



**AMENDED AND RESTATED DECLARATION  
OF THE  
VILLA MADELEINE RESORT CONDOMINIUM**

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**EXHIBIT A - DESCRIPTION OF PROPERTY**

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**EXHIBIT D - BY-LAWS**

**Amended And Restated Declaration  
of the  
Villa Madeleine Resort Condominium**

**WHEREAS**, pursuant to a certain Declaration dated September 14, 1988 (the "Original Declaration"), and recorded in the Office of the Recorder of Deeds in Christiansted St. Croix, U.S.V.I., on September 16, 1988, in P.C. Volume 291, page 199 as Document No. 6015/1988, a condominium regime was imposed upon certain land and improvements thereon located on the island of St. Croix, U. S. V. I.; and

**WHEREAS**, pursuant to a certain First Amendment to Declaration of Condominium of Villa Madeleine dated May 4, 1989 (the "First Amendment"), and recorded in the Office of the Recorder of Deeds in Christiansted, St. Croix, U.S.V.I., on May 8, 1989, in P.C. Volume 318, page 375, as Document No. 2953/1989, certain technical corrections were made to the description of the land upon which the regime had been imposed; and

**WHEREAS**, pursuant to a certain Second Amendment to Declaration of Condominium of Villa Madeleine Condominium dated May 5, 1989 (the "Second Amendment"), and recorded in the Office of the Recorder of Deeds in Christiansted, St. Croix, U.S.V.I., on May 8, 1989, in P.C. Volume 318, page 378, as Document No. 2954/1989, and pursuant to a certain Third Amendment to Declaration of Condominium of Villa Madeleine Condominium dated August 28, 1989 (the "Third Amendment"), and recorded in the Office of the Recorder of Deeds in Christiansted, St. Croix, U.S.V.I., on September 15, 1989, in P.C. Volume 332, page 326, as Document No. 6278/1989, certain additional land and improvements were subjected to the condominium regime, and

**WHEREAS**, pursuant to a certain Fourth Amendment to Declaration of Condominium of Villa Madeleine Condominium dated October 23, 1992, (the "Fourth Amendment"), and recorded in the Office of the Recorder of Deeds in Christiansted, St. Croix, U.S.V.I., on October 23, 1992, in P.C. Volume 446, page 432, as Document No. 5869/1992, and pursuant to a certain Fifth Amendment to Declaration of Condominium of Villa Madeleine Condominium dated April 15, 1994 (the "Fifth Amendment"), and recorded in the Office of the Recorder of Deeds in Christiansted, St. Croix, on June 6, 1994, in P.C. Volume 510, page 355, as Document No. 3211/1994, certain provisions of the Declaration were amended; and

**WHEREAS**, in accordance with the provisions of Section 9 of the Original Declaration, this Amended and Restated Declaration of Villa Madeleine Condominium has been approved by all of the Villa Owners in the Villa Madeleine Condominium;

**NOW THEREFORE WITNESSETH**, the Original Declaration, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, is hereby further amended and restated in its entirety as follows:

## 1. CREATION OF CONDOMINIUM REGIME

### 1.1. IMPOSITION OF REGIME.

A condominium regime as provided for in the Act is hereby imposed upon the Property. The Property is owned collectively in fee simple by all of the existing Villa Owners.

### 1.2. EFFECTIVE DATE.

The provisions of this Declaration shall become effective upon its recordation in the Office of the Recorder of Deeds in St. Croix, U.S.V.I.

## 2. NAME

The name of the condominium shall be the "Villa Madeleine Resort Condominium."

## 3. DEFINITIONS

As used in this Declaration, the following terms shall have the meanings set forth below, unless the context clearly indicates to the contrary:

### 3.1. ACT.

The term "Act" shall mean and refer to the Virgin Islands Condominium Act, codified as Title 28 V.I.C. §§ 901 et seq.

### 3.2. ASSESSMENT.

The term "Assessment" shall mean and refer to any amount charged against Villa Owners by the Association for the purpose of paying the Common Expenses of the Association.

### 3.3. ASSOCIATION.

The term "Association" shall mean and refer to the unincorporated association composed of all of the Villa Owners in the Condominium as defined in §901(d) of the Act.

### 3.4. BOARD OF DIRECTORS.

The term "Board of Directors" or "Board" shall mean and refer to the group of Persons responsible for the administration of the Association and the Condominium in accordance with the Act or the By-Laws.

**3.5. BY-LAWS.**

The term "By-Laws" shall mean and refer to the By-Laws of the Association attached hereto as Exhibit "D" to this Declaration.

**3.6. COMMON ELEMENTS.**

The term "Common Elements" shall mean and refer to all of the Condominium except the Villas.

**3.7. COMMON EXPENSES.**

The term "Common Expenses" shall mean and refer to all expenses incurred by the Association and designated as such in accordance with the provisions of the Act, this Declaration or the By-Laws.

**3.8. CONDOMINIUM.**

The term "Condominium" shall mean and refer to the Property as subjected to a condominium regime pursuant to the Act and this Declaration.

**3.9. CONDOMINIUM DOCUMENTS.**

The term "Condominium Documents" shall mean and refer to this Declaration and the By-Laws as the same may be amended from time to time.

**3.10. DECLARATION.**

The term "Declaration" shall mean and refer to this document, as amended from time to time.

**3.11. EASEMENT AGREEMENT.**

The term "Easement Agreement" shall mean and refer to that certain Reciprocal Easement Agreement between the Association and Greemar Development Corporation dated, March 3, 1995, and recorded in the Office of the Recorder of Deeds in Christiansted, St. Croix, U.S.V.I. on July 13, 1995, P.C. Vol.549, Page 237, as Document No. 4263/1995.

**3.12. MORTGAGEE.**

The term "Mortgagee" shall mean and refer to the holder of any recorded mortgage encumbering one or more Villas.

**3.13. PERCENTAGE INTERESTS.**

The term "Percentage Interests" shall mean and refer to the undivided interest in the Common Elements, expressed as a percentage, appurtenant to each respective Villa as provided in §905 of the Act and as shown on Exhibit "B" attached hereto.

### **3.14. PERSON.**

The term "Person" shall mean and refer to any individual, corporation, partnership or other legal entity recognized as such under the laws of the United States Virgin Islands.

### **3.15. PLATS AND PLANS.**

The term "Plats and Plans" shall mean and refer to, respectively, the plats titled "Asbuilt survey of improvements at Plot No. 19-A Estate Teague Bay, East End B Quarter" detail sheets No. 1 of 3, 2 of 3 and 3 of 3, dated October 20, 1994, and "Asbuilt Survey of Plots 19-A, 19-AA, Estate Teague Bay East End B" Quarter" dated October 20, 1994, all surveyed and drawn by Marshall P. Walker Jr. and Assoc., showing the location, elevations, numbers and boundaries of the Villas and the location and boundaries of the Common Elements and filed herewith, and the schematic drawings illustrating the approximate area and number of rooms of each Villa filed with the original Declaration, all of which are incorporated herein by reference and collectively referred to as Exhibit "C".

### **3.16. PROPERTY.**

The term "Property" shall mean and refer to those plots of land, together with the improvements located thereon, more particularly described in Exhibit A attached hereto.

### **3.17. SPECIAL ASSESSMENT.**

The term "Special Assessment" shall mean and refer to any Assessment that, from time to time, is levied against the Villa Owners other than the annual Assessment that is based on the budget of the Association.

### **3.18. VILLA.**

The term "Villa" shall mean and refer to one of the forty-three residential dwelling spaces more particularly described in Section 4.2. of this Declaration and on the Plats and Plans.

### **3.19. VILLA OWNER**

The term "Villa Owner" shall mean and refer to the Person, or combination of Persons, who hold legal title to a Villa.

## **4. DESCRIPTION OF CONDOMINIUM**

### **4.1. GENERAL DESCRIPTION.**

The Condominium includes forty-three detached buildings, each containing one Villa. The buildings are one story structures and are of masonry construction with concrete floors. Each building contains a cistern and swimming pool. The Condominium also contains a tennis court, a sewage treatment facility, roadways, walkways,

landscaping, underground utilities and other improvements, some of which are more particularly shown on the Plats and Plans.

#### **4.2. DESCRIPTION OF VILLAS.**

4.2.1. General. The Villas are designated on the Plats and Plans as Villas 1 through 23, 25 through 26 and 28 through 45. Except as modified by Sections 4.2.2. and 4.2.3. below, each Villa consists of the three dimensional space bounded by the unfinished upper surface of the floor slab of the Villa, perimetrical vertical planes extending upward from the outside edges of the floor slab and a horizontal plane extending outward from the highest point of the roof of the Villa.

4.2.2. Specific Inclusions. Each Villa shall also include the space comprising the interior of the swimming pool and the cisterns measured to the interior (water side) finished surfaces thereof located within the building containing such Villa, i.e., it is intended that each Villa include the "depression" in the pool deck and the three dimensional space within the cistern that is designed to contain water, but not the structural walls and other components of the pool and cistern themselves. Each Villa contains all non-structural walls, all built-ins and kitchen cabinets, all appliances except hot water heaters; all kitchen and bathroom plumbing fixtures, including ceramic toilet fixtures, but excluding toilet operating parts, all interior painting, floor tiling and other surface decorations.

4.2.3. Specific Exclusions. Notwithstanding the foregoing, all locks on exterior doors, the through-the-wall air conditioners, ceiling fans, water heaters, toilet operating parts, water and pool pumps, floor slab, load bearing walls, rain gutters, and roofs, no matter where located, and all pipes, conduit and wiring contained within such excluded building elements, shall not be a part of any Villa and shall, instead, comprise a part of the Common Elements.

#### **4.3. DESCRIPTION OF THE COMMON ELEMENTS.**

The Common Elements shall comprise all of the Condominium other than the Villas. Without limiting the generality of the foregoing, the Common Elements shall also include all apparatus, equipment and other installations existing in the Condominium for common use or necessary or convenient to the existence, maintenance or safety of the Condominium. The Common Elements shall be exclusively owned in common by the Villa Owners. The Common Elements shall remain undivided and no Person shall bring an action for partition except as specifically permitted by this Declaration or the Act.

### **5. PERCENTAGE INTERESTS**

Each Villa shall have appurtenant to it an undivided Percentage Interest in the Common Elements as set forth on Exhibit B, attached hereto. The Percentage Interests have been determined in accordance with the provisions of §905 (a) of the Act. The Percentage Interests cannot be changed without the unanimous consent of all Villa Owners. The Percentage Interest of each Villa cannot be separated from the ownership of the Villa and the transfer of title to any Villa shall automatically transfer title to the



Percentage Interest appurtenant to such Villa, whether or not any specific reference to the Percentage Interest is made in the deed, or other instrument of conveyance. All Assessments against Villas for the payment of Common Expenses shall be made in proportion to the Percentage Interests of such Villas.

## **6. THE ASSOCIATION**

### **6.1. ESTABLISHMENT.**

The Association is hereby created pursuant to the Act as a Virgin Islands unincorporated association. The Association shall be known as the "Villa Madeleine Resort Condominium Association."

### **6.2. MEMBERSHIP.**

Membership in the Association shall be limited to Villa Owners. Each Villa Owner shall, upon becoming a Villa Owner, also automatically become a member of the Association and shall cease being a member of the Association at such time as his ownership of the Villa ceases.

### **6.3. POWERS AND DUTIES OF THE ASSOCIATION.**

**6.3.1. General Powers.** The Association shall have such powers and duties as are specifically set forth in the Act, this Declaration or the By-Laws as well as the power to do every other act not inconsistent with law that may be appropriate to promote and attain the purposes set forth in the Act, the Declaration and these By-Laws. Without limiting in any manner the general powers set forth above, the Association shall have the following specific powers:

- a) to have perpetual existence, subject to the right of the Villa Owners to terminate the condominium regime as provided in the Act;
- b) to sue and be sued, complain and defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Villa Owners on matters affecting the Condominium;
- c) to transact business, carry on its operations and exercise the powers provided in the Act, the Declaration or these By-Laws in the United States Virgin Islands, any State, district or possession of the United States and in any foreign country;
- d) to make contracts and guarantees, incur liabilities and borrow money, sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of any part of its property and assets;
- e) to issue notes and other obligations and to secure the same by mortgage or security interest on any part of its property, franchises, and income; and

- f) to acquire by purchase or in any other manner, to take, receive, own, hold, use, employ, improve, and otherwise deal with any property, real or personal, or any interest therein, wherever located.

6.3.2. Administration. The affairs of the Association shall, subject to the requirements of the Act and this Declaration, be managed by the Board of Directors in the manner provided in the By-Laws.

#### **6.4. VOTING RIGHTS.**

Appurtenant to each Villa shall be the right to vote at all meetings of the Association, which voting right shall be weighted in proportion to the Percentage Interest in the Common Elements appurtenant to such Villa. Such voting right may not be separated from the Villa to which it is appurtenant; provided, however, that a proxy to vote may be granted to any individual in accordance with the provisions, and limitations, of the By-Laws.

### **7. DAMAGE TO OR DESTRUCTION OF THE CONDOMINIUM**

#### **7.1. DETERMINATION OF EXTENT OF DAMAGE.**

In the event of any damage to the Condominium, the Board shall promptly make a determination of the extent of the damage and, in the event the Board preliminarily estimates that the cost may exceed Five Hundred Thousand Dollars (\$500,000), the Board shall obtain a formal estimate of the cost to repair such damage from at least two independent sources.

#### **7.2. MINOR DAMAGE.**

If the Board determines that the cost to repair such damage is less than twenty percent (20%) of the full replacement cost of the improvements constituting the Villas and the Common Elements, the Board shall cause such damage to be repaired promptly and, if required, shall levy a Special Assessment against all of the Villas to fund all or a portion of the cost of such repair.

#### **7.3. SUBSTANTIAL OR TOTAL DAMAGE OR DESTRUCTION.**

If the Board determines that the cost to repair such damage is twenty percent (20%), or more, of the full replacement cost of the improvements constituting the Villas and the Common Elements, the Board shall promptly cause a notice to that effect to be given to all of the Villa Owners which notice shall set the time and place of a special meeting of the Villa Owners for the purpose of deciding whether or not to repair or reconstruct such damage. If more than fifty percent (50%) of the Percentage Interests are voted affirmatively to repair or reconstruct such damage at the special meeting the Board shall cause such damage to be repaired promptly and, if required, shall levy a Special Assessment against all of the Villas to fund all or a portion of the cost of such repair. If more than fifty-percent (50%) of the Percentage Interests are not voted affirmatively to repair or reconstruct such damage, § 925 of the Act shall become applicable and:

7.3.1. the Property shall be deemed owned by all of the Villa Owners as tenants in common in proportion to their previous respective Percentage Interests;

7.3.2. any liens affecting a Villa shall be deemed to be transferred in accordance with their existing priorities to the interest of the Villa Owner of such Villa as a tenant in common in the Property; and

7.3.3. the Property shall be subject to an action for partition at the suit of any Villa Owner, in which event, the net proceeds of sale, together with the net proceeds of any insurance on the Property held by the Association, if any, shall be considered one fund, and shall be distributed to or on behalf of the Villa Owners in proportion to their respective interests as tenants in common.

## **8. EASEMENTS**

In addition to the easements granted or reserved as described in the Easement Agreement, the following easements are hereby granted or reserved, as the case may be:

### **8.1. WALKWAYS AND PARKING SPACES.**

The walkways, driveways and other rights of way and the parking areas of the Common Elements shall be and the same are hereby declared and reserved to be subject to a perpetual, non-exclusive, easement over and across the same for ingress, egress and parking in favor of the Association and the Villa Owners for their use and the use of their family members, guests, invitees and lessees for all proper and normal purposes. The easement rights hereunder shall be used in a manner consistent with the structural design of the Common Elements and shall be subject to such further restrictions as shall be set forth in the By-Laws.

### **8.2. RIGHT OF ASSOCIATION TO GRANT OTHER EASEMENTS.**

The Association shall have the right to impose upon the Common Elements, from time to time, easements and cross-easements for the installation, maintenance, repair and replacement of improvements for the provision of utilities including, but not limited to, electric power, telephone service, cable television, water, sewer and security service. The Association shall have the right to grant such other easements upon the Common Elements as the Board may determine are necessary or useful for the operation of the Condominium and its enjoyment by Villa Owners; provided, however, that no easement shall be granted for the benefit of any person other than a Villa Owner or governmental body or instrumentality without the prior consent of the holders of more than fifty percent of the Percentage Interests given at any annual or special meeting of the Association. The officer of the Association executing any document granting such easements shall be deemed to be acting both on behalf of the Association and as the attorney-in-fact of each Villa Owner for such purpose.

### **8.3. EASEMENTS FOR ENCROACHMENTS.**

All of the Villas and the Common Elements shall be subject to easements for encroachments, which now or hereafter exist, caused by settlement or movement of any improvements upon the Property or caused by minor inaccuracies in building or rebuilding of such improvements. Such easements shall continue until the encroachments no longer exist.

### **9. UNITS SUBJECT TO DECLARATION, BY-LAWS AND THE ACT**

All present and future Villa Owners, tenants and other occupants of Villas shall be subject to, and shall comply with, the provisions of the Act, the Declaration and the By-Laws as they may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the taking of occupancy of any Villa shall constitute an agreement that the provisions of this Declaration and the By-Laws as the same may be amended from time to time, are accepted and ratified by such Villa Owner, tenant or occupant; and all of such provisions shall be deemed and taken to be covenants running with the land, and shall bind any person having, at any time, any interest or estate in such Villa, as though such provisions were recited and stipulated at length in each and every deed of conveyance or lease thereof.

### **10. PERSON TO RECEIVE SERVICE OF PROCESS**

The person to receive service of process in the case of an action against two or more Villa Owners relating to the Common Elements or more than one Villa shall be:

Donovan M. Hamm, Jr.  
5030 Anchor Way  
St. Croix, VI 00820

### **11. AMENDMENT OF DECLARATION**

#### **11.1. PROCEDURE FOR APPROVAL BY BOARD.**

If the Board receives a proposed amendment to the Declaration from any Board member, or five or more Villa Owners it shall schedule a meeting of the Board to consider the amendment, which meeting shall be held within fifteen days of such receipt. In the event a majority of the Board shall approve the proposed amendment and if the approval of the Association is required, a special meeting of the Association shall be called to consider the amendment unless the next regularly scheduled meeting of the Association falls within the next one hundred twenty (120) days following such approval, in which case, the Board may postpone consideration of the amendment by the Association until such regularly scheduled meeting. If the Board is required to schedule a special meeting of the Association, it shall be scheduled within one hundred twenty (120) days following approval of the amendment by the Board.

## **11.2. WHEN APPROVAL BY ASSOCIATION REQUIRED.**

11.2.1. An amendment to this Declaration that is made solely for the purpose of changing the Person to receive service of process does not require the approval of the Association following approval by the Board.

11.2.2. An amendment to this Declaration that is made solely for the purpose of recording a change in the By-Laws as required by §917 of the Act shall require the affirmative vote of at least the same Percentage Interests as are required in order to amend the By-Laws.

11.2.3. Unless a higher percentage is required by the Act, any other amendment to this Declaration must be approved by the affirmative vote of at least eighty-percent (80%) of the Percentage Interests.

## **11.3. EXECUTION AND RECORDATION.**

Any amendment to this Declaration that has received the approvals required above shall be executed on behalf of the Association by such officer, or officers as the By-Laws may provide and shall become effective upon recordation in the Office of the Recorder of Deeds in Christiansted, St. Croix, United States Virgin Islands. Every amendment to this Declaration shall contain the certification, under oath, of one of the officers executing the amendment that the approvals required by this Declaration for such amendment were obtained.

## **12. MISCELLANEOUS**

### **12.1. ENFORCEMENT.**

The Association, and any Villa Owner, may bring an action to enforce the provisions of the Act, this Declaration or the By-Laws. The prevailing party shall be entitled to an award of reasonable attorneys' fees.

### **12.2. PARTIAL INVALIDITY.**

The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in the event of such invalidity, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

### **12.3. WAIVER.**

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**12.4 CONFLICT.**

In the event the Act conflicts with any provisions of the Declaration or By-Laws, the Act shall control. In the event the Declaration conflicts with the By-Laws, the Declaration shall control.

**12.5 CAPTIONS.**

The captions and Table of Contents contained in this Declaration are for convenience only, are not part of this Declaration, and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

**12.6 GENDER, ETC.**

Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, the undersigned President of the Villa Madeleine Resort Condominium Association has executed this Declaration on behalf of the Association and every Villa Owner.

WITNESSES:

Mary Murphy  
Shirley Jansworth

VILLA MADELEINE RESORT  
CONDOMINIUM ASSOCIATION

Murl Webster  
Murl Webster, President

ATTEST:

R. D. Musser  
R. D. Musser, Secretary

Territory of the United States Virgin Islands  
Judicial Division of St. Croix

I, Muel H. Webster, President of the Villa Madeleine Resort Condominium Association, being duly sworn, certify that all approvals to the foregoing Amended and Restated Declaration of the Villa Madeleine Resort Condominium were obtained in accordance with the Virgin Islands Condominium Act and the provisions of the Declaration and that I have executed the foregoing instrument on behalf of said association.

Muel H. Webster  
, President

Sworn before me this 23 day of July, 1997:

Shaul Macintosh  
Notary Public



received for recording on the 25<sup>th</sup> day of July  
1997 at 11:07 o'clock AM and  
Recorded and Entered in Recorder's Book for the  
District of St. Croix, Virgin Islands of the U.S.A. at  
Photo-copy 620 Page 254  
No. 3142/1997 and noted in Real Property Register  
535 Page 533

Bernard F. Robertson

FEES 11.00