

agreements, a majority (as defined in Paragraph B of ARTICLE XXI, CASUALTY INSURANCE, PAYMENT OF PROCEEDS, RECONSTRUCTION, INSURANCE TRUSTEE; CONDEMNATION) of the first mortgagees of the Units in the Condominium shall approve said agreement or agreements, then the exemption provided for in this Paragraph D shall not apply to any mortgagee or to any Unit in the Condominium.

E. The provisions of Paragraph B to the contrary notwithstanding, the consent of the Developer shall be a mandatory requirement to the Association's entry into any agreement or acquisition authorized under Paragraph B above at any time the Common Elements appurtenant to Developer owned Units aggregate ten percent (10%) or more. This ARTICLE XXIV shall not be amended without Developer's consent so long as Developer owns more than one Unit in the Condominium.

**ARTICLE XXV  
SEPARABILITY OF PROVISION**

Invalidation of any of the covenants, conditions, limitations or provisions of this Declaration or in the Bylaws of the Association or of the Condominium Act shall in no way affect the remaining part or parts hereof which are unaffected by such invalidation and the same shall remain effective.

**ARTICLE XXVI  
TERMINATION**

The provisions for termination contained in Paragraph F of ARTICLE XXI of this Declaration are in addition to the provisions for voluntary termination provided for by the Condominium Act as amended. In addition, the Condominium may be voluntarily terminated if the proposed voluntary termination is submitted to a meeting of the members pursuant to notice and is approved in writing within ninety (90) days of said meeting by seventy-five percent (75%) of the total vote of the members of the Association and by all holders of first mortgages encumbering Units in the Condominium. The Condominium Association shall not otherwise be entitled, by act or omission, to seek to abandon or terminate the Condominium or Common Elements unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned), or Unit Owners (other than the Developer) shall have given their prior written approval.

**ARTICLE XXVII  
EASEMENTS FOR ENCROACHMENTS**

All the Condominium Property and all the Units and the Common Elements and the Limited Common Elements shall be and are singly and collectively subject to easements for encroachments which now or

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hereafter exist or come into being, caused by settlement or movement of the building or other improvements upon the Condominium Property, or caused by minor inaccuracies in construction or reconstruction of the building or such improvements upon the Condominium Property, which encroachments shall be permitted to remain undisturbed and such easements shall and do exist and shall continue as valid easements so long as such encroachments exist. A valid easement for the maintenance of such encroachments is herein created so long as such encroachments stand.

**ARTICLE XXVIII**  
**SPECIAL INSURANCE AND MAINTENANCE PROVISIONS**

**A. PLATE GLASS INSURANCE.** The Association may in the exercise of its discretion and from time to time determine that plate glass within the perimeter walls of the Units may be more economically insured by the Association under such coverages as the Association shall obtain as elsewhere provided in this Declaration and, in such case, the Association shall be deemed to have an insurable interest in such plate glass. Upon such determination by the Association and until otherwise determined by the Association, it shall be the Association's obligation and expense to repair or replace such plate glass as is damaged through casualty loss which is so insured or which may be so insured. Otherwise, and in the absence of the Association making the determination as set forth herein, the replacement of the plate glass in the perimeter walls of a Unit for reason of damage or destruction through casualty loss shall be the Unit Owners' responsibility, except that in any and all events, loss or damage occasioned by fire shall be the responsibility of the Association. It shall be deemed a sufficient determination by the Association, and no special act of the Association shall be required if the Association shall undertake insuring such plate glass for casualty losses in addition to fire or if the Association has acquired or maintains a fire and extended coverage policy upon the Condominium Property which contains coverages in addition to fire for casualty to such plate glass, whether or not such plate glass coverage is specifically set forth therein, and whether or not there shall be any deductible clause. Nothing herein shall be deemed to alter the Unit Owners' obligation for maintenance of the plate glass in perimeter walls where that obligation otherwise exists. For the purposes of this Paragraph A, the term "plate glass" as used herein is descriptive of all glass in exterior perimeter boundaries of Units in picture windows and sliding glass doors, as opposed to window panes, and is not descriptive of the process whereby glass is manufactured or prepared (e.g., "float" process).

**B. MAINTENANCE CONTRACTS.** If there shall become available to the Association a program of contract maintenance for all appliances and/or all air conditioning compressors and/or air handlers serving individual Units which the Association determines is to the benefit of the Unit Owners to consider, then upon resolution of the Unit Owners by a majority of those voting at a meeting of the Unit Owners

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at which a quorum is present, or by a majority of their whole number in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be a Common Expense. If, on the other hand, the Association determines that the program may be undertaken by the Association for the benefit of the Unit Owners who elect to be included in the program, then the Association may undertake the program without consent of the membership being required as aforesaid and the costs of such contractual undertakings shall be borne exclusively by the Unit Owners electing to be included in the program, and shall not be a Common Expense of the Association, but the Association may arrange for the collection of the contract costs from the individual Unit Owners electing to be included therein, may execute the contractual undertaking involved upon such terms and conditions as the Association deems proper and require from the Unit Owners electing in such written undertakings as the Association shall deem proper to evidence the said Unit Owners' obligation to the Association for their proportionate share of the costs of such program.

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**ARTICLE XXIX  
MISCELLANEOUS PROVISIONS**

**A. ASSESSMENTS NOT PAID BY THE DEVELOPER.** The Developer shall be excused from the payment of its share of the Common Expenses in respect of the Units which it owns during the period of time that it shall guarantee the maximum level of assessments to be collected from other Unit Owners. The guarantee and excuse from payment of assessments, if any, shall be as provided in the purchase contract between Developer and purchasers of Units.

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**B. RIGHT OF ENTRY.** The Association, its officers, directors, agents and employees, shall at all times have the right to enter the Units at reasonable times for the purposes of inspecting the Common Elements, gaining access to the Common Elements, or making repairs or otherwise maintaining the Condominium Property, or to abate emergency situations which threaten damage to the Condominium Property or any part of it.

**C. CONTRACTUAL LIENS AUTHORIZED.** Each Unit Owner in this Condominium is authorized to grant liens upon his respective Unit to secure the payment of his share (or the share attributable to his Unit in the appropriate cases) of fees, dues, charges or other exactions which the Unit Owner shall agree or shall have agreed to, or otherwise be obligated to pay in respect of any recreational facilities or recreation use rights or other use rights, at least in part of a recreational nature, in whatever form such rights shall be obtained, to-wit: memberships, liens, contracts and other undertakings obtained by the Association for the use of the Unit Owners by any means whatsoever. So long as such a lien encumbers a Unit, the owner of that Unit may not vote for voluntary termination of the condominium form of ownership without the consent of the

holder of that lien. In the event of the termination of the Condominium form of ownership as provided for by law or by the terms of this Declaration, the said lien so created shall attach to the undivided interest in the Condominium Property resulting from termination, held by the Unit Owner creating such lien or owning a Unit encumbered by such lien. This Paragraph C shall be liberally construed to grant Unit Owners maximum authority to grant the liens herein mentioned for the purposes herein provided, and shall not be construed in any way to restrict the powers or authorities of the Unit Owner nor to require any particular form for the creation of such liens, but Unit Owners shall, in addition to the powers and authority created herein, have the power and authority to create liens on their units which they would otherwise have had, had this Paragraph not been included in the Declaration of Condominium. Any lien created under the authority of this Paragraph shall take priority from the recording among the Public Records of Collier County, Florida, of the document creating that lien. This paragraph shall not be construed to cause or allow liens created under the authority of this Paragraph to become effective earlier than the aforementioned recording of the document creating such lien and neither this Paragraph nor this Declaration of Condominium shall be construed to be the document creating such lien.

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D. EASEMENTS. There is simultaneously created herewith nonexclusive easements for ingress and egress over such streets, walks, docks and other rights of way serving the Units, Boat Slips, and other recreational facilities of the Condominium as may from time to time exist and as are specifically designated for such purposes, and such easement shall be and are part of the Common Elements. The Developer, its successors as Developer, and the Association retain the right and have and shall at all times have the right to grant, declare, create, modify and amend, from time to time, without joinder and consent of any Unit Owner or in the case of the Developer, of any Unit Owner or of the Association, permits, licenses and easements upon the Condominium Property for public utility purposes, roads and for peaceful ingress and egress to prevent abutting properties from being landlocked or otherwise denied reasonable access to and from the public ways, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium providing, however, that at the time of the creation of such permits, licenses and easements and at the time of the modification or amendment of any such permits, licenses and easements, such easements and such modifications and amendments shall not be inconsistent with the peaceful and lawful use and enjoyment of the Condominium Property by the Unit Owners. The Developer may, by an instrument in writing, relinquish the power and authority herein reserved to grant, declare, create, modify and amend permits, licenses and easements, by the filing among the Public Records of Collier County, Florida, a written instrument to that effect, from and after the recording of which the Developer and its successors and assigns as Developer shall no longer have the powers and authorities reserved or granted to it in this Paragraph D.

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Notwithstanding such waiver, the Board of Directors shall have the power to reimpose any of the waived restrictions or limitations set forth in ARTICLE XII without approval of the membership being required. By a seventy-five (75%) percent vote of the Board of Directors, the Board may impose additional restrictions and rules and regulations upon the leasing of Units in addition to those contained in ARTICLE XII, but no such rules and regulations shall be deemed applicable to any lease existing at the time of the promulgation of such rules and regulations, to the extent that such rules and regulations are inconsistent with the contractual obligations in the lease.

H. DEVELOPER'S RIGHTS TO USE UNITS AS OFFICES OR MODELS. The Developer may maintain offices and/or models in any of the Units until all other Units of the Developer have been sold, provisions of ARTICLE XI, PURPOSE AND USE RESTRICTIONS, to the contrary notwithstanding. This Paragraph I may not be amended without the written consent of the Developer.

I. ARCHITECTURAL REVIEW BOARD. The Board of Directors of the Association may establish an Architectural Review Board, its members to be made up of a committee of members of the Board of Directors of the Association, to review proposed changes, alterations, repairs and any structural modifications to the outside of the Units, including porches, terraces, patios and balconies. Proposed changes, alterations, repairs and modifications shall be submitted to the Review Board in writing for approval. The Board shall have thirty (30) days in which to approve or disapprove the alterations, changes, repairs or modifications, and in the event the Board fails to act within thirty (30) days, said failure to act shall be deemed approval.

J. MODIFICATION OF BOUNDARIES BETWEEN ABUTTING UNITS. With written consent of the Association and with the written consent of their respective mortgagees, if any, the Unit Owners of abutting Units may agree, by instrument in writing, to move the boundary between their abutting Units in such manner as to include additional rooms or spaces in one Unit and to exclude them from the other. Such writing shall have as an exhibit thereto an architectural or engineering drawing certified to in the manner required by the Condominium Act of the State of Florida demonstrating the new boundary lines between the two Units and otherwise certified to in the manner required by law. The document establishing the new boundary lines shall also redistribute between the two Units involved the Common Elements, Limited Common Elements and common expense in a reasonably equitable manner such that totals of each of those items as reassigned to the two Units shall equal the same totals previously assigned to the two Units. The instrument creating the new boundary lines shall be executed with the formality required for deeds by all the Unit Owners of the Units involved, all the mortgagees thereon, and by the Association, except that the said mortgagees and/or the Association, may demonstrate their consent by a separate instrument in writing similarly executed. The said

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Instrument and consents shall be filed among the Public Records of Collier County, Florida, and shall constitute an amendment to the Declaration of Condominium which shall be effective from and after its recording and shall not require the consent to or any vote of the membership. Nothing herein, however, shall be deemed to grant authority for any amendments to this Declaration of Condominium except in the manner elsewhere provided for such amendments except in the specific and limited case herein described, to-wit: the modification of the boundary line between abutting Units for the purpose of including additional rooms and spaces in one Unit and to exclude them from the other, which may include modification of the boundary lines of the balconies, terraces or porches appurtenant to said Units. The Association's approval may be conditioned upon the said Unit Owners adequately providing for entrances, modifications in the perimeter walls of the two Units where changes are to be made, and assurances by the Unit Owners to the Association that all costs and expenses thereof will be borne in full and paid for by the said Unit Owners. Nothing herein shall require the Association to give its approval to the amendment contemplated herein if the modifications in the Units required to effectuate the change of boundary line would in any way endanger the structure, violate applicable zoning laws, rules and regulations, or result in a Unit whose interior area is less than that of the smallest other Units in the Condominium. Otherwise, the Association shall not unreasonably withhold its approval. So long as the Developer shall own any abutting Units the Developer may, in lieu of the Association, grant the approvals herein required with respect to those Units. Such approvals shall be binding on the Association providing only that before the amendment is recorded and the reconstruction or the modification of the Units undertaken, the Association shall be given reasonable assurance that the costs and expenses of the reconstruction or modification will be fully paid for by the Unit Owners and that the modifications do not violate applicable zoning laws, rules and regulations nor endanger the structural integrity of the building in which the modifications are being made. It shall not be necessary for any document to be placed or recorded to evidence such assurances, conformity with zoning laws, rules and regulations or proof that the structural integrity of the building is not endangered for the amendment to be effective. The recording of the amendment without such statements or assurances shall be presumptively sufficient providing only that in the event approval is given by the Developer rather than the Association that said approval contain a statement by the Developer that the Association had been given at least twenty (20) days written notice of its intention or the intention of the Unit Owners to record the said amendment by the delivery or mailing to at least two Directors of the Association, other than the Developer or the Developer's officers or employees, if there be any, of a copy of the amendment in proposed form.

K. RESTRICTION ON AMENDMENTS. Provisions of ARTICLE X, AMENDMENT TO DECLARATION, to the contrary notwithstanding, no provision of this Declaration or of the Bylaws of the Association

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granting or reserving to the Developer any rights, powers, authorities, usages or dispensations may be modified or amended in any way which will impair or restrict those rights, powers, authorities or special dispensations without the written approval of the Developer so long as the Developer or any successor or alternate Developer shall own any Units in this Condominium.

L. APPROVAL BY CONDOMINIUM ASSOCIATION. Whenever an approval of the Association is called for in this Declaration or in the Bylaws of the Association, such approval shall not be unreasonably withheld and such approval may be granted by act of the Board of Directors of the Association except in cases where the particular provision involved requires approval by the Unit Owners or the Association's members.

M. SHARES OF OWNERSHIP UPON TERMINATION.

1. Upon removal of the Condominium Property from the provisions of the Condominium Act or other termination of the Condominium form of ownership, no matter how effected, the Unit Owners shall own the Condominium Property in common in the undivided shares set forth as percentages in Article VI of this Declaration, which shares are hereafter referred to as "Termination Shares". Furthermore, so long as this Paragraph is operative, then the words "Termination Shares" shall be substituted in ARTICLE XVI, PROPERTY TAXATION AND ASSESSMENTS, for the words "share(s) of Common Elements" and for the words "Common Elements" in every context where the term "Common Elements" refers to or connotes a share or share (as opposed to that portion of the Condominium Property not contained within the Units.)

2. Paragraph M.1. above may be amended in accordance with applicable provisions of ARTICLE X, AMENDMENT TO DECLARATION. The amendatory procedures set forth in Paragraph C of ARTICLE X may be employed in any appropriate case therein mentioned and in any case in which through scrivener's error it shall appear that the total of the Termination Shares shall not equal exactly 100%. No amendment, however, whether under Paragraph A, B or C of ARTICLE X, may change the Termination Share attributable to a Unit without the written consent of the Unit Owner of that Unit and all mortgagees holding mortgages encumbering that Unit. This paragraph M.2. may not be amended without unanimous consent of all Unit Owners.

ARTICLE XXX  
ENFORCEMENT, DEFAULT

Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium, the Articles of Incorporation and Bylaws, and the rules and regulations adopted pursuant to these documents, as the same may be amended from time to time. In addition to any remedies provided by the Condominium Act, the Association

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(and Unit Owners, if appropriate) shall be entitled to the following relief:

A. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

B. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the Bylaws and Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to charge the Unit Owner and the Unit for the sums necessary to do whatever work is required to bring the Common Elements into compliance and to collect such charges as elsewhere provided. In addition, the Association shall have the right, for itself and its employees and agents, to enter the Unit and perform the work necessary to maintain the Common Elements in compliance with the above provisions. The Association shall have the authority to impose fines for violations on noncompliance.

C. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Articles of Incorporation or Bylaws of the Association or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys fees (including appellate attorneys fees).

D. Failure of the Association or any Unit Owner to enforce any covenant, restriction, or other provision of the Act, this Declaration, the Articles of Incorporation or Bylaws of the Association or the rules and regulations adopted pursuant to said documents as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

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IN WITNESS WHEREOF, the undersigned executed this Declaration of Condominium this 12th day of September, 1990.

Signed, sealed and delivered in the presence of:

GRAND BAY DEVELOPMENTS, L.C.,  
a Florida limited liability company

By: Grand Bay of Marco, Inc.,  
a Florida corporation, its  
Manager

Michelle Nindt  
John H. B.

By: David C. Bennett  
David C. Bennett  
Vice President

STATE OF FLORIDA )  
                          ) ss:  
COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me, this 12th day of September, 1990, by David C. Bennett, the Vice President of Grand Bay of Marco, Inc., a Florida corporation, the Manager of Grand Bay Developments, L.C., a Florida limited liability company, on behalf of said limited liability company.

James A. Nelson  
Notary Public  
My Commission Expires:

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Stephen E. Thompson, Esquire  
FROST & JACOBS  
1300 Third Street South  
Naples, Florida 33940  
(813) 261-0582

Notary Public  
State of Florida at Large  
My Commission Expires:  
September 21, 1993

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