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Prepared by and Hold for:  
R. Carlton Ward, Esq.  
Richards, Gilkey, Fite,  
Slaughter, Pratesi & Ward, P.A.  
1253 Park Street  
Clearwater, FL 33756

KEN BURKE, CLERK OF COURT  
AND COMPTROLLER PINELLAS COUNTY, FL  
INST# 2014232367 08/19/2014 at 02:21 PM  
OFF REC BK: 18498 PG: 2239-2240  
DocType:RST RECORDING: \$18.50

## CERTIFICATE OF AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR THE RESIDENCES AT WINDWARD PASSAGE

The undersigned hereby certifies that that the hereinafter described amendment to the Declaration of Condominium of The Residences at Windward Passages , a condominium recorded in O.R. Book 15529, Page 18 of the Public Records of Pinellas County, Florida ( the "Declaration") was duly approved as required at a meeting of the membership of the Association held on the 27th day of October, 2010.

### RECITALS

1. Article XIV, Section 14.3 is hereby amended and restated in its entirety to read as follows:

#### ARTICLE XIV - OCCUPANCY AND USE RESTRICTIONS


14.3 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, is first registered with the Association and weighs no more than twenty-five(25) pounds at maturity. 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. 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 14 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 14.3 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 14.3, 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

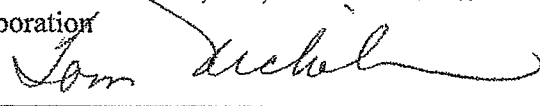
a Unit to keep and use a seeing eye dog or other assistive animal for purposes provided for in any local, state or federal law, statute or ordinance protecting the applicable person's right to do so.

IN WITNESS WHEREOF, this amendment is executed this 1 day of August, 2014.

Signed and sealed in

The Residences at Windward Passage  
Condominium Association, Inc., a Florida Not for  
Profit corporation

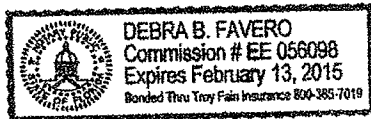
  
Print Name: Debra B. Favero

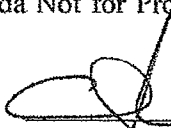
By:   
Tom Nicholson, its President

  
Print Name: TERRIE E. CENTILLI

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing was acknowledged before me this 1<sup>st</sup> day of August, 2014  
by Tom Nicholson, as President of The Residences at Windward  
Passage Condominium Association, Inc., a Florida Not for Profit corporation, on behalf of the  
corporation, who is personally known to me.



  
Notary Public/My Commission Expires:

1/26/14

Prepared by and Hold for:  
R. Carlton Ward, Esq.  
Richards, Gilkey, Fite,  
Slaughter, Pratesi & Ward, P.A.  
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Clearwater, FL 33756

KEN BURKE, CLERK OF COURT  
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INST# 2014232366 08/19/2014 at 02:21 PM  
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DocType:RST RECORDING: \$27.00

**CERTIFICATE OF AMENDMENT TO THE DECLARATION OF CONDOMINIUM  
FOR THE RESIDENCES AT WINDWARD PASSAGE**

The undersigned hereby certifies that that the hereinafter described amendment to the Declaration of Condominium of The Residences at Windward Passages , a condominium recorded in O.R. Book 15529, Page 18 of the Public Records of Pinellas County, Florida ( the "Declaration") was duly approved as required at a meeting of the membership of the Association held on the 26th day of June, 2014.

**RECITALS**

1. Article III, Section 3.4 is hereby amended and restated in its entirety to read as follows:

**ARTICLE III -DESCRIPTION OF CONDOMINIUM AND DEVELOPMENT**

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 follows:

(a) Balconies and Vestibules. Any balcony or vestibule (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit to the exclusion of other Units shall be a Limited Common Element of such Unit. Notwithstanding the foregoing, the Association and its designated contractors shall have an easement over said Limited Common elements in order to perform window cleaning and repairs to the exterior of the Condominium building.

(b) 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.

(c) Storage Lockers. Each Unit shall be assigned one Storage Locker, which Storage Locker upon assignment shall become a limited common element appurtenant to such Unit to which it is assigned. . Record of the assignment of Storage Lockers shall be maintained by the Association. Unassigned Storage Lockers shall be used as may be determined by the Board of Directors of the Association.

(d) Boat Slips. If the Developer obtains the necessary governmental approval and constructs Boat Slips over the submerged lands that adjoin the Condominium seawall, the Developer reserves the right to assign the exclusive use of a Boat Slip to a Unit as a Limited Common Element appurtenant thereto and the Developer has the right to charge for said assignment. Record of the assignment of Boat Slips shall be maintained by the Association. The Boat Slips, as initially constructed by the Developer, shall be maintained by the Association and the expense of said maintenance shall be apportioned equally between those Units who have been assigned the exclusive right to use a Boat Slip and the Association may use the provisions of Section 718.116, Florida Statutes, to enforce payment of the shares of such costs by said Unit Owners. After assignment of the exclusive right to use a Boat Slip, the Owner of the Unit to which the Boat Slip is assigned, may make improvements within the boundaries of the Boat Slip, such as the installation of a boat lift or davits, provided said improvements are approved by the Association Board of Directors, which improvements shall be the responsibility of the Unit Owner to maintain. In the event, in the opinion of the Association Board of Directors, maintenance of improvements to a Boat Slip required to be performed by the Unit Owner is not performed with thirty (30) days after written notice from the Association, then the Association shall have the right to perform said maintenance and the cost of the same shall be the responsibility of said Unit Owner as a Limited Common Element expense and the Association may use the provisions of Section 718.116, Florida Statutes, to collect the same. Unassigned Boat Slips may be used as guest spaces for the mooring of boats, subject to the Rules and Regulations as adopted by the Board of Directors of the Association from time to time and governmental regulations and these unassigned Boat Slips shall be common elements, the cost of maintenance of which shall be a common expense. No Unit may be assigned the exclusive use of more than two (2) Boat Slips as a Limited Common Element appurtenant thereto.


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

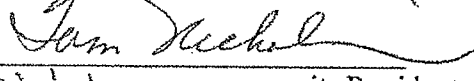
(f) Assignments. The exclusive right to use a Limited Common Element Parking Space, Storage Locker or Boat Slip as referenced in subparagraph (b), (c) and (d) above shall initially be made by the Developer or the Association. Subsequent to this initial assignment, a Unit Owner may assign the exclusive right to use their Parking Space, Storage Locker or Boat Slip to another Unit Owner 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 Association shall have the power to assign Parking Spaces, Storage Lockers and Boat Slips, which are left unassigned.

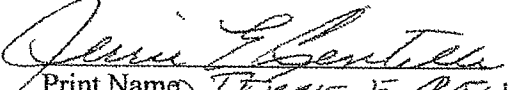
IN WITNESS WHEREOF, this amendment is executed this 1 day of August, 2014.

Signed and sealed in

The Residences at Windward Passage  
Condominium Association, Inc., a Florida Not for  
Profit Corporation

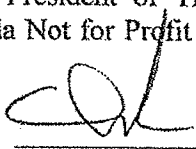
  
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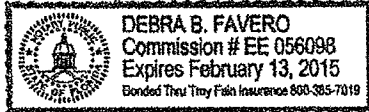
By:   
Tom Nicholson, its President

  
Print Name: TERRIE E. CENTILE

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing was acknowledged before me this 1 day of August, 2014  
by Tom Nicholson, as President of The Residences at Windward  
Passage Condominium Association, Inc., a Florida Not for Profit corporation, on behalf of the  
corporation, who is personally known to me.

  
Notary Public/My Commission Expires:



Prepared by and Return to:  
R. Carlton Ward, Esquire  
Richards, Gilkey, Fite,  
Slaughter, Pratesi & Ward, P.A.  
1253 Park Street  
Clearwater, FL 33756

**DECLARATION**  
of  
**THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM**

WINDWARD PASSAGE CONDOMINIUMS, LLC, a Florida limited liability company,  
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 including docks and Boat Slips that are located over submerged lands that adjoin 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, excluding the aforementioned docks and Boat Slips, 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 RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM, (hereinafter called the "Condominium").

(Condominium plat pertaining hereto is filed in Condominium Plat Book 146  
Pages 59 through 64, 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 Residences at Windward Passage 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 WINDWARD PASSAGE CONDOMINIUM, 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, 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 fifty-five (55) 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 follows:

(a) Balconies and Vestibules. Any balcony or vestibule (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit to the exclusion of other Units shall be a Limited Common Element of such Unit. Notwithstanding the foregoing, the Association and its designated contractors shall have an easement over said Limited Common elements in order to perform window cleaning and repairs to the exterior of the Condominium building.

(b) 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.

(c) Boat Slips. If the Developer obtains the necessary governmental approval and constructs Boat Slips over the submerged lands that adjoin the Condominium seawall, the Developer reserves the right to assign the exclusive use of a Boat Slip to a Unit as a Limited Common Element appurtenant thereto and the Developer has the right to charge for said assignment. Record of the assignment of Boat Slips shall be maintained by the Association. The Boat Slips, as initially constructed by the Developer, shall be maintained by the Association and the expense of said maintenance shall be apportioned equally between those Units who have been assigned the exclusive right to use a Boat Slip and the Association may use the provisions of Section 718.116, Florida

Statutes, to enforce payment of the shares of such costs by said Unit Owners. After assignment of the exclusive right to use a Boat Slip, the Owner of the Unit to which the Boat Slip is assigned, may make improvements within the boundaries of the Boat Slip, such as the installation of a boat lift or davits, provided said improvements are approved by the Association Board of Directors, which improvements shall be the responsibility of the Unit Owner to maintain. In the event, in the opinion of the Association Board of Directors, maintenance of improvements to a Boat Slip required to be performed by the Unit Owner is not performed with thirty (30) days after written notice from the Association, then the Association shall have the right to perform said maintenance and the cost of the same shall be the responsibility of said Unit Owner as a Limited Common Element expense and the Association may use the provisions of Section 718.116, Florida Statutes, to collect the same. Unassigned Boat Slips may be used as guest spaces for the mooring of boats, subject to the Rules and Regulations as adopted by the Board of Directors of the Association from time to time and governmental regulations and these unassigned Boat Slips shall be common elements, the cost of maintenance of which shall be a common expense. No Unit may be assigned the exclusive use of more than two (2) Boat Slips as a Limited Common Element appurtenant thereto.

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

(e) Assignments. The exclusive right to use a Limited Common Element Parking Space or Boat Slip as referenced in subparagraph (b) and (c) 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 or Boat Slip 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 or Boat Slips 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 and Boat Slips, which are left unassigned but only after the Developer has voluntarily relinquished such reserved right in whole or in part.

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. For as long as there are any unsold Units, 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.

(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 set forth in **Exhibit "D"** attached hereto and made a part hereof. The Allocation of Percentage Shares was established by the Developer in the following manner:

(a) The approximate area of each Unit (including heating and air-conditioning equipment servicing said Unit) was measured, in square feet, excluding Limited Common Elements. Such area is hereafter referred to as its "Unit Area".

(b) The total Unit Area of all Units was then computed, and is hereinafter referred to as the "Total Unit Area".

(c) The Total Unit Area was thereafter divided into the Unit Area of each Unit to determine the Allocation of Percentage Shares for each Unit (See Total % of Ownership as set forth on Exhibit "D" to this Declaration.

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 owning Seventy Five Percent (75%) of the members of this Association. Except as elsewhere provided, approvals of proposed amendments must be by affirmative vote of Unit Owners owning Seventy Five Percent (75%) of the Units present in person or by proxy. 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 balconies and vestibules 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 balconies appurtenant to Units when deemed necessary by the Board of Directors of the Association. Owners of Units to which Boat Slips are appurtenant shall keep the Boat Slips clean and tidy in appearance and be responsible to maintain any improvements installed in said Boat Slips after the initial assignment of the exclusive right to use the same from the Developer to the Unit Owner. The Association shall maintain the catwalks and tie poles. Associated with the Boat Slips and assess the cost of the same equally to those Unit Owner to which the exclusive right to use the Boat Slip is assigned as a Limited Common Element appurtenant thereto. The Association shall maintain any common boardwalk constructed parallel to the seawall which is designated as a common element available for use by all Unit Owners and the Association shall maintain as a common element expense any catwalks or tie poles associated with guest Boat Slips which are available for use by Unit Owners as a common element and not a Limited Common Element.

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 Five Percent (75%) 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 addition, alteration or improvement 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 Seventy Five Percent (75%) 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, Capital Improvement and Limited Common Element 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", "Capital Improvement Assessments" and "Limited Common Element 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.

(c) "Limited Common Element Assessments" shall mean and refer to a charge against an Owner or his or her Unit, with respect to the maintenance of a Limited Common Element which is appurtenant to his or her Unit, which maintenance has been performed by the Association, but the responsibility of which is that of the Unit Owner, such as the cost of maintaining Limited Common Element Boat Slips which cost is to be shared equally by the Owners of the Units to which the use of Boat Slips appurtenant thereto equally, or the cost of the maintenance and repairs to a particular Boat Slip for improvements made thereto by the Unit Owner subsequent to assignment of the Boat Slip by the Developer pursuant to Article 3.4(c) hereof.

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 delinquent installment. 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 as well as interest and all reasonable costs and attorney fees incurred by the Association incident to the collection process. 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. 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

Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

### 11.1 Purchase, Custody and Payment.

(a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company or provider authorized to do business in Florida.

(b) Named Insured. The named insured shall be the Association, individually, and agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

(c) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).

(d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(e) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

11.2 Coverage. The Association shall maintain insurance covering the following:

(a) Casualty. The Building, including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding (i) all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and (ii) electrical fixtures, appliances, air conditioners or heating equipment, water heaters and built-in cabinets which are located in Units and the repair and replacement responsibility of Owners, and all Improvements located on the Common Elements or Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (collectively the Insured Property), shall be insured against casualty loss (excluding loss by flood and other causes excluded from a typical condominium package policy) in an amount not less than 100% of the full insurable replacement cost thereof, excluding foundation and excavation costs. Specifically, the Association should not be responsible to maintain insurance against casualty loss with regard to those portions of a Unit not initially installed by the Developer.

Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association.

(c) Worker's Compensation. Worker's Compensation and other mandatory insurance, when applicable.

(d) Flood Insurance. Flood insurance shall be secured. The Board of Directors shall determine the nature and amount of coverage to be obtained but as a minimum, such coverage as to satisfy requirements of Federal law.

(e) Fidelity Insurance. If required by the Act, fidelity insurance covering all persons who control or disburse Association funds.

(f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available and determined by the Board of Directors to be desirable.

(g) Such Other Insurance. As the Board of Directors of the Association shall determine from time to time to be desirable.

(h) Policy Provisions. When appropriate and obtainable, each of the foregoing policies shall waive the insurers right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance

or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, if appropriate and obtainable, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

(i) Disclaimer. All Unit Owners, mortgagees and others should be aware of the fact that because of exclusions from coverage, changes in construction costs, land and profit components in sales prices and other factors, the amount of insurance coverage available in the event of substantial damage to the Condominium Property, the proceeds available for reconstruction and/or retirement of mortgage debt may not be entirely sufficient for such purposes. Accordingly, all persons are advised to consult with their own insurance providers as to what supplemental coverage may be available under their own policies to mitigate any impact of a shortage of proceeds for Association policies.

11.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units.

11.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.

11.5 Insurance Trustee: Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida or one or more of the Directors or Officers of the Association. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for 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 elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

(a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units or their terraces, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

(b) Optional Property. Proceeds on account of damage solely to Units or their terraces and/or certain portions or all of the contents thereof not included in the Insured Property (all

as determined by the Association in its sole discretion),(collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

(c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

11.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

(a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefore.

(b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

(c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the Beneficial owners as provided in Section 11.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

11.7 Unit Owner's Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner arising from occurrences within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association. The foregoing shall also apply to terraces of Units, assigned storage lockers, and other Limited Common Elements.

11.8 Benefit of Mortgagees. Certain provisions in this Section 11 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

11.9 Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

11.10 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

## XII.

### RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY

12.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If Seventy Five Percent (75%) or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning Eighty Percent (80%) of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such funds, all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

12.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than Eighty Percent (80%) of the applicable interests in the Common Elements, as well as

the Owners of all Units, Limited Common Elements and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.

12.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

(a) Disbursement. The proceeds of insurance collected on account of a casualty and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the of the Association is less than \$500,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$500,000.00, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (I) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

(iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if underinsured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property.

All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected

shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

(iv) 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 relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

(v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

12.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments shall be in proportion to all of the Owners' respective shares in the Common Elements. In the event of insufficient proceeds of insurance on Optional Property, the shortage shall be the individual responsibility of the Owners thereof.

12.5 Benefit of Mortgagees. Certain provisions in this Section 12 are for the benefit of mortgagees of Units and may be enforced by any of them.

### XIII. CONDEMNATION

13.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, or the amount of that award shall be set off against the sums hereafter made payable to the defaulting Owner (and if the award exceeds such sums, the Association shall have the right to bring legal action against 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 determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

13.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a 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 the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty or as elsewhere in this Section 13 specifically provided.

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

(a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be the individual responsibility of the Owner of the Unit.

(b) Distribution of Surplus. The balance of the award in respect of the Unit or its Limited Common Elements, 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 such mortgagees.

(c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

(i) add the total of all percentages of all Units after reduction (the "Remaining Percentage Balance"); and

(ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit. No Limited Common Elements shall be used in the aforesaid calculations.

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

(a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

(b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work, therefore, shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

(c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:

(i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Subsection 13.4(c) hereof (the "Percentage Balance"); and

(ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 13.4 (c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

(d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

(e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in

accordance with the then existing rules of 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 Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

13.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

13.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected 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, a majority of all Directors of the Association.

#### XIV. 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:

14.1 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 14.1 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 14 and the Board of Directors of the Association shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

14.2 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.

14.3 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. 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 14 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 14.3 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 14.3, 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.

14.4 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). Notwithstanding the foregoing, Unit Owners may (as determined by the Board of Directors) decorate the Limited Common Element vestibule appurtenant to their Unit, provided the color of any walls, floor or ceiling is not altered.

14.5 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.

14.6 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.

14.7 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 14.7. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

14.8 Floor Coverings and Sound Insulation. Without limiting the generality of the approval requirements set forth in Section 9 of this Declaration, no hard-surfaced floor coverings shall be installed in any Unit, except for Units on the first floor unless approved by the Board of Directors of the Association and unless same is installed with an acoustical cork insulation or alternative sound-absorbing backing meeting the requirements of the Board of Directors of the Association. Notwithstanding the foregoing limitation, hard surface floor coverings installed in a Unit by the Developer may be replaced with a similar floor covering of equal or less weight with sound-absorbing material as described in the previous sentence. Ceiling fans must have a minimum one (1) inch shaft between the ceiling and the motor mechanism and must be installed with isolation pads. A waterproofing system must be installed under all elevated balcony and terrace floor coverings meeting the requirements of the Association Board of Directors.

14.9 Exterior Improvements; Landscaping. Except as authorized in Section 718.113(4), Florida Statutes regarding flags, and without limiting the generality of Sections 9.1 or 14.4 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.

14.10 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 14 for good cause shown.

14.11 Changes in Permitted Uses. No amendments to this Section 14, 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.

## XV.

### 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.

15.1 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 paragraph 15.2 hereafter. The provisions of this Section 15.1 shall not apply to the sale of Units by the Developer. The provisions of this Section 15.1 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 15.1 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.

15.2 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.

15.3 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 **one hundred eighty days (180) 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.

15.4 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.

15.5 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.

15.6 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.

15.7 Boat Slips. No Boat Slip shall be assigned or leased to a person or entity who/which is not also a Tenant or Owner of a Unit.

## XVI. 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:

16.1 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.

16.2 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.

16.3 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.

16.4 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).

16.5 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.

XVII.  
ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS.

17.1 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.

17.2 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.

XVIII.  
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.

XIX.  
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, AND ARTICLE 13 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.

XX.  
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:

20.1 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.

20.2 Sale of Units. 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 motel 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.

20.3 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.

20.4 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;

XXI.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

21.1 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.

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

21.3 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 Section 4. 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.

21.4 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.

21.5 Notwithstanding any provision in Article IX hereof, there shall be no amendment of the Declaration that affects this Article XXVI, 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.

21.6 If this Declaration is terminated pursuant to Article XIII 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.

21.7 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.

XXII.

Special Provisions to Satisfy the Requirements of Federal National Mortgage Association

22.1 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.

22.2 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.

22.3 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.

22.4 Unless waived pursuant to Section 718.112(2)(f), Florida Statutes, 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.

22.5 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. (See Page 22(a)).

22.6 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)(d), Florida Statutes, as amended.

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

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 30<sup>th</sup> day of November, 2006.

Signed in the presence of:

WINDWARD PASSAGE CONDOMINIUMS, LLC

[Signature]  
Print Name Brian Werner

By: [Signature]  
Salman Haider, Manager

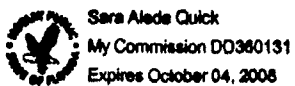
[Signature]  
Print Name: Steven Meitzen

By: [Signature]  
Larry Cooper, Manager

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 30 day of November, 2006, by Salman Haider, as Manager of WINDWARD PASSAGE CONDOMINIUMS, LLC, a Florida limited liability company, and Larry Cooper as Manager of WINDWARD PASSAGE CONDOMINIUMS, LLC, a Florida limited liability company, who are personally known to me.

Sara Aleda Quick  
Notary Public  
My commission expires: 10/04/08



JOINDER AND CONSENT OF MORTGAGE

The undersigned owner and holder of a promissory note secured by a MORTGAGE AND SECURITY AGREEMENT dated June 24, 2005 and recorded June 24, 2005 in O.R. Book 14407, commencing at Page 961 of the Public Records of Pinellas County, Florida, given to KEYBANK NATIONAL ASSOCIATION upon real property located in Pinellas County, Florida, and being the same property described in Exhibit "A" of the Declaration of The Residences at Windward Passage, a condominium, to be recorded in the Public Records of Pinellas County, Florida, (hereinafter referred to as "Declaration"), hereby joins in and consents to the making of the Declaration, and agrees that the lien of its mortgage upon said real property described in Exhibit "A" of the Declaration and improvements thereon shall be subject to the Declaration.

Dated and executed this 4<sup>th</sup> day of December, 2006.

Witnesses:

KEYBANK NATIONAL ASSOCIATION

Jeanne A. Klumschot  
Name: Jeanne A. Klumschot

By: Lisa Resnick

As its: Vice President

Sandra K. Clements  
Name: SANDRA K. CLEMENTS

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing was acknowledged before me this 4<sup>th</sup> day of December, 2006, by Lisa Resnick, as Vice President of KEYBANK NATIONAL ASSOCIATION, on behalf of the Bank, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Sandra K. Clements  
Notary Public  
My Commission Expires:

SANDRA K. CLEMENTS



# THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM LYING IN SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST, CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA

**DESCRIPTION:**

A PORTION OF LOT 9 AND ALL OF LOTS 10, 11, 12 AND 13, BLOCK D, UNIT 5, ISLAND ESTATES OF CLEARWATER, TOGETHER WITH A PORTION OF VACATED DORY PASSAGE, AS RECORDED IN PLAT BOOK 51, PAGE 34, PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 13; THENCE N49°23'41"W, ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF "WINDWARD PASSAGE", A DISTANCE OF 320.00 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT; THENCE ALONG SAID CURVE, HAVING A RADIUS OF 50.00 FEET, CHORD 31.82 FEET, BEARING N50°57'41"W, A DISTANCE OF 32.17 FEET TO A POINT OF REVERSE CURVE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET, CHORD 73.14 FEET BEARING N59°31'28"W, A DISTANCE OF 82.03 FEET; THENCE LEAVING SAID LINE, N16°31'22"W, A DISTANCE OF 120.00 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE; THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 170.00 FEET, A CHORD OF 162.57 FEET BEARING S77°57'31"E, A DISTANCE OF 189.50 FEET TO A POINT OF TANGENCY; THENCE S49°23'41"E, A DISTANCE OF 180.00 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT; THENCE ALONG SAID CURVE HAVING A RADIUS OF 70.00 FEET, A CHORD OF 74.84 FEET BEARING S81°42'22"E, A DISTANCE OF 74.98 FEET TO A POINT, SAID POINT BEING THE SOUTHWESTERLY CORNER OF PHASE IV VILLAGE ON ISLAND ESTATES, AS RECORDED IN CONDOMINIUM PLAT BOOK 42, PAGE 30, PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA; THENCE ALONG THE SOUTHERLY LINE OF SAID VILLAGE ON ISLAND ESTATES, THE FOLLOWING THREE (3) COURSES:

1.) S49°23'41"E, A DISTANCE OF 136.76 FEET; 2.) S08°12'32"E, A DISTANCE OF 81.05 FEET; AND 3.) S40°36'19"W, A DISTANCE OF 106.62 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE AFOREMENTIONED WINDWARD PASSAGE;

THENCE ALONG SAID LINE N49°24'08"W, A DISTANCE OF 81.00 FEET; THENCE S40°36'19"W, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING

CONTAINING 1.838 ACRES MORE OR LESS.

TOGETHER WITH SUBMERGED LAND DESCRIBED ON SHEET 6

**NOTES:**

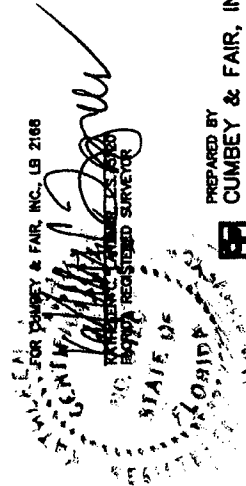
1. BEARINGS SHOWN HEREON ARE BASED ON THE WESTERLY LINES OF LOTS 11-13, ACCORDING TO THE MAP OR PLAT THEREOF, HAVING A BEARING OF N49°23'41"W.
2. LEGAL DESCRIPTION WAS PROVIDED BY THE CLIENT.
3. EASEMENTS SHOWN REFLECT ATTORNEY'S TITLE INSURANCE FUND POLICY #227351 DATED AUGUST 5, 2004 PREPARED BY PENNINGTON, MOORE, WILKINSON, BELL & DUNBAR P.A. IN TAMPA, FLORIDA.
4. ELEVATIONS SHOWN HEREON ARE BASED ON NATIONAL GEODETIC SURVEY BENCHMARK DESIGNATED AURAL-A, A BRONZE DISK SET IN 12" ROUND CONCRETE MONUMENT, ELEVATION = 11.62, NORTH AMERICAN VERTICAL DATUM OF 1988.
5. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

**INDEX**

DESCRIPTION	1
SITE PLAN	2
GROUND FLOOR PLAN GARAGE	3
UNIT PLAN - FLOOR 2	4
UNIT PLAN - FLOORS 3 - 6	5
SUBMERGED LAND- BOAT SLIPS	6

**CERTIFICATION**

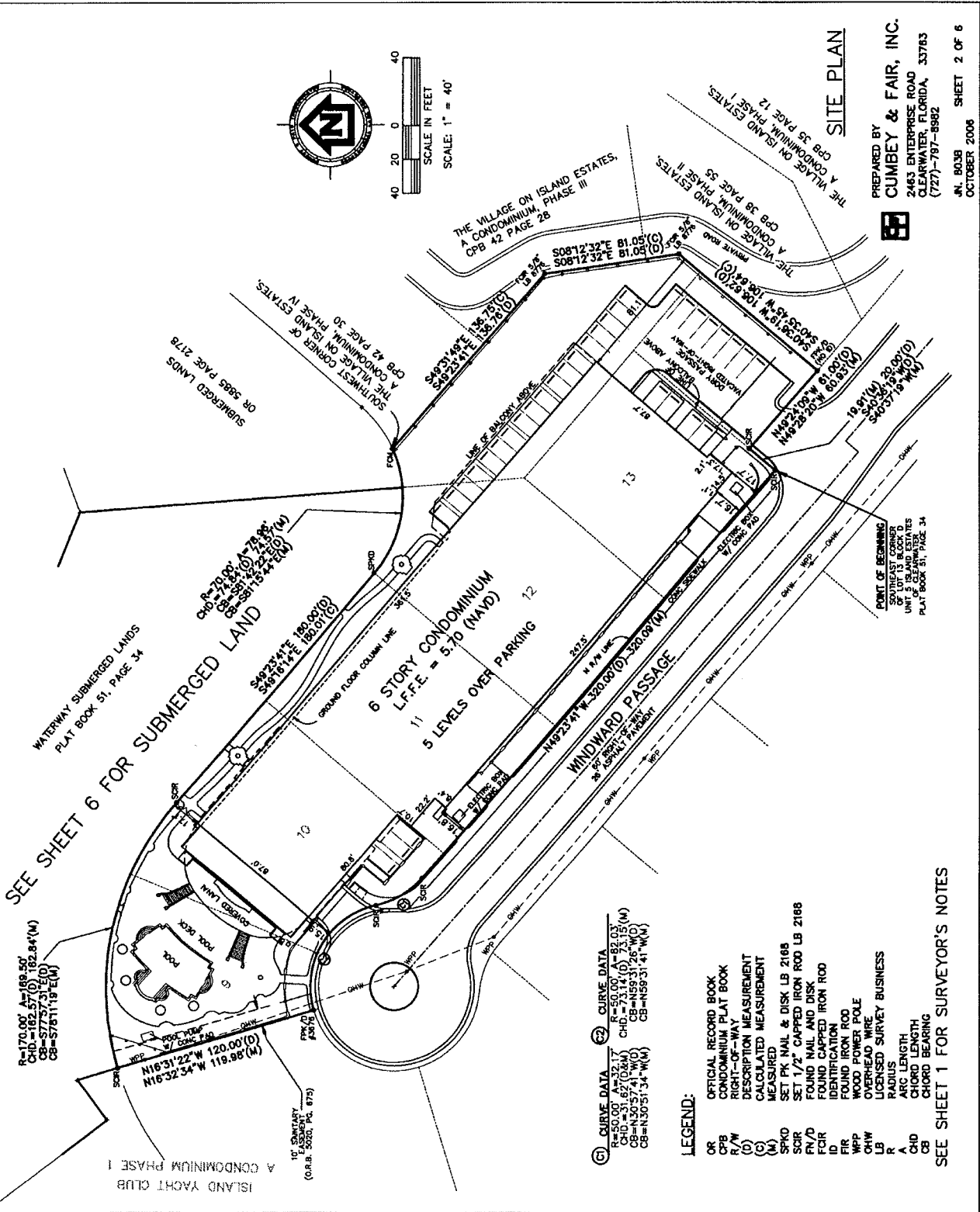
I HEREBY CERTIFY THAT THE CONSTRUCTION OF THE IMPROVEMENTS IS SUBSTANTIALLY COMPLETE, SO THAT THIS PLAT OF THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM TOGETHER WITH THE PROVISIONS OF THE DECLARATION DESCRIBING THE CONDOMINIUM PROPERTY IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS, AND THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS.


  
 JAMES C. CUMBE
   
 REGISTERED SURVEYOR
   
 STATE OF FLORIDA
   
 12/04/08
   
 DATE

PREPARED BY  
**CUMBEY & FAIR, INC.**  
2463 ENTERPRISE ROAD  
CLEARWATER, FLORIDA 33783  
(727)-787-8682

JL 8038 SHEET 1 OF 6  
OCTOBER 2008

**THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM**  
 LYING IN SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
 CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



**SITE PLAN**

PREPARED BY  
**CUMBEY & FAIR, INC.**  
 2463 ENTERPRISE ROAD  
 CLEARWATER, FLORIDA, 33783  
 (727)-797-8982

IN 8038 SHEET 2 OF 6  
 OCTOBER 2006

SEE SHEET 6 FOR SUBMERGED LAND

WATERWAY SUBMERGED LANDS  
 PLAT BOOK 51, PAGE 34

R=170.00' A=188.50'  
 CHD=162.57'(D) 162.84'(M)  
 CB=57757.31'(D)  
 CB=57611.19'(M)

N16°31'22"W 120.00'(D)  
 N16°32'34"W 119.98'(M)

10' SURVEY  
 (O.R.B. 2020, PL. 873)

**① CURVE DATA**  
 R=50.00' A=32.17' CH=51.00' 52.03'(M)  
 CB=N30°51'34"W 119.98'(M)  
 CB=N30°51'34"W 119.98'(M)  
 CB=N59°31'41"W 119.98'(M)  
 CB=N59°31'41"W 119.98'(M)

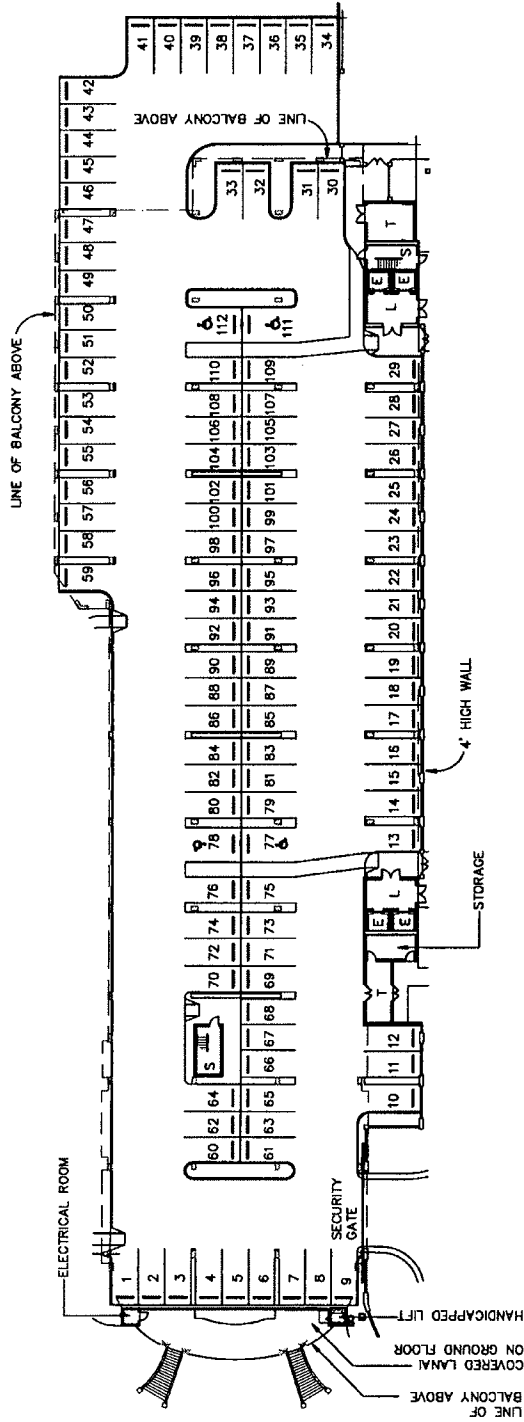
**LEGEND:**

- OR OFFICIAL RECORDED BOOK
- CB CONDOMINIUM PLAT BOOK
- R/W RIGHT-OF-WAY
- (D) DESCRIPTION MEASUREMENT
- (C) CALCULATED MEASUREMENT
- (M) MEASURED
- SPKD SET PK NAIL & DISK LB 2168
- SCR SET 1/2" CAPRED IRON ROD LB 2168
- FW/D FOUND WOOD AND DISK
- FCIR FOUND CAPRED IRON ROD
- ID IDENTIFICATION
- WPP WOOD POWER POLE
- OH/W OVERHEAD WIRE
- LB LICENSED SURVEY BUSINESS
- R RADIUS
- A ARC LENGTH
- CHD CHORD LENGTH
- CB CHORD BEARING

SEE SHEET 1 FOR SURVEYOR'S NOTES

# THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM

LYING IN SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



**GARAGE FLOOR ELEVATIONS:**  
 CEILING ELEVATION = 13.29  
 FLOOR ELEVATION = 5.70

**LEGEND:**  
 E ELEVATOR  
 T TRAYS ROOM  
 S STAIRS  
 L LOBBY

**NOTES:**

1. ELEVATIONS BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988. MEAN SEA LEVEL = 0.00 FEET.
2. BALCONIES ARE LIMITED COMMON ELEMENTS APPURTENANT TO THOSE UNITS WHICH THEY ABUT
3. ALL BOUNDARY WALLS AND STRUCTURAL SUPPORTS ARE COMMON ELEMENTS.
4. DIMENSIONS AND LIMITS OF INDIVIDUAL UNITS ARE THE INTERIOR FACE OF THE PERIMETER WALLS.
5. PARKING SPACES 34 THROUGH 46 AND 10 THROUGH 12 ARE OUTSIDE THE GARAGE.

**GROUND FLOOR PLAN**  
 GARAGE AND OUTDOOR PARKING



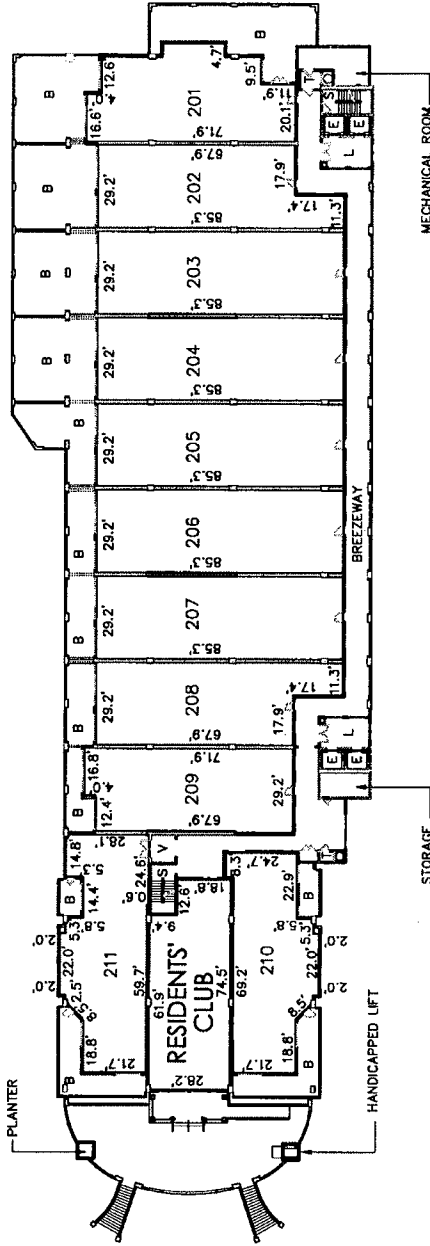
30 15 0 30  
 SCALE IN FEET  
 SCALE: 1" = 30'

PREPARED BY  
**CUMBELEY & FAIR, INC.**  
 2463 ENTERPRISE ROAD  
 CLEARWATER, FLORIDA, 33763  
 (727)-787-8982

J.N. 8038 SHEET 3 OF 6  
 OCTOBER 2006

# THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM

LYING IN SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



**SECOND FLOOR**  
 UNITS 201 THROUGH 211  
 CEILING ELEVATION = 25.98  
 FLOOR ELEVATION = 16.47

## FLOOR 2 UNIT PLAN

**LEGEND:**

- E ELEVATOR
- T TRASH ROOM
- S STAIRS
- L LOBBY
- B BALCONY
- V VESTIBULE



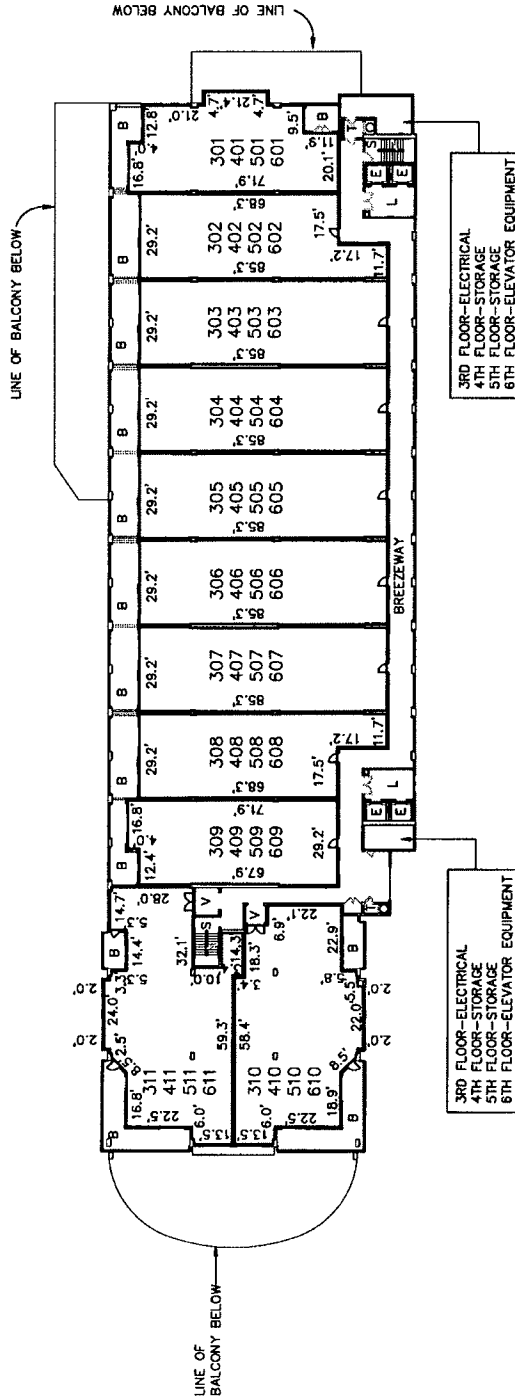
- NOTES:**
1. ELEVATIONS BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988. MEAN SEA LEVEL = 0.00 FEET.
  2. BALCONIES AND VESTIBULES ARE LIMITED COMMON ELEMENTS APPURTENANT TO THOSE UNITS WHICH THEY ADJUT.
  3. ALL BOUNDARY WALLS AND STRUCTURAL SUPPORTS ARE COMMON ELEMENTS.
  4. DIMENSIONS AND LIMITS OF INDIVIDUAL UNITS ARE THE INTERIOR FACE OF THE PERIMETER WALLS.

PREPARED BY  
**CUMBERLY & FAIR, INC.**  
 2463 ENTERPRISE ROAD  
 CLEARWATER, FLORIDA, 33763  
 (727)-787-8982

JN. 6038 SHEET 4 OF 6  
 OCTOBER 2006

# THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM

LYING IN SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



**FOURTH FLOOR:**  
UNITS 401 THROUGH 411  
CEILING ELEVATION = 48.80  
FLOOR ELEVATION = 37.82

**THIRD FLOOR:**  
UNITS 301 THROUGH 311  
CEILING ELEVATION = 36.80  
FLOOR ELEVATION = 27.15

**SIXTH FLOOR:**  
UNITS 601 THROUGH 611  
CEILING ELEVATION = 66.63  
FLOOR ELEVATION = 56.13

**FIFTH FLOOR:**  
UNITS 501 THROUGH 511  
CEILING ELEVATION = 57.97  
FLOOR ELEVATION = 48.47

**LEGEND:**  
E ELEVATOR  
T TRASH ROOM  
S STAIRS  
L LOBBY  
B BALCONY  
V VESTIBULE

- NOTES:**
- ELEVATIONS BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988. MEAN SEA LEVEL = 0.00 FEET.
  - BALCONIES AND VESTIBULES ARE LIMITED COMMON ELEMENTS APPURTENANT TO THOSE UNITS WHICH THEY ABUT
  - ALL BOUNDARY WALLS AND STRUCTURAL SUPPORTS ARE COMMON ELEMENTS.
  - DIMENSIONS AND LIMITS OF INDIVIDUAL UNITS ARE THE INTERIOR FACE OF THE PERIMETER WALLS.

## FLOORS 3-6 UNIT PLAN

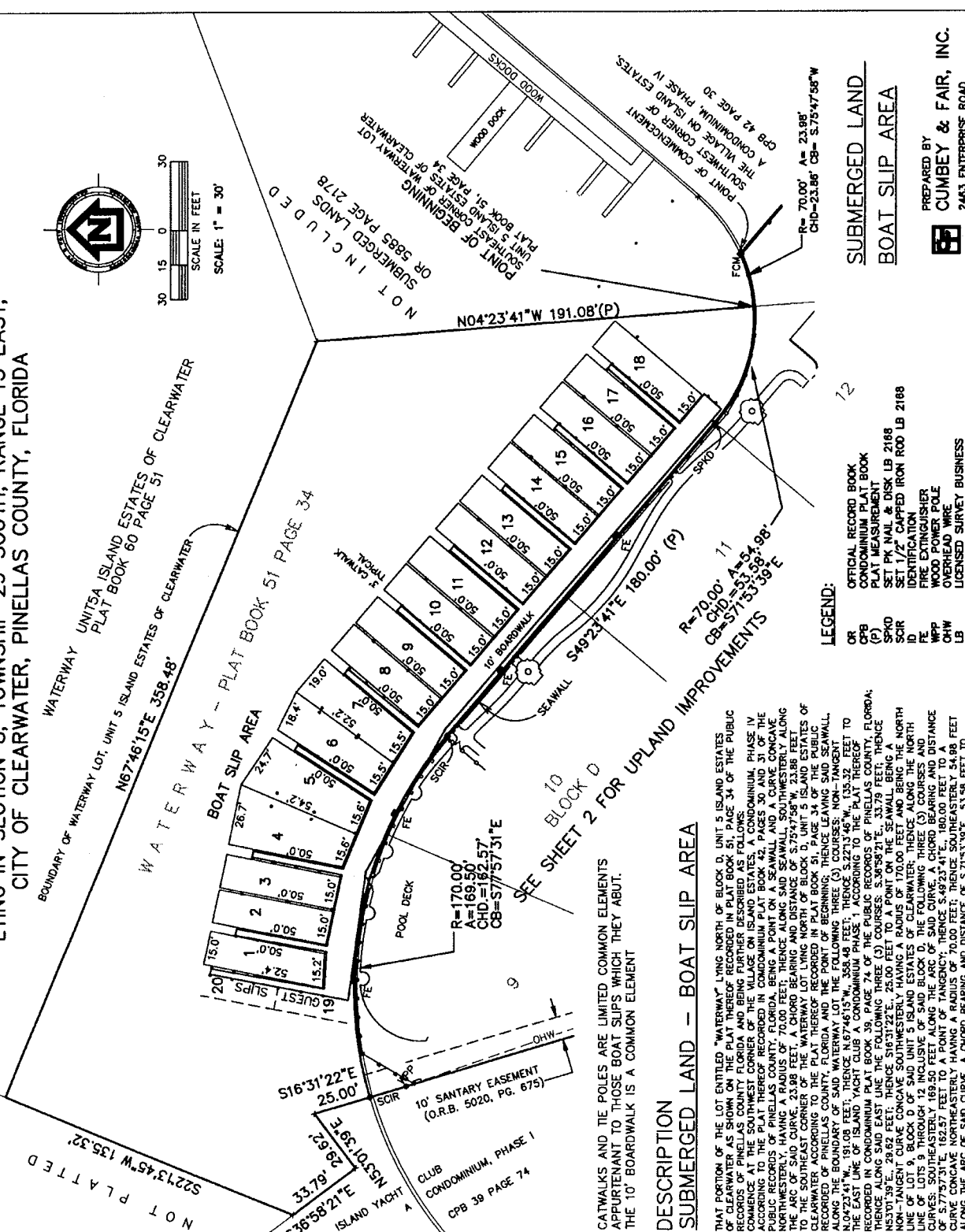
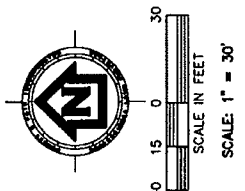


30 15 0 30  
SCALE IN FEET  
SCALE: 1" = 30'

PREPARED BY  
**CUMBEY & FAIR, INC.**  
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N. 803B SHEET 5 OF 8  
OCTOBER 2008

# THE RESIDENCES AT WINDWARD PASSAGE, A CONDOMINIUM

LYING IN SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



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**LEGEND:**

- OR OFFICIAL RECORD BOOK
- CFB CONDOMINIUM PLAT BOOK
- (P) PLAT MEASUREMENT
- SPKD SET PK NAIL & DISK LB 2188
- SCIR SET 1/2" CAPPED IRON ROD LB 2188
- ID IDENTIFICATION
- FE FIRE EXTINGUISHER
- WPP WOOD POWER POLE
- OHW OVERHEAD WIRE
- LB LICENSED SURVEY BUSINESS
- R RADIUS
- A ARC LENGTH
- CHD CHORD BEARING
- CB CHORD BEARING

**DESCRIPTION**  
**SUBMERGED LAND - BOAT SLIP AREA**

THAT PORTION OF THE LOT ENTITLED "WATERWAY" LYING NORTH OF BLOCK D, UNIT 5 ISLAND ESTATES... (Detailed description of submerged land and boat slip area follows, including references to various plat books and survey data.)

SEE SHEET 1 FOR SURVEYOR'S NOTES

CATWALKS AND TIE POLES ARE LIMITED COMMON ELEMENTS APPURTENANT TO THOSE BOAT SLIPS WHICH THEY ABUT. THE 10' BOARDWALK IS A COMMON ELEMENT