

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION OF CONDOMINIUM
FOR PRESENT TEXT SEE EXISTING DECLARATION OF CONDOMINIUM**

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

FOR

LA SCALA AT THE COLONY, A CONDOMINIUM

KNOW ALL MEN BY THESE PRESENTS:

That heretofore, the original Declaration of Condominium for La Scala at the Colony, a Condominium, (hereinafter the "Condominium") was recorded in Official Record Book 3971, at Page 2430, et. seq., of the Public Records of Lee County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended and restated.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Amended and Restated Declaration of Condominium is made by La Scala at the Colony Condominium Association, Inc., a Florida not-for-profit corporation, hereinafter the "Association". The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Condominium Act (as defined below). No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a Unit or any other interest in the Condominium Property, or the lease, occupancy, or use of any portion of a Unit or the Condominium Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.
2. **NAME AND ADDRESS:** The name of this Condominium is La Scala at the Colony, a Condominium, and its street address is 5051 Pelican Colony Boulevard, Bonita Springs, FL 34134.
3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration as amended (hereinafter the "Land") is legally described in Exhibit No. "1" attached hereto.
4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (the "Condominium Act"), unless the context otherwise requires.

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

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4.1 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Units.

4.2 "Association" means La Scala at the Colony Condominium Association, Inc., a Florida not-for-profit corporation, the legal entity responsible for the operation of this Condominium.

4.3 "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of the Unit Owners.

4.4 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration".

4.5 "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto, as amended from time to time. The exhibits attached to this Declaration are as follows:

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|-----|---|-------------|
| (A) | Certificate of Surveyor, Legal Description, Survey/Plot Plan and Floor Plans | Exhibit "1" |
| (B) | Amended and Restated Articles of Incorporation | Exhibit "2" |
| (C) | Amended and Restated By-Laws | Exhibit "3" |
| (D) | Undivided Share in Common Expenses, Ownership of Common Elements and Common Surplus | Exhibit "4" |
| (E) | Rules and Regulations | Exhibit "5" |

4.5.1 "Condominium Property" means the Land and personal property that were subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with this Condominium.

4.6 "Family" or "Single Family" shall refer to any one of the following:

- (A) One person (as used in this Declaration, the term "person" or "natural person" shall mean a real person as opposed to an artificial entity such as a corporation, partnership or trust).
- (B) Two or more persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage, adoption or legal custody to each of the others.
- (C) Not more than two natural persons not related by blood, marriage, adoption or legal custody, who reside together as a single housekeeping unit, along with their children, if any.

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

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4.7 "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the Unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.8 "Guest" means any person who is not the Unit Owner or a lessee or a member of the Owner's or lessee's family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

4.9 "Institutional Mortgagee" means the mortgagee (or its assignee) of a first mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.10 "Lease" means the grant by a Unit Owner of a temporary right of use of the Owner's Unit for valuable consideration.

4.11 "Limited Common Elements" means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units and as shown on the Condominium Plat or otherwise specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit it or it is otherwise expressly provided.

4.12 "Occupy" when used in connection with a Unit, means the act of staying overnight in a Unit. "Occupant" is a person who occupies a Unit.

4.13 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more Units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of Units encumbered, and not by the dollar amount of such mortgages.

4.14 "Primary Occupant" means a natural person designated to occupy a Unit when title to the Unit is held in the name of two or more persons who are not husband and wife, or by a trustee, corporation, partnership or other entity which is not a natural person, as required by Section 14 herein.

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4.15 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, structural alteration, maintenance, transfer, exterior appearance of Units, and the appearance of Common Elements and Limited Common Elements, subject to any limits set forth in the Declaration of Condominium. The current Rules and Regulations are the Amended and Restated Rules and Regulations attached hereto as Exhibit "5".

4.16 "Unit" means and refers to that portion of the Condominium Property which is subject to exclusive ownership and is referred herein to each of the separate and identified Units delineated in Exhibit "1" (Certificate of Surveyor, Legal Description, Survey/Plot Plan and Floor Plans).

4.17 "Unit Owner" or "Owner" means and refers to the record owner of legal title to a Unit, except that for the purpose of interpreting use and occupancy restrictions related to Units, in cases where a Primary Occupant has been designated for a Unit because of its ownership, the word "Owner" refers to the Primary Occupant and not the record owner.

4.18 "Voting Interest" means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in Association matters. There are sixty-four (64) Units and therefore there are a total of sixty-four (64) Voting Interests.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached hereto as Exhibit No. 1 are a survey of the Land and plot plans ("Condominium Plat"), which graphically describe the improvements in which Units are located, and which show all the Units including their identification numbers, locations and approximate dimensions and the Common Elements and Limited Common Elements. Each Unit includes that part of the building that lies within the following boundaries:

(A) Upper and Lower Boundaries. The upper and lower boundaries of the Unit are the following boundaries, extended to their intersections with the perimeter boundaries:

(1) Upper Boundaries. In all Units, the upper boundary is the horizontal plane of the unfinished lower surface of the ceiling of the Unit.

(2) Lower Boundaries. Lower boundaries consist of the horizontal plane of the unfinished upper surface of the floor of the Unit.

(B) Perimeter Boundaries. The perimeter boundaries of the Unit are the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit as depicted on the Condominium Plat, extended to their intersections with each other and with the upper and lower boundaries.

(C) Interior Walls. No portion of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.

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