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**DECLARATION**  
**of**  
**THE WESTWIND AT TREASURE ISLAND CONDOMINIUM**

TREASURE ISLAND WATERFRONT, LLC, a Florida limited liability company (the "Developer"), hereby declares:

I.  
**SUBMISSION STATEMENT**

1.1 **The Land.** The Developer owns fee simple title to certain land located in Pinellas County, Florida, as more particularly described in Exhibit "A" annexed hereto (the "Land").

1.2 **Submission Statement.** The Developer hereby submits in fee simple the Land to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Land, but excluding all public or private (e.g., cable television) utility installations therein or thereon not owned by Developer. Without limiting any of the foregoing, no property, real, personal or mixed not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto.

All provisions, restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the Land in perpetuity unless this Declaration is terminated as provided hereafter.

1.3 **Name.** The name by which this condominium is to be identified is THE WESTWIND AT TREASURE ISLAND CONDOMINIUM, (hereinafter called the "Condominium").

(Condominium plat pertaining hereto is filed in Condominium Plat Book 156  
Pages 88 through 91, inclusive.)

## II. DEFINITIONS

The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.

2.2 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time, a copy of which is attached hereto as Exhibit "B" and incorporated herein.

2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which, from time to time, is assessed against the Unit Owner.

2.4 "Association" means The Westwind at Treasure Island Condominium Association, Inc., a Florida corporation, not for profit, the sole entity responsible for the operation of the Condominium.

2.5 "Association Property" means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to the Association for the use and benefit of its members.

2.6 "Balcony", "Patio" and "Terrace" shall have the same meaning and be interchangeable for the purposes of this Declaration and its exhibits and any rules and regulations.

2.7 "Board of Directors" or "Board" means the Board of Directors of the Association.

2.8 "Building" means the structure(s) in which the Units and the common elements are located, regardless of the number of such structures, which are located on the Condominium Property.

2.9 "Bylaws" means the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as Exhibit "C" and incorporated herein.

2.10 "Common Elements" mean and include:

(a) The portions of the Condominium Property which are not included within the Units.

(b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.

(c) An easement of support in every portion of a Unit which contributes to the support of the Building.

(d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

(e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

2.11 "Common Expenses" mean all expenses incurred by the Association for the Condominium and charges assessed or imposed against Units in the Condominium by the Association, as authorized by the Act. If approved by the Board of Directors, "Common Expenses" shall include the cost of a master television antenna or satellite system, or cable television service, internet access service or other bulk service obtained pursuant to bulk contracts or otherwise made available for use by all Unit Owners. For all purposes of this Declaration, "Common Expenses" shall also include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended.

2.12 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association (including, but not limited to, assessments, rents, profits and revenues on account of the Common Elements), over the amount of Common Expenses.

2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.

2.14 "Condominium Property" means the Land, Improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.

2.15 "County" means the County of Pinellas, State of Florida.

2.16 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.

2.17 "Developer" means TREASURE ISLAND WATERFRONT, LLC, a Florida limited liability company, its successors and such of its assigns as to which its rights hereunder are assigned by written instrument recorded in the public records of the County. Such assignment may be made on an exclusive or non-exclusive basis, may be conditional or unconditional, and may be an assignment of all or only portions of its rights as Developer hereunder; provided, however, that no such assignment shall make any assignee the Developer for purposes hereof unless such assignment is an assignment of all of Developer's rights hereunder, is exclusive, except as to any previously assigned rights, and the assignee expressly accepts said assignment by written instrument recorded in the public records of the County.

2.18 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Property, including but not limited to, the Building.

2.19 "Institutional Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional Mortgagees" shall mean and refer to Institutional Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional Mortgagees are appurtenant.

2.20 "Land" shall mean the Land described in Exhibit "A" attached hereto and incorporated herein.

2.21 "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.22 "Plat" shall mean the plat of the condominium recorded in the condominium plat books for the County, a copy of which is annexed hereto as Exhibit "A".

2.23 "Surface Water Management System" shall mean and include, and is not limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plain compensation areas, wetlands and any associated buffer areas, wetland mitigation areas, under drains, outfall structures and related appurtenances.

2.24 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.

2.25 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of legal title to a Condominium Parcel.

### III.

#### DESCRIPTION OF CONDOMINIUM AND DEVELOPMENT PLAN

3.1 Development. This development shall consist of one (1) building containing twenty (20) units.

3.2 Identification of Units. Each unit is identified by a separate numerical or alpha designation which is set forth on the Plat attached hereto as Exhibit "A." Exhibit "A" consists of a survey of the land, a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located, and a plot plan thereof. The Plat (Exhibit "A") together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with title to each Unit as an appurtenance thereto:

- (a) An undivided share in the Common Elements and common surplus;

(b) The exclusive right to use such portion of the Common Elements as may be provided in this Declaration;

(c) An exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, provided that an easement and air space which is vacated shall be terminated automatically;

(d) Membership in the Association with the full voting rights appurtenant thereto; and

(e) Other appurtenances as may be provided by this Declaration or the Act.

3.3 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries.

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the highest ceiling.

(ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.

(b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

(c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the boundaries of the Unit extend to the interior surface of all windows (which term does not include sliding glass doors but does include glass curtain walls) and extend to the exterior surface of sliding glass doors and unfinished interior surfaces of exterior doors. The framework for windows (again not including framework for sliding glass doors) shall not be included in the boundaries of the Unit and shall be Common Elements.

(d) Utility Equipment and Conduits. The Units shall include all plumbing and lines, equipment and fixtures located within the boundaries of the Unit, together with plumbing and electrical and other utility lines within the Common Elements which serve the Unit only. The Unit shall not include electrical and plumbing lines, conduits, equipment, fixtures, pipes, wires, air passageways, ducts or other utility lines running through or adjacent to the Unit which are utilized for or serve other Units or the Common Elements, which items shall be made a part of the Common Elements.

(e) Air Conditioning/Heating. Any air conditioning/heating equipment which services only a single Unit shall be considered part of said Unit and not a Common Element, whether located within or without the Unit.

(f) Appliances. The Unit shall include any electric door-bells/knockers, hot water heaters, refrigerators, dishwashers, and other appliances which serve only one Unit.

(g) Fixtures. The Unit shall include all interior fixtures which shall serve the Unit exclusively, including without limitation, all plumbing fixtures, utility and electrical fixtures and cabinets.

(h) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "A" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3.3(c) shall control unless specifically depicted otherwise on such Plat. In the event that the actual physical location of any Unit constructed within the building at any time does not precisely coincide with the area depicted on the Plat, the actual physical location of the Unit shall control over locations, dimensions and descriptions reflected on the Plat. Furthermore, notwithstanding the fact that no Unit may be divided or partitioned for purposes of sale or lease, a Unit may be combined with a laterally adjacent Unit in order to permit occupancy of such areas as one residential living space. Such combination of Units shall be for the purpose of occupancy only and shall not be deemed an amendment to this Declaration. Any such combination shall not materially alter or modify the configuration or size of a Unit and each Unit shall remain a separate Unit for purposes of this Declaration.

3.4 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this declaration, as limited common elements appurtenant thereto, vesting in the owner of each unit the exclusive right to use, such limited common elements as are defined herein and/or are shown on the plat, including but not limited to the following:

(a) Parking Spaces. Each Unit shall be assigned one Parking Space, which Parking Space upon assignment shall become a limited common element appurtenant to such Unit to which it is assigned. Parking Spaces other than the one per Unit previously assigned, may also be assigned by the Developer to Units and the Developer has the right to charge for this assignment and will be freely transferable among Unit Owners after first being assigned by the Developer. Record of the assignment of Parking Spaces shall be maintained by the Association. Unassigned Parking Spaces shall be used as guest spaces or as may be determined by the Board of Directors of the Association. Handicap Parking Spaces may be assigned to Units with non-handicap Owners, provided that if said Parking Spaces are needed in the future to be used by a handicap resident, then such space will be reassigned.

(b) Hurricane Shutters. To the extent applicable, any hurricane shutters affixed to the exterior of the building for the specific use of a particular unit.

(c) Assignments. The exclusive right to use a limited common element Parking Space as referenced in subparagraph (a) above shall initially be made by the Developer. Subsequent to this initial assignment, a Unit Owner may assign the exclusive right to use their Parking Space to another Unit Owner, the Developer or to a subsequent transferee of a Unit and a form for this purpose will be made available by the Directors of the Association. The Developer shall be entitled to assign any unassigned parking spaces as limited common elements appurtenant to a particular unit and to charge and collect a fee for said assignment. The Association shall have the power to assign

Parking Spaces, which are left unassigned but only after the Developer has voluntarily relinquished such reserved right in whole or in part or no longer holds a Unit for sale in the ordinary course of business.

3.5 Easements. The following easements are hereby created (in addition to any easements created under the Act):

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall have a right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day's notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

(c) Right of Entry into Units in Emergency. In case of emergency originating in or threatening any Unit, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate, and to facilitate entry in the event of any such emergency, the owner of each Unit, if required by the Association, shall deposit under the control of the Association, a key or keys to the front locks of such Unit.

(d) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

(e) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across

sidewalks, driveways, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

(f) Construction: Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, of any Improvements or Units located or to be located thereon and for repair, replacement and maintenance purposes, where the repair, replacement or maintenance is the obligation of the Developer, pursuant to warranty or other contractual obligation that it may have to an individual unit owner or the Association.

(g) Sales Activity. The Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for guest accommodations, model apartments and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units within the Condominium and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease. The rights of the Developer described in this paragraph 3.5(g) shall terminate when the Developer no longer holds a Unit for sale in the ordinary course of business.

(h) Association. The Association shall have an easement of access over, under and through the Condominium Property for the purpose of performing its lawful functions pursuant to this Declaration, including, without limitation, the maintenance of Improvements, parking areas, utility lines and equipment, driveways, landscaped areas and any privacy wall/fence located along the boundary of the Condominium Property. Specifically, the Association shall have an easement and right of access to each Unit, when necessary, for the maintenance of any common element or any portion of a Unit to be maintained by the Association. Whenever necessary, the Association or their representatives may enter a Unit to perform its lawful function as described herein, the Association shall provide reasonable notice and said entry shall be at reasonable times except, however, that in the event of an emergency originating in or threatening any Unit, regardless of whether the Owner is present at the time of such emergency, the Association or any other person authorized by it shall have the right to enter such Unit for the purpose of remedying or abating such cause of such emergency and such right of entry shall be immediate, and to facilitate entry in the event of such an emergency, the Owner of each Unit, if required by the Association, shall deposit under the control of the Association, a key or keys to the front door locks of such Unit.

(i) Additional Easements. The Developer or Association, by and through the Board of Directors on behalf of all Unit Owners, shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications, service or other easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium property and to grant access easements or relocate any existing access easements on Condominium Property as the Developer or Board shall



deem necessary or desirable, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes. The aforementioned rights of the Developer to grant additional easements shall only be for so long as Developer is in control of the Association.

#### IV.

#### RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

#### V.

#### OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES; VOTING RIGHTS

5.1 Percentage Ownership and Shares. The Allocation of Percentage Shares in the common Elements and Common Surplus, and the Percentage Share of the common Expenses, appurtenant to each Unit is one- twentieth (1/20<sup>th</sup>) part hereof.

5.2 Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Bylaws and Articles of Incorporation of the Association.

#### VI.

#### AMENDMENTS

Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:

6.1 By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than an affirmative vote of Owners representing a majority of the Units. Furthermore, pursuant to Section 718.112(2)(c), F.S., the Board of Directors of the Association shall be required to consider an amendment to the Declaration if in receipt of a petition from 20% of the voting interest of the Association requesting the Board to address an amendment to the Declaration as an item of business at its next regular Board Meeting or at a special meeting of the Board, but not later than 60 days after the receipt of the petition, which item shall be placed on the agenda of said Board meeting. Except as elsewhere provided, approvals of proposed amendments must be by affirmative vote of Unit Owners owning a majority of the Units present in person or by proxy at a duly called meeting of

the Association. Notwithstanding anything to the contrary contained herein, the Association reserves the right to amend this Declaration and the Exhibits annexed hereto so as to correct any errors or omissions not materially and adversely affecting the rights of Unit Owners. Amendments enacted to correct errors or omissions may be approved by a majority of the Board of Directors of the Association.

6.2 By The Developer. The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the Bylaws of the Association to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent thereto. Further, the Developer shall not be permitted to make any amendment which requires the approval of Unit Owners under Section 718.110(4) or (8) of the Act without first obtaining such approval.

6.3 Proviso. Unless otherwise provided specifically to the contrary in this Declaration (e.g., in Section 9 hereof), no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) of the affected Unit(s), and all record owners of liens on the affected Unit(s), shall join in the execution of the amendment and same is also approved by a majority of the votes of the Association. In no event shall the consent or joinder of mortgagees be required unless the amendment materially affects the rights or interests of the mortgagees or is otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and such consent or joinder may not be unreasonably withheld.

6.4 Execution and Recording. Amendments other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate and amendment is properly recorded in the public records of the County.

## VII.

### MAINTENANCE AND REPAIRS.

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of window screens, the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. Any maintenance, repair work or replacement done by Unit Owner pursuant to this paragraph 7.1, including but not limited to that done with respect to windows,

screens, glass in exterior doors, shall be done in such a manner that it shall conform to the existing design, color and quality of material replaced or repaired. Furthermore, it shall be the responsibility of the Unit Owner not to paint or otherwise decorate or change the appearance of any portion of the exterior of the Condominium building, including but not limited to balconies, patios and terraces.

Specifically, Unit Owners shall be responsible to clean the interior of all windows and the exterior of all windows that can be accessed from the interior of the Unit. The Association shall clean the exterior surfaces of all windows that are not accessible from the interior of the Unit when deemed necessary by the Board of Directors of the Association. Unit Owners shall maintain the patios, terraces and balconies appurtenant to their Unit(s) and shall keep the same neat and tidy, except that in order to maintain a uniform appearance, the Association will paint the exterior walls and railing of the patios, balconies and terraces appurtenant to Units when deemed necessary by the Board of Directors of the Association.

Notwithstanding the foregoing, the Association shall maintain and repair at the Association's expense all portions of a Unit contributing to the support of the Condominium building, which portions shall include but not be limited to, (a) load-bearing columns, floors and walls, (b) all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to parts of the Condominium property other than the Unit, and all utility services and other facilities contained within a Unit which serve as part or parts of the Condominium property other than the Unit within which contained. All incidental damage caused to a Unit by the Association in performing the aforementioned work shall be promptly repaired at the expense of the Association. Furthermore, the Association shall periodically clean the exterior windows of Units which are not accessible to the Unit Owner.

7.2 Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available hereafter, all maintenance, repairs and replacements in or to the Common Elements (other than certain Limited Common Elements as provided in Section 7.1) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense. The Association shall be responsible for the operation and maintenance of the improvements, facilities and systems utilized in connection with the storm and surface water collection, retention, detention, drainage and disposal services for the Condominium Property and shall comply with all requirements of the Southwest Florida Water Management District.

7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit or Units shall be the responsibility of the applicable Unit Owner(s), individually, and not the Association, without regard to whether such items are included within the boundaries of the Units.

## VIII.

### ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY THE ASSOCIATION

After the completion of the improvements included in the limited and common elements which are contemplated by this Declaration, there shall be no material alterations or substantial addition to the limited and common elements without the prior approval of Seventy Percent (70%) of

the record Owners of all Units. Addition, alteration or improvement to the common elements, or any part thereof, costing in the aggregate \$10,000.00 or less in a calendar year shall not be considered material or substantial and may be made by the Association based upon the approval of a majority of the Board of Directors of the Association without the approval of Unit Owners. For purposes of the previous sentence, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above stated purposes, regardless of whether the repayment of any of that debt is made beyond that year.

## IX.

### ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY UNIT OWNERS

9.1 Consent of the Board of Directors. Except as hereafter provided, no Unit Owner shall make any material alteration or substantial addition in or to the Common Elements, any Limited Common Element or to that portion of his Unit which is to be maintained by the Association or do anything which would jeopardize the safety, soundness or architectural appearance of the Condominium building and easement without first obtaining approval in writing of the Board of Directors of the Association and fifty percent (50%) of the record Owners of other Units.

9.2 Additions, Alterations or Improvements by Developer. The Developer shall have the additional right, without the consent or approval of the Association or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements). Notwithstanding the foregoing, none of the alterations described above may result in a change in the configuration or size of a Unit in any material fashion, may not materially alter or modify the appurtenances to a Unit or may not increase the proportion or percentage by which an Owner of a parcel shares the common expenses and owns the common surplus without the approval of the Owners of the Unit(s) affected and the approval of all owners of mortgages and liens on the affected Unit(s).

## X.

### COLLECTION OF ASSESSMENTS

10.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while he or she is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his or her share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

10.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium, the Board of Directors may, except as otherwise provided in the Declaration, levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

(a) "Special Assessments" shall mean or refer to a charge against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for specific purposes of a non-recurring nature which are not in the nature of capital improvements.

(b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements.

10.3 Default in Payment of Assessments. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each installment of the assessment for each delinquent installment that the payment is late. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel. The lien is effective and shall relate back to the recording of the Declaration, provided that as to Institutional Mortgagees, the lien is effective from and after recording of the claim of lien. The claim of lien shall state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates. It must be executed and acknowledged by an officer or authorized agent of the Association and shall be recorded in the Public Records of the County. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid but in no event for a period exceeding one year, unless lien enforcement action has commenced in a court of competent jurisdiction during such year. The one-year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Condominium Parcel. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon and costs and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. Upon full payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the remainder of the assessment for the budget year in which the claim of lien is filed to be accelerated and shall thereupon be immediately due and payable.

Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessment.

10.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to

foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

10.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent, the expenses of such receiver to be paid by the party which does not prevail in the foreclosure action.

10.6 Institutional Mortgagee. In the event a first mortgagee, an institutional Mortgagee or other purchaser shall obtain title to a Unit as a result of a foreclosure action in which the Association has been joined as a defendant, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such acquirer of title or its successors and assigns shall be liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure or in satisfaction of debt. However, a first mortgagee's liability or an Institutional Mortgagee's liability as aforesaid shall be limited to (i) the Unit's Common Expenses or Assessments which accrued or came due during the six months immediately preceding the acquisition of title and for which payment in full has not been received by the Association or (ii) one percent (1%) of the original mortgage debt, whichever is less. The provisions of this Section 10.6 shall not apply unless the first mortgagee joins the Association as a defendant in the foreclosure action. Joinder is not required if, on the date the complaint is filed, the Association was dissolved, administratively or otherwise, or did not maintain an office or agent for service of process at a location which was known or reasonably discoverable by the first mortgagee by the date the foreclosure action was filed. The person acquiring title shall pay the amount owed to the Association within thirty (30) days of transfer of title. The unpaid share of Common Expenses or Assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer and its successors and assigns. A first mortgagee acquiring title to a Condominium Parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such Condominium Parcel, whether or not the Unit is occupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

10.7 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Notwithstanding any limitation on transfer fees contained in Section 718.112(2)(i), F. S., the Association or its

authorized agent may charge a reasonable fee for the preparation of the certificate. The amount of the fee must be included on the certificate. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

10.8 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, as determined from time to time by the Board of Directors. Initially, Assessments will be collected monthly.

## XI. INSURANCE

11.1 Purchase of Insurance. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, the Common Elements and Condominium Property. Such Insurance shall include insurance against those risks, with such coverage and limits, as provided in Section 11.2 below, together with such other insurance as the Association deems necessary. The premiums for all such Insurance and other expenses in connection with said insurance shall be assessed as part of the Common Expenses. The named insured shall be the Association, individually and as agent for the Owners and their mortgagees, as their interests may appear, without naming them. For purposes of this and the following Article, all buildings constituting the Condominium as described on the Plat shall collectively be deemed one "Building and shall include any additional building as a part thereof which may hereafter become a part of this Condominium.

### 11.2 Coverage.

(a) Fire and Other Perils. The Association shall obtain, maintain and pay the premiums upon a policy or policies of hazard insurance providing primary coverage for all portions of the Condominium Properly for which the Association is required to maintain insurance in accordance with the Condominium Act.

(1) The policy or policies shall be in an amount equal to one hundred (100%) percent of current replacement cost of the Building, exclusive of land, foundation, excavation and other items normally excluded from coverage, if available, and any deductibles established pursuant to Section 11.2(h), unless a lower percentage is expressly approved by the Board. In all events, the amount of coverage shall comply with the amounts required by the Condominium Act.

(2) The policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor trustee, as insured, for the use and benefit of the individual Owners and their mortgagees, as their interests may appear. Loss payable shall be in favor of the Association or insurance trustee, as a trustee, for each Unit Owner and each such Owner's mortgagee(s). The Association or insurance trustee, if any, shall hold any proceeds of insurance in trust for Unit Owners and their mortgage holders, as their interests may appear. Each Unit Owner and each Unit Owner's mortgagee(s), if any, shall be beneficiaries of the policy in the fraction of ownership of the Common Elements set forth in this Declaration. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request. Such policies shall

contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the Pinellas County area and shall name any holder of mortgages on Units within the Condominium. Such policies shall provide that they may not be canceled or substantially modified, without at least ten (10) days' prior written notice to the Association and to each holder of a mortgage listed as a scheduled holder of a mortgage in the policies.

(3) Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, FEDERAL HOME LOAN MORTGAGE CORPORATION ("FHLMC"), FEDERAL NATIONAL MORTGAGE ASSOCIATION, ("FNMA"), or the designee of FHLMC OR FNMA; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

(4) The policies shall also provide for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Unit Owners that are not under the control of the Association or the Owners collectively; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss.

(5) The insurance policy shall afford, as a minimum, protection against the following:

(i) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) In the event the Condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accident in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and

(iii) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including alt perils normally covered by the standard "all risk" endorsement.

In addition, such policies shall include an "agreed amount endorsement" and, if available, an "inflation guard endorsement."

(6) The Association shall provide, on an individual case basis, if required by any Institutional Mortgagee, construction code endorsements (such as a demolition cost endorsement, a contingent liability from operation of building laws endorsement and an increased cost of construction endorsement) if the Condominium is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the Condominium by an insured hazard.



(7) Such policies shall provide that they may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Institutional Mortgagee which is listed as a scheduled holder of a first mortgage in the insurance policy.

(b) **Liability Insurance.** The Association shall maintain general public liability insurance coverage. Coverage limits shall be in such amounts as the Board shall determine, from time to time. The Association shall provide, if so determined by the Board, and if required by any Institutional Mortgagee insurance protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including but not limited to, host liquor liability, employers liability Insurance, contractual and all written contract insurance, and comprehensive automobile liability insurance.

(c) **Flood Insurance.** If the Condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Association shall obtain and pay the premiums upon, as a Common Expense, a policy or policies of flood insurance on the buildings and any other property covered by the required form of policy (the "Insurable Property"), in an amount deemed appropriate by the Association, as follows: The lesser of: (1) the maximum coverage available under the NFIP for all buildings and other Insurable Property within the Condominium to the extent that such buildings and other Insurable Property are within an area having special flood hazards; or (2) one hundred (100%) percent of current "replacement cost" of all buildings and other Insurable Property within such area.

Such policy shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

(d) **Fidelity Bonds.** Blanket fidelity bonds shall be maintained by the Association in the amount required by Section 718.111(11)(h), of the Condominium Act, as it may be amended or renumbered from time to time.

(e) **Workers Compensation.** Workers Compensation Insurance meeting all of the requirements of the State of Florida.

(f) **Directors and Officers Liability Insurance.** Such insurance may include. If the Board so determines, coverage for committee members of the Association.

(g) **Additional Coverage.** Such other insurance as the Board shall determine from time to time to be desirable and in the best interest of the Association and the Owners.

(h) **Deductibles.** The Board, in the exercise of its reasonable business judgment, may obtain policies of casualty and liability insurance having reasonable deductibles. In the event of a loss, the deductible amount, if any, with respect to any such policy shall be treated as a Common Expense payable from Regular Assessments, Special Assessments, or, if appropriate, from an applicable reserve. If, however, the claim or damage arises from the negligence of a particular

Owner or Owners, the Association may recover payment of any such amount due from the Owner responsible therefor and same shall be an Owner Charge.

11.3 Individual Policies. Every insurance policy issued to an individual Owner shall provide that the coverage afforded by such policy in excess over the amount recoverable under any other policy which shall cover the same property without rights of subrogation against the Association.

11.4 Annual Determination. The Board shall determine, not less often than annually, the insurance coverage and amounts provided for in this Article 11. Policies may contain reasonable deductible provisions as determined by the Board from time to time.

11.5 Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, and their Mortgagees, as their Interests may appear, and all policies and endorsements thereto shall be held by the Association. All proceeds covering property losses shall be paid to an insurance trustee which shall be designated, from time to time, by the Board (the "Insurance Trustee") (if appointed). The Board of Directors shall have the option in its discretion to appoint an Insurance Trustee who if appointed shall be a bank or trust company in Florida with trust powers, with its principal place of business in Florida or one or more of the Directors or officers of the Association. If the Association fails or elects not to appoint an Insurance Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by the Declaration. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of policies, or the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the Owners in the following shares, which shares need not be set forth on the records of the Insurance Trustee:

(a) Common Elements. Proceeds on account of damage to Common Elements: an undivided share for each Owner, such share being the same as the undivided share in the Common Element appurtenant to his Unit.

(b) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

(1) When the Condominium Building is to be restored, for the Owner so damaged in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association. In the event of a reasonable dispute or reasonable act of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

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

11.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

(a) **Expenses of the Trustee.** All expenses of the insurance Trustee shall be paid first or provision made therefore, as a Common Expense.

(b) **Advancements.** If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest it required.

(c) **Construction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of repairing the damage. Any proceeds remaining after defraying such costs shall be distributed to the Owners and their Mortgagees, jointly, in the amount of their respective undivided shares.

(d) **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 Owners and their Mortgagees, jointly, in their respective undivided shares.

(e) **Certificate.** In making distributions to Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice President and Secretary or Assistant Secretary, as to the names of the Owners and their Mortgagees and their respective shares of the distribution.

11.7 **Association as Agent** The Association is hereby irrevocably appointed agent and Attorney in Fact for each Owner and for each holder of a mortgage or other lien upon a Unit, and for each owner of any other interest in the Condominium Property, with power to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

11.8 **Appointment of Insurance Trustee.** The Board shall have the option, in its discretion, of appointing an Insurance Trustee hereunder from time to time, If the Association fails to appoint, or elects not to appoint an Insurance Trustee, then during the time there is no appointed Insurance Trustee, the Association will perform directly all duties, functions and obligations imposed upon the insurance trustee by this Declaration.

11.9 **Mortgagees.** No mortgages 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 for actual distributions thereof made to the Owner and mortgagee pursuant to this Declaration. The requirement of joint remittance to Owners and mortgagees, whether in this Article 11 or elsewhere in the Declaration, is a covenant for the benefit of any mortgagee of a Unit, and may be enforced by such mortgagee.

11.10 **Owners Obligation.** Each Owner shall have the obligation to purchase public liability insurance to protect himself against claims due to accidents within his Unit, and casualty insurance on the contents within said Unit, the ceiling, floor and wall coverings, and electrical fixtures, appliances, water heater, and built-in cabinets, to the extent that these items are located within the Unit, air conditioning and heating equipment (whether located within or without the Unit), and any

improvements made within the Unit which are not covered by the Association policy. Each Owner shall further be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities as a result of amendments to Section 718.111(11), F.S.. Each Owner is expected to carry homeowner's insurance, with coverage for additions and alterations, loss assessment protection or to recognize and accept that such Owner bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance. In addition, each Owner should review the coverage of the Association to determine any additional insurance that may be advisable for him or her to purchase. Each Unit Owner shall comply with the requirements of Section 718.111(11)(g)2, F.S., as amended from time to time, regarding providing the Association with evidence of currently effective policies of insurance as required in this paragraph.

## XII.

### RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY

12.1 Determination to Reconstruct or Repair. If any part of the Condominium Property is damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

(a) Common Elements. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(b) Condominium Building:

(1) Lesser Damage. If the damaged improvement is the Condominium Building, and if Units to which fifty percent (50%) or more of the Common Elements are appurtenant are found by the Board of Directors to be tenantable, the damaged property shall be reconstructed or repaired unless, within sixty (60) days after the casualty, it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.

(2) Major Damage. If the damaged improvement is the Condominium Building, and if Units to which more than fifty percent (50%) of the Common Elements are appurtenant are found by the Board of Directors to be untenable, the damaged property shall neither be reconstructed nor repaired and the Condominium shall be terminated without agreement as elsewhere provided unless, within sixty (60) days after the casualty, the majority of Owners of the Common Elements agree in writing to such reconstruction or repair.

(c) Certificate. The Insurance Trustee may rely upon a certificate of the Association executed by its President or Vice President and Secretary or Assistant Secretary in determining whether the damaged property is to be reconstructed or repaired.

12.2 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Condominium Property or, if not, then in accordance with plans and specifications approved by the Board of Directors and, if the damaged property is the Condominium Building, by the Owners of not less than seventy five percent (75%) of the Common Elements, including the Owners of all damaged Units, whose approval shall not be

unreasonably withheld. If reconstruction in accordance with the original plans and specifications cannot be effected because of governmental regulations intervening between the time of original construction and the time of reconstruction, then the Board shall have the authority to make such modifications to the construction plans as maybe necessary to comply with such changes and regulations, as determined by the Board only, without necessity of Owner approval; provided, however, that if such governmental restrictions will prevent the reconstruction of all Units in the Condominium, then the Condominium shall be terminated.

12.3 Responsibility. If the damage is only to those portions of a Unit or Units for which the responsibility of maintenance and repair is that of the Owner(s), then the Owner(s) shall be responsible for reconstruction and repair after casualty. In all other instances, it shall be the Association's responsibility to reconstruct and repair after casualty.

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

12.5 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs.

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

(a) Association. If the total Assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair which is the responsibility of the Association exceed \$50,000.00, the sums paid upon such Assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repair.

(b) Insurance Trustee. The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the Association from collections of Assessments against 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:

(1) Association - Under Threshold Amount. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than the Threshold Amount (hereinafter defined), then the construction fund shall be disbursed in payment of such costs upon the order of the Association.

(2) Association - Threshold Amount or Over. If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is the Threshold

Amount, or more, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

(3) Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an Owner shall be paid by the Insurance Trustee to the Owner.

(4) 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; provided, however, to the extent a distribution to an Owner is not in excess of Assessments paid by such Owner into the construction fund, such distribution shall not be made payable jointly to any mortgagee.

(5) Threshold Amount. "Threshold Amount" means, for the purposes of this Article, \$100,000.00 as increased by three (3%) percent on January 1 of each year, beginning January 1, 2011. The 3% increase each year shall be calculated with reference to the Threshold Amount for the immediately preceding year.

(6) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, whether a disbursement is to be made from the construction fund, or whether surplus funds to be distributed are less than the Assessments paid Owners; instead, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice President and Secretary or Assistant Secretary, as to any or all of such matters stating that the sums to be paid are due and properly payable in the name of the designated payee and the amount to be paid.

12.7 Failure to Reconstruct. In the event of "major damage, as defined in Section 12.1(b)(2)," to or destruction, of all or a substantial part of the Condominium Property and if the property is not repaired, reconstructed or rebuilt within a reasonable period of time, any Owner shall have the right to petition a court of competent jurisdiction for equitable relief which may, but need not, include termination of the Condominium and partition.

### XIII. CONDEMNATION

13.1 Deposit of Awards With Insurance Trustee. The taking of portions of Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed a casualty and any awards for that taking will be deemed to be proceeds of insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to the Owners, Owners shall deposit the awards with the Insurance Trustee and in the event failure to do so, in the discretion of the Board, a Charge shall be made against the defaulting Owner in the

amount of the award or the amount of the award shall be set off against funds hereinafter made payable to that Owner.

13.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for whether damaged property will be constructed or repaired after a casualty. For this purpose, the taking by eminent domain shall also be deemed a casualty.

13.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the award and Special Assessments shall be deemed to be insurance proceeds and shall be owned and distributed in a manner provided with respect to the ownership and distribution of insurance proceeds, if the Condominium is terminated after casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds by the Insurance Trustee (if appointed) after casualty or as otherwise provided in this Article.

13.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit, and the remaining portion of the Unit can remain habitable (in the sole opinion of the Association) the award from the taking of the portion of the Unit shall be used for the following purposes and in the order stated and the following changes shall be made to the Condominium:

(a) Restoration of the Unit. The Unit shall be made habitable and if the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the Owner of the Unit as an Owner Charge;

(b) Distribution of Surplus. The balance of the award, with respect to the Unit, if any, shall be distributed to the Owner of the Unit, and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.

13.5 Unit Made Not Habitable. If the taking is of the entire Unit or so reduces the size of the Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking the Unit shall be used for the following purposes and in the order stated and the following changes shall be made to the Condominium:

(a) Payment of Award. The award shall be paid first to the Association for any due and unpaid Assessments; then to the affected Owners and to each mortgagee of the Unit as their interests may appear, the remittance being made payable jointly to the Owner and the mortgagee(s). In no event shall the total of such distributions, with respect to any specific Unit, exceed the market value of such Unit immediately prior to the taking.

(b) Addition to the Common Elements. The remaining portion of the Unit, if any, shall become a part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for the use by some or all Owners, in manner approved by the Board. Such Unit shall no longer be deemed a Unit.

(c) **Adjustment of Shares.** The shares in the Common Elements appurtenant to the Units that continue as a part of the Condominium shall be adjusted to distribute the ownership shares in the Common Elements that were appurtenant to the deleted Unit(s), among the remaining Units, in proportion to the ownership shares of the remaining Units immediately prior to such adjustment.

(d) **Assessments.** If the balance of the award (after payments to the Owner as provided above), for the taking is not sufficient to alter the remaining portions of the Unit for use with the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all the Owners who will continue as Owners of Units after the changes in the Condominium affected by this taking. The Assessment shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effective pursuant hereto, by reason of this taking.

13.6 **Market Value.** If, for the purposes of Section 13.5(a), the market value of a Unit immediately prior to a taking cannot be determined by agreement between its Owner and Mortgagees and the Association within thirty (30) days after notice of a dispute by any affected party, such market value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Owners, including all Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they existed prior to the adjustment of such shares pursuant hereto and by reason of the taking.

13.7 **Taking of Common Elements.** The award for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner provided by the Board. The balance of the award for the taking of the Common Elements, if any, shall become part of the Common Surplus.

13.8 **Amendment to the Declaration.** The changes in the Unit, and the Common Elements and the ownership of the Common Elements and the share of the Common Expenses and Common Surplus that are affected by the taking shall be evidenced by an Amendment to this Declaration of Condominium that is only required to be approved by and executed upon the direction of the majority of all Directors of the Association.

#### XIV. TERMINATION

The Condominium may be terminated in the following manner

14.1 **Termination Because of Economic Waste or Impossibility.** The condominium form of ownership may be terminated by a plan of termination approved by a majority of the voting interest of Unit Owners at a meeting duly called for such purpose when:



a. the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws and regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repairs; or

b. it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

14.2 Termination Upon Casualty. If the Condominium suffers "Major Damage" as defined in Section 12.1(b)(2) above, then the Condominium will be terminated unless, within 60 days after the casualty, Owners representing a majority of the total voting interests of the Condominium agree in writing that the Condominium will be repaired and not terminated.

14.3 Agreement. Except as provided in Sections 14.1 and 14.2 above, the Condominium may be terminated at any time pursuant to a plan of termination approved by at least seventy-five percent (75%) of the total voting interest of the Condominium, if not more than ten percent (10%) of the total voting interest of the Condominium have rejected the plan of termination by negative vote or by providing written objection thereto.

14.4 Plan of Termination/Ownership Interest Upon Termination. A plan of termination adopted pursuant to this Article XIV of the Declaration shall comply with the requirements of the Condominium Act. Upon termination of the Condominium, the Condominium Property shall be owned in common by all the Unit Owners in the same undivided shares as each Owner had in the Common Elements pursuant to the provisions of this Declaration and the allocation of proceeds of the sale of the Condominium Property shall be apportioned between the Unit Owners based on the same undivided shares each Unit Owner had in the Common Elements pursuant to the provisions of this Declaration. Any lien shall be transferred to the undivided share in the Condominium Property attributable to the Condominium Unit originally encumbered by the lien in its same priority.

14.5 Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate the Association. The former Owners and their successors and assigns shall continue to be members of the Association, and the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Article. When the affairs of the Association have been fully wound up, the Association shall be dissolved in accordance with law.

14.6 Partition: Sale. If following a termination, at least sixty-seven percent (67%) of the Voting Interests agree to accept an offer for the sale of the property, the Board of Directors shall complete the transaction. If the Owners have not authorized a sale of the former Condominium and Association Property within one (1) year after the recording of the Certificate, the Board of Directors may proceed to sell the property without agreement by the former Owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Board of Directors to the beneficial Owners thereof, as their interests shall appear. At any time more than one (1) year following termination, the former Condominium Property and Association Property may be partitioned and sold upon the application of any Owner; provided, however, that no proceeding seeking partition may be filed if there is then pending a contract for the sale of the property, and

during the pendency of any such partition proceeding, such proceeding shall be held in abeyance if a contract to sell the property is executed. If the property is sold pursuant to any such contract, then any pending partition proceeding shall be dismissed.

14.7 New Condominium. The termination of the Condominium does not bar creation of another Condominium including all or any portion of the same property.

14.8 Provisions Survive Termination. The provisions of this Section 14 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles, and shall have the power to levy Assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, as well as post-termination costs of maintaining the former Condominium Property and winding up the affairs of the Association, are Common Expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens,

## XV. OCCUPANCY AND USE RESTRICTIONS.

In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions which shall be applicable to all Unit Owners, their families, guests, invitees, licensees, and lessees, to wit:

15.1 Occupancy. Each Unit shall be used as a residence only, except as otherwise herein expressly provided. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families, provided that the Unit Owner or other permitted occupant must reside with his/her family: (i) the individual Unit Owner, (ii) an officer, director, stockholder, employee or designee of such corporation, (iii) a partner, employee or designee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be. Occupants of an approved leased or subleased Unit must be the following persons, and such persons' families who reside with them: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder, employee or designee of a corporate lessee or sublessee, (iii) a partner, employee or designee of a partnership lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee. In no event shall occupancy of a Unit (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The provisions of this Subsection 15.1 shall not be applicable to Units used by the Developer for model apartments, guest accommodations, sales or other offices or management services.

As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parent, brother, sister, grandchildren and other person permanently cohabiting the Unit as or together with the Owner or permitted occupant thereof. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Unit. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this

Section 15 and the Board of Directors of the Association shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

15.2 Children. Children shall be permitted to reside in Units but shall be subject to the age restrictions imposed as to use of certain recreation facilities, as provided in the Rules and regulations of the Association.

15.3 Pets. Each Unit Owner or occupant (regardless of the number of joint owners or occupants) may maintain no more than two (2) household pets in his or her Unit, to be limited to dog(s) or cat(s) (or other household pets defined as such and specifically permitted by the Board of Directors of the Association), provided it is not kept, bred or maintained for any commercial purpose, does not become a nuisance or annoyance to neighbors and is first registered with the Association. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). Unit Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash no more than six (6) feet in length at all times when outside the Unit and shall be transported in the service elevator only. There are no designated pet walk areas on the condominium property. No pets may be kept in/on patios, balconies, terraces or entry vestibules when the Owner is not in the Unit. Without limiting the generality of Section 15 hereof, violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Section 15.3 shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that a bird(s) is not kept on Limited Common Elements and does not become a nuisance or annoyance to neighbors. Notwithstanding any of the foregoing, however, neither this Section 15.3, any other provision of this Declaration nor any rule or regulation of the Association shall be enforced, adopted or amended so as to prohibit or unlawfully restrict any right of the Owner or occupant of a Unit to keep and use a seeing eye dog or other assistive animal for purposes provided for in any local, state or federal law, statute or ordinance protecting the applicable person's right to do so. The foregoing notwithstanding, no rottweilers, pit bulls, or chow breed dogs shall be allowed.

15.4 Alterations Without limiting the generality of Section 9.1 hereof or except as authorized under Section 9.1 hereof, and subject to Section 9.2 hereof, no Unit Owner shall cause or allow improvements or changes to any Limited Common Elements or Common Elements, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television or radio antenna, machinery, or air conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Board of Directors of the Association (in the manner specified in Section 9.1 hereof).

15.5 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

15.6 Nuisances. No nuisances (as reasonably determined by the Board of Directors of the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of unreasonable annoyance to residents or occupants of Units or which interferes

with the peaceful possession or proper use of the Condominium Property by its residents or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.

15.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the same shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over the same, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or Bylaws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 15.7. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

15.8 Intentionally deleted.

15.9 Exterior Improvements; Landscaping. Except as authorized in Section 718.113(7), F.S., regarding religious objects and as authorized in Section 718.113(4), F.S., regarding flags, and without limiting the generality of Sections 9.1 or 15.4 hereof, but subject to any provision of this Declaration or the Act specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, terraces or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), or on the interior side thereof so as to be visible to the exterior, without the prior written consent of the Board of Directors of the Association. Specifically, no "For Rent", "For Sale" or any other sign shall be displayed or exposed to view by a Unit Owner or other occupant. To insure a uniform appearance on the exterior of the Building, all window coverings of Units, including, but not limited to verticals, shades, sheers, curtains, drapes, mini-blinds and Venetian blinds shall be faced on the exterior with white material approved by the Association. The furnishings and decorations which Unit Owners may place in, on or about the verandahs, balconies, patios and terraces of Units may be subject to such additional rules and regulations as the Board of Directors of the Association may adopt from time to time.

15.10 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 15 for good cause shown.

15.11 Changes in Permitted Uses. No amendments to this Section 15, any other provision of this Declaration governing the use of Units or the Common Elements or to any Rules and Regulations of the Association shall operate to prohibit the keeping of a pet, parking of a vehicle or leasing or occupancy of a Unit where same was (i) permitted prior to the effectiveness of the amendment, (ii) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant as existed prior to the effectiveness of the amendment. Likewise, no improvement made to or about any Unit which was permitted at the time of its making shall be required to be removed by virtue of a change in the permissibility of such types of improvements.

XVI.  
SELLING, LEASING AND MORTGAGING OF UNITS

Units may be made subject to mortgages without restrictions, but sales and leases of Units shall be subject to the provisions of this Section.

16.1 Board Approval. There shall be no sale, lease or transfer of interest, legal or beneficial, nor transfer of possession of a Unit without the prior written approval of the Board of Directors of the Association. In the event a corporation, partnership, trust or other legal entity owns a Unit, the transfer of all or substantially all of the beneficial ownership of such entity shall be considered a transfer of interest in the Unit.

No fee shall be charged by the Association in connection with the transfer or approval which is in excess of the expenditures reasonably required for such transfer, nor shall the expense exceed the fee permitted under the Act, from time to time, which at the time of recording of this Declaration is \$100.00. Any Unit Owner desiring to sell, lease or deliver possession of a Unit shall submit to the Board an application for approval, which application shall be in writing and in a form approved by the Association, and shall provide the name, address, and telephone number of the desired purchaser or tenant, the names of all intended occupants of the Unit, together with such other information as the Board may reasonably require. The Board must either approve or disapprove the request within ten (10) days after its receipt of the request or such supplemental information as it may reasonably require. If a sale is approved, a recordable Certificate of Approval shall be executed by the Association to be recorded at the expense of the purchaser. If a lease is approved, a written notice of approval will be provided by the Association. The Board's failure to give the Unit Owner the Certificate of Approval or written notice of approval, or written notice of disapproval within the ten (10) day period shall be deemed to be the Board's consent to the same. If the Board disapproves a requested sale in writing within the ten (10) day period, the Board shall be deemed to have exercised its option to purchase as described in Section 16.2 hereafter. The provisions of this Section 16.1 shall not apply to the sale of Units by the Developer. The provisions of this Section 16.1 shall not apply to a transfer or purchase by Institutional Mortgagees which acquire title as a result of their mortgage lien on the Unit, regardless of whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; nor shall this Section 16.1 require approval of a purchaser who acquires title to a Unit at a duly advertised public sale, with open bidding provided by law, including but not limited to an execution sale, a foreclosure sale, a judicial or a tax sale. Notwithstanding anything to the contrary in this Section 16.1, the Developer shall not be exempt from the requirements for approval of leases or lessees which apply to all other Owners or Units.

16.2 Sale of Unit. In the event any Unit Owner desires to sell his or her Unit, the Association shall have the option to purchase or lease any such Unit upon the same terms and conditions as are offered by the Unit Owner to any third party, subject to the following:

(a) Prior to the sale or transfer of any Unit to any person other than the transferor's spouse, a member of his or her immediate family, or a wholly owned corporation, the Unit Owner shall notify the Board in writing of the name and address of the person to whom the proposed sale or transfer is to be made, the terms and conditions of the sale or transfer, and provide a copy of the purchase/transfer agreement, with such other information as may be reasonably required by the Board.

(b) Within ten (10) days after receipt of said notice and such supplemental information as it may reasonably require, the Board may exercise its right to purchase, in writing, and shall promptly notify the Unit Owner of its decision.

(c) If the Board notifies the Unit Owner of its intent to exercise this option, it shall deliver to the Unit Owner the deposit required under the terms of the proposed sale within the above mentioned ten (10) day period and shall then be obligated to close the sale of the Unit in accordance with the terms and conditions of the proposed sale or lease agreement previously furnished to it. If the Board furnishes the Unit Owner with written notice of its intent to exercise the option, but fails to deliver the required deposit within the ten (10) day period, such failure shall be deemed to be a consent to the sale to the contract purchaser or tenant. Approval of the sale constitutes a waiver of the option.

(d) If the Board timely notifies the Unit Owner of its exercise of this option and accompanies its notice with the required deposit, the Association's obligation to purchase the Unit as provided herein may be assigned by the Association to any member or members as shall be determined solely by the Association.

(e) Upon receipt of the deposit and the Board's notice of intent to exercise the option, the selling Unit Owner may either close the proposed sale of his or her Unit with the Association or a member or members to whom the Association's obligation to purchase the Unit has been assigned, or withdraw the offer specified in its notice to the Board. If the Association or the member to whom the option has been assigned fails to close the proposed sale under the terms and conditions of said notice, the deposit previously delivered by the Association shall be retained by the Unit Owner as liquidated damages and the Unit Owner shall, thereafter, be free to consummate the transaction with the party who made the original bona fide offer.

16.3 Leasing. In the event of leasing of Units, the Board shall have the right to require that a substantially uniform form of lease be used. No portion of a Unit (other than an entire Unit) may be rented. All leases shall provide (or be automatically deemed to provide, absent an express statement) that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association. If a Lessee violates any of the aforementioned, in addition to any other rights they may have, the Association has the right to evict the Lessee from the Unit and, for the purposes thereof, each Unit Owner by accepting title to a Unit in this Condominium also authorizes the Association to act on his behalf as his agent in any action brought to evict a Lessee under this paragraph. Furthermore, in the event the Association evicts any Lessee or otherwise takes any action to enforce the provisions of this Declaration, the Articles, the Bylaws or any of the Rules and Regulations of the Association, the Board of Directors and the other Unit Owners shall not be liable to the Lessee or Unit Owner for any loss or damages suffered, arising from or connected therewith.

No lease of a Unit shall be valid or approved for a term of less than seven (7) days. Regardless of whether or not expressed in the applicable lease, the Unit Owner shall be jointly and severally liable to the Association for the acts and omissions of his or her tenant(s) which constitute a

violation of, or non-compliance with, the provisions of this Declaration, the Articles, Bylaws and of any and all rules and regulations of the Association.

16.4 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

16.5 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 15.

16.6 Parking Spaces. No parking space shall be assigned to a person or entity who/which is not also an Owner of a Unit and shall become upon assignment an appurtenance to the Unit to which it is assigned. Further, no parking space shall be leased to a person or entity who/which is not a tenant or Owner of a Unit.

## XVII. COMPLIANCE AND 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 and all exhibits annexed hereto, and the Rules and Regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

17.1 Compliance. 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, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and compliance, to impose any applicable fines or to sue in a court of law for damages.

17.2 Fines. If the Association intends to levy a fine, the following shall apply:

(a) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days. The hearing shall be held before a committee of other Unit Owners appointed by the Board of Directors of the Association. If the committee does not agree with the fine, the fine may not be levied. The notice shall include:

(i) A statement of the date, time and place of the hearing.

(ii) A statement of the provisions of the Declaration; Association Bylaws or Association rules which have allegedly been violated; and

(iii) A short and plain statement of the matters asserted by the Association.

(b) 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 Association.

(c) A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for a hearing. No fine may exceed the maximum amount authorized by the Condominium Act, as amended from time to time, which presently has a maximum of \$100.00 per violation, and may be levied on the basis of each day of a continuing violation, provided that no fine shall in the aggregate, exceed \$1,000.00.

17.3 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his or her intentional act, negligence, misuse or neglect or by that of any member of his or her family or his or her 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 to such negligence by the Association.

17.4 Costs and Attorney's Fees. 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 exhibits annexed hereto, 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 attorney's fees (including appellate attorney's fees).

17.5 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, 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.

## XVIII.

### ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS.

18.1 Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii) receive notices of and attend Association meetings, (iv) receive notice of an alleged default in any obligations hereunder by any Unit Owner, on whose Unit such mortgagee holds a mortgage, which is not cured within Thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.

18.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day



delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.

XIX.

COVENANTS RUNNING WITH THE LAND

All provisions of this Declaration, the Articles, Bylaws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, Bylaws and applicable rules and regulations, as may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, Bylaws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

XX.

DISCLAIMER OF WARRANTIES

**DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, EXCEPT ONLY THOSE SET FORTH IN SECTION 718.203 OF THE ACT (IF APPLICABLE), AND ARTICLE 15 OF THE PROSPECTUS TO WHICH THIS DECLARATION IS ATTACHED. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED. ALL UNIT OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.**

XXI.

RIGHTS OF DEVELOPER

In addition to the rights which the Developer has by common law and pursuant to the Act, the Developer shall have the following rights:

21.1 Easements. Until such time as Developer has completed all of the contemplated improvements and sold all of the Units that will ultimately be contained within the Condominium Property, easements, including but not limited to ingress and egress, are hereby reserved and shall exist through and over the Condominium Property as may be required, convenient, or desired by Developer for the completion of the contemplated improvements and the marketing and sale of said Units. Neither the Unit Owners or the Association, nor their use of the Condominium Property shall interfere in any way with such completion and sale.

21.2 Sale of Units. Until such time as the Developer no longer holds a Unit for sale in the ordinary course of business in the condominium, the Developer shall have the right to transact any business necessary to consummate the sale of Units, including but not limited to, the right to install and maintain a sales office and advertising on the Condominium Property, use the Common Elements and, notwithstanding anything to the contrary contained herein, the Developer may maintain and use sales offices, promotion and development offices, models and Units retained by the Developer, or owned by the Developer, or the use of which has been reserved to the Developer in this Declaration or by contract or otherwise lawfully enforceable as a contract obligation by the Developer against the Association or any of the Unit Owners other than the Developer, so long as such use shall also conform with applicable laws, zoning, rules and ordinances of the appropriate governmental jurisdictions. Specifically, Developer shall have the right to use Units owned by the Developer as guest units for the purpose of housing guests and prospective purchasers of the Condominium Property for promotion and sales purposes, without limitation as to duration of stay or number of guests.

21.3 No Board Action Without Developer's Consent. During the period that Developer holds any Units for sale in the ordinary course of business none of the following actions may be taken by the Association, either through an act of its Board of Directors or as membership, without the Developer's approval in writing:

- (a) Assessment of the Developer as Unit Owner for Capital Improvements;
- (b) Any action by the Association that would detrimental to the sale of the Units by the Developer; however, an increase in assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units for the purposes of this paragraph.

21.4 Developer's Rights With Respect To Common Elements. The Developer reserves every right necessary or desirable relative to the Common Elements and the Condominium Property in general for the following purposes:

- (a) Furnishing of the Condominium Property;
- (b) The sale or mortgage of the Condominium Units;

XXII.  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

22.1 For the purposes of this Article, the Declaration and the Articles of Incorporation and Bylaws of the Association, the term "Surface Water Management System Facilities" shall include, but is not limited to: all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plane compensation areas, wetlands and any associated buffer areas and wetland mitigation areas.

22.2 All Surface Water Management System Facilities shall be located upon common elements.

22.3 There shall be no construction activities permitted with respect to the Surface Water Management System Facilities, which construction activities shall be defined to include, but not be limited to: digging or excavating, depositing fill, debris, or other material or item; constructing or altering any water control structures; or any other construction to modify the Surface Water Management System Facilities. If the Condominium includes a wetland mitigation area, as defined in Section 1.7.24 of part B of the Environmental Resource Permitting Information Manual promulgated pursuant to the Florida Administrative Code (F.A.C.) for the Southwest Florida Water Management District ("SWFWMD"), or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written permission from SWFWMD. Construction and maintenance activities, which are consistent with the design and permit conditions approved by SWFWMD in the Environmental Resource Permit may be conducted without specific written approval from SWFWMD. The Association shall be responsible for the operation and maintenance of the Surface Water Management System Facilities, and all operation and maintenance and re-inspection reporting shall be performed in accordance with the terms and conditions of the Environmental Resource Permit.

22.4 SWFWMD shall have the right to take enforcement measures, including civil action for injunctive relief and/or penalties, against the Association to compel the Association to correct any outstanding problems with the Surface Water Management System Facilities.

22.5 Notwithstanding any provision in Article IX hereof, there shall be no amendment of the Declaration that affects this Article XXII, the Surface Water Management System Facilities or the operation and maintenance of the Surface Water Management System Facilities without the prior written approval of SWFWMD.

22.6 If this Declaration is terminated pursuant to Article XIV and the Association is dissolved, all unit owners shall be jointly and severally responsible for the operation and maintenance of the Surface Water Management System Facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility.

22.7 If there is on site wetland mitigation as defined in said Section 1.7.24 on the common elements, the Association budget shall allocate sufficient funds for the monitoring and maintenance of the wetland mitigation areas each year until SWFWMD determines that the mitigation areas are successful in accordance with the Environmental Resource Permit.

XXIII.  
Special Provisions to Satisfy the  
Requirements of Federal National Mortgage Association

23.1 The Association shall allow all unit owners, their lenders, insurers and guarantors of first mortgages to inspect, during normal business hours, all of the records of the Association.

23.2 Upon written request, the Association shall furnish its most recent annual statement to any holder of a first mortgage of a unit in the condominium.

23.3 The Association may cancel, without penalty or cause, any contract or lease made by it before unit owners, other than the Developer, assume control of the Association, upon written notice to the other party.

23.4 Unless waived pursuant to Section 718.112(2)(f), F.S., the Association shall maintain an adequate reserve fund for the maintenance and repair of the common elements, which shall be funded from regular monthly assessments for common expenses.

23.5 Upon written request, the Association shall furnish the following notices to the holder, insurer or guarantor of any mortgage of any unit in the condominium:

(a) Notice of any condemnation or casualty loss that affects a material portion of the condominium property or the applicable unit.

(b) Notice of any delinquency in the payment of assessments more than sixty (60) days past due as to the applicable unit.

(c) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Notice of any proposed action, which would require the consent of a percentage of mortgage holders.

23.6 The Association shall purchase and maintain policies of insurance and fidelity bond coverage in accordance with requirements under Section 803.07P of the FNMA Conventional Home Mortgage Selling Contract Supplement and the requirements of Chapter 718.111(11)(h), F.S., as amended.

23.7 As used herein, the terms "mortgagee" or "lender" shall be deemed to include the Federal National Mortgage Association, VA or FHA, as applicable.

XXIV  
DOCKS AND BOAT SLIP

24.1 Docks and Boat Slips. The Developer has obtained the right to use and occupy certain submerged lands lying adjacent to the Land by way of a Sovereignty Submerged Lands Lease

("Lease") from the Board of Trustees of the Internal Improvement Fund of the State of Florida ("TIFF"). It is contemplated that the Developer will construct Dock Facilities and Boat Slips, as hereinafter defined, over these submerged lands and the Developer reserves the right to assign the exclusive right to use one or more Boat Slips (the "Assignment") to any Unit it desires, for additional consideration. In addition, the Developer reserves the right to assign the exclusive right to use one or more Boat Slips to the Association to be used by all members of the Association pursuant to rules and regulations adopted from time to time by the Association for their use.

#### 24.2 Definitions.

A. "Boat Slip" shall mean and refer to an area of submerged land which is identified as a Boat Slip by number or letter designation on a plan of the Dock Facilities and Boat Slips created by the Developer, which Boat Slip shall be an area to be used and occupied by a Vessel, or Vessels. The perimeter boundaries of each Boat Slip shall be the vertical plane passing through the inner most surfaces of the docks or pilings surrounding the Boat Slip and the lower boundary of the Boat Slip shall be the surface of that portion of the Submerged Land lying beneath the Boat Slip. A Boat Slip shall include the right to use (i) that portion of the surface of any dock or catwalk that adjoins the Boat Slip, (ii) all cleats and tie pilings or dolphins adjoining the Boat Slip and designated by Developer or the Association for the exclusive use with the Boat Slip and (iii) any dock box or other improvement (including electric, water and other utility connections) placed on the dock adjacent to the Boat Slip by Developer or the Association for the exclusive use of the Boat Slip.

B. "Dock Facilities" shall mean and refer to those portions of Submerged Land and improvements within the Submerged Land that are not part of a Boat Slip, such as without limitation, a dock, catwalk, riprap, pilings, and any walkways serving Boat Slips.

C. "Vessel" shall mean and refer to any Owner's leisure or recreational motor boat, sailboat or other water craft which is self-propelled and in a seaworthy condition, together with any tender kept thereon; provided, however, that this term shall exclude any houseboat, floating home, house-like barge, seaplane, non-displacement (i.e., air cushion) or commercial marine vessels. In the event of any dispute as to whether a particular vessel or boat is permitted to be kept in a Boat Slip, the determination of the Board of Directors made in its sole discretion shall be dispositive. The term "Vessel" shall include all vessels kept in a Boat Slip.

#### 24.3 Easements.

A. Developer reserves the right (but shall have no obligation) to grant easements for utilities throughout the Dock Facilities, including water, communications, security and cable television facilities. Each appropriate utility company or agency shall have an easement for the purpose of maintaining all utility lines, connections and equipment now or hereafter located on the Dock Facilities or within the Boat Slips.

B. Owners of the right to use adjacent and contiguous Boat Slips shall have the right of reasonable, joint use of dolphins and pilings, if any, on or immediately proximate to the common boundary between such Boat Slips for the purpose of attaching a mooring line(s) in connection with mooring a Vessel. Each Owner will use reasonable care and good seamanship in connection with this use right and will exercise his or her rights hereunder in a reasonable manner to

minimize interference with or inconvenience to other Owners. No Owner will be responsible for ordinary wear and tear to dolphins or pilings from the use described herein, but each Owner will be liable for any damage or destruction caused by negligence or willful misconduct in the exercise of the use rights granted hereby.

C. The Dock Facilities are hereby declared to be subject to a perpetual nonexclusive easement in favor of the Association, and the employees and agents of the Association, so that such employees and agents may carry out their duties and have access over the Dock Facilities.

D. Notwithstanding anything herein to the contrary, each Owner shall be liable for all damages to the Boat Slip or Vessel of another Owner or to the Dock Facilities where the cause of such damage is the failure of such Owner to properly secure (or, if required by the Association, remove) his or her Vessel to (or from) its mooring piles or dolphins.

#### 24.4 Restrictions on Use of Boat Slips and Dock Facilities.

A. Each Boat Slip is subject to the exclusive use of the Owner holding a Assignment for that particular Boat Slip. Each Boat Slip shall be used only for the mooring of a Vessel in a seaworthy condition and under its own motor power. No person other than the Owner or approved lessee or house guest of an Owner shall be entitled to use a Boat Slip that has been assigned.

B. A Boat Slip may not be leased or rented except to an Owner or lessee of a Unit.

C. No Boat Slip may be used for a commercial purpose except that Developer may use Boat Slips in conjunction with the sale of Units or the exclusive right to use a Boat Slip.

D. Each Member is solely responsible for the proper mooring of his or her Vessel and is required to maintain mooring lines in good condition and sufficiently strong to secure the Vessel at all times. All mooring whips must be of a type approved by the Association. Any special mooring rules or procedures issued by the Association shall be complied with at all times. Vessels moored in a Boat Slip shall not be permitted to extend over the boundary of the Boat Slip. The Vessel (including all bowsprits, booms, pulpits and other projections and overhangs) must be moored as close as possible to the dock, consistent with good boating practice.

E. During hurricane and other high velocity wind threats, each Owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency. If an Owner's Vessel sinks as a result of a storm, or for any other reason, the Owner must remove the sunken Vessel immediately after the occurrence of such event and, if not so removed within twenty-four (24) hours after the sinking, the Association may, (but shall not be obligated to) remove the sunken Vessel and impose an individual slip fee against the Owner for the cost of such removal. Each Owner agrees to indemnify, defend and save the Association, its agents, employees and designees for and from any and all loss or damage incurred in connection with the exercise or non-exercise of the Association's rights hereunder. If an Owner plans to be absent during

the hurricane season, such Owner must prepare his Boat Slip and secure or remove, as appropriate, his Vessel prior to his departure in accordance with the standards established by the Board of Directors (or in the absence thereof, with all due care), designate a responsible firm or individual to care for his Boat Slip and Vessel should there be a hurricane or other storm, and furnish the Association with the name, address and telephone number of such firm or individual. Such firm or individual shall be subject to the approval of the Association. The Owner shall be liable for all damages caused to the Dock Facilities and to the Boat Slips, Vessels or other property of other Owners for such Owner's improper preparation or failure to remove, as the case may be, of his or her Boat Slip and Vessel for hurricanes and other storms. Notwithstanding anything contained herein to the contrary, the Association may also levy fines in accordance with the rules and regulations if the Owner fails to abide by the provisions of this paragraph. Notwithstanding the right of the Association to enforce the foregoing requirements, the Association shall not be liable to any Owner or other person or entity for any damage to persons or property caused by an Owner's failure to comply with such requirements.

F. Any Member may, at its own cost and expense, upon obtaining all required permits, construct and maintain davits or a lift for a Vessel within the Boat Slip in accordance with specifications approved by the Association.

G. No Member shall erect or maintain any fence, gate or other barrier, or any other improvement on any portion of the Dock Facilities, except for such that may be constructed within a Boat Slip as approved by the Association.

H. No open fires shall be permitted on any Vessel, Boat Slip or any Dock Facilities, except in any areas which may be approved for such use by the Board, and no charcoal, starting fluids or similarly used substances shall be kept on any portion of the Dock Facilities.

K. No fish or other marine life of any kind shall be cleaned, prepared or processed in any manner on the Dock Facilities except in those portions of the Dock Facilities specifically designated for such use by the Board of Directors. Fish may be cleaned on a Vessel, provided that it is done in accordance with the rules and regulations of the Association and provided that the Vessel is properly cleaned afterward.

L. The Association shall have the right to inspect any Vessel in the vicinity of the Dock Facilities to determine its compliance with all applicable municipal, county, state and federal fire, safety and other regulations as well as to determine whether the Vessel complies with the maximum Vessel size requirements for the applicable Boat Slip. The Association shall have the right (but not be required) to remove any Vessel from the vicinity of the Dock Facilities which fails to comply with said regulations or fails to fit within the applicable Boat Slip. Each Owner shall indemnify, defend and save the Association, its agents, employees and designees from and against any loss or damage incurred in connection with the exercise or non-exercise of the Association's rights hereunder.

M. Notwithstanding anything contained herein to the contrary, the Developer and the Association may permit police, U.S. Coast Guard and similar watercraft of public authorities to tie up to and be kept on any portion of the Dock Facilities designed for such use.

N. Vessels may only be moved or operated on Submerged Land during such hours of the day as may be determined by the Board from time to time.

O. No use or practice which is either an annoyance to Owners or an interference with the peaceful possession and proper use of the Dock Facilities by the Owners shall be allowed. No Owner shall commit or permit any nuisance or any immoral or illegal activity in or about the Dock Facilities. No Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Members, or allow any such noise or disturbance to be made within the Dock Facilities.

P. Whenever the Association is permitted or required by this Declaration to enter any Boat Slip for the purpose of correction, repair, cleaning, clearing, or in the event of an emergency, or any other required or permitted activity, such entrance shall not be deemed a trespass.

Q. Except in connection with development, sales, or resale of Boat Slips by the Developer, no signs, advertisements or notices of any kind (including "for sale" signs), shall be displayed to the public view on any Boat Slip, any Vessel or on the Dock Facilities, without the prior written approval of the Association. The foregoing shall not prohibit lettering, registration numbers, flags and other displays customarily found on recreational watercraft.

R. The Association and the Board reserve the right to approve all Vessels which are moored on the Submerged Land, including at the Dock Facilities and Boat Slips, including the appearance of Vessels. The minimum standards for such approval shall be the compliance of the Vessel with the requirements of this Declaration and with those adopted by the Association. The granting of approval for a Vessel shall not, however, be deemed to create any liability of the Association or of their officers or directors as to the unsafe or unseaworthy condition of any Vessel or any damage to persons or property arising therefrom.

S. Owners may perform routine washing, waxing and detailing on their Vessels while docked at the Dock Facilities. Owners may also perform minor repairs as determined by the Board from time to time. No bottom cleaning will be permitted while a Vessel is moored at the Dock Facilities. Maintenance and repair of Vessels other than routine cleaning and minor repairs approved by the Board is not allowed at the Dock Facilities, or in a Boat Slip.

T. The Developer and Association shall have the right to increase or decrease the size of any Boat Slip, the use of which has not been assigned, provided that such modification does not interfere with navigation or materially and adversely affect the rights of an Owner to which another Boat Slip has been assigned.

U. The handling, storage, transportation and disposal of hazardous or toxic materials shall be prohibited at the Dock Facilities; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum products used by an Owner in connection with the operation of his or her Vessel. Dispensing of fuel is prohibited. The Association shall have the right to immediately remove, or cause the removal of, any hazardous or toxic material located on the Submerged Land. Each Owner shall insure that any bilge water pumped into the waters does not contain any petroleum or other hazardous or toxic materials. For purposes of this paragraph, hazardous or toxic materials shall be as defined by Federal, Florida and common law. Each Owner



shall indemnify, defend and save the Developer, the Association and any management company harmless from and against any damages, claims and liability resulting from or arising out of the violation of any of the requirements of this paragraph by such Owner. All expenses incurred by the Developer and the Association in connection with compliance with all environmental and related laws shall be paid in accordance with Article 4 hereof, except in the case of a violation of this Declaration by a particular Owner.

V. No person shall use the Dock Facilities or any Boat Slip or any vessel, in any manner contrary to, or not in accordance with, the rules and regulations which may be promulgated by the Association whether or not such rules and regulations are restated herein in whole or in part.

W. In its use of the Boat Slip and Dock Facilities, each Owner shall comply with all the terms and conditions of the Lease and all applicable laws, regulations and permits.

#### 24.5 Maintenance of Properties and Vessels.

A. Each Owner shall keep his or her Vessel at all times in a neat, attractive and safe condition, and the Association may levy a fine against such Owner for the cost of maintaining the appearance and safety of his Vessel, plus an administrative fee of not more than twenty-five percent (25%) of such cost. Further, the Association shall have the right to remove any Vessel which is not maintained in a neat, attractive and safe condition, as determined by the Board of Directors. Notwithstanding the foregoing, the Association shall have no liability to any Owner to keep the Boat Slips or Vessels in a safe condition.

B. The Association shall be responsible for the routine and ordinary maintenance of all the Dock Facilities including the Boat Slips; provided, however, that the expense of any maintenance, repair or reconstruction of any portion of the Dock Facilities necessitated by the negligent or willful acts of an Owner, or his lessees, invitees, licensees, family or guests shall be borne solely by such Owner. The Association shall have the right (but not an obligation) to repair or reconstruct the Dock Facilities in the event of damage or destruction. The Association shall use insurance proceeds to fund such repair or reconstruction, to the extent that the insurance proceeds are sufficient to do so. All repair and reconstruction shall be completed in good and workmanlike manner and in accordance with plans and specifications approved by the Association. Each Unit Owner acknowledges that the Association, in the Association's sole and absolute discretion, may or may not elect to provide insurance coverage for the Boat Slips, to the extent such insurance coverage is financially feasible to the Association.

#### 24.6 Dock Facilities.

A. The Association shall be responsible for compliance with the Lease and for the management, maintenance and operation of the Dock Facilities including the Boat Slips, and for the payment of all property taxes and other assessments which are liens against the Dock Facilities, from and after the date of recordation of this Declaration. Reserves may be established for the replacement or repair of the Dock Facilities.

B. The Association, through its Board of Directors shall regulate the use of the Dock Facilities (including the Limited Common Areas) by Owners and assignees, and may from

time to time promulgate such rules and regulations consistent with this Declaration, governing the use thereof as it may deem to be in the best interest of its Owners. A copy of all rules and regulations established hereunder and any amendments thereto shall be made available to all Owners at the office of the Association. Such rules and regulations and all provisions, restrictions and covenants as now or hereafter provided, including, without limitation, all occupancy and use restrictions contained in this Declaration, may be enforced by legal or equitable action of the Association.

C. Subject to the provisions herein, each Owner shall have the right and easement of enjoyment to, and use of, the Dock Facilities, except for the Boat Slip, the exclusive use of which has been assigned to a particular Unit. An Owner of a Unit, to which the exclusive use of a Boat Slip has been assigned, may assign the use of said Boat Slip to another Unit or to a subsequent transferee of the Unit to which it has been assigned. If the exclusive right to use is to be assigned to another Unit, the assignment shall not be effective until the Association has been notified of the same in writing and any sums due the Association relative to the Boat Slip have been paid.

D. Owners shall have the right and easement of enjoyment to, and use of, the Dock Facilities subject to the following:

1. The right of the Association to suspend the enjoyment rights and easements of any Owner for any period during which any sums due to the Association remain unpaid by the Owner and for any period during which such Owner is in violation of this Declaration or any rules and regulations promulgated by the Association.

2. The right of the Association and its agents to properly maintain the Dock Facilities. For the purpose of performing its maintenance obligations permitted under this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Vessel at reasonable hours on any day, and an easement therefore is hereby expressly granted. Such notice shall not be required in the event of an emergency where a delay in entry could result in damage to any Boat Slip, Vessel, Dock Facilities, persons or other property.

3. The rules and regulations governing the use and enjoyment of the Dock Facilities, as promulgated by the Association.

4. All of the provisions of this Declaration, the Articles of Incorporation and Bylaws, the rules and regulations promulgated by the Association for use of the Dock Facilities, and all exhibits thereto, all as same may be amended from time to time.

5. Such easements as may be granted or reserved on any separate instrument; such easements as may be granted or reserved separately by the Developer or the Association, and such other easements as may be granted or reserved pursuant to the provisions of this Declaration.

6. The right and duty of the Association to levy charges against each Owner for the purpose of operating, maintaining, repairing and replacing the Dock Facilities in compliance with the provisions of this Declaration.

7. The right of fire, police, coast guard, health and sanitation and other public service personnel and vehicles to have access to, and use, the Dock Facilities for the purpose of performing their duly authorized duties.

8. The terms and conditions of any purchase contract or other agreement with the Developer or the Association relative to the Boat Slip.

E. In case of any emergency originating in, or threatening any Boat Slip, regardless of whether the Owner is present at the time of such emergency, the Board of Directors or any other person authorized by the Association, shall have the right (but not an obligation) to enter such Boat Slip and the Vessel located therein for the purpose of remedying or abating the cause of such emergency.

F. The size of the Vessel which may be moored in a particular Boat Slip is limited to that size of Vessel which can be accommodated by the Boat Slip in accordance with prudent boating practices and as limited by the Lease. The Association shall have the right to establish additional rules and regulations regarding the size of the Vessels each Boat Slip may accommodate.

G. By acceptance of a deed for a Unit, each Owner acknowledges and agrees that the Developer and the Association shall not be liable to Owner or any other person for personal injury, loss of life, property damage to a Vessel, its motor, accessories and contents thereof, resulting from the operation of Vessels and the use of the Boat Slips and Dock Facilities. Each Owner using the Dock Facilities and Boat Slips or the channels adjacent to the Dock Facilities and Boat Slips, assumes all risk of injury, loss or damage to himself or herself, his guests and invitees and to his or her vessel or its appurtenances or contents, including any loss or damage arising out of or due to adverse weather conditions. This responsibility includes damage to other vessels and damage to the Dock Facilities and Boat Slips. Neither the Developer nor Association shall have any liability or responsibility therefore. Neither the Developer nor the Association make any expressed or implied warranties or representation as to the conditions of the docks, piers, gangways, wharves or ramps and have no duty to advise of any hazardous conditions requiring the attention of the Owner. Neither the Developer nor the Association shall be liable for any injury to persons or property occurring at the Dock Facilities and Boat Slips, or for any theft of, or from, any vessel, regardless of whether or not the loss, damage or claim results from the Developer's or the Associations negligence. The Association shall not have any liability for the care or protection of any vessel, and each owner agrees to indemnify and to hold harmless the Developer and the Association against any such loss, damage, claim arising out of the Owner's, or such owner's family Owners, guest or invitees use of the Dock Facilities and Boat Slips and/or the operation of a vessel at or around the Dock Facilities and Boat Slips, whether or not the loss, damage or claim results from either the Developer's or Associations negligence or from adverse weather conditions. Furthermore, each Owner agrees to indemnify and hold harmless the Developer and the Association from any liability arising out of the violation of any permit issued with respect to Dock Facilities and/or Boat Slips as a result of the actions of Owner and/or Owner's family, guests, invitees and lessees.

H. The Developer and the Association make no representations or warranties concerning security at the Dock Facilities. Owners shall be responsible for properly securing a

Vessel's equipment including, but not limited to, antennas, transducers, trim tabs, bimini tops, outriggers, or other protruding equipment and shall be responsible for articles left in the Vessel.

I. The Association is hereby authorized to purchase insurance on the Dock Facilities in such types, in such amounts, with such deductibles, and with such companies as the Board of Directors shall deem appropriate. The Association is not obligated to maintain any insurance and it is acknowledged that property insurance on the Dock Facilities may not be feasible or desirable to carry due to cost or availability.

J. The Owner of any Vessel occupying a Boat Slip shall maintain a full marine insurance package (hull coverage as well as indemnity and liability coverage) on the Vessel in the amount specified by the Association from time to time, and the policy for this insurance shall name the Association as additional insured. A copy of a certificate of such insurance for the Vessel shall be delivered to the Association.

24.7 Permitting/Lease. Notwithstanding anything herein to the contrary, each Owner acknowledges and agrees that the existence of the Dock Facilities and Boat Slips is strictly subject to the terms and conditions of the Lease, the dock permit and all applicable laws to maintain same (collectively the "Permits"). The right to the continued operation of the Dock Facilities and Boat Slips are subject to all of the terms and conditions of all Permits and specifically the Lease. To the extent any of the terms and conditions are violated, the right to the continued existence and operation of the Dock Facilities and Boat Slips may terminate.

24.8 Maintenance and Expense. The administration of the Lease and the operation, maintenance, repair and replacement of the Dock Facilities and the Boat Slips shall be performed by the Association. The costs of the foregoing (the "Dock and Slip Costs") shall be the equal responsibility of those Units to which the exclusive right to use a Boat Slip has been assigned, which cost shall be allocated per Boat Slip based on a fraction, the numerator of which is 1 and the denominator of which shall be the total number of Boat Slips. For example, if there are 8 Boat Slips, then the Owner of each Unit to which a Boat Slip is assigned shall pay for 1/8 of the cost of maintenance and operation of the Dock Facilities and Boat Slips. In the event one or more Boat Slips are reserved for the use of the Association members as a whole and the exclusive use of which is not assigned to any particular Unit, then the Association shall be responsible for the costs associated with said slip. The frequency of payment of the cost for the operation and maintenance of the Dock Facilities and Boat Slips shall be as determined by the Association Board of Directors. If an Owner fails to timely pay its share of said costs, then the Association shall have the following remedies:

A. If the failure to pay continues for ninety (90) days, then the Unit Owner's use of the Boat Slip may be terminated by the Association and will be null and void and of no further effect and the right of use with respect to such Boat Slip shall revert to the Association.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 10 day of May, 2010.

Signed in the presence of:

DEVELOPER:

TREASURE ISLAND WATERFRONT, LLC,  
a Florida limited liability company

[Signature]  
Signature of Witness

John T. DiCamillo  
Print Name of Witness

[Signature]  
Signature of Witness A

Nick H. Dunser  
Print Name of Witness

By: [Signature]

Its: President

STATE OF FLORIDA  
COUNTY OF PINELLAS

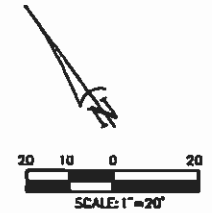
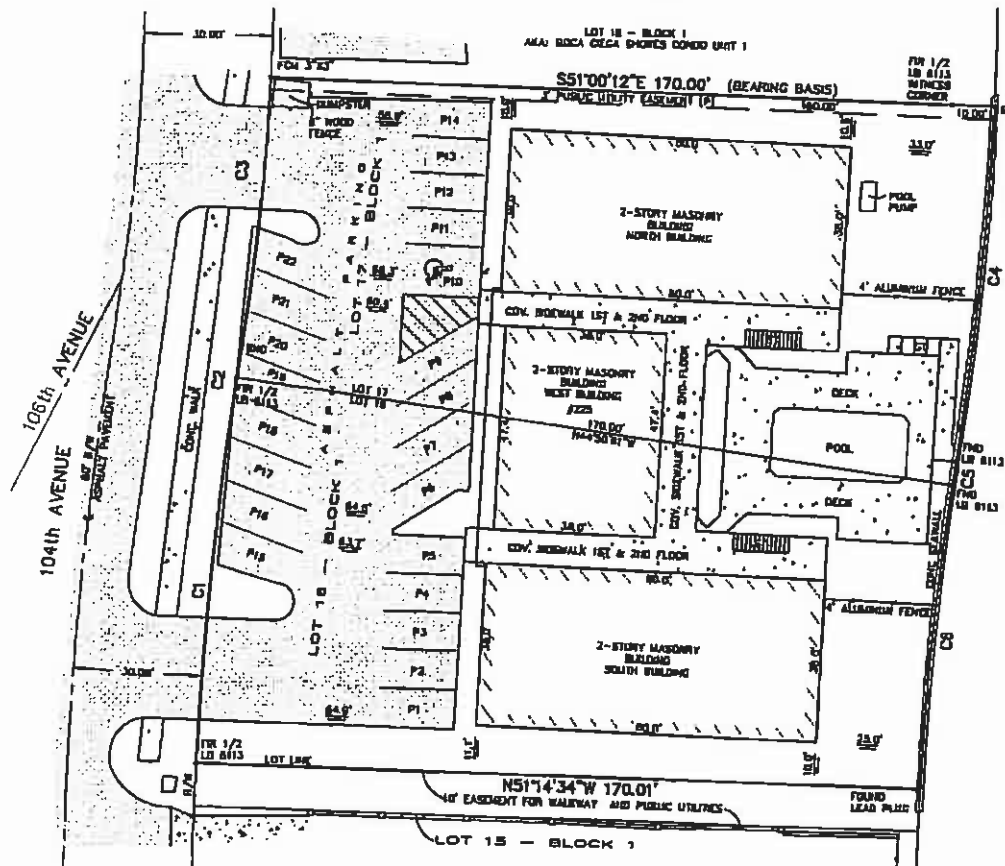
The foregoing instrument was acknowledged before me this 10 day of May, 2010, by Nick Reader, as President of TREASURE ISLAND WATERFRONT, LLC, a Florida limited liability company, who is personally known to me or who has produced FL Drivers License, as identification.



[Signature]  
Notary Public  
My commission expires:

# THE WESTWIND AT TREASURE ISLAND CONDOMINIUM

SECTION 23, TOWNSHIP 31 SOUTH, RANGE 15 EAST  
CITY OF TREASURE ISLAND, PINELLAS COUNTY, FLORIDA



ALL IMPROVEMENTS  
OUTSIDE OF THE  
UNITS AND NOT  
LABELED "LCE" ARE  
COMMON ELEMENTS

- LEGEND**
- AKA: ALSO KNOWN AS
  - CE: COMMON ELEMENT
  - CONC: CONCRETE
  - COV: COVERED
  - EL: ELEVATION
  - FCM: FOUND CONCRETE MONUMENT
  - FR: FOUND IRON ROD
  - LB: LICENSED BUSINESS
  - LCE: LIMITED COMMON ELEMENT
  - PI: PARKING SPACE
  - (P): PLAT
  - R/W: RIGHT-OF-WAY
  - SR: SET 1/2" IRON ROD LB 6113
  - SPKD: SET PK NAIL & DISK LB 6113
  - ST: STAIRS/STEPS
  - TEL: TELEPHONE
  - (TYP): TYPICAL

**DESCRIPTION**  
LOTS 16 AND 17, BLOCK 1, CITY OF TREASURE ISLAND SUBDIVISION BLOCKS 2-4-8-10-11-12-13-14-15 AND REMAINDER OF BLOCKS 1 AND 6, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 31, PAGES 18 THROUGH 22, INCLUSIVE, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA AND INHERENT RIGHTS.

- NOTES**
- FIELD MEASUREMENTS ARE BASED ON THE LINE BETWEEN LOTS 17 AND 18 BLOCK 1, BEING ASSUMED AS S51°00'12"E.
  - CERTAIN IMPROVEMENTS WITHIN THE COMMON ELEMENTS HAVE NOT BEEN LOCATED.
  - COMMON ELEVATION AND LIMITED COMMON ELEVATIONS ARE OBTAINED IN THE DECLARATION OF CONDOMINIUM.
  - THERE MAY BE ADDITIONAL INSTRUCTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.
  - ELEVATIONS ARE BASED ON NATIONAL GEODESIC SURVEY DESIGNATION "THE 147 USE" PMS "ADG787" HAVING AN ELEVATION OF 4.51 NORTH AMERICAN VERTICAL DATUM (NAVD 83).
  - ALL FOUND POINTS ARE UNMARKED UNLESS OTHERWISE NOTED. ALL PROPERTY BEARINGS AND DISTANCES ARE ALSO FIELD MEASURED UNLESS NOTED.

## SITE PLAN SURVEYOR'S CERTIFICATE

I, DANIEL D. FERRARI, THE UNDERSIGNED REGISTERED LAND SURVEYOR, AUTHORIZED TO PRACTICE IN THE STATE OF FLORIDA, IN COMPLIANCE WITH SECTION 716.10(4)(C), FLORIDA STATUTES, DO HEREBY CERTIFY THAT THIS CONDOMINIUM PLAT OF THE WESTWIND AT TREASURE ISLAND CONDOMINIUM CONSISTING OF SHEETS 1 THROUGH 5 IS SUBSTANTIALLY COMPLETE SO THAT THE MATERIAL, TOGETHER WITH THE PROVISIONS OF THE DECLARATION RELATING TO MATTERS OF SURVEY DESCRIBING THE CONDOMINIUM, IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS, AND THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM SAID MATERIALS, AND THAT IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO LANDSCAPING, UTILITY SERVICES AND ACCESS TO EACH UNIT, AND COMMON ELEMENT FACILITIES SERVING THIS CONDOMINIUM HAVE BEEN SUBSTANTIALLY COMPLETED.

JANUARY 27, 2010  
DATE OF SURVEY

*Daniel D. Ferrari*  
DANIEL D. FERRARI  
PROFESSIONAL LAND SURVEYOR  
LS 3883 STATE OF FLORIDA

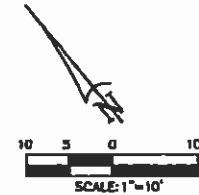
CURVE	RADIUS	ARC	CHORD BEARING	CHORD
C1	900.00	90.67	S42°18'19"W	90.83
C2	900.00	6.85	S45°23'08"W	6.85
C3	333.00	83.99	N42°17'59"E	83.98
C4	725.00	83.58	N42°17'59"E	83.55
C5	730.00	5.56	S45°23'08"W	5.56
C6	730.00	71.58	S42°18'19"W	71.62

**POLARIS ASSOCIATES INC.**  
PROFESSIONAL SURVEYING LB 6113  
2165 SUNNYDALE BLVD., SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113  
SHEET 1 OF 4

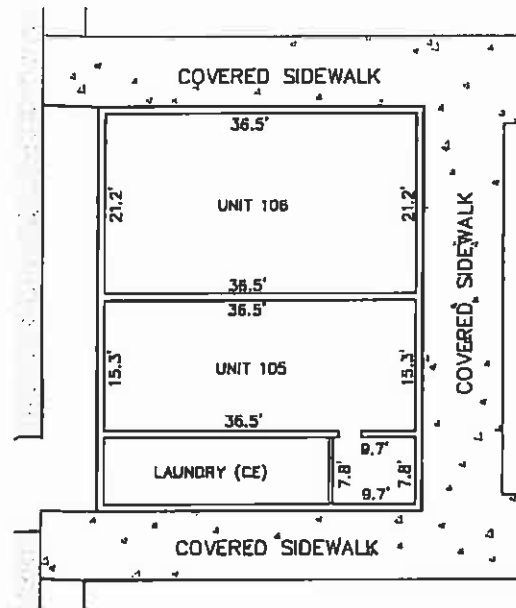
EXHIBIT "A" TO DECLARATION

# THE WESTWIND AT TREASURE ISLAND CONDOMINIUM

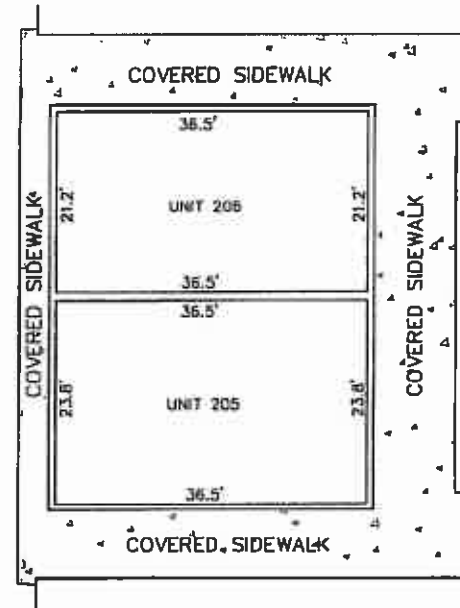
SECTION 23, TOWNSHIP 31 SOUTH, RANGE 15 EAST  
CITY OF TREASURE ISLAND, PINELLAS COUNTY, FLORIDA



FIRST FLOOR



SECOND FLOOR



ALL IMPROVEMENTS  
OUTSIDE OF THE  
UNITS AND NOT  
LABELED "LCE" ARE  
COMMON ELEMENTS

1st FLOOR EL = 6.0  
CEILING EL = 14.0  
2nd FLOOR EL = 14.5  
CEILING EL = 22.8

FLOOR PLANS  
WEST BUILDING



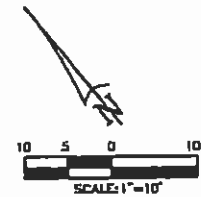
**POLARIS** ASSOCIATES INC.

PROFESSIONAL SURVEYING LB 6113  
2165 SUNNYDALE BLVD., SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113

SHEET 2 OF 4

# THE WESTWIND AT TREASURE ISLAND CONDOMINIUM

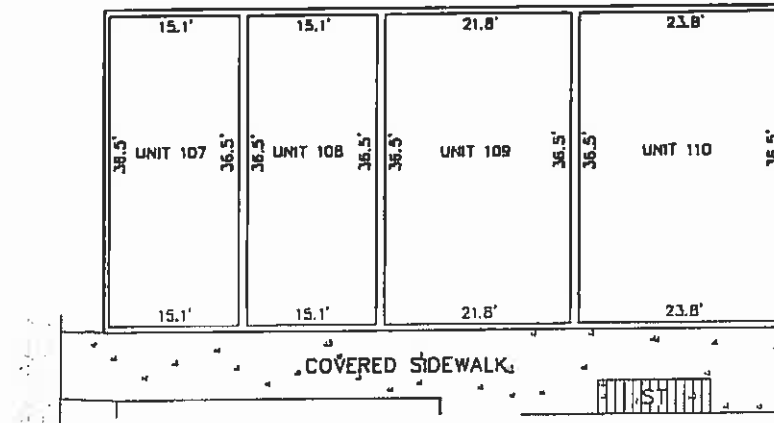
SECTION 23, TOWNSHIP 31 SOUTH, RANGE 15 EAST  
CITY OF TREASURE ISLAND, PINELLAS COUNTY, FLORIDA



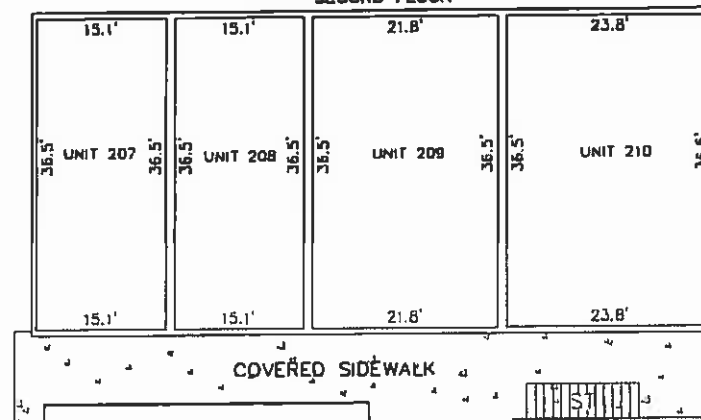
ALL IMPROVEMENTS  
OUTSIDE OF THE  
UNITS AND NOT  
LABELED "LCE" ARE  
COMMON ELEMENTS

1st FLOOR EL. = 5.0  
CEILING EL. = 14.0  
2nd FLOOR EL. = 14.5  
CEILING EL. = 22.8

FIRST FLOOR



SECOND FLOOR



FLOOR PLANS  
NORTH BUILDING



**POLARIS** ASSOCIATES INC.

PROFESSIONAL SURVEYING LB 6113  
2165 SUNNYDALE BLVD., SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 481-6113

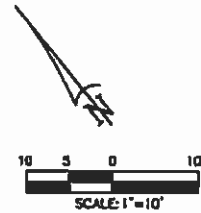
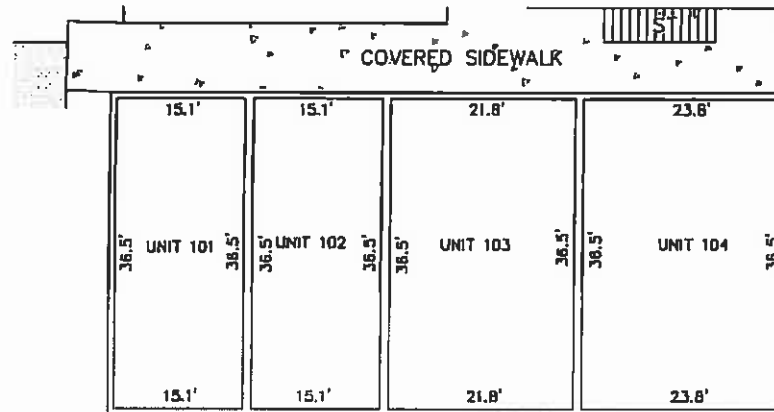
SHEET 3 OF 4



# THE WESTWIND AT TREASURE ISLAND CONDOMINIUM

SECTION 23, TOWNSHIP 31 SOUTH, RANGE 15 EAST  
CITY OF TREASURE ISLAND, PINELLAS COUNTY, FLORIDA

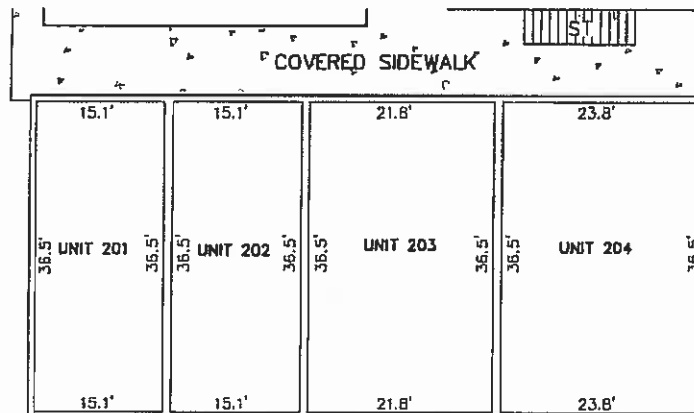
FIRST FLOOR



ALL IMPROVEMENTS  
OUTSIDE OF THE  
UNITS AND NOT  
LABELED "LCE" ARE  
COMMON ELEMENTS

1st FLOOR EL = 8.0  
CEILING EL = 14.0  
2nd FLOOR EL = 14.5  
CEILING EL = 22.6

SECOND FLOOR



FLOOR PLANS  
SOUTH BUILDING



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SHEET 4 OF 4