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THIS INSTRUMENT PREPARED BY  
AND RETURN TO  
LISA A WOLINER, ESQ  
BECKER & POLIAKOFF, P A  
630 S ORANGE AVENUE  
SARASOTA, FL 34236

**CERTIFICATE OF AMENDMENT  
TO  
DECLARATION OF CONDOMINIUM  
OF  
CAPRI WEST, A CONDOMINIUM**

The undersigned officers of Capri West Condominium Association, Inc., a not for profit Florida corporation organized and existing to operate and maintain Capri West, a Condominium, according to the Declaration of Condominium thereof as recorded in O R Book 1407, page 1427, et seq. as amended, of the Public Records of Sarasota County, Florida, hereby certify that the following amendments to the Declaration of Condominium were adopted with the approval of at least two-thirds (2/3rds) of the total membership of the Association at a membership meeting held on December 4, 2000. The undersigned further certify that the amendments were proposed and adopted in accordance with the condominium documentation, and applicable law.

(Additions indicated by underlining, deletions by ---)

1. **Proposed Amendment to Article 3.1 of the Declaration of Condominium, to include the definition of the unit boundaries from the surveys attached to the Declaration in the text itself, as follows:**

3.1 APARTMENT OR UNIT means unit as defined by the Condominium Act The boundaries of the unit shall consist of the area lying within the undecorated surface of the perimeter walls, floors and ceilings surrounding the unit. The owner shall own the walls and partitions which are contained within the unit as well as pipes, wires and conduits which provide service solely to the unit and shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings surrounding the unit including drywall, plaster, paint, wallpaper, screens, windows, etc.

2. **Proposed Amendment to Article 11.6, section a. of the Declaration of Condominium to read as follows:**

11.6 USE RESTRICTIONS. The use of the property of the condominium shall be in accordance with the following provisions as long as the condominium shall exist and the buildings in useful condition exist upon the land.

a. The condominium property shall be used only for single family residences and for the furnishing of services and facilities herein provided for the enjoyment of such residences. Each of the units for which provision is made by the condominium documents shall be occupied only by a single family as its residence and for no other purpose. As used in this Declaration and elsewhere in the Condominium

Documents, "family", "single family", or words of similar import shall be defined as occupancy of the unit by person, not more than two (2) of which are unrelated to each other, living together as a single housekeeping unit, or two (2) or more persons related by blood, marriage or adoption and living together as a single housekeeping unit. Nothing herein shall be applied or construed to permit discrimination based on familial status, handicap or other protected classifications pursuant to Fair Housing Laws Permanent occupancy of an Unit shall be restricted to not more than two (2) persons per bedroom and permanent occupancy by more than two (2) persons per bedroom shall be prohibited.

**3. Proposed Amendment to Article 11.6, creating new subsection 11.6 d., to read as follows:**

d. The common elements shall be used only for the purposes intended Unit owners are prohibited from modifying or altering the appearance of the common elements without the advance written approval of the Board of Directors. Notwithstanding the foregoing, the following decorative item(s) shall be permitted:

One wall decoration, not to exceed 20" (inches) in diameter to be placed on the unit's exterior door by the use of a "S" hook. No holes shall be made in any exterior wall to mount any object at any time

One floor plant, not to exceed 20" (inches) in diameter and 36" (inches) in height.

**4. Proposed Amendment to Articles 14.2, 14.3 and 14.5 of the Declaration of Condominium, to read as follows:**

**14.2 SHALL BEAR INTEREST; LATE FEES:** Unit Owners are required to pay assessments and installments thereof in a timely manner and shall be notified, in writing, if a payment is not received within fifteen (15) days of the date due. A parcel share of the common expenses and installments thereon not paid within thirty (30) days of the due date shall bear interest from the date when due until paid at the highest rate allowed by law. Payments not received within thirty (30) days of the date due shall also accrue late charges, in addition to interest, in the amount of \$25.00 or 5% of the delinquent assessment, whichever greater.

**14.3 ASSOCIATION SHALL HAVE A LIEN** The Association shall have a lien on each condominium parcel for the parcel's share of any unpaid common expenses, late fees and interest thereon against the owner of such condominium parcel, until paid. Such liens shall also include reasonable attorney fees and costs incurred by the Association incident to the collection of such common expenses or enforcement of the lien. Such lien shall be executed in and recorded in the Public Records of Sarasota County, Florida, in the manner provided by law, ~~but such liens shall be subordinate to the lien of any mortgage, or other liens recorded prior to the time of the recording of the claim of lien by the Association or its assigns.~~ A Claim of Lien may be filed anytime after the unit owner is more than thirty (30) days delinquent in the payment of an assessment or installment thereof and the Board of Directors shall cause liens to be filed in an appropriate and timely manner

(14.4 remains unchanged)

~~14.5 MORTGAGEES LIABILITY FOR COMMON EXPENSES: —Where a first mortgagee of record obtains title to a condominium parcel or where any other purchaser obtains title as a result of the foreclosure of a first mortgage of record or where and first mortgagee accepts a deed to a condominium parcel in lieu of foreclosure, such acquirer of title, his heirs, legal representatives and assigns shall not be liable for the share of common expenses or assessments by the Association pertaining to such condominium parcel chargeable to the former owners of such parcel which became due prior to the acquisition of title thereto as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure. — Such unpaid share of the common expenses or assessments shall be, if possible, collected from the proceeds of the mortgage foreclosure sale, if any, which would otherwise accrue to the benefit of the unit owner against whom the foreclosure proceedings were maintained. In the event there are not sufficient funds available for such purpose, then, such unpaid share of common expenses or assessments shall be determined to be common expenses collectable from all of the unit owners including such acquirers, their heirs, legal representatives, successors and assigns. A unit owner is jointly and severally responsible with the previous owner for all unpaid assessments that came due before the acquisition of title. Notwithstanding same, a first mortgagee acquiring title through foreclosure or by deed in lieu of foreclosure shall only be liable for unpaid assessments in the manner provided in the Condominium Act.~~

**5. Proposed Amendment to Article 16 of the Declaration of Condominium, completely deleting the existing language and replacing it with the following: (Please note, substantial rewording of provision, see original Declaration for existing text.)**

**16. Insurance. The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements and Association Property shall be as follows:**

**16.1 Authority to Purchase Insurance** All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.

**16.1.1 Coverage.**

**(a) Casualty.** Except as otherwise provided herein, the Association shall obtain and maintain fire and extended coverage insurance with a responsible insurance company, or through alternate sources as may be available, upon all of the insurable improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the full replacement or insurable value thereof, provided the Board may exclude foundation and excavation costs in its discretion. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and

maintains such insurance coverage as may be available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes (1997). The original policy of insurance shall be held by the Association, and Institutional Lenders shall be furnished, upon request, mortgage endorsements covering their respective interests. Each Unit Owner shall be responsible for insuring personal property located within the Unit; ceiling, floor and wall coverings, and electrical fixtures, appliances, air conditioning and heating equipment, water heater, and built-in cabinets to the extent these items are located within the Unit boundaries; and any improvements made within the Unit which are not covered by the Association policy. The owners shall also be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities by virtue of future amendments to Section 718.111(11), Florida Statutes (1997). Notwithstanding the foregoing, any insurance otherwise required to be maintained by the Unit Owners by the terms hereof may be included in the insurance coverage purchased by the Association and paid for as part of the Common Expenses, if so authorized by the Association Board of Directors, unless prohibited by law.

**(b) Liability Insurance.** The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. Each Unit Owner will be responsible for procuring and maintaining public liability insurance covering losses which may occur in and about the owner's Unit, as the Owner may deem appropriate.

**(c) Worker's Compensation.** Such worker's compensation coverage as may be required by law.

**(d) Other Insurance.** Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage, flood insurance, and insurance for the benefit of its employees.

**(e) Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment.

**16.2 Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

**16.3 Insurance Shares or Proceeds.** Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares.

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

**16.3.2 Unit.** Proceeds on account of damage to Units shall be held in the following undivided shares.

(a) When the Condominium Building is to be restored - for the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(b) When the Condominium Building is not to be restored - an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to the Unit.

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

**16.4 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:

**16.4.1 Reconstruction or repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagee's being payable jointly to them. This is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.

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

**16.5 Association as Agent.** The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim

**16.6 Repair and Reconstruction after Casualty.**

**16.6.1 Determination to Reconstruct or Repair.** If any part of the Condominium Property or any property in which the Association owns an interest shall suffer loss or damage by casualty, the improvements shall be restored unless eighty (80%) percent of the voting interests vote to terminate this condominium. Except for the consent of Institutional Lenders provided in Section of this Declaration, no further consent from any other person or entity shall be necessary to effectuate a termination of the condominium in the manner above described. In the event the condominium is to be terminated, then all Owners of Units shall immediately convey all their right, title, and interest to their respective Units to the Association. The recording of each such conveyance in the Public Records of County will have the immediate effect of releasing all liens upon the respective Unit and shall cause their instantaneous transfer to that Unit Owner's share of the funds to be subsequently distributed by the Association as provided herein.

The Association shall collect all insurance proceeds payable as a result of such destruction, shall collect all assets of the Association which are allocable to the Units in this Condominium and which may remain after the Association pays its liabilities, and shall effect a public or private sale of the Condominium Property, by whatever means the Association Board of Directors shall deem best, for the highest and best price, for cash or terms, as soon as practicable consistent with local real estate market conditions. The Association may make partial distributions of each Unit's share of the funds collected by the Association at such times and in such aggregate amounts as the Association Board of Directors may deem appropriate. In determining the amount of any partial distribution, the Association Board of Directors shall ensure that sufficient funds are retained by the Association to cover unpaid or anticipated costs, fees, or other liabilities of the Association. When the Association has collected all insurance proceeds and all proceeds from the sale of the Condominium Property and, to the extent applicable, the assets of the Association and has paid all applicable Association liabilities and reasonable Association fees, appraiser's fees, and other costs reasonably incurred, the Association shall make a final distribution of each Unit's share of the remaining funds held by the Association.

Any distribution, whether partial or final, of a Unit's share of the funds held by the Association shall be made jointly to the Owner of the Unit and the record Owners of any mortgages or other liens encumbering the Unit at the time of the recording of the conveyance to the Association by the Unit Owner. All mortgages and other liens upon the respective Units shall be fully released and discharged as provided herein even though the share of a particular Unit in the funds distributed by the Association is insufficient to pay all liens in full, in such event the lienholders who had priority against the title to the Unit shall have priority of payment of the Unit's share of such funds. Nothing herein provided shall in any way relieve the Unit Owner of his personal liability for any deficiency which may remain upon any liens which encumbered his Unit at the time of his conveyance to the Association.

Mortgagees and other lienholders will evidence their acceptance and consent to the foregoing provisions by the acceptance of their mortgages or perfection of their liens. The provisions of this paragraph may be enforced by injunction, by suit for specific performance, or by other appropriate remedy upon suit filed by the Association in a court of competent jurisdiction.

## **16.7 Method.**

**16.7.1 Plans and Specifications.** Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements, if available, or if not, then according to plans and specifications approved by the Board of Directors of the Association, provided that if the damaged property is a Building containing Units, approval must also be obtained from the Owners of all Units and mortgagees of record in the damaged Building, which approval shall not be unreasonably withheld.

**16.7.2 Responsibility.** If the loss or damage is only to those parts of a Unit or Units for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for repair and reconstruction. In all other instances, the responsibility for repair and reconstruction after casualty shall be that of the Association.

**16.7.3 Estimates of Costs.** Immediately after a determination is made to repair or reconstruct damage to property for which the Association has responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimates of the cost of the repair or reconstruction.

**16.7.4 Assessments.** If the insurance proceeds are insufficient to defray the estimated cost of repair of the Common Elements or any property in which the Association owns an interest, or if at any time during repair or reconstruction the insurance proceeds are insufficient, Assessments shall be made against all Unit Owners who own the damaged Units in the proportion that the damage to their Unit bears to the whole, and against all Unit Owners in the case of damage to Common Elements or Association Property, in sufficient amounts to

provide the necessary funds for the payment of such costs. Such Assessments on account of damages to Common Elements or Association Property, shall be in proportion to the Unit Owner's share of the Common Expense.

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

(a) **Association - Insurance.** The proceeds of insurance collected on account of casualty and the sums from collections of Assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(b) **Association - Lesser Damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$25,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association.

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

(d) **Unit Owners.** The portion of insurance proceeds representing damage for which responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Association to the Unit Owner and if there is a mortgagee endorsement to such Unit, then to the Unit Owner and the mortgagee jointly, who may use such proceeds as they may be advisable.

(e) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.



6. **Proposed Amendment to Article 19 of the Declaration of Condominium, to create new section 19.4, to read as follows:**

19.4 Fining Provision. In addition to the remedies available elsewhere in the condominium documents the Directors may, pursuant to F.S. 718 303, impose fines against a unit, its owner, tenant or invitee, not to exceed the maximum permissible by law, for failure to comply with the provisions of the Board policies and resolutions and the Condominium Documents, including the Rules and Regulations, by owners, occupants, licensees, tenants, and invitees.

a. A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law.

b. The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing by being given written notice. Notice shall be deemed effective when deposited in the United States Mail, certified, return receipt requested, to the address of the unit owner listed in the official records of the Corporation, and as to tenants, to the mailing address for the unit.

c. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Corporation. The hearing shall be held before a Committee of other unit owners. If the Committee does not agree with the fine, the fine may not be levied. Should the Corporation be required to initiate legal proceedings to collect a duly levied fine, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial, at trial, and on appeal.

d. Nothing herein shall be construed to interfere with the right of any owner to obtain from the violator occupying his/her unit, payment in the amount of any fine or fines that are assessed against the unit.

e. Nothing herein shall be construed as a prohibition of or a limitation on the right of the Corporation to pursue other means to enforce the governing documents, the condominium act or any applicable laws and ordinances. All rights and remedies provided herein, the condominium act or Florida law shall be cumulative.

7. **Proposed Amendment to Article 2, Section 6.B. of the Bylaws to read as follows:**

B. Special meetings shall be held whenever called by the direction of the president or a majority of the Board. The Board shall use its best efforts to conduct monthly regular Board meetings. The secretary shall give notice of each special and regular meeting either personally, by mail, facsimile, electronic mail, or telegram, at least

five (5) days before the date of such meeting, but the directors may waive notice of the calling of the meeting;

8. Proposed Amendment to Article 7, Section 1 of the Bylaws to read as follows:

Section 1 CHECKS. All checks or demands for money and notes of the corporation shall be signed by the President, Vice President, or Treasurer or by such officer or officers or such other person or persons as the Board of Directors may from time to time designate All checks, drafts, transfers or other withdrawals from the Association's accounts in excess of one thousand (\$1,000.00) dollars shall require the signature of at least two (2) members of the then-serving Board of Directors.

In witness whereof, the Association has caused this instrument to be executed by its authorized officers this 29<sup>th</sup> day of December, 2000, at Sarasota County, Florida

CAPRI WEST CONDOMINIUM ASSOCIATION, INC

BY [Signature]  
Elwin Ferris, President

[Signature]  
Witness Signature  
A. ANN COBB

Printed Name  
[Signature]  
Witness Signature  
Bonnie NAWARRÉ  
Printed Name

ATTEST. [Signature]  
Eloise Atherton, Secretary

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of December, 2000 by Elwin Ferris, as President and Eloise Atherton, as Secretary of CAPRI WEST CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of the corporation. They are personally known to me or have produced Ferris/known--Atherton FL D/L as identification. If no type of identification is indicated, the above-named persons are personally known to me

Notary Public [Signature]  
Printed Name A. Ann Cobb  
State of Florida  
My Commission Expires \_\_\_\_\_

