such Unit, waive any right to maintain or bring such action.
- (12) No electric machine or apparatus of any sort shall be used or maintained in any Unit which causes interference with the television reception in other Units.
- (13) The occupants of Units shall abide by all the Rules, and Regulations promulgated by the Association concerning occupancy and the use of the Condominium Units and common elements and areas.
- (14) No signs of any type shall be maintained, kept, or permitted on any part of the common elements, or in or on any Unit, where the same may be viewed from the common elements, except for those signs maintained by the Association.

ARTICLE XI. UNIT OWNER AND ASSOCIATION MAINTENANCE

- (A) Each Unit Owner, lessee or occupant shall, at all times, maintain in good condition and repair the interior of each such Unit, including: interior walls; floors; ceilings; doors;

windows; water; heat and air conditioning units; interior of storage rooms.

- (B) Each Unit Owner, lessee or occupant shall at all times, maintain in good condition and repair the exterior lightings; electric and plumbing systems; parts and components thereof; sanitary facilities; fixtures; equipment; and lamps.
- (C) Each Unit Owner, lessee or occupant shall, at all times maintain in good condition and repair the following portions of the limited common elements: patio areas, porches, walkways, carports, roofs and gutters.
- (D) The Association's responsibility for maintenance of limited common element property shall be limited only to the roofs of those Units which are tiled and only to the extent of cleaning said roofs, and cleaning and painting exterior walls of the units, as needed. The Association shall otherwise maintain the common elements and limited common elements not otherwise required to be maintained by the Unit Owner.
- (E) The Association is empowered to enact reasonable procedures, either as part of Association's By-Laws or Rules and Regulations, binding upon Unit Owners, to assure quality and attractiveness of such maintenance and repairs. All maintenance to the exterior of the Unit or to limited common elements must be approved in advance by the Board of Directors of the Association.
- (F) As used in this Article, the phrases "electric system," "plumbing system" and "roof" shall be construed respectively, as follows (which shall be the unit owner's maintenance responsibility as set for above):

"Electrical system" shall refer to those items of electrical conduit, wire, switches, fixtures and equipment located within the Unit itself or on the Unit side of the meter;

"Plumbing system" shall refer to all plumbing items from the cut-off valve to the Unit or located within the Unit itself; and,

"Roof" shall refer to the roof of the dwelling portion of a Unit and shall include roofs covering carports, ceilings, and storage areas within said carports.

- (G) In the event any Unit Owner shall fail to repair or maintain the roof in accordance with this subparagraph or otherwise fail to make any other repair or maintenance required by the Unit Owner under this Declaration, the Board of Directors of the Association shall notify the Unit Owner, in writing by certified mail, of the specific maintenance or repair, as the case may be, which the Board of Directors of the Association deems necessary and demand that the Unit Owner accomplish the necessary maintenance or repair within no later than sixty (60) days of the date of the notice issued by the Board of Director of the Association.
- (H) Further, in the event that the Unit Owner fails to accomplish the specific maintenance or repairs within said sixty (60) days, the Association may undertake such maintenance or repair and avail itself to the same rights and remedies as set forth in Article IX.

ARTICLE XII. CLUBHOUSE MEMBERSHIP

Each unit owner shall be and become a member of THE VILLA CLUB. THE VILLA CLUB consists of certain recreational facilities at IMPERIAL SOUTHGATE VILLAS CONDOMINIUM APARTMENTS, the location of which appears on the Plat of IMPERIAL SOUTHGATE VILLAS CONDOMINIUM APARTMENTS, Section Two, Referred to above. Solely for the purposes of this Declaration and the formula for calculating any increase in membership fees payable to THE VILLA CLUB, the fiscal year for THE VILLA CLUB shall run from November 1 of any calendar year through and including October 31 of the immediately following calendar year. The designation of THE VILLA CLUB fiscal year herein, however shall not affect the years selected by either THE VILLA CLUB or the Association for tax or any other purposes.

For historical reference, effective November 1, 1992, each unit owner paid as a membership fee to THE VILLA CLUB the sum of Twenty Dollars (\$20.00) per month, per unit owned. This fee remained in effect for five years beginning November 1, 1992, and ending on October 31, 1997.

For the fiscal year beginning November 1, 1997, and in each fiscal year thereafter, both base costs and comparison costs must be determined to calculate any future increase in membership fees for THE VILLA CLUB. The actual costs of maintenance, taxes and operation of THE VILLA CLUB incurred by THE VILLA CLUB for the immediately preceding fiscal year shall be considered the "Comparison Cost" year. The "Base Cost" shall be established by averaging the actual annual costs of repairs, maintenance, taxes and operation of THE VILLA CLUB incurred by THE VILLA CLUB for the three (3) fiscal years immediately preceding the Comparison Cost year. Any future increase in membership fees for THE VILLA CLUB shall be determined by subtracting the Base Cost from the Comparison Cost and dividing the resulting difference, if any, by the Base Cost to obtain the percentage of increase, if any. The percentage obtained shall then be multiplied by the fee then currently in force to obtain the dollar amount of the membership fee increase. In no event shall the membership fee be less in any subsequent year than the previous year.

THE VILLA CLUB shall notify the Association, in writing, by no later than November 30 of any fiscal year in which an increase is sought, of any intended increase in THE VILLA CLUB membership fees, and shall provide to the Association an accounting of the costs of repairs, maintenance, taxes and operation of THE VILLA CLUB (the "Expenses") together with a worksheet as to how it arrived at the sum representing the requested increase. THE VILLA CLUB shall also furnish to the Association, together with such notification of fee increase and worksheet, proof of payment of the Expenses in the form of, without limitation, contracts, bills, statements, receipts, or canceled checks upon which THE VILLA CLUB relies in support of its calculations. THE VILLA CLUB shall not be entitled to claim expenses or portion thereof in its calculations for which documentation is not supplied to the Association with THE VILLA CLUB's notification of fee increase. In determining the actual costs of any Comparison Cost year THE VILLA CLUB shall use a cash basis of accounting. The Association shall have thirty (30) days from receipt of THE VILLA CLUB's notification of an increase to review the worksheet and documentation and to notify THE VILLA CLUB in writing that it is contesting the calculation of the increase sought. Such notice shall be specific in describing the reasons for contesting the calculation of the increase. If a notice of contest is not given within the time provided, the calculation shall be deemed accepted and shall take effect as of November 1 of the fiscal year for which the increase is sought. If the Association gives timely notice to THE VILLA CLUB contesting the calculation of the increase then THE VILLA CLUB and the Association shall each designate a certified public accountant licensed in the State of Florida and the two C.P.A.'s shall select a third C.P.A. to act as mediators. The three C.P.A.'s shall review the documents supporting THE VILLA CLUB's requested increase and the notice of contest and shall determine, by a majority vote, whether the increase was calculated correctly. The determination of the C.P.A.'s shall be binding on THE VILLA CLUB, the Association and the unit owners. If THE VILLA CLUB elects not to increase, fails to give timely notice of its intent to increase, or fails to increase for any reason the membership fees in any fiscal year in which it may be entitled to do so, THE VILLA CLUB shall forever waive that year's increase and must use the formula outlined above for any future years.

THE VILLA CLUB recognizes that the unit owners of Imperial Southgate Villas Condominium Apartments, Section One, and Imperial Southgate Villas Condominium Apartments, Section Three are also required to be members of THE VILLA CLUB under the provisions of the Declaration of Condominium of those condominiums and upon the same terms as stated herein. THE VILLA CLUB, therefore, agrees that any future increase in Villa Club membership fees shall be applicable to all unit owners in all three condominiums comprising the Imperial Southgate Villas Condominium Apartments Development.

The membership fee shall be paid quarterly in advance by each unit owner. In the event of joint ownership of a unit, the total quarterly obligation of the joint owners will be one quarterly fee. In the event of default in the payment of the membership fee, the defaulting unit owner shall immediately be suspended from all club privileges, and there shall accrue upon the unit of such defaulting owner a lien in favor of THE VILLA CLUB in the amount of the delinquent membership fee together with interest thereon at the rate of ten percent (10%) per annum. Said lien may, at the option of THE VILLA CLUB, be foreclosed in the same manner as real property mortgages in the State of Florida or suit may be

instituted thereon against the defaulting owner or owners. In either event, THE VILLA CLUB shall be entitled to recovery in addition to the delinquent membership fees, THE VILLA CLUB's costs of collection including court costs and attorney's fees. The transfer of any unit shall not affect the rights of THE VILLA CLUB hereunder to proceed to foreclose its lien against such unit or seek redress against the defaulting owner. THE VILLA CLUB reserves the right to terminate, within its sole discretion, any and all memberships at any time.

ARTICLE XIII. ALTERATIONS AND ADDITIONS

No unit owner shall make any alterations, additions to the exterior of such Owner's Unit or to the common elements or the limited common elements adjacent to such Owner's Unit (referred to collectively herein as "Addition" or "Additions") without the prior written approval of the Association through its Board of Directors in each instance. Approval by the Board shall be by majority vote, quorum present. Additions shall also include covering, replacement or modification of exterior doors, glass or screened surfaces. In the event that any Unit Owner desires to make any Addition, such owner shall submit to the Board complete plans and specifications with respect to such work and an estimate of the cost with respect to such work. If the proposed addition is approved by the Board, such owner shall provide to the Association such documents as the Board shall require including without limitation, copy of construction contract, applicable building permits, approvals, insurance certificates and construction warranties. All such work with respect to the Addition shall be the full and complete responsibility of the Owner who shall fully indemnify, defend and hold harmless the Association and its members, officers and directors from and against any and all liabilities, claims, suits, actions, debts, judgments costs and expenses (including reasonable attorney's fees) arising out of or resulting from the work associated with the Addition. Insurance maintenance and repair to such additions shall be the responsibility of the Unit Owner or Association in accordance with the provisions of this Declaration.

ARTICLE XIV. AGE 55 COMMUNITY

It is the intent of this Declaration of Condominium that the Association will comply with the Federal Fair Housing Act and any other applicable federal or state law or regulation, as amended from time to time, which allow the Association to restrict the occupancy of the Condominium's Units based on age provided certain criteria are met:

- (a) At least one person who is fifty-five (55) years of age or older shall occupy permanently at least eighty percent (80%) of all the Condominium's Units, subject to calculation as delineated in Title 24, United States Code of Federal Regulations, Part 100, as same may be amended from time to time. Such occupant shall be a Unit Owner or a tenant of a Unit Owner. Persons under fifty-five (55) years of age who are also sixteen (16) years or older may occupy and reside in a Condominium Unit if one of the other permanent occupants of the Unit is age fifty-five (55) years or older. Persons under sixteen (16) years of age shall not permanently occupy a Condominium Unit except as set forth below, but such persons age sixteen (16) years or less may occupy a Condominium Unit only on a temporary basis, not to exceed thirty (30) days in any calendar year.
- (b) Notwithstanding the requirements set forth above, and except as set forth below, the following exceptions to the aforesaid age restrictions shall apply as permitted by the Association's Board of Directors on a case-by-case basis:
 - 1. If more than one person owns a Condominium Unit, and the only co-owner was fifty-five (55) years of age or older dies, then the Board of Directors may waive the requirement for one occupant of this Condominium Unit to be age fifty-five (55) years or older. This exception for each such Condominium Unit shall lapse upon transfer of the Condominium Unit to a person who was not co-owner with the deceased Condominium Unit Owner. For the Board to consider this exception, the deceased Condominium Unit Owner's co-owner(s) shall notify the Association's Board of Directors within thirty (30) days of the death of a Condominium Unit Owner who was over fifty-five (55) years of age.

- 2. The restriction on occupancy by persons less than fifty-five (55) years of age shall not apply to those Condominium Units in which no person age fifty-five (55) years or older occupies such Condominium Unit as of the date that this amendment to the Declaration is recorded for as long as such Condominium Unit remains permanently occupied by one or more of the same occupants. This exception for each such Condominium Unit shall lapse upon transfer of the Condominium Unit to a new Owner or tenant.

- 3. If a person under eighteen (18) years of age is or becomes the legal ward of a Condominium Unit Owner who is age fifty-five (55) years or older or if such person under eighteen (18) years of age is or becomes otherwise economically or medically dependent upon such Condominium Unit Owner, the Board of Directors may waive the thirty (30) day limitation for occupancy by such underaged person on a yearly, case-by-case basis. However, this exception shall only be available for Condominium Units occupied by the owner thereof who is fifty-five (55) years of age or older.

ARTICLE XV. DURATION

These Amended and Restated covenants shall run with the land thirty (30) years from the date hereof, or as otherwise set forth in the Marketable Title Act, Florida Statutes, State of Florida, and any amendments made thereto.

DATED this 8 day of MARCH, 2001.

IMPERIAL SOUTHGATE VILLAS
CONDOMINIUM ASSOCIATION,
SECTION II, INC.

(Affix corporate seal)

By: Ruth B. Jenkins
Ruth Jenkins, President

J.P.C.
Witness - John P. Collins

By: Susan Vitello
Susan Vitello, Secretary

M.L.K.
Witness - Michelle L. Kaye

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 8 day of MARCH, 2001, by Ruth Jenkins and Susan Vitello, who are personally known to me or have produced a Florida Driver's License as identification.

J.P.C.
Notary Public
Printed Name: _____
My Commission Expires: _____

