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when recorded return to:
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PG 1596-1624 08/12/2015 at 11:34:07 AM,
DEPUTY CLERK: MTERRELL Pat Frank, Clerk
of the Circuit Court Hillsborough County

**CERTIFICATE APPROVING AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
BIARRITZ VILLAGE ASSOCIATION, INC.**

AND

**CERTIFICATE APPROVING AMENDED AND RESTATED BYLAWS OF
BIARRITZ VILLAGE ASSOCIATION, INC.**

This Certificate Approving Amended and Restated Declaration of Covenants, Conditions and Restrictions of Biarritz Village Association, Inc. and Certificate of Approving Amended and Restated Bylaws of Biarritz Village Association, Inc. is made as of the 27 day of July, 2015, by the Biarritz Village Association, Inc., a Florida nonprofit corporation (the "Association").

WITNESSETH:

WHEREAS, the original Biarritz Village Declaration of Covenants, Conditions and Restrictions was recorded on June 8, 1989 in Official Records Book 5710, Page 1143, *et seq.*, of the Public Records of Hillsborough County, Florida, and was subsequently amended by virtue of that certain Certificate of Amendment to Declaration of Covenants, Conditions and Restrictions Biarritz Village recorded November 29, 2001 in Official Records Book 11233, Page 0314 of the Public Records of Hillsborough County, Florida (together the "Original Declaration").

WHEREAS, the original Bylaws of Biarritz Village Association, Inc. (the "Original Bylaws") were adopted at the first meeting of the Biarritz Village Association, Inc. Board of Directors on October 27, 1992 and were not recorded in the official records of Hillsborough County, Florida.

WHEREAS, the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Biarritz Village Association, Inc., attached as **Exhibit "A"** to this Certificate, and the Amended and Restated Bylaws of Biarritz Village Association, Inc., attached as **Exhibit "B"** to this Certificate (together, the "Amendments"), amend and restate the Original Declaration and the Original Bylaws.

WHEREAS, the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Biarritz Village Association, Inc., attached as **Exhibit "A"** to this Certificate, and the Amended and Restated Bylaws of Biarritz Village Association, Inc., attached as **Exhibit "B"** to this Certificate (together, the "Amendments"), amend and restate the Original Declaration and the Original Bylaws.

WHEREAS, Article IX, Section 1 of the Original Declaration provides in pertinent part that:

Except as hereinafter provided, the covenants and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-six and two-thirds percent (66 2/3%) of the Owners (other than Developer), and the Class B member, for so long as the Class B membership exists.

WHEREAS, Article XIV, Section 1 of the Original Bylaws provides that the Bylaws may be amended by the affirmative vote of two-thirds (2/3) of the Board of Directors, and after notice to the Members, by the majority vote of Class A Members and all Class B Members present at any regular or special meeting of the Membership.

WHEREAS, at a duly noticed meeting of the Board of Directors of the Association (the "Board Meeting"), at which a quorum of the Board of Directors was present, held in the manner required by the Association's governing documents, and held after notice was provided to all Members, the Board of Directors did cast their votes in favor of or against certain proposed amendments to the Original Bylaws;

WHEREAS, at a duly noticed meeting of the Members of the Association (the "Membership Meeting"), at which a quorum of Members was present, held in the manner required by the Association's governing documents, the Members did cast their votes in favor of or against certain proposed amendments to the Original Declaration and Original Bylaws, and the Amended and Restated Bylaws of Biarritz Village Association, Inc., attached to this Certificate as Exhibit B, was approved by the affirmative vote of not less than two-thirds (2/3) of the Board of Directors;

WHEREAS, at the above-referenced Membership Meeting, the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Biarritz Village Association, Inc., attached to this Certificate as Exhibit A, was approved by Members representing at least sixty-six and two-thirds percent (66 2/3%) of the Owners (other than Developer), and the Amended and Restated Bylaws of Biarritz Village Association, Inc., attached to this Certificate as Exhibit B, was approved by the majority vote of Class A Members present in person or by proxy at the Membership Meeting;

WHEREAS, the Association desires to amend the Original Declaration and Original Bylaws as provided herein.

NOW, THEREFORE, the Association hereby declares and certifies as follows:

1. The foregoing recitals are true and correct.
2. The Amendments are true and accurate copies of each and every amendment to the Original Declaration and Original Bylaws as approved by the Board of Directors at the Board Meeting, approved by the Members at the Membership Meeting and approved by the First Mortgagees in compliance with § 720.306, Fla. Stat.
3. All initially capitalized terms not defined herein or in the Amendments shall have the meaning set forth in the Original Declaration or Original Bylaws.
4. With respect to the Amendments, text to be deleted is indicated by strikethrough (~~strikethrough~~) and text to be added is indicated by a double underline (underline). Ellipses (. . .) indicate that the language omitted by the ellipsis shall remain unchanged.
5. In the event that there is a conflict between the Amendments and the Original Declaration or Original Bylaws, the Amendments shall control.
6. All provisions of the Original Declaration and Original Bylaws are hereby ratified and shall be of full force and affect, except as specifically modified and amended by the Amendments.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and

seal as of the date first written above.

Witnesses:
Florida nonprofit

[Signature]
Print Name: Shelly BRAMM

[Signature]
Print Name: Shelly BRAMM

BIARRITZ VILLAGE
ASSOCIATION, INC., a

corporation

By: [Signature]
President

By: [Signature]
Secretary

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

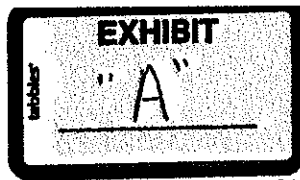
The foregoing instrument was acknowledged before me this 27 day of July, 2015 by MARK KREKERIAN as President, and SUSAN M. TIMCHAK, as Secretary, of the Biarritz Village Association, Inc., a Florida nonprofit corporation, on behalf of the corporation, who are personally known to me or have produced _____ as identification.

[Signature]

NOTARY PUBLIC
Print Name: Ellen L Morgado

My Commission Expires:





**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF BIARRITZ VILLAGE ASSOCIATION, INC.**

WITNESSETH:

WHEREAS, the original Biarritz Village Declaration of Covenants, Conditions and Restrictions was made April 7, 1989 by WATSON, FORSBERG GROUP, INC. (hereinafter referred to as the "Developer"), and was recorded on June 8, 1989 in Official Records Book 5710, Page 1143, et seq., of the Public Records of Hillsborough County, Florida;

WHEREAS, the original Biarritz Village Declaration of Covenants, Conditions and Restrictions was subsequently amended by virtue of that certain Certificate of Amendment to Declaration of Covenants, Conditions and Restrictions Biarritz Village recorded November 29, 2001 in Official Records Book 11233, Page 0314 of the Public Records of Hillsborough County, Florida;

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Biarritz Village Association, Inc. amends and restates the original Biarritz Village Declaration of Covenants, Conditions and Restrictions, as the same was amended in November, 2001. WHEREAS, Developer has incorporated, under the laws of the State of Florida, Biarritz Village Association, Inc., for the purpose of administering and enforcing the covenants and restrictions contained herein, collecting and disbursing assessments and charges as hereinafter created and preserving the values and amenities within the Biarritz Village Association, Inc. community;

NOW, THEREFORE the real property described in Article II is, and shall be subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth, which conditions shall run with the real property described in Article II hereof and shall be binding on all parties having any right, title or interest in the hereinafter described properties or any part thereof and their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to Biarritz Village Association, Inc., a Florida corporation, not-for-profit.
- (b) "Biarritz Village" shall mean and refer to all existing properties subject to this Declaration as defined in Article II, below.
- (c) "Developer" shall mean and refer to Watson, Forsberg Group, Inc., a Florida corporation
- (d) "First Mortgagee" shall mean and refer to any person, corporation or other entity named as a mortgagee in any mortgage deed granting First Mortgage lien upon the fee simple title to any Lot.

- (c) "Living Unit" shall mean and refer to the building located on a plot of land shown as an individual Lot designated and intended for use and occupancy as a residence by a single family.
- (f) "Lot" shall mean and refer to any one of the following described lots: Lots 1 through 38, inclusive, Block 1; Lots 1 through 37, inclusive Block 2; and Lots 1 through 17, inclusive Block 3, all in Biarritz Village, according to the Plat thereof on file and of record in the County of Hillsborough, State of Florida. Notwithstanding the foregoing, Lot 1, Block 2, Biarritz Village and Parcel "B", Biarritz Village, shall for purposes of this Declaration, be deemed to constitute one Lot together (and shall be held by the same Owner).
- (g) "Member" shall mean and refer to all Owners who are Members of the Association as provided in Article III, Section 1, hereof.
- (h) "Owner" shall mean and refer to the holder of the fee simple absolute or contract vendee to any Lot; but notwithstanding any applicable theory of a mortgage, shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosures or by deed in lieu of foreclosure.
- (i) "Plat" shall refer to the Plat of Biarritz Village, as filed with the Hillsborough Clerk of Circuit Court, in Plat Book 66, Page 34, of the Public Records of Hillsborough County, Florida on September 13, 1988.
- (j) "Subject Area" shall refer to those portions of the Lots (1) not lying within any area designated as Conservation Area on the Plat; and (2) not covered by any lake or other permanent body of water.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Existing Property. The real property which is and shall be subject to this Declaration is located in the County of Hillsborough and State of Florida and is more particularly described as follows:

Lots 1 through 38, Inclusive, Block 1; Lots 1 through 37, inclusive Block 2; Lots 1 through 17, inclusive Block 3; and Parcel "B", all in Biarritz Village, according to the Plat thereof on file and of record in the County of Hillsborough, State of Florida.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is hereby subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage and the period in which the fee owner may redeem from such foreclosure has terminated or by deed in lieu of foreclosure. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered the

record owner of the Lot upon furnishing proof to the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. In addition, the following shall be applicable:

- (a) When one or more persons is an Owner of a Lot, all such persons shall be Members.
- (b) It shall be the duty of each Owner to register his name and the nature of his interest with the secretary of the Association. If the Owner does not register his interest, the Association shall be under no duty to recognize his ownership.
- (c) The Owner(s) of a given Lot shall be collectively entitled to one vote.
- (d) Where there is more than one Owner of a Lot, the vote shall be exercised as they among themselves shall determine and shall be cast by the person named in a certificate signed by all Owners of the Lot and filed with the secretary of the Association. Such certificate shall be valid until revoked by a subsequent certificate filed with the secretary of the Association.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Landscaping. The Association shall maintain all ALRC approved landscaping within the Subject Area. For purpose of this Section 1, "landscaping" shall mean all ground covering (i.e. grass, etc.), trees, hedges, shrubbery or other plants (but shall not include any plant or other landscaping which is not planted within the Lot (i.e. flowers and other plants which are in tubs or planters). The landscape maintenance procedures, standards of maintenance and retention of persons to perform said maintenance shall be determined exclusively by the Board of Directors of the Association. Cheval Property Owner's Association, Inc., a Florida non-profit corporation ("CPOA"), the umbrella association for the Cheval development, is the entity responsible for approving all landscaping materials and landscaping design. For purposes of this section 1, "maintain" shall mean to regularly mow, edge, trim and fertilize the landscaping and shall not mean the replacement of landscaping, it being the Owners obligation to replace any dead landscaping within such Owner's Lot.

In addition to maintenance of the Subject Area, and subject to negotiation by the Board of Directors of satisfactory arrangements with CPOA, the Association shall also maintain and, when necessary, replace all landscaping within the strip of land between the boundary line of each Lot abutting Parcel "A" (as shown on the Plat) and the curb line of streets lying within Parcel "A".

Section 2. Landscape Sprinkler System. Each Owner shall maintain, repair and replace the landscape sprinkler system installed within the Owner's Lot. Subject to the authority of CPOA, the Association shall maintain, repair and replace that portion of the landscape sprinkler system lying within the strip of property between the boundary of each Lot abutting Parcel "A" (as shown on the Plat) and the curb line of streets lying within Parcel "A".

Section 3. Entranceway Monumentation. The Association shall maintain any entranceway monumentation within Biarritz Village, including without limitation electrical and water systems in connection therewith.

Section 4. Berms and Timber Seawalls. The obligation of the Association hereunder is to maintain berms and timber seawalls created by the Developer, that are installed in compliance with

controlling restrictions existing at the time of their construction. Other seawalls, to the extent on a Lot, shall be the responsibility of the Lot Owner.

Section 5. Street Lights. The Association shall lease decorative street lights from Tampa Electric Company (TECO) which street lights shall be installed throughout the rights-of-ways designated on the Plat as Parcel "A" as the Board of Directors of the Association, in its exclusive discretion, shall deem appropriate. The rental cost and expenses in connection with said leased street lights shall be the obligation of the Association.

Section 6. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or perform its obligations, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of Biarritz Village, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of Biarritz Village or the enforcement of this Declaration.

Section 7. Access. For the purpose of performing the obligations of the Association described in this Article, through its duly authorized agents or employees, shall have the right to enter upon the Subject Area at reasonable hours of any day. Owners shall make available access to enclosed areas as necessary for the performance of the obligations of the Association described herein.

Section 8. Rules and Regulations. The Association may make reasonable rules and regulations pursuant to this Declaration, which rules and regulations shall be consistent with the rights and duties established in this Declaration. In enforcing said rules and regulations, the Association may (i) utilize the procedures set forth in Section 3 of Article IX in connection with the enforcement of these Covenants and Restrictions; and (ii) assess fines for violations of said rules and regulations against the Owner of any Lot who fails to comply with said rules and regulations, and said fine shall be a charge on each such Lot and shall be a continuing lien on each such Lot. Each such fine, together with such Interest thereon, and cost of collection thereof, shall also be the personal obligation of the person who is the Owner of each Lot at the time the fine was assessed. The provisions of Section 9 and 10 of Article V hereof shall be applicable to said fines and the liens created hereby.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed or contract for deed therefor, whether or not it shall be so expressed in any such deed or contract for deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association (a) annual assessments or charges and (b) special assessments for capital improvements, such annual and special assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each such Lot and shall be a continuing lien on each such Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be in the personal obligation of the person who was the Owner of each such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the propose of promoting the pleasure, health, safety and welfare of the residents in

Biarritz Village and in particular for the improvements and maintenance of properties and services devoted to this purpose and related to the use and enjoyment of the Subject Area including, but not limited to, the payment of taxes and special assessments (if any), insurance, water changes, electricity, decorative street light rental, repair, maintenance, replacement and additions, and for the cost of labor, equipment, materials, management and supervision.

Section 3. Annual Assessments and Working Capital. Annual assessments against the members on the Lots shall be levied by a majority vote of the Board of Directors of the Association

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Subject Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting. Special assessments shall be fixed in equal amounts for all Lots. Special Assessments may not be used to fund the initial installation of the entranceway monumentation and fountain, landscaping, sprinkler system, decorative street lights or berms and timber seawalls.

Section 5. Quorum of any Action Authorized Under Section 4. The quorum required for any action authorized by Section 4 hereof shall be as follows:

At the first meeting called, as provided in Section 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Section 4 and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 6. Reserve Funds. Beginning January 1, 1992, the Association shall establish and maintain reserve funds for the periodic maintenance, repair, and replacement of the landscaping, sprinkler system, entranceway monumentation and fountain and berms and timber seawalls required to be maintained by the Association pursuant to article IV of this Declaration (Reserve Fund); and shall assess and collect such amounts as part of the annual assessments and charges. While it is intended that such reserve funds shall be reasonably sufficient to cover the cost of the maintenance, repair and replacement of the landscaping sprinkler system, entranceway monumentation and fountain and berms and timber seawalls required to be maintained by the Association pursuant to article IV of this Declaration, nothing contained in this Section 6 shall in any way limit the ability of the Association to levy special assessments for Capital Improvements (as defined in Section 4 of this Article V).

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessment shall be made for the balance of the calendar year and shall become due and payable ratably on the first day of each month commencing on the date fixed for commencement as hereinbefore provided. The assessments for any year after the first year shall become due and payable ratably on the first day of each month of said year. The due date of any special assessment under Section 4 shall be fixed in the resolution authorizing such assessments.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall at that time prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessments shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment: Personal Obligation of the Owner. Lien: Remedies of the Association. If the assessments are not paid as to a Lot on the date when due as specified in Section 7 above ("delinquency date"), then such assessment shall become delinquent and shall, together with such interest and late fees in the maximum amount allowed by law and together with costs of collection thereof, as hereinafter provided, become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his or her heirs, devisees, personal representatives and assigns. The Association may file a claim of lien with respect to any such lien in the public records. Any First Mortgagee or insurer or guarantor of a first mortgage may file with the Association a written request of notice of any Owner of a Lot, on which it holds a first mortgage or is the insurer or guarantor of a first mortgage, failing to pay any assessments within sixty (60) days of the due date. Upon failure of an Owner to pay assessments within sixty (60) days of the due date, the Association shall send written notice thereof to any such requesting First Mortgagee or insurer or guarantor of a first mortgage. The Association will accept payment of any such assessments by a First Mortgagee or the insurer or guarantor of a first mortgage on behalf of the Owner of any Lot upon which it holds a first mortgage or on which it is the insurer or guarantor of a first mortgage. If the assessment is not paid within the later of thirty (30) days after the delinquency date or fifteen (15) days after the date of sending written notice to any such requesting First Mortgagee or insurer or guarantor of a first mortgage, the assessment shall bear interest from the date of delinquency at the maximum rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or the Association may foreclose the lien against the Lot by suit in the manner provided for foreclosure of a mechanics lien on real property, and there shall be added to the amount of such assessment the Association's reasonable attorney's fees and costs incurred in connection therewith; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, collection costs, and reasonable attorney's fees, including any fees incurred in any bankruptcy or appellate proceeding, to be fixed by the court together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of such Owner's Lot.

Section 10. Status of Lien. Except as otherwise provided by law, the lien provided for herein is effective from and shall relate back to the date on which the original declaration was recorded. The sale or transfer of title to any Lot shall not affect the lien provided for herein and shall not release a Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. In the event of a transfer of title, the transferee shall be jointly and severally liable for all assessments, interest, late fees, attorney's fees, costs and any other monetary obligations owed to the Association at the time of conveyance. Where the mortgagee holding a first mortgage of record obtains title pursuant to the remedies provided in a first mortgage, including judicial or non-judicial foreclosure of the mortgage, or by a deed in lieu of foreclosure, it shall be liable for the share of assessments, and all interest, late fees, attorney's fees, costs and any other monetary obligation chargeable to that Lot which became due prior to such acquisition of title, and for which payment in full has not been received by the Association, to the greatest extent allowable under applicable law. The lien of the assessments provided for herein shall be subordinate to any tax liens now or hereafter placed upon a Lot, including assessments for sewers, grading or paving of streets and other improvements thereof, in favor of the State of Florida or

any taxing subdivision thereof. Except as otherwise provided for in this Section, the lien of the assessments provided for herein shall be prior to all other liens.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties to the extent of any assessment or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) All properties exempted from taxation by the laws of the State of Florida upon the terms and to the extent of such legal exemption.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VI

COVENANTS FOR INSURANCE

Section 1. Insured Items Insurance: The Association may, at the discretion of the Board of Directors of the Association, purchase and maintain landscaping on the property owned by the Association ("Insured Items") which shall include, but shall not necessarily be limited to, fire and extended coverage insurance issued by a responsible insurance company on the assets of the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value based upon current replacement cost. In the event that the Association shall fail to pay currently the premiums due with respect to said fire and extended coverage insurance, or shall fail to pay currently taxes or other charges with respect to the insured items, then and in any such event any First Mortgage or insurer or guarantor of a first mortgage may make payment of such due premiums, taxes or other charges for the benefit of the Association and the insured items and such payment so made by any First Mortgage or insurer or guarantor of a first mortgage shall be a sum immediately due and owing by the Association to such First Mortgagee or insurer or guarantor of a first mortgage. A copy of any insurance obtained under this Section shall be furnished to any First Mortgagee or insurer or guarantor of a first mortgage filing a written request therefore with the Association.

Section 2. Insured Items Insurance Proceeds and Condemnation Award. In the event the Association shall receive insurance proceeds from an insurance carrier pursuant to any insurance policies insuring against fire and extended coverage insurance with respect to insured items or shall receive an award for condemnation of insured items, such insurance proceeds or award shall be held in trust by the Association for the purpose of repair, replacement or reconstruction of the Insured Items and for no other purpose. No provision contained in this Declaration shall be construed to give priority to any Owner with respect to distribution of any Insurance proceeds arising as aforesaid, or with respect to proceeds arising as a result of condemnation awards or for any other reason whatsoever, and distribution of Insurance proceeds or condemnation awards for any reason whatsoever shall be made to Owners only after securing in each individual case the specific written consent to such distribution by the First Mortgagee with respect to the Lot the Owner of which is to receive such distribution.

Section 3. Public Liability Insurance. The Association shall purchase and maintain a policy of insurance to cover any obligations it may incur under any Workmans Compensation Laws and in addition the Association shall purchase and maintain a comprehensive policy of public liability insurance covering the landscaping, sprinkler system, entranceway monumentation and fountain and street lights with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage

arising out of a single occurrence, such coverings to include protection against water damage liability, liability for non-owned and hired automobiles, and liability for property of others. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all other coverage in the kinds and amounts commonly required by location and use.

Section 4. Fidelity Bonds. The Association shall purchase and maintain fidelity coverage against dishonest acts by its officers, directors and employees, and all others who are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements: all shall name the Association as an obligee; all shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated operating expenses of the Association, including reserves; all shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 5. Other Insurance. The Association may maintain such other insurance as the Board deems appropriate.

Section 6. Notices. Any policy of Insurance obtained pursuant to this Article VI shall provide that at least ten (10) days prior written notice of cancellation, termination, or modification of coverage shall be sent to any First Mortgagee or insurer or guarantor of a first mortgage who shall have filed a written request for any such notices with the insurer. The Association shall furnish notices of any insured casualty to or condemnation of insured items to any First Mortgagee or insurer or guarantor of a first mortgage who shall have filed a written request for any such notice with the Association.

ARTICLE VII

EASEMENTS

Section 1. Association Easements. The rights and easements of enjoyment by the Owner of each Lot and the title of such Lot shall be subject to the rights of the Association to an exclusive assessment on and over said Lot in favor of the Association for the purpose of the exercise of the rights and obligations of the Association described herein.

ARTICLE VIII

SPECIAL PROVISIONS

Section 1. Conflicting Provisions. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notification of Default. A First Mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

Section 3. Exemption from Right of First Refusal. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage, or by foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any right of first refusal, whether express or implied, in favor of the Association.

Section 4. Restrictions of Activities of Association. Unless at least sixty-six and two-thirds percent (66 2/3%) of the Owners and sixty-six and two-thirds percent (66 2/3%) of all First mortgagees have given their written approval, the Association shall not be entitled to:

- (a) Change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner
- (b) Create common areas.
- (c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the maintenance of the landscaping, sprinkler system, entranceway monumentation and fountain, street lights and berms and timber seawalls.
- (d) Use hazard insurance proceeds for losses to any landscaping, sprinkler system, entranceway monumentation and fountain, street lights and berms and timber seawalls otherwise than for the repair, replacement or reconstruction of such landscaping, sprinkler system, entranceway monumentation and fountain, street lights and berms and timber seawalls.
- (e) Change any provision hereof for the express benefit of First Mortgagee or Insurers or guarantors of first mortgages.
- (f) Change any of the insurance required pursuant to Article VI.
- (g) Terminate this Declaration or amend this Declaration to allow any action to be taken as set forth in subparagraph (a) through (f) above without having first obtained the prior written approvals of the Owner or first mortgagee as otherwise required in this Section.

Section 5. Examination of Association Books and Records. First Mortgagees shall have the right to examine the books and records of the Association.

Section 6. Right to Pay Association Obligations. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Subject Area and may pay overdue premiums on hazard and public insurance policies or secure new hazard and public insurance coverage on the lapse of a policy, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 7. Priority of First Mortgagees. No provision of the Declaration of By-Laws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their mortgages in the case of a distribution to Owners of Insurance proceeds or condemnation awards for losses to or a taking of insured items.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Duration. The easements created hereby shall be permanent and the covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefits of

and be enforceable by the Association, their respective legal representatives, heirs, successors and assigns, in perpetuity from the date this Declaration is recorded.

Except as hereinafter provided, the covenants and restrictions of this Declaration may be amended upon the approval, in person or by proxy, of not less than sixty-six and two-thirds percent (66 2/3%) of the Owners. The prior approval of sixty-six and two-thirds percent (66 2/3%) of all First Mortgages of Living Units shall also be required for any amendment of this Declaration which would affect the right of the Association to do any of those things enumerated in Section 5 of Article VIII hereof.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of the mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions may be by any proceeding at law or in equity against any person violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorney's fees and costs of any such actions to restrain violation or to recover damages as determined by the court shall (1) be assessable against and payable by any persons violating the terms contained herein; and (2) constitute a continuing lien on the Lot of any Owner violating the terms contained herein (and the Association may file a claim of lien which respect to any such lien in the public records).

Section 4. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law be transferred to another surviving or consolidated association or corporation, or alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within Biarritz Village except as hereinabove provided.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.