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CERTIFICATE OF AMENDMENT OF DECLARATION OF RESTRICTIONS,  
LIMITATIONS, COVENANTS AND USES FOR GOLFWOOD  
CONDOMINIUM NO. 2 AND ARTICLES OF INCORPORATION AND  
BYLAWS OF GOLFWOOD CONDOMINIUM NO. 2, INC.

THE UNDERSIGNED, being the duly elected President of GOLFWOOD CONDOMINIUM NO. 2, INC., a Florida corporation not for profit, does hereby certify that at an ANNUAL Meeting of the members held on January 21, 1994 where a quorum was present, after due notice, all the resolutions set forth below were approved and adopted by the votes indicated for the purpose of amending and restating the Amended and Restated Declaration of Restrictions, Limitations, Covenants and Uses for Golfwood Condominium No. 2, a Condominium, as recorded at Official Records Book 651, Page 588, et seq., Public Records of Lee County, Florida, and the Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Association.

1. The following resolution was approved by the affirmative vote of twenty-four (24) of the voting interests of the condominium association at a duly called membership meeting.

RESOLVED: That the Declaration of Restrictions, Limitations, Covenants and Uses for Golfwood Condominium No. 2, a Condominium, be and is hereby amended and restated in its entirety, and the Amended and Restated Declaration of Condominium is adopted in the form attached hereto; and

2. The following resolution was approved by a vote of three-fourths (3/4ths) vote of all persons constituting the quorum at a duly called meeting.

RESOLVED: That the Articles of Incorporation of this Association be and are hereby amended and restated in their entirety, and the Amended and Restated Articles of Incorporation are adopted in the form attached hereto; and

3. The following resolution was approved by a vote of three-fourths (3/4ths) vote of all persons constituting the quorum at a duly called meeting.

RESOLVED: That the Bylaws of this corporation be and are hereby amended and restated in their entirety, and the Amended and Restated Bylaws are adopted in the form attached hereto.

7/6/94  
Date  
Rhonda Delisle  
Signature of Witness  
Rhonda Delisle  
Printed Name of Witness

GOLFWOOD CONDOMINIUM  
NO. 2, INC.  
By: Charles Dixon  
Charles Dixon, President  
Address:  
[CORPORATE SEAL]

RECORD VERIFIED - CHARLIE CRIGEN, CLERK  
BY: HELEN CARROLL, D.C.

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Eunice Fernandez  
Signature of Witness  
Eunice Fernandez  
Printed Name of Witness

State of Florida  
County of Lee

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 1994, by Charles Dixon, President of GOLFWOOD CONDOMINIUM No. 2, INC., a Florida not for profit corporation, on behalf of the Association. He is personally known to me or has produced n/A (type of identification) as identification and who did (not) take an oath.

Barbara Z Bailey  
Printed Name:  
Commission Number:  
Commission Expiration:  
(Seal) NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JANUARY 02, 1995  
BONDED THRU AGENT'S NOTARY BROKERAGE

THIS INSTRUMENT PREPARED BY  
CHRISTOPHER N. DAVIES, ESQUIRE  
Post Office Box 1480  
Fort Myers, Florida 33902

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS,

LIMITATIONS, COVENANTS AND USES

FOR

GOLFWOOD CONDOMINIUM NO. 2

SUBSTANTIAL REWORDING OF DECLARATION - SEE ORIGINAL

DECLARATION FOR ORIGINAL TEXT

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KNOW ALL MEN BY THESE PRESENTS:

That heretofore on January 6, 1971, the original Declaration of Restrictions, Limitations, Covenants and Uses for Golfwood Condominium No. 2 (hereinafter the "Condominium") was recorded in Official Record Book 651, at Page 588 et seq., of the Public Records of Lee County, Florida. That Declaration of Restrictions, Limitations, Covenants and Uses, as it has previously been amended, is hereby further amended in part and is restated in its entirety.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP** - This Amended and Restated Declaration of Restrictions, Limitations, Covenants and Uses is made by Golfwood Condominium No. 2, Inc., a Florida corporation not for profit, hereinafter the "Association". The land subject to this Declaration, the legal description of which is designated as Schedule "A" to the original recorded Declaration of Restrictions, Limitations, Covenants and Uses (O.R. Book 651, Page 589) and incorporated herein by reference, and the improvements located thereon, have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration.

2. **NAME - PLAN OF DEVELOPMENT** - The Condominium consists of thirty-six (36) separate and numbered residential lots, which lots for purposes of this Declaration shall be referred to as "units", designated in Exhibit "II" to the original Declaration of Restrictions, Limitations, Covenants and Uses (O.R. Book 651, Pages 615-621), which Exhibit is incorporated herein by reference. The Condominium is located in Lehigh Acres, Lee County, Florida.

THIS INSTRUMENT PREPARED BY  
CHRISTOPHER N. DAVIES, ESQUIRE  
Post Office Box 1480  
Fort Myers, Florida 33902

3. **NAME - ASSOCIATION** - The name of the Condominium Association is Golfwood Condominium No. 2, Inc. This Association is incorporated as a nonprofit Florida corporation, having been incorporated in 1970.

4. **DEFINITIONS** - The terms used herein shall have the meanings stated in the Condominium Act (Chapter 718, Florida Statutes) and as follows unless the context otherwise requires:

4.1. **ASSESSMENT** - The share of the funds required for the payment of common expenses which from time to time is assessed against a unit owner.

4.2. **ASSOCIATION** - The corporation responsible for the operation of the Condominium.

4.3. **ASSOCIATION PROPERTY** - All property, real or personal, owned by the Association.

4.4. **BOARD OF DIRECTORS** - The Board of Directors is responsible for administration of the Association.

4.5. **CHARGE OR SPECIAL CHARGE** - An obligation of a unit owner to pay or reimburse money to the Association which cannot be secured as an assessment pursuant to Section 718.116, Florida Statutes, but which is secured by a common law lien on the units and its appurtenances pursuant to this Declaration.

4.6. **COMMON ELEMENTS** - The portions of the property submitted to condominium ownership and not included in the units as defined in Section 718.108, Florida Statutes, including the land, all parts of the improvements which are not included within the units, easements and installations for the furnishing of services to more than one unit or to the common elements, such as water, sewer, and electricity, as defined with greater particularity in Section 5.4.1 hereof.

4.7. **COMMON EXPENSES** - All expenses and assessments properly incurred by the Association for the Condominium and such expenses as may be declared to be common expenses by this Declaration. Specifically, the expenses of providing cable television and other cable or SMATV (Satellite Master Antenna Television) delivered services to the Condominium under a bulk services contract or by the Association shall be a common expense unless Florida law provides otherwise.

4.8. **COMMON SURPLUS** - The excess of all receipts of the Association over the common expenses.

4.9. **CONDOMINIUM DOCUMENTS** - This Declaration and its attached exhibits, including previously promulgated documents incorporated herein by reference, which set forth the nature of the property rights in the Condominium and the covenants

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running with the land which govern these rights. All the Condominium documents shall be subject to the provisions of the Declaration and their order of precedence shall be as follows: (1) Declaration; (2) Articles of Incorporation; (3) Bylaws; (4) Rules and Regulations.

4.10. **CONDOMINIUM PARCEL** - A unit together with the undivided share in the common elements which is appurtenant to the unit.

4.11. **CONDOMINIUM PROPERTY** - The lands and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.

4.12. **FAMILY** - means one natural person or a group of two or more natural person each of whom is related to each of the others by blood, marriage, or adoption, or not more than two persons not so related, who reside together as a single housekeeping unit.

4.13. **GUEST** - means any person who is physically present in or occupies a unit on a temporary basis at the invitation of the unit owner without the payment of consideration.

4.14. **INSTITUTIONAL MORTGAGEE** - means the mortgagee (or its assignee) of a first mortgage against a Condominium parcel, which mortgagee is a bank, savings and loan association, mortgage banker, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a first mortgage against a Condominium parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

4.15. **LEASE** - means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

4.16. **LIMITED COMMON ELEMENTS** - Those portions of the common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.17. **LOT** - means the same as "unit" as defined in Section 4.22 below.

4.18. **OCCUPANT** or **OCCUPY** - when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.

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4.19. **OPERATION** - The administration and management of the Condominium property.

4.20. **PERSON** - An individual, corporation, trust or other legal entity capable of holding title to real property.

4.21. **SINGULAR, PLURAL, GENDER** - Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and use of any gender shall be deemed to include all genders.

4.22. **UNIT** - A part of the Condominium property which is subject to exclusive ownership.

4.23. **UNIT NUMBER** - The letter, number or combination thereof, which is used as the identification of a unit, and which is designated in Section 7.1 below.

4.24. **UNIT OWNER** - The owner of a Condominium parcel.

4.25. **VOTING INTEREST** - means the voting rights distributed to the Association members pursuant to Section 718.104(4)(i), Florida Statutes.

**5. UNITS SHALL BE CONSTITUTED AS FOLLOWS:**

5.1. **REAL PROPERTY** - Each unit and all appurtenances thereto, for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the Condominium property, subject only to the provisions of the Condominium documents and applicable laws.

5.2. **BOUNDARIES** - Units mean and comprise the thirty-six (36) separately designated and legally described freehold estates, consisting of all of the land and improvements thereon, as described in Exhibit "II" of the originally recorded Declaration of Restrictions, Limitations, Covenants and Uses.

5.3. **EXCLUSIVE USE** - Each unit owner shall have the exclusive use of such owner's unit.

5.4. **OWNERSHIP** - The ownership of each unit shall carry with it, as appropriate, and whether or not separately described, all of the right, title and interest of a unit owner in the Condominium property which shall include but not be limited to:

5.4.1. **COMMON ELEMENTS** - Common elements mean and comprise all of the real property, improvements and facilities of the Condominium other than the units as same are hereinabove defined. Common elements shall include, but not

be limited to, roads, drives, driveways, park areas, swales, sidewalks, curbs, conduits and street lighting located within the easement areas reserved and specifically made a part of the common elements. The definition of common elements also includes all personal property held and maintained for the joint use and enjoyment of all of the owners of all units.

**5.4.2. ASSOCIATION MEMBERSHIP** - Membership in the Association and an undivided share in the common surplus of the Association.

**5.4.3. EASEMENT TO AIR SPACE** - An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time, and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

**5.5. EASEMENTS** - The following non-exclusive easements from the Association to (as applicable) each unit owner, to the Association, and its employees, agents and hired contractors, to utility companies, unit owners' families in residence, guests, invitees and to governmental and emergency services, have previously been granted and created:

**5.5.1. INGRESS AND EGRESS** - Easements over the common areas for ingress and egress to units and public ways.

**5.5.2. MAINTENANCE, REPAIR AND REPLACEMENT** - Easements through the units and common elements for maintenance, repair and replacements. Such access is to be only during reasonable hours except that access may be had at any time in the case of an emergency.

**5.5.3. UTILITIES** - Easements through the common areas and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other units and the common elements.

**5.5.4. GRANT OF UTILITY AND OTHER EASEMENTS** - The Association has the power, without the joinder of any unit owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements, and to grant access easements or relocate any existing access easements in any portion of the common elements as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

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5.5.5. **PUBLIC SERVICES** - Access to the property and to the units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.

5.5.6 **OTHER** - Any other easements existing or created at the time of recordation of the original Declaration.

## 6. MAINTENANCE RESPONSIBILITY

6.1. **MAINTENANCE** - The responsibility for the maintenance of a unit shall be as follows:

6.2. **BY THE ASSOCIATION** - The Association shall maintain, repair and replace at the Association's expense:

6.2.1. Such portions of the unit as contribute to the support of the building including, but not limited to, the perimeter walls, columns, roof, and concrete slab. Also, wiring, piping, ductwork and other mechanical, electrical or other installations or equipment serving the common areas or more than one (1) unit. The Association shall maintain, repair, and replace the exterior of the buildings located on the lots (including painting) and the roofs except as modified by Section 6.3.1, below. Exterior post lights, including the replacement of light bulbs, shall also be maintained, repaired, and replaced by the Association.

6.2.2. Provided that if the maintenance, repair or replacement of any of the above Association expense maintenance items, or of other units, shall be made necessary because of the negligence, act or omission of a unit owner, his family, lessees, invitees or guests, the unit owner shall be liable and the work shall be done by the Association or the damaged unit owner(s) at the expense of the responsible unit owner and, if done by the Association, the cost shall be secured as a charge.

6.2.3. All incidental damage caused to a unit by work done or ordered by the Association shall be promptly repaired by and at the expense of the Association.

6.2.4. If the Association fails to maintain the common elements in accordance with its obligations, any unit owner or institutional first mortgagee may seek specific performance to compel the Association to do so.

6.3. **BY THE UNIT OWNER** - The responsibility of the unit owner shall be as follows:

6.3.1. To maintain, repair and replace at his expense, all portions of the unit except the portions to be maintained, repaired and replaced by the Association. The unit owner's responsibility specifically includes all doors, windows, window glass, and screens and associated hardware; screen enclosures; fixtures; switches; valves; lighting

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fixtures; fan motors; all air conditioning and heating equipment; ceiling fans; wiring; piping and duct work serving only the particular unit, whether located inside or outside the unit; stoves, refrigerators, fans, and other appliances and equipment, and which may now or hereafter be situated in the unit. In addition, the unit owner shall maintain, repair, and replace all elements and parts of any additions and improvements to the unit as originally constructed, including repairs to the roof, interior and exterior walls, windows, electrical items, plumbing items, and ceilings.

6.3.2. Unit owners shall not paint, resurface or otherwise decorate or change the appearance of any portion of the improvements not within the interior walls of the unit unless the written consent of the Board of Directors is first obtained. Paint colors and materials shall be as specified by the Association.

6.3.3. Unit owners shall plant and maintain shrubbery within five feet (5') of their physical dwelling provided any such landscaping does not become a nuisance and approval of the Board of Directors is first obtained. The on-going maintenance of such landscaping shall be a unit owner responsibility.

6.3.4. No unit owner shall paint or otherwise decorate or change the appearance, configuration, or size of any portion of the building not within the interior walls of the building located on the lot or which is visible from the exterior of the lot unless the written approval of the Board of Directors is first obtained. This shall not be construed to require approval of interior shades, drapes or curtains.

6.3.5. No owner shall make any alterations in the portions of the improvements which are to be maintained by the Association or remove any portion thereof or make any additions thereto without the prior written approval of the Board of Directors. The entire expense of any such work shall be borne by the unit owner. No owner shall do any work which would jeopardize the safety or soundness of the improvements or impair any easements.

7. COMMON ELEMENTS

7.1. The common elements are owned in undivided shares as follows:

<u>LOT NO.</u>	<u>CONDOMINIUM UNIT NO.</u>	<u>UNDIVIDED SHARE</u>
1	1	2.73%
2	2	2.74%
3	3	2.70%
4	4	2.73%
5	5	2.74%
6	6	2.73%
7	7	2.74%
8	8	2.73%

9	9	2.70%
10	10	2.71%
11	11	2.70%

<u>LOT NO.</u>	<u>CONDOMINIUM UNIT NO.</u>	<u>UNDIVIDED SHARE</u>
12	12	2.71%
13	13	2.70%
14	14	2.71%
15	15	2.70%
16	16	2.71%
17	17	2.71%
18	18	2.71%
19	19	3.67%
20	20	2.73%
21	21	2.70%
22	22	2.70%
23	23	2.71%
24	24	2.70%
25	25	2.70%
26	26	2.92%
27	27	2.84%
28	28	2.84%
29	29	2.84%
30	30	2.84%
31	31	2.84%
32	32	2.71%
33	33	2.84%
34	34	2.84%
35	35	2.84%
36	36	<u>2.84%</u>
		100.00%

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7.2. The maintenance and operation of the common elements shall be the responsibility of the Association.

7.3. Each unit owner and the Association shall be entitled to use the common elements in accordance with the purposes for which they are intended but no such use shall hinder or encroach upon the lawful rights of owners of other units.

7.4. Material alteration of, or substantial additions to, the common elements or Association property may be made by a majority vote of the Board of Directors with the provisions set forth below. Except as provided above as to changes made by an owner with Association approval, material alterations of, or substantial additions to, the common

elements or Association property which exceed a cost of \$10,000.00 in the aggregate in any calendar year, may be effectuated only by a vote of a majority of the voting interests.

8. **FISCAL MANAGEMENT** - The fiscal management of the Association including such items as the budget, fiscal year, financial statements, assessments, and collection of assessments shall be as set forth in the Bylaws.

9. **ASSOCIATION** - The administration of the Condominium by the Board of Directors and its powers and duties shall be as set forth in the Bylaws.

10. **INSURANCE** - In order to adequately protect the Association, the Association property and the Condominium property required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

10.1. **DUTY AND AUTHORITY TO OBTAIN** - Each unit owner shall obtain and maintain adequate insurance for his unit. The owner, at this expense, shall keep current adequate replacement cost insurance (which term shall be construed to include the costs of the replacement improvements meeting the current building and fire codes and all other requirements of governmental entities with jurisdiction) covering his unit. The unit owner shall also maintain and keep current a standard "All Risk" property contract of insurance. Proof of insurance shall be furnished to the Board of Directors by way of a Certificate of Insurance at least annually and at any other time upon written demand by the Board. The Association shall be listed as an additional insured. All such insurance obtained by an owner shall, whenever such provision shall be available, provide that the insurer waives its right of subrogation as to any claims against other owners and the Association and their respective agents and guests. The name of the insured shall be the Association, the unit owner and their mortgagees, without naming them, as their interests shall appear.

10.2. **BASIC INSURANCE** - The Association shall use its best efforts to obtain and maintain adequate replacement cost (which term shall be construed to include the costs of the replacement improvements meeting then current building and fire codes and all other requirements of governmental entities with jurisdiction but not including insurance on each individually owned unit) insurance covering all of the buildings, the common elements as well as all Association property, in an amount determined annually by the Board of Directors, such insurance to afford the following protection:

10.2.1. **PROPERTY** - Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract of insurance.

10.2.2. **FLOOD** - As appropriate to the flood zone in which the Condominium is located and made available through the National Flood Insurance Program.

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10.2.3. **LIABILITY** - Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

10.2.4. **AUTOMOBILE** - Automobile liability for bodily injury for all owner and/or non-owner motor vehicles in such limits of protection and with such coverage as may be required by the Board of Directors in connection with service on behalf of the Association.

10.2.5. **WORKERS' COMPENSATION** - The Association shall maintain workers' compensation insurance on at least a minimum premium basis.

10.2.6. **DIRECTORS' AND OFFICERS' LIABILITY** - The Association shall maintain Directors' and Officers' liability insurance in an amount deemed adequate by the Board.

10.2.7. **STATUTORY DISHONESTY BOND** - Minimum of \$10,000, or such amounts as are required by law, per Director, Officer, employee or persons having access to Association funds.

10.2.8. **OPTIONAL COVERAGE** - The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and the unit owners.

10.3. **DESCRIPTION OF COVERAGE** - A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners upon request.

10.4. **WAIVER OF SUBROGATION** - If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

10.5. **INSURANCE PROCEEDS** - All insurance policies shall be for the benefit of the Association, the unit owners and their mortgagees, as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid and hold and disburse the same in trust for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

10.5.1. **COMMON ELEMENTS** - Proceeds on account of damage to common elements shall be held according to the percentage share set forth

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elsewhere in this Declaration, the share of each unit owner being the same as his share in the common elements.

**10.5.2. UNITS** - Proceeds on account of units shall be held in the following undivided shares:

**10.5.3. PARTIAL DESTRUCTION, WHEN THE BUILDINGS ARE TO BE RESTORED** - For owners of all units, each owner's share being in proportion to his share in the common elements appurtenant to his unit.

**10.5.4. TOTAL DESTRUCTION, WHEN THE BUILDINGS ARE TO BE RESTORED** - For owners of all units, each owner's share being in proportion to his share in the common elements appurtenant to his unit.

**10.6. MORTGAGEE** - If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

**10.7. DISTRIBUTION OF PROCEEDS** - Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

**10.7.1. COST OF RECONSTRUCTION OR REPAIR** - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall become part of the common surplus.

**10.8. FAILURE TO RECONSTRUCT OR REPAIR** - If it is determined in the manner elsewhere provided in this Declaration that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the affected owners, remittances to unit owners and their mortgagees being payable jointly to them, the shares of each unit owner being the same as his share in the common elements. This is a covenant for the benefit of mortgagees and may be enforced by such mortgagees.

**10.9. ASSOCIATION AS AGENT** - The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

**11. RECONSTRUCTION OR REPAIR AFTER CASUALTY** - If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

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11.1. **DAMAGE TO UNITS** - Where loss or damage occurs within a single unit or units, any Association insurance proceeds on account of the damage, less the deductible, shall be distributed to the owner(s) of the damaged units in shares proportional to the amount of damage in each unit covered by the Association policy. Such insurance proceeds shall include coverage obtained by individual homeowners for which the Association is an additional interest. The owners of damaged units shall be responsible for reconstruction and repair.

11.2. **DAMAGE TO COMMON ELEMENTS - LESS THAN "VERY SUBSTANTIAL"** - Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss, and the following procedures shall apply:

11.2.1. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for the repair and reconstruction of the common elements affected.

11.2.2. If the net proceeds of insurance (including both Association and unit owner policies) plus available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, and if other funds such as reserves are not available, levy a special assessment against all unit owners on an equal basis. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for repair and restoration of the property.

11.3. **"VERY SUBSTANTIAL" DAMAGE** - As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby seventy-five percent (75%) or more of the total units are rendered uninhabitable. Should "very substantial" damage occur, the following procedures shall apply:

11.3.1. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.

11.3.2. A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty to determine the wishes of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

11.3.3. If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost thereof so that no special assessment is required, then the Condominium property shall be restored or repaired unless seventy-five percent (75%) of the total voting interests of the Association vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of unit, in which case the Condominium shall be terminated.

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11.3.4. If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then, unless seventy-five percent (75%) of the voting interests of the Association vote in favor of such special assessment and against termination of the Condominium, the Condominium shall be terminated and the property removed from the provisions of the Condominium Act. If seventy-five percent (75%) of the total voting interests of the Association approve the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate and contract for such repairs and restoration. The special assessment shall be added to the proceeds available for repair and restoration of the property.

11.4. If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

11.5. **EQUITABLE RELIEF** - In the event of substantial damage to the Condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within twelve (12) months following the damage or destruction and is completed within a reasonable time thereafter absent extenuating circumstances beyond the control of the Association.

11.6. **PLANS AND SPECIFICATIONS** - Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors and by the owners of seventy-five percent (75%) of the total voting interests of the Association.

12. **USE RESTRICTIONS** - The use of the property of the Condominium shall be in accordance with the Rules and Regulations adopted by the Board of Directors:

12.1. **LAWFUL USE** - No immoral, improper, offensive, or unlawful use shall be made of any unit or of the common elements, or of the limited common elements, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common elements or on the limited common elements, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other owners or occupants of other units, or annoy them by unreasonable noises, nor shall any such owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit or which interferes with the peaceful possession and proper use of any other unit, or the common elements, or the limited common elements.

12.2. REGULATIONS - Reasonable regulations concerning the use of the Condominium property including the units may be made and amended from time to time by the Board of Directors of the Association. Copies of the regulations and amendments shall be furnished by the Association to all unit owners.

12.3. USE OF UNITS - Use of the units is restricted to single family residential purposes only. All live-in guests must be registered with the Association upon arrival and unregistered guests may be denied use of recreational facilities and amenities. No unit shall be converted to time share use.

12.4. POOLS - The installation of a pool after the adoption of this Declaration is strictly prohibited. Only those owners who have had pools installed prior to the adoption of this Declaration shall be allowed to have pools.

12.5. VEHICLE PARKING AND STORAGE - Parking or storage of owner or resident owned mobile homes, motor homes, trailers of any type, size, or purpose, or commercial vehicles (autos, vans, or trucks with advertising) is prohibited on driveways, on common elements, or on Maycrest Road, Richland Road, or Westpark Road between the hours of 10 p.m. and 7 a.m. Guests may park their mobile or motor homes in the resident's driveway for a time not to exceed 72 hours in any seven (7) day period. Unit owners, residents, and their guests may park their vehicles in their carport without restrictions provided the vehicle fits completely within the height and width of the owner's carport dimensions.

12.6. PETS - All pets are to be approved by the Board of Directors. Condominium unit owners or occupants having pets must keep said pets on a leash at all times when outside the unit and said pets shall not be permitted to roam over the Condominium property unless accompanied by the owner or the owner's representative to the end that a unit owner's or occupant's pet shall not be permitted to disturb other unit owners or occupants or to create a condition of nuisance or discomfort to other unit owners. Unit owners must pick up all solid wastes of their pet and dispose of such waste appropriately.

12.7. LEASING OF UNITS - Each unit is hereby restricted to residential use by the owner or owners thereof, their immediate families, guests and invitees. No owner or owners of any unit shall lease or rent his unit for a period of less than three (3) months nor permit use of the same for transient hotel or commercial purposes. The first day of occupancy under the lease shall determine in which year the lease occurs. No lease shall be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee shall be allowed.

12.7.1. OCCUPANCY DURING LEASE TERM - No one but the lessee, his family members within the first degree of relationship by blood, adoption or

marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to six (6).

**12.7.2. USE OF COMMON ELEMENTS AND ASSOCIATION PROPERTY** -When a unit is leased, a tenant shall have all use rights in the Association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest. Nothing herein shall interfere with the access rights of the unit owner as a landlord pursuant to Chapter 83, Florida Statutes, the Florida Residential Landlord Tenant Act.

**12.7.3 OCCUPANTS** - The total number of permanent occupants shall not be more than five (5).

**12.7.4. REGULATION BY THE ASSOCIATION** - All of the provisions of the Condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

**12.8. TRANSFER OF OWNERSHIP OF UNITS** - In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a unit shall be subject to the following provisions:

**12.8.1. FORMS OF OWNERSHIP** - There are a number of forms of ownership:

(A) A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

(B) Co-Ownership. Co-ownership of units is permitted. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section.

(C) Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in

which the unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section.

(D) Designation of Primary Occupant. Within thirty (30) days after the effective date of this provision, each owner of a unit which is owned in the forms of ownership stated in preceding subsections (B) and (C) shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

(E) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance. The life tenant shall be the only Association member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights and shall be subject to Subsection (B), above.

#### 12.8.2. TRANSFERS.

(A) Sale or Gift. No unit owner may dispose of a unit or any interest in a unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined.

(D) To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Consents to Transfer on behalf of the Association.

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12.8.3. PROCEDURES.

(A) Notice to Association.

(1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a condition for approval.

(2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell the unit following the procedures in this Section.

(3) Demand. With the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.

(4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) Board Action. Within twenty (20) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Consent to Transfer to the transferee.

(C) Disapproval.

(1) With Good Cause. Approval of the Association shall be withheld only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good causes for disapproval:

(a) The person seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

(d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;

(e) The person seeking approval has evidenced an attitude of disregard for association rules or by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;

(f) The transfer to the person seeking approval would result in that person owning more than five (5) units in the Condominium; or

(g) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process.

(2) Without Good Cause. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth herein, then within 30 days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day

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of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

(3) If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Consent to Transfer shall be issued.

**12.8.4. EXCEPTION** - The approval and consent contained herein are not applicable to the acquisition of title by a mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

**12.8.5. UNAPPROVED TRANSFERS** - Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

**12.9. FEES AND DEPOSITS RELATED TO THE SALE OR LEASE OF UNITS** - Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the approval, which fee shall not exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

**12.10. NOTICE OF SUIT** - An owner shall give notice to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given immediately after the owner receives knowledge thereof.

**12.11. JUDICIAL SALES** - Judicial sales are exempt from this Section.

**13. COMPLIANCE AND DEFAULT** - Each owner and the Association shall be governed by and shall comply with the terms of the Condominium documents as they may be amended from time to time.

**13.1. FAILURE TO COMPLY** - Failure to comply shall be grounds for relief, which relief may include, but shall not be limited to, an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any unit owner. No litigation shall be initiated until such time as the matter has been submitted to non-binding arbitration pursuant to Section 718.1255, Florida Statutes.

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**13.2. PREVAILING PARTY RECOVERY** - In any such proceeding, including arbitration, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees, including appeals in an amount determined in the discretion of the arbitrator.

**13.3. NO WAIVER OF RIGHTS** - The failure of the Association or any owner to enforce any covenant, restriction or other provision of the Condominium documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other infractions.

**14. AMENDMENTS** - Amendments to the Declaration of Restrictions, Limitations, Covenants and Uses shall be in accordance with this Section:

**14.1. PROCEDURE** - An amendment may be proposed either by the Board of Directors or by the owners of ten percent (10%) of the units, and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the Bylaws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association, that it has been enacted by the affirmative vote of the required percentage of unit owners, and the separate written joinder of mortgagees where required, and shall include the recording data identifying the location of the Declaration as originally recorded. The amendment shall become effective when recorded in the Public Records.

**14.2. REGULAR AMENDMENTS** - Amendments to the Declaration may be enacted by a favorable vote of twenty four (24) votes of the total voting interests in the Association.

**15. TERMINATION** - The Condominium may be terminated in the following manner:

**15.1. AGREEMENT** - The Condominium may be terminated at any time by approval, in writing, of ninety percent (90%) of the voting interests of the Association.

**15.2. VERY SUBSTANTIAL DAMAGE** - If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 11.3, and it is not decided as therein provided that it will be reconstructed or repaired, the Condominium form of ownership will thereby terminate without agreement.

**15.3. GENERAL PROVISIONS** - Upon termination, the former unit owners shall become the owners, as tenants in common, of all Condominium and Association property and the assets of the Association. The shares of such tenants in common shall be the same as were their percentage shares of the common elements. The mortgagee or

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lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts affecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Charlotte County, Florida.

**15.4. NEW CONDOMINIUM** - The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

**15.5. PARTITION; SALE** - Following termination, the Condominium and Association property may be partitioned and sold upon the application of any unit owner. If following a termination, the owners of seventy-five percent (75%) of the total voting interests of the Association determine to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

**15.6. LAST BOARD** - The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon a termination.

**15.7. PROVISIONS SURVIVE TERMINATION** - The provisions of this Section 15 shall be deemed covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

## **16. RIGHTS OF MORTGAGEES**

**16.1. EXCUSAL OF PRIOR ASSESSMENTS** - Where an institutional holder of a first mortgage of record obtains title to a unit by foreclosure, or by deed in lieu of foreclosure, such mortgagee and its successors and assigns shall be liable for such unit's assessments, charges or share of the common expenses which became due prior to acquisition of title. However, the mortgagee's liability is limited to a period not exceeding six (6) months, but in no event does the first mortgagee's liability exceed one percent (1%) of the original mortgage debt. The first mortgagee's liability for such expenses or assessments does not commence until thirty (30) days after the date the first mortgagee received the last payment of principal or interest. In no event shall the mortgagee be liable for more than six (6) months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or one percent (1%) of the original mortgage debt, whichever amount is less. Such mortgagee may obtain title, own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association.

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16.2. **REQUESTS FOR INFORMATION** - Upon receipt by the Association from any institutional mortgagee, guarantor or insurer of a copy of the mortgage held by such institutional mortgagee, guarantor or insurer on a unit, together with written request therefor from such institutional mortgagee or an insurer or guarantor of such first mortgage specifying the address to which the following items are to be sent, the Association shall timely send to such institutional mortgagee, insurer or guarantor the following, and for which the Association may charge a reasonable fee:

16.2.1. **FINANCIAL STATEMENT** - A copy of a financial statement of the Association for the prior fiscal year; and

16.2.2. **INSURANCE TERMINATION** - Written notice of the cancellation or termination by the Association of any policies of insurance covering the Association common elements or any improvements thereon, or any fidelity bonds of the Association; and

16.2.3. **DAMAGE TO CONDOMINIUM PROPERTY** - Written notice of any damage or destruction to the improvements located on the Association common elements which affects a material portion of the project or the unit securing its mortgage; and

16.2.4. **CONDEMNATION** - Written notice of condemnation or eminent domain proceeding affecting a material portion of the project or the unit securing its mortgage; and

16.2.5. **DELINQUENT OWNERS** - Written notice of failure by an owner owning a unit encumbered by a first mortgage held by such institutional mortgagee to pay any assessments where such failure or delinquency has continued for a period of sixty (60) days.

16.2.6. **FAILURE TO NOTIFY** - The failure of the Association to send any such information or notice to any such institutional mortgagees shall have no effect on any meeting, act, or thing which was to have been the subject of such notice nor affect the validity thereof.

17. **ENFORCEMENT OF ASSESSMENT LIENS** - Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property and pursuant to Section 718.116, Florida Statutes. During occupancy, if so ordered by the Court, the owner shall be required to pay a reasonable rental, and the Association shall be entitled to the appointment of a receiver to collect it, and the Association shall have all the powers provided under the Florida Condominium Act, and shall be entitled to collect interest at the highest lawful rate (currently 18% per annum) on unpaid assessments and reasonable attorneys' fees, including

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appeals, and costs incident to the collection of such assessment or enforcement of such lien, with or without suit.

**18. CREATION AND ENFORCEMENT OF CHARGE LIENS** - The Association shall have a non-statutory common law lien upon the Condominium parcels to secure payment to the Association by unit owners of all charges, administrative guest fees, costs and expenses for which they are liable to the Association and which cannot be secured as assessments, regular or special, under Section 718.116, Florida Statutes. The lien may be foreclosed in the same fashion as a mortgage on real property, shall bear interest at the highest lawful (currently 18% per annum) rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

**19. ASSOCIATION MEMBERS** - The qualification of members and the manner of their admission shall be as follows:

**19.1. ALL OWNERS OF UNITS** shall be members of the Association, and no other persons or entities shall be entitled to membership.

**19.2. MEMBERSHIP IN THE ASSOCIATION** shall be established by the recording in the Public Records of Lee County, a deed or other instrument establishing a change of record title to a unit in the Condominium; the new owner thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated. Provided, however, that the approval requirements contained in this Declaration of Restrictions, Limitations, Covenants and Uses and the Bylaws must have been met before a person's membership commences.

**20. CONDEMNATION:**

**20.1. DEPOSIT OF AWARDS WITH ASSOCIATION** - The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

**20.2. DETERMINATION WHETHER TO CONTINUE CONDOMINIUM** - Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

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**20.3. DISBURSEMENT OF FUNDS** - If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments shall be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium shall be reduced, the owners of condemned units, if any, shall be made whole, and any property damaged by the taking shall be made usable in the manner provided below. Proceeds of awards and special charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

**20.4. ASSOCIATION AS AGENT** - The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

**20.5. UNITS REDUCED BUT TENANTABLE** - If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**20.5.1. RESTORATION OF UNIT** - The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

**20.5.2. DISTRIBUTION OF SURPLUS** - The balance of the award, if any, shall be distributed to the Association as common surplus.

**20.6. UNIT MADE UNTENANTABLE** - If the taking is of any entire unit, or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**20.6.1. PAYMENT OF AWARD** - The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagee(s).

**20.6.2. ADDITION TO COMMON ELEMENTS** - If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors.

**20.7. ADJUSTMENT OF SHARES IN COMMON ELEMENTS** - The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be equal to the number of such units remaining.

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20.8. **ARBITRATION** - If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal according to the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I. (Member, Appraisal Institute) appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit; and a judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisals shall be paid by the party selecting the appraiser.

20.9. **TAKING OF COMMON ELEMENTS** - Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

20.10. **AMENDMENT OF DECLARATION** - The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Restrictions, Limitation, Covenants and Uses that needs to be approved by ninety percent (90%) of all voting interests of the Association.

21. **SEVERABILITY** - If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and the application of any such provision, section, sentence, clause, phrase, or word in other circumstances shall not be affected thereby.

22. **EFFECTIVE DATE** - This Amended and Restated Declaration shall not become effective until same is recorded in the Public Records of Lee County, Florida.

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS, LIMITATIONS, COVENANTS AND USES and attachments hereto made and entered into this 13<sup>th</sup> day of April, 1994.

WITNESSES:

GOLFWOOD CONDOMINIUM NO. 2, INC.

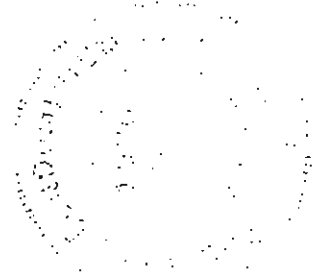
[Signature]  
Signature of Witness  
ORVILLE L. KURTZ

Printed Name of Witness

Viola B. Simpson  
Signature of Witness

VIOLA B. SIMPSON  
Printed Name of Witness

By: [Signature]  
President  
(CORPORATE SEAL)



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Attest:

[Signature]  
Secretary

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of April, 1994, by Charles D. Dixon, Jr. and Norbert J. Bechever, President and Secretary, respectively, of GOLFWOOD CONDOMINIUM NO. 2, INC., who are personally known to me or who have produced personally known (type of identification) as identification and who did (did not) take an oath, on behalf of said corporation.

[Signature]  
Notary Public J. Wade Ford

(please print name below signature)  
Commission No. 149907  
(SEAL)

My Commission Expires:

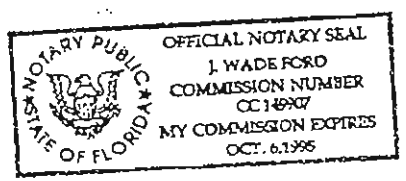


Exhibit "A"

**PROPOSED AMENDMENT  
TO THE  
AMENDED AND RESTATED DECLARATION OF RESTRICTIONS, LIMITATIONS,  
COVENANTS AND USES FOR GOLFWOOD CONDOMINIUM NO. 2**

The Amended and Restated Declaration of Restrictions, Limitations, Covenants and Uses for Golfwood Condominium No.2 shall be amended as shown below.

**NOTE:** New language is underlined; language being deleted is shown in ~~strike through~~ type.

1. The Amended and Restated Declaration of Restrictions, Limitations, Covenants and Uses for Golfwood Condominium No.2 shall be amended by adding a new Section 12.12 as follows:

12.12

(1). Statement of Intent. It is hereby declared by the Golfwood Condominium No. 2, Inc., that the Association desires and intends to provide housing for older persons, as defined in the Fair Housing Amendments Act of 1988 (hereinafter referred to as the "Act") and the Federal Rules and Regulations (hereinafter referred to as the "Federal Regulations") as promulgated by the Department of housing and Urban Development (hereinafter sometimes referred to as "HUD"). It is more specifically the desire and intention of this Association to meet the exemption for housing for older persons as is provided for in 24 CFR Part 100, Section 100.304 (hereinafter referred to as the "55 or Over Housing Exemption"). Section 100.304 implements Section 807(b)(2)(c) of the Act which exempts housing communities intended and operated for occupancy by at least one (1) person 55 years of age or over per unit that satisfy certain criteria. In this endeavor, the following occupancy restrictions and procedures shall govern. Further, in addition to these Amendments to the Declaration, the Association shall do whatever is required by the Act and Federal Regulations to publish its intention to comply with, and adhere to, policies and procedures which demonstrate an intent to provide housing for persons 55 year of age or over. The Act and Federal Regulations, as amended from time to time, are hereby incorporated by reference into this document. Reference to the Act and to the Federal Regulations in this document shall mean the Act and the Federal Regulations as they are amended from time to time. To the extent that any of these provisions relating to the Act appear to conflict with any language in the constituent documents governing Golfwood Condominium No. 2, said provisions shall be deemed federally preempted by the Act, null and void and of no force or effect whatsoever.

(2). Fair Housing Definitions:

2(A). "ACT" shall mean and refer to the (Federal) Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995 (Pub.L. 100-430, approved

September 13, 1988; 102 STAT.1619.)

2(B). "FEDERAL REGULATIONS" shall mean and refer to the Federal rules and regulations promulgated by the Department of Housing and Urban Development, which became originally effective on March 12, 1989, and as subsequently amended.

2(C). "55 OR OVER HOUSING EXEMPTION" shall mean and refer to the exemption for housing for older persons (55 or over housing) as is provided for in Section 807(b)(2)(C) of the Act.

(3). Minimum Age Restrictions. Permanent occupancy of a unit shall be restricted as follows provided that the restrictions contained in the remaining provisions of this Section are met:

3(A). No persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

3(B). However, a person under the age of eighteen (18) years may be permitted to visit and temporarily reside in a unit for a period of time not to exceed thirty (30) days in the aggregate in any calendar year, nor more than twenty (20) consecutive days. The visitation time periods shall not be cumulative from year to year. Only overnight visitation shall be considered in the computation. By way of example, if an under-aged person visits overnight, two (2) days of visitation shall be computed. If an under-aged person visits during the day only and does not stay overnight, no days of visitation shall be computed.

(4). Occupancy by Older Persons - Age 55.

4(A). Except for persons who are surviving spouses or cohabitants, recipients of legacy, or grandfathered-in as provided for in Section 6 below, no unit shall be occupied or be permitted to be occupied unless there is at least one (1) person occupying the unit who has attained the age of 55 years (hereinafter referred to as the "designated occupant"). This occupancy requirement shall not preclude temporary occupancy by guests or relatives of the designated occupant for periods not to exceed thirty (30) days in the aggregate during a twelve (12) month period (see Section 5 below), nor more than twenty (20) consecutive days.

4(B). This Section shall guarantee that not less than 80% of all newly-occupied units shall have a designated occupant residing in the unit.

(5). Guest Visitation Limitation. Use of units by the following guests of the designated occupant when the designated occupant is not present in the unit shall be restricted as follows: No guest shall use or occupy a unit in excess of sixty (60) days in the aggregate in a calendar year, of which the maximum number of continuous days shall be fifteen (15). Each day, as well as part of a day, shall be counted in this computation. This

Section shall be in addition to restrictions pertaining to guests which may be contained elsewhere in the governing documents and Rules and Regulations of the Association, as amended from time to time. The designated occupant shall be considered to be not present in the unit when the designated occupant does not stay overnight in the unit along with the quest.

5(A). A "guest" shall mean and refer to any person who is visiting a unit without requirement to contribute money, perform any services or provide any other consideration to the owner in connection with such visit/occupancy. A permanent occupant of a unit shall not be considered as a guest. Furthermore, an owner of a unit shall never be considered a guest of the unit he or she owns, unless the owner is visiting a lessee in the unit.

5(B). Registration of Guests. All guests who visit when the designated occupant is not present in the unit must register with the Association prior to or upon arrival at Golfwood Condominium No. 2. The Board of Administration shall be empowered to adopt a form for use in connection with the registration of such guests, which the guests must sign. The form shall include an acknowledgment of the following: (i) relationship with the designated occupant; (ii) the intended length of stay; (iii) that the guest has received a copy of the governing documents and Rules and Regulations of the Association, or summation thereof, and agrees to abide by them; (iv) and such other reasonable information determined by the Board of Administration from time to time. Such guest shall not be entitled to visit unless he or she registers with the Association as required in this Section.

5(C). Unauthorized Guest Visit. Any guest visit not authorized pursuant to the terms of this Section shall be deemed improper, entitling the Association to bar access of the guest to the unit and recreational facilities and/or shall entitle the Association to obtain an injunction removing the guest and his or her personal belongings from the unit.

5(D). Other Restrictions. The restrictions on guests in this Section shall be in addition to other restrictions which may be contained elsewhere in the constituent documents and Rules and Regulations of the Association.

(6). Exceptions to Section 4.

6(A). Grandfather Status. Section 4 above shall not apply to any persons who have occupied or owned a unit prior to the date of this amendment, provided those persons did not lease or sell said unit after the date of this amendment. In any lease or sale after the date of this amendment, the owner and new occupant shall be subject to the provisions provided elsewhere herein.

6(B). Surviving Spouse or Cohabitant. Section 4 shall not be applicable in the case of the death of the designated occupant whose surviving spouse or cohabitant is under 55 years of age, provided that the surviving spouse or cohabitant resided with the designated occupant at the time of the designated occupant's death. Under such

circumstances, the surviving spouse or cohabitant shall be allowed to continue to occupy the unit irrespective of age so as to prevent disruption of the lives of surviving spouses and cohabitants under age 55, when the over 55 designated occupant dies or otherwise leaves the unit.

6(C). Recipient of Legacy. The Federal Regulations recognize that the 20% requirement is not intended to exclude all incoming households; therefore Section 4 shall not be applicable in the event that an owner of a unit dies and the unit is inherited by an individual who is under 55 years of age. The recipient of the legacy and his or her household shall be allowed to occupy the unit.

6(D). No "Set-Aside". This Section is not intended to establish a 20% "set-aside" for persons under 55 years of age or families with children under the age of eighteen (18) years.

(7). Contract/Covenant. Every Owner and lessee shall be deemed to have a contract with the Association to ensure that the occupancy requirement in Section 4 is met at all times. Even though this occupancy requirement is a contract between the Association and the Owner or lessee, as applicable, this amendment shall be deemed to be a covenant running with the land. Furthermore, the Owner shall be responsible to ensure that his/her lessee(s) comply with this occupancy requirement.

(8). Proof of Age.

8(A). All persons occupying units after the date of this amendment shall deliver to the Association a completed Association form demonstrating proof of age and any other documentation required by the Association.

8(B). Any person(s) not providing such documentation, when and as requested by the Board of Administration, shall be validly presumed by the Association and by a Court of law to be under the age of 55 years, even though the persons may actually be 55 years of age or over.

(9). Remedies for Non-Compliance. The Association concurrently shall have any one or more of the following remedies for non-compliance, in addition to those provided elsewhere in the governing documents.

9(A). Lease of a Unit.

(i) In the event of a lease of a unit, and the occupancy and other requirements of this amendment are not met, the Association shall be entitled to file for and obtain an injunction against the Owner of the unit and lessee(s) and/or other occupants on the unit, removing the unauthorized lessee(s) and/or other unauthorized occupants.

(ii) The Association shall also be entitled to evict the unauthorized

lessee(s) and other unauthorized occupants in the unit, as agent for the Owner(s). This right of eviction by the Association shall apply only:

(a) After the expiration of seven (7) working days from the date on which the Association mails notice to the Owner(s) by certified mail, return receipt requested, or provides notice by hand delivery; and

(b) Provided that the Owner(s) fail(s) to commence eviction proceedings on his/her/their own and fails to so notify the Association, within the seven (7) day period.

(iii) The lease shall specify, and if it fails to so specify the lease shall be deemed to specify, that the lessee(s) and all other occupants shall abide by the constituent documents for Golfwood Condominium No. 2 and the Rules and Regulations of the Association; and shall specify that the Association has the remedies provided for in this Section 9(A). Costs and attorney's fees incurred by the Association in connection with the exercise of its remedies under this Section 9(A), provided that the Association prevails, shall be the responsibility of the Owner(s) of the unit and to the extent awarded by a Court under Chapter 83, Florida Statutes, shall also be the responsibility of the lessee(s).

9(B). Other Occupancies (other than Leases). In the event of an existing ownership; in the event of use by guests; or in the event of a sale, gift, or other transfer of title; and the occupancy requirements of this amendment are not met, the Association may disapprove the transfer and shall be entitled to file for and obtain an injunction against the Owner(s) of the unit and all occupants in the unit, removing the unauthorized occupants (including the Owner(s)). In that event, if the Association prevails, the Owner(s) shall be responsible for costs and attorney's fees incurred by the Association in connection with its enforcement of this Section 9(B).

10. Registration Required. All Owners, lessees and occupants must register with the Association at the time of becoming a member of the Association or, in the case of a non-owner, at the time of the commencement of the lease agreement, by delivery of the items referred to below. Furthermore, no persons shall attain grandfather status under Section 6(A) above unless the person registers with the Association by delivery of the items referred to below. These items are as follows:

10(A). A fully completed and signed Association form, to be provided by the Association; and

10(B). Documentation demonstrating proof of age as provided for in Section 9 above; and

10(C). In the event of a lease, a fully executed copy of the lease must also be delivered (if not already on file with the Association). It shall be the responsibility of the particular Owner, not the Association, to provide the lessee(s) and/or other occupants of the unit with the registration form for the lessee(s) occupant(s) to complete and return to

the Association within five (5) days from the date of receipt.

11. Additional Occupants. Even though a person under the age of 55 years is given grandfather status under Section 6(A) above or is provided with an exception under Section 6(B) above, this shall not entitle additional persons to occupy the unit after the date of this amendment, unless:

11(A). That additional person is 55 years of age or older; or

11(B). That additional person is also accorded grandfather status under Section 6(A) above; or

11(C). That additional person is legally married to the surviving spouse or cohabitant mentioned in Section 6(B) above.

12. Non-Occupancy Status. Each Owner or lessee, as applicable, shall notify the Association of any periods of time during which the unit becomes unoccupied. As used in this Section, "unoccupied" is defined to mean any intended absence of all permanent residents of the unit, for a period in excess of six (6) months. It is understood that this is a necessary requirement because the Federal Regulations require record keeping of occupied and unoccupied units.

13. Additional Provisions. Special provisions concerning the Act and Federal Regulations.

13(A). Notwithstanding any other provision in this Declaration, to the contrary, the following shall apply: Upon the affirmative vote of two-thirds (2/3) of the Owner's voting interests of the Association which vote may be evidenced by written agreement or consent, present and voting at a duly called meeting, any one or more of the following amendments to this Declaration may be approved and become effective.

(i) Any amendment which is necessary to enable Golfwood Condominium No. 2 to attain or retain the "55 or Over Housing Exemption" of the Act.

(ii) Any amendment which is necessary to refine those amendments approved by the Association relating to the Act and/or Federal Regulations.

(iii) Any amendment which is necessary to delete any or all amendments approved by the Association relating to the Act and/or Federal Regulations.

(iv) Any amendment which is made which otherwise relates to the Act and/or Federal Regulations.

(v) Any amendment which may be required due to regulations adopted from time to time by the Federal National Mortgage Association (FNMA).



**CERTIFICATE OF AMENDMENT  
TO  
THE AMENDED AND RESTATED DECLARATION OF  
RESTRICTIONS, LIMITATIONS, COVENANTS AND USES FOR  
GOLFWOOD CONDOMINIUM NO. 2**

INST # 8895741 OR BK 04789 Pgs 4247 - 4254 (8pgs) RECORDED 07/15/2005 02:58:32 PM  
 CHARLIE GREEN, CLERK OF COURT, LEE COUNTY, FLORIDA  
 REC FEE 89.50  
 DEPUTY CLERK ID 54969

*THE UNDERSIGNED*, being duly elected and acting President and Secretary respectively, of GOLFWOOD CONDOMINIUM NO. 2, INC., a Florida corporation not-for-profit, do hereby certify that all resolutions set forth below were approved, evidenced by written statement or ballot manifesting their intention that such amendment be adopted. The resolutions were approved and adopted by the votes indicated for the purposes of approving and for amending the Amended and Restated Declaration of Restrictions, Limitations, Covenants and uses for Golfwood Condominium No. 2 as originally recorded in Official Records Book 651, page 588 *et. seq.*, and as subsequently amended in the Public Records of Lee County, Florida.

1. The following resolutions were approved and passed by 90% of all voting interest, at a duly called meeting of the membership of the persons entitled to vote either in person or by proxy as required by the documents of the Association:

**RESOLVED**, that the Amended and Restated Declaration of Restrictions, Limitations, Covenants and Uses for Golfwood Condominium No. 2 be and is hereby amended in the form attached hereto as Exhibit "A", and;

1. That the officers and directors are hereby instructed and authorized to execute the aforementioned documents and cause them to be filed of public record, together with a Certificate of Amendment.

Dated this 6 day of July, 2005.

GOLFWOOD CONDOMINIUM NO. 2,  
INC.

WITNESS:

George J. Sestrev  
Witness Signature

George J. Sestrev  
Printed Name of Witness

Edwin Kelley  
Witness Signature

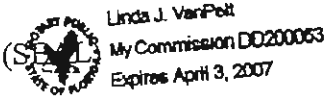
EDWIN KELLEY  
Printed Name of Witness

By: CARL W. FRENCH  
Print Name: Carl W. French  
Title: President

Attest: Robert C. Russell  
Print Name: ROBERT C. RUSSELL  
Title: Secretary

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2005, by Carl William French, President of Golfwood Condominium No. 2, Inc., a non-profit Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced FLAL F 652 13943362-0, as identification and did not take an oath.



Linda J. VanPelt  
Notary Public  
Linda J. VanPelt  
Printed Name of Notary

This Instrument Prepared by:  
Christopher J. Shields, Esq.  
PAVESE LAW FIRM  
1833 Hendry Street  
Fort Myers, Florida 33901

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GOLFWOOD CONDOMINIUM NO. 2 - CERTIFICATE OF AMENDMENT