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**DECLARATION**  
**OF**  
**DIAMOND BEACH CONDOMINIUM**

After recording return to:  
First American Title Insurance Company  
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1220 Augusta Drive, Suite 120  
Houston, TX 77057  
Diamond Beach

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**DECLARATION  
OF  
DIAMOND BEACH CONDOMINIUMS**

**ARTICLE I**

*Submission: Defined Terms*

Section 1.1 *Submission of Real Estate* Diamond Beach VP, LP, a Texas limited partnership, owner in fee of the real property described in Section 3.1, hereby submits such real property, together with all easements, rights and appurtenances thereto and the building and improvements erected or to be erected thereon, to the provisions of the Uniform Condominium Act (Texas Property Code, Chapter 82)

Section 1.2 *Defined Terms.* As used in this Declaration (the "Declaration"), the following terms have the meanings specified in this Section 1.2. Other capitalized terms not defined herein or in the Plats and Plans shall have the meaning specified or used in the Act

"Act" means the Uniform Condominium Act (Texas Property Code, Chapter 82), as amended from time to time.

"Association" means the Diamond Beach Owners Association, a Texas nonprofit corporation and condominium association.

"Commercial Units" means the indoor bar as one (1) Unit, the outdoor bar and grill as one (1) Unit, and the spa and the leasing office and cabanas collectively as one (1) Unit

"Common Elements" means The Common Elements shall consist of all portions of the Property, except the Units, and including the Limited Common Elements, unless otherwise expressly

specified herein. The Common Elements include, without limitation and if applicable, any of the following items located on the Property: the walls, roof, hallways, breezeways, stairways, exterior windows, entrances and exits, mechanical equipment areas, storage areas, "lazy river", grill house, swimming pool, walkways, mail boxes, fire escapes, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit), central heating and ventilating systems servicing the Common Elements, public utility lines, structural parts of the Building, and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements. Any reference to "Common Elements" appearing on the Plat (except reference to Limited Common Elements) shall be deemed solely for purposes of general information and shall not be limited in any way, nor shall any such reference define the Common Elements in any way. The use of the Common Elements and the right of the Unit Owners with respect thereto shall be subject to and governed by the Act, the Governing Documents and the rules and regulation of the Association.

"Condominium" means the condominium established by the Declarant to be known as "Diamond Beach Condominiums".

"Declarant" means Diamond Beach VP, LP, a Texas limited partnership, or its successors or assigns, provided such successors or assigns are designated in writing by Diamond Beach VP, LP, as a successor or assign of the rights of Declarant set forth herein.

"Eligible Insurer" means an insurer or guarantor of a first mortgage secured by a Unit in the Condominium. An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first security interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it is the insurer or guarantor of a security interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XVI.

"Eligible Mortgagee" means a holder of a first mortgage secured by a Unit in the Condominium. An Eligible Mortgagee must notify the Association in writing of its name and address and inform the Association that it holds a first security interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it holds a security interest. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVI

"Governing Documents" means the Declaration, Plats and Plans recorded and filed pursuant to the provisions of the Act, the Certificate of Formation of the Association, the Bylaws of the Association, and the Rules of the Association as they may be amended from time to time. Any exhibit, schedule or certification accompanying a Governing Document is a part of that Governing Document.

"Limited Common Element" means a portion of the Common Elements, designated in this Declaration, or on the Plats and Plans, by the Act, for the exclusive use of one or more but fewer than all of the Units.

"Parking Area" means the portions of the Property which are designated for parking for the Unit Owners pursuant to the Plat, this Declaration, the rules and regulations of the Association, or any resolutions of the Board. The Parking Area includes any access areas or driveways related to the Parking Area and Parking Spaces.

"Parking Spaces" means those portions of the Parking Area designated for the parking of automobiles, motorcycles, and bicycles, which shall be Common Elements unless a Parking Space is assigned to an individual Unit, in which event it will be a Limited Common Element.

"Phase I" means all residential and commercial units to be located and related Common Elements and Limited Common Elements to be located on the real property as designated in Section 3.1.

"Phase II" means all residential units and related Common Elements and Limited Common Elements to be located on the real property as designated in Section 3.1.

"Property" means the real property described in Section 3.1, together with all easements, rights and appurtenances thereto and the buildings and improvements erected or to be erected thereon, submitted to the provisions of the Act

"Unit" shall mean an individual residential condominium unit in the Condominium which is intended to be offered for separate sale to the public, and unless otherwise specified, shall additionally include the commercial unit for sale to the public and/or to be retained by Declarant, its successor and assigns.

## ARTICLE II

### *Names*

Section 2.1 *Condominium* The name of the Condominium is Diamond Beach Condominiums.

Section 2.2 *Association* The name of the Association is Diamond Beach Owners Association, a Texas nonprofit corporation.

## ARTICLE III

### *Description of Real Property*

Section 3.1 *Real Property* The Condominium is located in Galveston County, Texas. The real property of the Condominium is described in the legal description on Exhibit "A" attached hereto and portions of the Property designated as Phase I and Phase II are depicted on the plat or drawing attached hereto as Exhibit "B".



#### ARTICLE IV

##### *The Association*

Section 4.1 *Authority.* The business and affairs of the Condominium shall be managed by the Association acting by and through its Board of Directors. The Association shall be governed by its Bylaws, this Declaration, the Association's, Articles of Incorporation, and the Condominium Act as amended from time to time.

Section 4.2 *Powers.* The Association shall have all of the powers provided in the Act.

#### ARTICLE V

##### *Units*

Section 5.1 *Number.* The number of Units in the Condominium is a total of two hundred forty (240) Units, including one hundred seventeen (117) residential Units in Phase I and in the event Phase II is developed as similar Condominium Units, one hundred twenty-three (123) residential Units in Phase II of the development project, together with three (3) commercial Units for business and retail use to be located in Phase I.

Section 5.2 *Identification.* The identification number of each Unit is shown on the Plats or Plans or both.

Section 5.3 *Unit Owner Interest.* Each Unit Owner shall own title in fee simple to his or her Unit and shall have the exclusive right to the use and occupancy of his or her Unit, subject to the provisions of this Declaration. There shall be appurtenant to each Unit an individual share of the Common Elements and the exclusive right to use such Limited Common Elements as are appurtenant to such Unit.

Section 5.4 *Boundaries.* The boundaries of each Unit are shown on the Plans and Plans and are more particularly described as the perimeter walls, floors, ceilings, and balcony of a Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the Unit, and all other portions of the perimeter walls, floors, ceilings or balcony are a part of the Common Elements. Subject to Section 6.1(b), the spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

## ARTICLE VI *Common Elements*

Section 6.1 *Limited Common Elements.* The following portions of the building are designated as Limited Common Elements:

(a) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a Unit, then the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, and the portion serving more than one Unit or the Common Elements is a part of the General Common Elements.

(b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, patios, and exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

(c) Stairways, the use of which is limited to certain Units as shown on the Plans are Limited Common Elements allocated exclusively to those Units.

(d) In the event a portion of the parking spaces are reserved for specific Units, such parking spaces shall be designated as Limited Common Elements for the use of the Unit Owners

or an unrestricted, unassigned or unreserved basis. Additional parking spaces may be designated by Declarant by easement or use agreements for the use of retail establishments, their customers and invitees and/or Unit Owners, visitors, guests, invitees, and tenants.

(e) The area improved by the Declarant as storage facilities for Units shall be a Limited Common Element, the use of which is limited exclusively to the Owner of the Unit to which the storage space has been assigned.

(f) Any Common Expenses associated with the maintenance, repair, or replacement of components or elements attached to exterior surfaces, trim, siding, doors, windows, storage area, and elevators shall be assessed against the Unit or Units to which the Limited Common Element is assigned as a Common Expense assessment. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

**Section 6.2 Allocation of Specified Common Elements** The Board of Directors may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by non-owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Board of Directors. Any such designation by the Board Directors shall not be a sale or disposition of such portions of the Common Elements.

**Section 6.3 Transfer of Common Elements.** Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) by an individual of any interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

**Section 6.4 Reassignment of Limited Common Elements.** A Limited Common Element, including, without limitation, assigned or reserved Parking Spaces, if any, and storage units may be reallocated or reassigned upon the written application to the Association by the

Owner(s) whose use of the Limited Common Element is or may be directly affected by the reallocation or reassignment. Upon such application and approval of the Owner(s) application, which shall not be unreasonably withheld, the Association shall prepare and execute an amendment to this Declaration reassigning the Limited Common Element. This amendment shall be delivered to the Owner(s) of the Unit(s) affected by the reallocation or reassignment upon payment by them of all costs for the preparation, execution and recordation of the amendment. The amendment shall become effective upon the execution of the amendment by the Association and the Owner(s) directly affected by such reallocation or reassignment and the recordation of such amendment in the Galveston County Deed Records. Notwithstanding any other provisions of the Governing Documents and the foregoing, in the event a portion of the Parking Spaces or Parking Area is reserved or assigned to specific Units, and a designated handicapped accessible parking space has been assigned as a Limited Common Element to an Owner that is not disabled and thereafter a Unit in the Condominium is purchased by an Owner that is disabled, such designated handicapped accessible parking space shall be assigned to such disabled Owner and another available parking space assigned to the non-disabled Owner by the Board of Directors without amendment to this Declaration or the consent of any other Owners or lienholders.

## ARTICLE VII

### *Maintenance, Repair, and Replacement*

Section 7.1 *Common Elements.* The Common Elements shall be maintained in good condition by the Association, subject to reasonable wear and tear and casualty. The Declarant, General Contractor, suppliers, or manufacturers may provide information to the Association regarding the use and maintenance of Common Elements. Subject to Section 17.2, the costs and expense for the upkeep and maintenance of the Common Elements shall be a Common Expense of the Unit Owners, and shall be included in the Common Expense Assessments for the usual and ordinary costs and expenses for the maintenance, repair, upkeep and operation of the Common Elements, and each Owner shall pay his or her pro-rata share thereof. The failure to use and maintain the Common Elements as intended and in accordance with any instructions or information from manufacturers, suppliers, the General Contractor or Declarant shall void any

warranties and the Association shall indemnify the General Contractor and Declarant, together with their respective representatives, from any and all claims, demands, damages, losses and expenses, including, without limitation, reasonable attorney's fees, resulting directly or indirectly therefrom.

**Section 7.2 Units.** Each Unit Owner shall maintain, repair, and replace, at his or her own expense, all portions of his or her Unit, except those portions of the Unit required by the Declaration or the Act to be maintained, repaired, or replaced by the Association.

**Section 7.3 Right of Access** Each Unit Owner shall afford to the Association and the other Unit Owners, and the agents and employees of each of the Association and the Unit Owners, access through such Unit Owner's Unit reasonably necessary for the proper maintenance of the Condominium. The Association shall use reasonable efforts to obtain permission, written authorization and/or give notification to the Owner and/or occupants of a Unit prior to entering a Unit. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Unit Owner is present at the time.

**Section 7.4 Beachfront Requirements.** The Association shall be responsible for compliance with all local, state and federal rules, requirements, regulations, and laws pertaining to the beachfront and dune protection area, including, without limitation, compliance with all requirements regarding future design and financial responsibility resulting from flooding or erosion.

## ARTICLE VIII

### *Special Declarant Rights, and the Declarant Control Period*

**Section 8.1 Special Declarant Rights.** The Declarant reserves the following Special Declarant Rights:

- (a) to exercise any development or alteration right set forth in Section 8.4;

(b) to complete or make improvements indicated on the Plats and Plans filed with this Declaration;

(c) to maintain sales, management, or leasing offices, and models in Units or on the Common Elements for as long as the Declarant owns a Unit, subject to the following limitations:

(i) no more than four (4) Units owned by the Declarant may be used at any one time as sales, management or leasing offices, or models;

(ii) offices and models may be located on any floor of Phase I or Phase II of the Condominium and may consist of multiple Units with the same floor plan or any combination of floor plans; and

(iii) offices and models may be relocated at any time provided the Declarant takes reasonable steps to minimize any disruption to the Unit Owners caused by such relocation;

(d) to maintain signs on Phase I or Phase II of the Condominium to advertise Phase I or Phase II of the Condominium until the Declarant owns and is marketing three (3) or less Units in each of Phase I and Phase II for sale;

(e) to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration; and

(f) to appoint or remove any officer of the Association or any director during the period of Declarant control, subject to the provisions of Section 8.3 of this Declaration.

(g) The exclusive right to select the real estate broker and firm to market and list for sale each Unit for a term of six (6) months from and after the date each Owner of a Unit decides to sell such Owner's Unit during the period of Declarant Control

*Section 8.2 Time Limitations on Special Declarant Rights and Applicable Property.*  
Unless sooner terminated by a recorded instrument signed by the Declarant, any Special Declarant Right may be exercised by the Declarant for the maximum period of time specified in the Act and the applicable provisions of this Declaration. All such Special Declarant Rights and development rights apply to the Property as a whole, as described on Exhibit "A" attached hereto, unless limited to specific portions of the Property by the applicable provisions of this Declaration. Unless limited by this Declaration, any of the Special Declarant Rights and development rights may be exercised with respect to different portions of the Property at different times, and in any order. Declarant makes no assurances as to the timing or order of its exercise of any such rights, the boundaries of any portions of the Property affected, or whether its exercise of such rights with respect to one portion will require the exercise of such rights as to other portions or the Property as a whole.

*Section 8.3 Declarant Control of the Association*

(a) Subject to Section 8.3 (b), there shall be a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of Board of Directors. The period of Declarant control terminates not later than the earlier of the 120<sup>th</sup> day after conveyance of 75 percent of (a) the Units in Phase II or (b) the Units in Phase I in the event Phase II is not developed, or three (3) years after the first Unit of (a) Phase II is conveyed or (b) Phase I is conveyed in the event Phase II is not developed.

(b) Not later than the termination of the period of Declarant control, the Unit Owners shall elect a Board of Directors of at least three members, all of whom shall be Unit Owners. The Board of Directors shall elect the officers before the 31<sup>st</sup> day after the date the period of Declarant control terminates. The persons elected shall take office on election.

**Section 8.4 Alterations by Declarant**

(a) The Declarant shall have the right, at its sole option and cost and expense, without the vote or consent of the Association, other Owners or the representative or representatives of holders of mortgages on Units, to (i) exclude or alter the development of Phase II, (ii) make alterations, additions, or improvements in, to and upon Units owned by the Declarant (hereinafter called "Declarant-Owned Unit") whether structural or nonstructural, interior or exterior, ordinary or extraordinary; (iii) change the layout or number of rooms in any Declarant-Owned Unit; (iv) change the size and/or number of Declarant-Owned Units by subdividing one or more Declarant-Owned Units into two or more separate Units, combining separate Declarant-Owned Units (including those resulting from such subdivision or otherwise) into one or more Units, altering the boundary walls between any Declarant-Owned Unit, or otherwise; (v) reapportion among the Declarant-Owned Units affected by such change in size or number pursuant to the preceding clause (iv), their appurtenant interest in the Common Elements; and (vi) make any other changes to Declarant-Owned Units, to the Plans, or to the Common Elements as are permitted hereunder or under the Act; provided, however, that the percentage interest in the Common Elements of any Units (other than Declarant-Owned Units) shall not be changed by reason thereof unless Owners of such Units shall consent thereto and, provided further, that the Declarant shall comply with all laws applicable thereto. In the event Phase II is not developed as comparable condominium units, Declarant or the then current Owner of the Phase II property, may elect to exclude the Phase II property from this Declaration and the Association without further rights or obligations, with the exception of continuing to have the right to share the use and expense of the common areas and amenities serving both Phase I and Phase II properties.

(b) At any time when the Declarant owns a Unit, the Declarant shall have the authority, at its sole option, cost and expense, to make changes in or additional improvements to the Common Elements without the prior consent of the Association, other Unit Owners or the representative or representatives of holders of mortgages on Units. No Owner shall ever be assessed for any changes or improvements done by the Declarant pursuant to this provision. The provisions of this section may not be added to, amended or deleted without the prior written consent of the Declarant as long as Declarant owns a Unit.

(c) The Declarant, or any subsequent Owner of a Commercial Unit, shall have the right, without the vote or consent of the Association, other Unit Owners or the representative



or representatives of holders of mortgages on Units to (i) make alterations, additions or improvements in, to and upon a Commercial Unit, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in a Commercial Unit from time to time; (iii) change the size of a Commercial Unit by subdividing the same into any desired number of Units (or by combining any Units resulting from such subdivision); (iv) change a Commercial Unit to a Residential Unit; and (v) reapportion among the newly created Units resulting from such subdivision (combination) their appurtenant interest in the Common Elements; provided, however, that the percentage interest in the Common Elements of other Units shall not be changed by reason thereof, unless the Owners of such Units shall consent thereto, and, provided further, that the Owner of a Commercial Unit shall comply with all applicable laws

In the event of the subdivision of a Commercial Unit into separate Units, a combining of two or more Commercial Units, or a change of a Commercial Unit to a Residential Unit, each Owner of a changed Unit shall have all of the rights, privileges and benefits, and be subject to all of the obligations of the Owners of the original Commercial Units as provided in this Declaration, the By-Laws and the Rules and Regulations initially adopted, as thereafter amended. The provisions of this Article VIII may not be added to, amended or deleted without the prior written consent of the Declarant as long as Declarant owns a Unit, and thereafter, the Owner or Owners of the Commercial Units.

#### ARTICLE IX *Allocated Interests*

**Section 9.1 Allocation of Interests.** The undivided interest in the Common Elements, the Common Expense liability and the number of votes in the affairs of the Association allocated to each Unit have been calculated by using the following formulas:

(a) *Undivided Interest in Common Elements.* The percentage of the undivided interest in the Common Elements allocated to each Unit is based on one (1) share to each Unit compared with the total shares allocated to all the Units in the Condominium.

(b) *Liability for Common Elements* The percentage of liability for Common Expenses allocated to each Unit is based on one (1) share to each Unit compared with the total shares allocated to all the Units in the Condominium. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units as permitted elsewhere in this Declaration and the Act. Notwithstanding the foregoing, in the event Phase II is developed in any manner other than as similar condominium units, the obligation for common area expenses and assessments for the combined Phase I and Phase II properties, will be allocated based on square footage of living area, and in the event Phase II is not developed as a comparable residential structure or structures, then the Declarant or Owner of the Phase II property and the Board will agree upon an equitable division of common area expenses and assessments for the use of the shared common areas and amenities for Phase I and Phase II.

(c) *Votes.* Each Unit shall have one vote. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Articles of Incorporation or Bylaws of the Association, means the specified percentage, portion or fraction of all of the votes allocated in this Section 9.1. Any deadlock among the Unit Owners that cannot be resolved after a period of 90 days from when the deadlock first arose shall be decided by mandatory and binding arbitration and the following shall apply: (a) the arbitration shall be decided by one (1) arbitrator. The parties shall choose a mutually acceptable arbitrator, and in the event the parties cannot agree on the selection of the arbitrator, the parties shall choose two (2) arbitrator who shall agree upon the appointment of a third arbitrator who shall be the sole arbitrator; (b) the fees for the arbitration shall be shared equally by the parties and reimbursed to the prevailing party by the non-prevailing party, and such fees shall be consistent with the fees currently charged by arbitrators in Galveston County, Texas without regard to the amount in controversy; and (c) a final binding award by the arbitrator shall be made within thirty (30) days from the date of the first notice of the dispute unless extended by mutual agreement or good reason by the arbitrator. All decisions by the arbitrator shall be final

**ARTICLE X**  
*Site Plans or Floor Plans*

Section 10.1 *Plat or Plans.* A project plat and Unit plans (floor or elevation, and individual condominium Unit plans) are attached to this Declaration as Exhibit "B".

**ARTICLE XI**  
*Restrictions on Use, Occupancy, and Alienation*

Section 11.1 *Use Restrictions.* Subject to the Special Declarant Rights reserved under Article VIII, the following use restrictions apply to all Units and to the Common Elements:

(a) With the exception of the Commercial Units which may be used for retail purposes, the use of each Unit is restricted to that of a single family residence and accessory uses as permitted herein. Except for those activities conducted as part of the marketing and development program of the Declarant, no industry, business, trade or commercial activities (other than home professional pursuits), unscheduled public visits, nonresidential storage, mail or other use of a Unit shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes, except for leasing and renting as provided in this Declaration, the Rules and Regulations and/or Bylaws of the Association. The Commercial Units shall be comprised of three (3) Units which will include the indoor bar and outdoor bar and grill as one (1) Unit, the spa as one (1) Unit and the leasing office and cabanas as one (1) Unit. It is intended that the indoor and outdoor bar and grill, together with the spa will be retained by Declarant, its successors and assigns and the leasing office and cabanas will be conveyed to a third party, and each of which shall be used for retail purposes to provide goods and/or services to the Owners and the public.

(b) No improper, offensive or unlawful use may be made of the Property; Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and the State of Texas and all ordinances, rules and regulations of the City of Galveston, Texas. The violating Unit Owner shall hold harmless the Association and other Unit Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance.

**Section 11.2 Occupancy Restrictions.** Subject to the Special Declarant Rights reserved under Article VIII, the following occupancy restrictions apply to all Units and to the Common Elements

(a) No Unit Owner shall do any act or permit any act to be done in, on or to any Unit, balcony, patio, yard, parking space, or Common Element which will impair the structural integrity, weaken the support or otherwise adversely affect the building or any Common Element.

(b) No electrical device creating overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner who caused it. Total Electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(c) All Unit Owners shall maintain their Units in a clean and well maintained condition. No storage of trash will be permitted in or outside any Unit in a manner which may permit the spread of fire, odors, or seepage or the encouragement of vermin.

(d) All fixtures and equipment will be used for the purpose for which they were designed. There shall be no floor load in excess of 50 pounds per square foot, unless special arrangements are made and an engineering determination of floor load capacity in the area of the heavy use is approved by the Association.

(e) The Parking Area and Parking Spaces are restricted to parking of automobiles, motorcycles, and bicycles, and shall not be used for storage or the parking or storage of recreational vehicles, boats or trailers.

(f) Storage of articles of personal property is restricted to identified storage areas or the Unit Owner's Unit. Storage of personal property on balconies, patios or other areas visible from the building's exterior is prohibited. Placement of any articles of personal property,

including, furniture and related amenities in such areas shall be restricted to that of the quality, design and appearance compatible with the design and standards of the Condominium project. Any quality issues, questions or variances shall be subject to the approval of the Board of Directors.

(g) No noxious, offensive, dangerous or unsafe activity shall be conducted in any Unit, nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner or occupant shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, comforts or convenience of other Unit Owners or occupants.

(h) No animals, birds, or reptiles of any kind shall be kept in a Unit, except for a maximum of two dogs of gentle disposition, or two cats, caged birds, aquarium fish, or other household pets ("Pets"), as approved and licensed in writing by the Association as compatible with the Condominium. All Pets shall at all times be on a leash or in a carrier when outside of a Unit and shall not be left unattended at any time while outside of a Unit and shall not be left unattended for more than two (2) hours on any balcony or exterior enclosure of a Unit. Owners shall comply at all times with the rules and regulations promulgated by the Association pertaining to ownership and maintenance of Pets. Pets may not be kept, board, or maintained for any commercial purpose. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three (3) days' written notice from the Board of Directors. Unit Owner shall hold the Association harmless from any claim resulting from any action of their pets. Seeing eye dogs and hearing ear dogs will be permitted for those persons holding certificates of necessity.

(i) All clothes dryers will have lint filters which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screens which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept clean in good order and repair by the Unit Owner.

(j) No signs, window displays or advertising visible from outside a Unit (except for a name plate or sign not exceeding nine square inches in area, on the main entrance door to each Unit and which is approved by the Board of Directors) shall be maintained or permitted in any part of a Unit

(k) No Owner shall erect antennae, awnings or other exterior attachments, or place any reflective material in the windows of a Unit or on the Balcony thereof, including the placement or installation of any equipment or materials on the roof of the Building.

(l) All window coverings visible from any portion of the exterior of the Condominium, including, without limitation, drapes, shades, shutters, and/or backings, shall be of design and materials consistent with the quality, standards and design of the Condominium and shall be white or off white in color. Any quality issues, questions or variances shall be subject to the approval of the Board of Directors.

**Section 11.3 Leasing Restrictions.** A Unit may not be conveyed pursuant to a timesharing plan except as a part of the sales program of the Declarant, or for initial occupancy as a part of a binding purchase agreement. All leases and rental agreements shall be subject to the rental program established by Declarant and shall be in writing and subject to the requirements of the Declaration, the Articles, bylaws and rules and regulations of the Association with a copy provided to the Association. All leases of a Unit shall include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Governing Documents against the tenant, provided the Association gives the landlord written notice to the last known address of landlord, of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action. The approximate twenty (20) cabanas are anticipated to be leased on a daily basis, the ownership and rental of which will be controlled by third parties.

**Section 11.4. Resale Restrictions.** Unless prior written consent of Declarant is obtained an Owner may not resell a Unit in Phase I until the earlier of (a) 85% of the Units in Phase II are under approved contracts to be sold to third parties; or (b) completion of construction of Phase II and issuance of a final certificates of occupancy for all Units in Phase II.

In the event Declarant has not commenced construction of Phase II by the completion, and construction and issuance of final certificates of occupancy for Phase I there shall be no resale restriction and any Unit may be resold following closing of the initial sale of such Unit.

## ARTICLE XII

### *Easements, Licenses and Encroachments*

**Section 12.1 Recorded Easements.** All easements and licenses to which the Condominium is currently subject are recited in Exhibit "C" hereto. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to Article VIII of this Declaration.

**Section 12.2 Non-Exclusive Easements.** A Unit Owner and tenants of Units in the Condominium, and the members of their families and servants residing in their Units, and their guests and invitees, shall have a valid non-exclusive easement for the use of the Common Elements, subject to reasonable regulation in the Rules and Regulations of the Association; *provided, however* that the Association may temporarily suspend the Unit Owner's rights under the easement for the failure to pay assessments or to abide by the Association's rules and regulations for use of the Common Elements and facilities.

**Section 12.3 Right of Ingress and Egress** A Unit Owner has an unrestricted right of ingress and egress to his or her Unit. Such right of ingress and egress is perpetual and passes with the transfer of ownership of the Unit.

**Section 12.4 Encroachments** To the extent that the construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements results in a Unit or Common Element encroaching on another Unit or Common Element, a valid easement for both the encroachment and its maintenance shall exist for the entire period during which such encroachment exists; *provided, however*, that a valid easement for the encroachment and its maintenance shall not exist if the physical boundaries of a Unit after the construction,

reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements is not in substantial accord with the description of those boundaries as described in this Declaration.

Section 12.5. *Utility Easements.* Easements are hereby declared and granted for utility purposes, including the right to install, lay, construct, maintain, operate, renew, repair, and replace water mains and pipes, sewer lines, gas mains, telephone wires, cable vision and satellite television networks, internet networks, receiving dishes and equipment, and electrical conduits, wires and equipment over, under, along and on any part of the Common Elements for the purpose of providing the Property with such services, as may exist on the date any Property is submitted to the Act.

Section 12.6 *Easements Appurtenant.* All easements and rights described herein are easements appurtenant, running with the Property, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Unit Owner, purchaser, Mortgagee and other person having an interest in said Property, or any part or portion thereof.

Section 12.7 *Declarant Easements.* The right of the Unit Owner to use and possess the Common Elements as set forth herein shall be subject to a blanket easement over the Common Elements in favor of the Declarant, and its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors, and assigns, for the purpose of (i) access and ingress to and egress from the Common Elements or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, buildings, landscaping and any other improvements on the Property or any part thereof, (iii) the installation and maintenance of signs advertising the Units on the Property, or any part thereof, and signs directing potential purchasers to the Sales Office and models erected in connection with such Units, (iv) using and showing the models and Sales Office or for such other purposes deemed necessary or desirable in connection with such construction, leasing, marketing, sale or brokerage, (v) setting up, staffing and maintaining marketing materials and tables in the Common Elements and using the Common



Elements for special events, (vi) posting and maintaining such signs and lighting on the Property as are deemed necessary or desirable in connection with (iv) and (v) above, and (vii) using the office of the Condominium for management of the Condominium, construction activities at the Condominiums and sales or leasing activity concerning the Condominiums. Until all the Units are sold and conveyed, the Declarant shall be entitled to such access, ingress and egress to the Property as it shall deem necessary in connection with the sale of, or work in, the Condominium or any Unit. Declarant shall have a blanket easement over the Common Elements for its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns for purposes of access and ingress to and egress from said Common Elements, and for the purposes of marketing, sales, brokerage, construction, installation, repair replacement and restoration of utilities, driveways, buildings, landscaping and any other improvements on said Common Elements until Declarant is no longer a Unit Owner. The foregoing easement shall be deemed and taken to be covenant running with the land. In the event Phase II is not developed as condominium units, Declarant, its successors and assigns, shall retain an easement and right to the use and enjoyment of the amenities and facilities located on the Common Elements of Phase I subject to the rules and regulations of the Association which easement shall be appurtenant to the Property and may not be amended or terminated by vote or agreement of Unit Owners.

**Section 12.8 *Reservation of Construction Easement.*** Declarant does hereby reserve for the benefit of Declarant and Declarant's successors and assigns an unobstructed temporary construction easement for the free and uninterrupted delivery of materials and performance of labor related directly or indirectly to the construction of improvements on that certain tract or tracts of land adjacent to and/or adjoining any portion of the west side of the Property identified as that portion of the Property designated as Phase II, to provide for ingress, egress, delivery and operation of construction equipment over the Property and improvements located thereon in compliance with industry standards, applicable building codes, laws, ordinances, regulations and permits. The aerial portion of the easement shall extend horizontally from and along the entire common boundary line between Phase I and Phase II of the Property from the ground level

upward. The easement is temporary and will cease and terminate immediately upon completion of construction of all improvements of Phase II on the adjacent and adjoining portion of the Property upon the issuance of all certificates of occupancy by the City of Galveston for the use of such improvements. This reservation of a temporary easement is not intended to interfere with the use and enjoyment of the Property by the Owners and the Owners shall not interfere with or cause delay in the use of the easement by Declarant and Declarant's successors and assigns. This reservation of easement is appurtenant to the Property and may not be amended or terminated by vote or agreement of Unit Owners.

### ARTICLE XIII

#### *Amendment of Declaration*

Section 13.1 *Amendment by Unit Owners.* Except as otherwise provided by the Act or this Declaration, including, without limitation, the provisions of Article VII and Article XII, Section 12.5, and as limited by Article XVI herein, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners to which at least 67 percent of the votes in the Association are allocated, or any larger majority this Declaration specifies. The procedure for amendment must follow the procedures of Section 82.067 of the Act.

Section 13.2 *Amendment by Board of Directors or Declarant.* The Board of Directors or the Declarant, if the Declarant owns a Unit that has never been occupied, may without a vote of the Unit Owners or approval of the Association amend the Declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, The Federal Home Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, or as may be permitted under the Act.

Section 13.3 *Amendment of Restrictions.* This Declaration may not be amended without the written consent of Declarant which in any way modifies, reduces, or eliminates any of the rights granted to Declarant herein, including without limitation, Special Declarant Rights set forth in Article VII, Article VIII, Article XII, and Article XXIII. The provisions of this section shall survive and remain effective following termination of the period of Declarant control as set forth in Section 8.3 herein.

**ARTICLE XIV**  
*Amendments of Bylaws*

Section 14.1 *Amendment of Bylaws.* Except as otherwise provided by law or this Declaration, and as limited by Article XVI of this Declaration, the Bylaws may be amended only by vote or agreement of Members representing at least a majority of the vote to be cast at a meeting for which a quorum is obtained.

**ARTICLE XV**  
*Termination*

Section 15.1 *Termination.* Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs must be agreed to by Unit Owners who represent at least 80 percent of the votes in the Association and by at least 51 percent of Eligible Mortgagees. Notwithstanding any lower requirement permitted by this Declaration or the Act, any actions to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the property must be agreed to by Unit Owners who represent at least 80 percent of the votes in the Association and by at least 67 percent of Eligible Mortgagees. Subject to the foregoing, termination of the Condominiums may be accomplished only in accordance with Section 82.068 of the Act.

**ARTICLE XVI**  
*Mortgage Protection*

Section 16.1 *Notice of Actions*

(a) The Association shall give timely written notice to each holder, insurer, or guarantor of a mortgage on any Unit in the Condominium of which it has received notice pursuant to subsection (b) of:

- (i) any condemnation or casualty loss that affects a material portion of the Condominium property or applicable Unit;

(ii) any delinquency in the payment of assessments or charges owed by the Unit Owner more than sixty (60) days past due as to the applicable Unit;

(iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(iv) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

(b) A holder, insurer or guarantor of a mortgage on any Unit must notify the Association in writing of its name and address and inform the Association that it holds a security interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it holds a security interest.

#### Section 16.2 *Consents.*

Notwithstanding any requirements permitted by this Declaration or the Act, no amendment of any material provision of the Governing Documents by the Association or the Unit Owners described in this Section shall be effective without notice as required by Section 16.1 above, without the vote of at least 67 percent of the Unit Owners (or any greater Unit Owner vote required in this Declaration of the Act). A change to any of the following would be considered material:

(i) voting rights;

(ii) increases in assessments that raise the previously assessed amount by more than 25%; assessment liens, or priority of assessment liens;

- (iii) reductions in reserve for maintenance, repair, and replacement of Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Elements or vice versa or the combining of two or more adjacent Units;
- (viii) expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any major material change in the restrictions on the leasing of Units;
- (xi) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xii) restoration or repair the Condominium (after damage or partial condemnation) in a manner other than that specified in the Governing Documents;  
or
- (xiii) any provisions that expressly benefit the mortgage holders, or guarantors.

**Section 16.3 *Financial Statements.*** To the extent the Association does not have an audited financial statement, any Eligible Mortgagee or Eligible Insurer shall have the right to have an audited financial statement prepared at its own expense

**Section 16.4 *Working Capital***

(a) The Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or service. The initial working capital fund established by the Declarant for the benefit of and to be funded by the Association shall be in an amount that is at least equal to two (2) months of estimated Common Expenses for each Unit. Each Unit's share of the working capital fund shall be collected either at the time the sale of the Unit is closed or when the control of the Condominium is transferred to the Unit Owners, whichever is earlier. Any amounts paid into the working capital fund shall not be considered as advance payments of regular Common Expense assessments and shall be in addition to such assessments with the exception that a portion of the Common Expense assessments collected upon closing of a sale or transfer of a Unit may be used for the reserve fund. The working capital fund shall be transferred to the Association for deposit to a segregated fund for use by the Association when control of the Association is transferred to the Unit Owners. Upon each subsequent transfer or sale of a Unit to a third (3<sup>rd</sup>) party, an additional working capital amount at least equal to two (2) months of estimated Common Expenses for such Unit shall be due and payable to the Association upon closing of such sale or transfer. All payments into the working capital fund shall be non-refundable.

(b) The Declarant shall not use this working capital fund to defray any of its expenses, reserve contributions, except as provided herein, or construction costs or to make up any budget deficits while it is in control of the Association. Upon the sale of an unsold Unit, the Declarant shall be entitled to reimburse itself for any funds it paid to the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

Section 16.5 *Reserve Fund* 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 the Common Expenses

Section 16.6 *Insurance Requirements* The Association shall purchase and maintain policies of insurance and fidelity bond coverage in accordance with the recommendations initially by Declarant, and thereafter, the Association.

#### ARTICLE XVII

##### *Assessment and Collection of Common Expenses*

Section 17.1 *Apportionment of Common Expenses* Except as otherwise provided by the Act or this Declaration, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Elements in Section 9.1 of this Declaration

##### *Section 17.2 Common Expenses Attributable to Fewer than all Units*

(a) Any Common Expenses associated with the maintenance, repair, or replacement of components or elements attached to, planted on, or a part of, patios, decks, exterior surfaces, trim, siding, doors, windows, storage area, and elevators shall be assessed against the Unit or Units to which the Limited Common Element is assigned as a Common Expense assessment shall be assessed as a general Common Expense against all Units. Any quality issues, questions or variances shall be subject to the approval of the Board of Directors. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned;

(b) Any Common Expense associated with the maintenance, repair, or replacement of any chimney shall be assessed against the Unit served by such chimney, if any;

(c) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against that Unit;

(d) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit;

(e) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit Owner's Unit; and

(f) Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against a Unit Owner pursuant to the Governing Documents and the Act are enforceable as Common Expense assessments.

**Section 17.3 Responsibility for Assessment of Common Expenses** The Board of Directors shall be responsible for levying and collecting general and special assessments for Common Expenses. For purpose of this Article XVII, "assessments" means regular and special assessments (including payments or obligations to reserve accounts), dues, fees, charges, interest, late fees, fines, collection costs, reasonable attorneys' fees, and any other amount due to the Association by the Unit Owner or levied against the Unit by Association, all of which are enforceable as assessments under Section 22.113 of the Act

**Section 17.4 Lien.** The Association has a lien on a Unit for a Common Expense assessment levied against the Unit or fines imposed against its Unit Owner from the time the Common Expense assessment fine becomes due. Fees, charges, late charges, fines and interest charged pursuant to a Common Expense assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.



A lien for Common Expense assessments will not be affected by the sale or transfer of the Unit, unless a foreclosure of a first mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying further assessments.

**Section 17.5 Priority** The Association's lien for assessments has priority over any other lien, except as otherwise provided in Section 82.113(b) of the Act.

**Section 17.6 Commencement of Common Expense Assessments.** Monthly Common Expense assessments for Phase I shall begin on the date of closing of a conveyance of a Unit in Phase I following issuance of a Certificate of Occupancy and excludes shell or incomplete Units, to a Unit Owner other than the Declarant and shall be due on the first day of each subsequent calendar month thereafter, without notice. Monthly Common Expense assessments for Phase II shall begin on the date of closing of a conveyance of a Unit in Phase II following issuance of a Certificate of Occupancy and excludes shell or incomplete Units to a Unit Owner other than the Declarant and shall be due on the first day of each subsequent calendar month thereafter, without notice. For each of Phase I and Phase II, respectively, Declarant shall pay the pro rata share of assessments for all unsold Units for each Phase beginning one hundred eighty (180) days after the first Unit (excluding shell units) is conveyed and Monthly Common Expense assessments have commenced for that Phase, and continuing thereafter until Declarant has sold or conveyed all Units owned by Declarant. Assessments for unsold Units in Phase II shall not commence until after completion of construction, issuance of a certificate of occupancy, and conveyance of the first Unit in Phase II. The initial monthly Common Expense assessment for residential Units shall not be less than \$550.00 per Unit per month prorated for the first month from the date of closing, and with one (1) full monthly assessment prepaid at closing, together with an initial reserve assessment upon closing in an amount equal to two (2) monthly assessments as a reserve for capital expenditures as set forth in Section 16.4(a). The initial monthly assessment for the three (3) Commercial Units shall be \$550.00 commencing on the occupancy of such Unit and official opening of business operations. Specifically, the indoor bar and outdoor bar and grill

shall be assessed as one (1) Commercial Unit, the spa shall be assessed as one (1) Commercial Unit and the leasing office and cabanas shall collectively be assessed as one (1) Commercial Unit. The monthly assessments for commercial Units shall at all times be payable as set forth hereinabove and shall at all times be equal to the lowest monthly assessment payable by any Residential Unit. This provision shall not be subject to amendment except by the unanimous vote of all Owners.

**Section 17.7 *No Waiver of Liability for Common Expenses.*** No Unit Owner may become exempt from liability for payment of Common Expense assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense assessments are made.

**Section 17.8 *Personal Liability of Unit Owners.*** The Unit Owner of a Unit, at the time a Common Expense assessment or portion of the assessment is due and payable, is personally liable for the Common Expense assessment or portion of the assessment is due and payable, is personally liable for the Common Expense assessment, which is secured by a continuing lien on the Owner's Unit.

Personal liability for such Common Expenses assessments shall not pass to a successor in title to the Unit unless the successor agrees to assume the obligation.

**Section 17.9 *Remedies for Failure to Pay Assessments.*** The Association's remedies for a Unit Owner's failure to pay assessments levied by the Association include, but are not necessarily limited to, those remedies set forth in Section 82.102 and 82.113 of the Act.

## ARTICLE XVIII

### *Interest Rate*

**Section 18.1 *Interest on Delinquent Assessments.*** In the event of default in the payment of any monetary obligation to the Association, a Unit Owner shall be obligated to pay interest on

the principal amount, from the due date, at a rate to be determined, from time to time, by the Board of Directors, not to exceed the maximum permitted by law.

**Section 18.2 *Default Interest Rate*** If the Board of Directors shall refuse or fail, from time to time, to determine a rate of interest, the rate of interest shall be the highest maximum rate permitted by law.

#### **ARTICLE XIX**

##### ***Right to Assign Future Income***

**Section 19.1 *Right to Assign Future Income.*** The Association may assign its right to future income, including the right to receive Common Expense assessment, only by the affirmative vote of Unit Owners to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose and only after payment of all accrued and outstanding expenses and after making provision for the payment of all ordinary operating expenses of the Condominium for the period during which the right to future income, including the right to receive Common Expense assessments, has been assigned.

#### **ARTICLE XX**

##### ***Persons and Units Subject to Governing Documents***

**Section 20.1 *Compliance with Governing Documents; Uniform Applicability.*** All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Governing Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Unit constitutes agreement that the provisions of the Governing Documents are accepted and ratified by that Unit Owner, tenant, mortgagee or occupant. To the extent there are unsold Units owned by the Declarant, the Declarant shall enjoy the same duties as any other Unit Owner would as they relate to each individual unsold Unit. So long as the Declarant owns one or more Units, the Declarant shall be subject to the provisions of the Governing Documents.

**Section 20.2 *Adoption of Rules*** The Board of Directors may adopt and amend rules and regulations regarding the use and occupancy of Units as it affects the Common Elements, the Limited Common Elements and the activities of occupants.

#### **ARTICLE XXI**

##### ***Damage to or Destruction of Property***

**Section 21.1 *Duty to Restore***. Subject to Section 82.111 of the Act, a portion of the Condominium for which insurance is required under Section 82.111 that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Condominium is terminated;
- (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- (c) at least 80 percent of the Unit Owners, including each Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, and Eligible Mortgagees vote to not rebuild

**Section 21.2 *Cost***. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

#### **ARTICLE XXII**

##### ***Condemnation***

**Section 22.1 *Condemnation***. If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 82.007 of the Act.

## ARTICLE XXIII

### *Rights of Action*

Section 23.1 *Rights of Action.* The Association and any aggrieved Unit Owner shall have a right of action against the Declarant, a Unit Owner or any other person who fails to comply with the provisions of the Governing Documents or the decisions made by the Association. A Unit Owner has a right of action against the Association for a violation of the Governing Documents or the decision of the Association.

Section 23.2 *Arbitration.* Any controversies, claims or disputes involving Declarant, its representatives, the Association, the General Contractor for Declarant, or any Unit Owner which cannot be resolved by good faith negotiations shall be resolved by mandatory and binding arbitration and the following shall apply: (a) the arbitration shall be decided by one (1) arbitrator. The parties shall choose a mutually acceptable arbitrator, and in the event the parties cannot agree on the selection of the arbitrator, each party shall choose an arbitrator and those two (2) arbitrators shall agree upon the appointment of a third arbitrator who shall be the sole arbitrator; (b) the fees for the arbitration shall be shared equally by the parties and reimbursed to the prevailing party by the non-prevailing party, and such fees shall be consistent with the fees currently charged by arbitrators in Galveston County, Texas without regard to the amount in controversy; and (c) a final binding award by the arbitrator shall be made within thirty (30) days from the date of the first notice of the dispute unless extended by mutual agreement or good reason by the arbitrator. All decisions by the Arbitrator shall be final, and any judgment upon the award rendered by the Arbitrator may be confirmed, entered and enforced in any court having proper jurisdiction.

## ARTICLE XXIV

### *Miscellaneous*

Section 24.1 *Appointment of Attorney-in-Fact.* Each Unit Owner, by acceptance of a deed or other instrument of conveyance from Declarant or from any Unit Owner or grantor resulting in ownership of a Unit, shall be deemed to appoint the Association as his or her true and lawful attorney-in-fact (which shall be deemed to be irrevocable power of attorney coupled

with an interest and not voidable due to the incapacity or disability of an Unit Owner) to act in connection with all matters concerning the maintenance of insurance policies and the destruction, repair or obsolescence of the Condominium, in whole or in part. Without limiting the generality of the foregoing, the Association, by and through its President or Vice President, shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds, to institute and prosecute litigation or arbitration, to pay all costs associated with its activities as Common Expenses (to the extent the proceeds received from such insurance are not adequate to pay such costs), to administer the distribution of such proceeds in connection with any reconstruction or repair, to distribute any remaining proceeds to Unit Owners and their mortgagees (subject to the provisions of the Governing Documents and the Act) as their interests may appear, to execute releases of liability, and to execute all documents and to do all things on behalf of the Unit Owners and the Condominium as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters (other than exercising any voting rights in determining whether to repair or reconstruct). The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit (except to the extent available by endorsement as herein provided) or covering the liability of any Unit Owner for occurrence not caused or connected with the Association's operation, maintenance or use of the Condominium.

*Section 24.2 Security.* The Association and/or Declarant shall not in any way be considered an insurer or guarantor of security within the property. Neither shall the Association be held liable for any loss or damages by reason of failure to provide adequate security of ineffectiveness of security measures undertaken. The Association does not represent or warrant that any fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices, or other security systems (if any are present) will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, nor that fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices or other security systems will in all cases provide the detection or protection for which the system is designed or intended. The Association is not an insurer and each owner and occupant of any Unit and each tenant, guest and invitee of any owner assumes all risks for loss or damage to persons, to Units and to the contents of Units and acknowledges that the Association has made no representations or warranties nor has the Association, any owner, occupant, tenant,

guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices or other security systems recommended or installed or any security measures undertaken within the property.

**Section 24.3 Captions.** The captions contained in the Governing Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Governing Documents or the intent of any provision thereof

**Section 24.4 Gender.** The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Governing Documents so requires.

**Section 24.5 Waiver.** No provision contained in the Governing Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 24.6 Invalidity.** The invalidity of any of the Governing Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of the Governing Documents shall continue in full force and effect.





## CONSENT OF MORTGAGEE

INTERNATIONAL BANK OF COMMERCE as beneficiary of Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated September 20, 2006, filed for record in the Galveston County Property Records, executed by Randall J. Davis, President of Portland Corporation, a Texas corporation, the in its capacity as the general partner of Diamond Beach VP, LP, a Texas limited partnership, for and on behalf of said corporation and partnership to Jay Rogers, Trustee to secure the payment of one note of even date therewith in the original principal sum of FORTY-ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$41,900,000.00) payable to the order of IBC; and as

Assignee of an Assignment of Leases dated September 20, 2006, filed for record in the Galveston County Property Records.

Assignee of an Assignment of Contracts with respect to Condominium Documents recorded in the Galveston County Property Records; and as

The undersigned hereby subordinates its mortgage lien and security interests and any and all other liens owned or held by it (in and to the Property of the condominium regime to be created) to the terms and provisions of the above and foregoing Declaration of Diamond Beach Condominiums (to which this Consent of Mortgagee is annexed) and to the condominium regime to be created thereby (or to be created thereby upon recordation) all with the same effect and intent as if said Declaration had been executed and recorded prior to the execution and recordation of the mortgage and other instruments created said liens and security interests. This consent shall not be construed operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the individual Units and all appurtenances thereto, and all of the undivided shares and interest in the Common Elements of the Property and of said condominium regime established by said Declaration, until said mortgage and liens are otherwise released by the undersigned.

IN WITNESS WHEREOF, the said Mortgagee has caused this instrument to be signed on its behalf on this 16<sup>th</sup> day of January, 2009

INTERNATIONAL BANK OF COMMERCE

By: [Signature]

Name: Jeff Samples

Title: President - IBC Bank

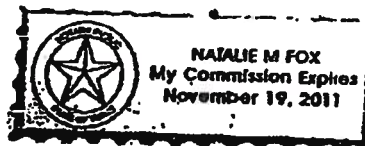
STATE OF TEXAS

COUNTY OF HARRIS

SON SON SON

This instrument was acknowledged before me on this 16<sup>th</sup> day of January, 2009, by [Signature] as President of INTERNATIONAL BANK OF COMMERCE, on behalf of said bank.

[Signature]  
Notary Public, State of Texas





FIRST AMENDMENT TO DECLARATION OF DIAMOND BEACH CONDOMINIUMS

This First Amendment to Declaration of Diamond Beach Condominiums dated April 2nd, 2009, is executed and entered into by Diamond Beach VP, LP, a Texas limited partnership, as Declarant and as Owner of all of the property comprising Diamond Beach Condominiums ("Declarant") and amends the Declaration of Diamond Beach Condominiums executed by Declaration January 14, 2009, and filed of record under Clerk's File No. 2009003602 in the Official Public Records of Real Property of Galveston County, Texas (the "Declaration").

RECITALS:

A. Capitalized terms not defined herein shall have the definitions set forth in the Declaration.

B. Declarant desires to amend the Declaration in accordance with Article XIII thereof to update the documents attached to the Declaration as Exhibit "B" to clarify, as stated throughout the Declaration, that Phase II need not be built and to provide for further updates to Exhibit "B" as construction progresses.

NOW THEREFORE, in accordance with the Declaration and the Texas Uniform Condominium Act, Declarant hereby amends the Declaration as follows:

ARTICLE I.

Exhibit "B" attached hereto and incorporated herein by reference is hereby incorporated into the Declaration as "Exhibit "B."

ARTICLE II.

The Declaration is hereby amended to include the following at the end of Section 3.1:

"As set forth throughout the Declaration, Phase II may not be built. Upon completion of Phase I, Declarant, (without necessity of the joinder of any other Owner) shall file a Supplement to the Declaration amending Exhibit "B" to reflect the actual measurements for each Unit and any other appropriate changes. To the extent Declarant proceeds with construction of Phase II, upon completion of Phase II, Declarant, (without necessity of the joinder of any other Owner) shall file a Supplement to the Declaration amending Exhibit "B" to reflect the actual measurements for each Unit in Phase II and any other appropriate changes."

ARTICLE III.

The Declaration is hereby modified throughout to the extent in conflict with the contents of this Amendment or Exhibit "B" attached hereto and incorporated herein by reference. The Declaration is unmodified and in full force and effect except as expressly set forth herein.

IN WITNESS WHEREOF, the Declarant has caused this First Amendment to the Declaration to be executed by a duly authorized agent this 3<sup>rd</sup> day of April, 2009.

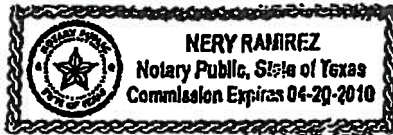
DIAMOND BEACH VP, LP,  
a Texas limited partnership


By: Portland Corporation, its general partner

By:   
RANDALL J. DAVIS, President

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

Before me, the undersigned authority, on this 3 day of April, 2009, personally appeared RANDALL J. DAVIS, known to me to be the person whose name is subscribed to the foregoing instrument as President of Portland Corporation, a Texas corporation that is the general partner of Diamond Beach VP, LP, a Texas limited partnership and acknowledged to me that he executed the same on behalf of such limited partnership.



  
Notary Public in and for the State of Texas

## CONSENT OF MORTGAGEE

INTERNATIONAL BANK OF COMMERCE as beneficiary of Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated September 20, 2006, filed for record in the Galveston County Property Records, executed by Randall J. Davis, President of Portland Corporation, a Texas corporation, the in its capacity as the general partner of Diamond Beach VP, LP, a Texas limited partnership, for and on behalf of said corporation and partnership to Jay Rogers, Trustee to secure the payment of one note of even date therewith in the original principal sum of FORTY-ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$41,900,000.00) payable to the order of IBC; and as

Assignee of an Assignment of Leases dated September 20, 2006, filed for record in the Galveston County Property Records.

Assignee of an Assignment of Contracts with respect to Condominium Documents recorded in the Galveston County Property Records; and as

The undersigned hereby subordinates its mortgage lien and security interests and any and all other liens owned or held by it (in and to the Property of the condominium regime to be created) to the terms and provisions of the above and foregoing Declaration of Diamond Beach Condominiums (to which this Consent of Mortgagee is annexed) and to the condominium regime to be created thereby (or to be created thereby upon recordation) all with the same effect and intent as if said Declaration had been executed and recorded prior to the execution and recordation of the mortgage and other instruments created said liens and security interests. This consent shall not be construed operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the individual Units and all appurtenances thereto, and all of the undivided shares and interest in the Common Elements of the Property and of said condominium regime established by said Declaration, until said mortgage and liens are otherwise released by the undersigned.

IN WITNESS WHEREOF, the said Mortgagee has caused this instrument to be signed on its behalf on this 3 day of April, 2009

**INTERNATIONAL BANK OF COMMERCE**

By: [Signature]

Name: Jeff Samples

Title: President

STATE OF TEXAS

COUNTY OF HARRIS

§  
§  
§

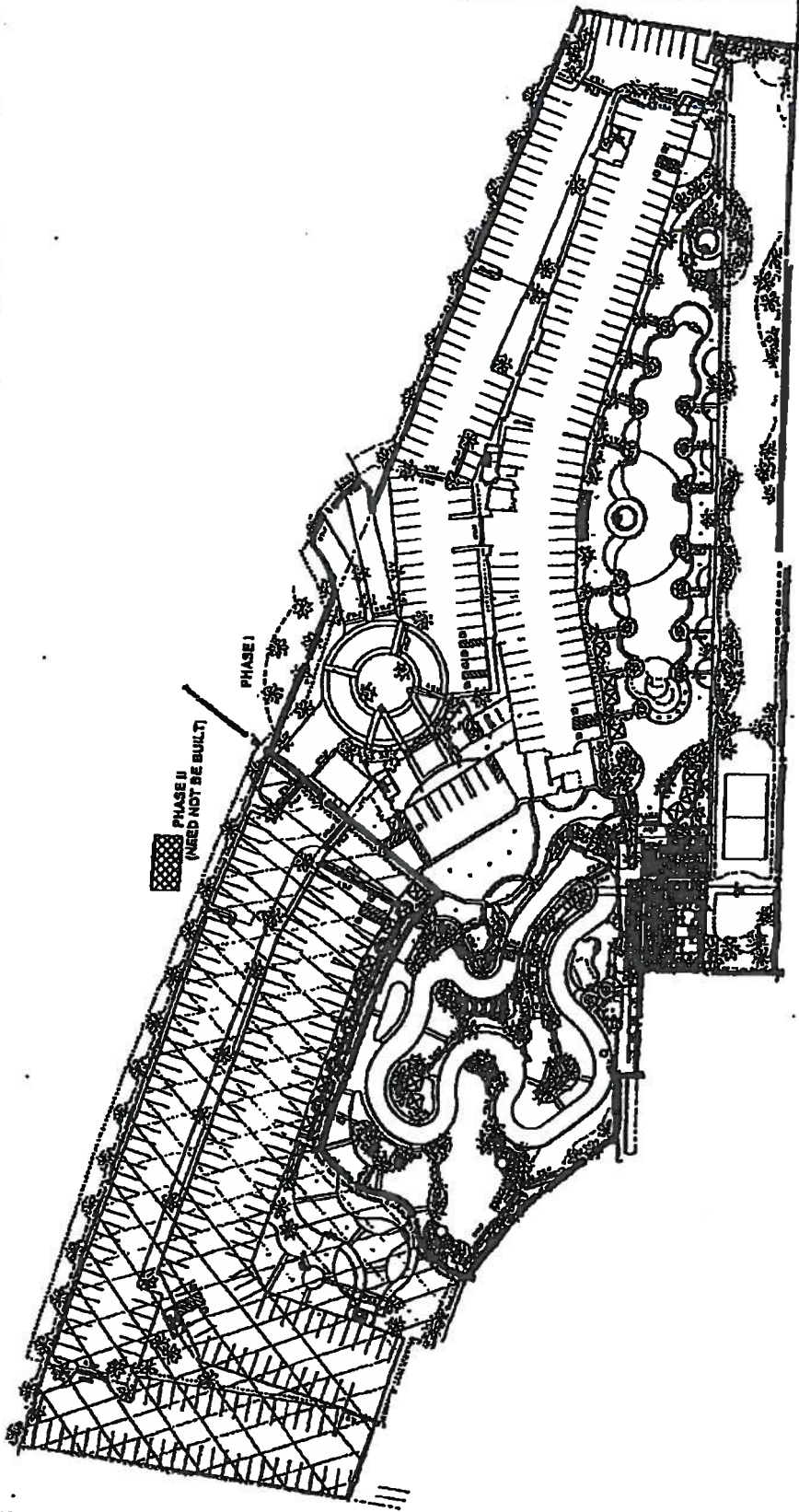
This instrument was acknowledged before me on this 3 day of April, 2009,  
Jeff Samples by  
President as  
of  
INTERNATIONAL BANK OF COMMERCE, on behalf of said bank.



[Signature]

Notary Public, State of Texas

EXHIBIT "B"



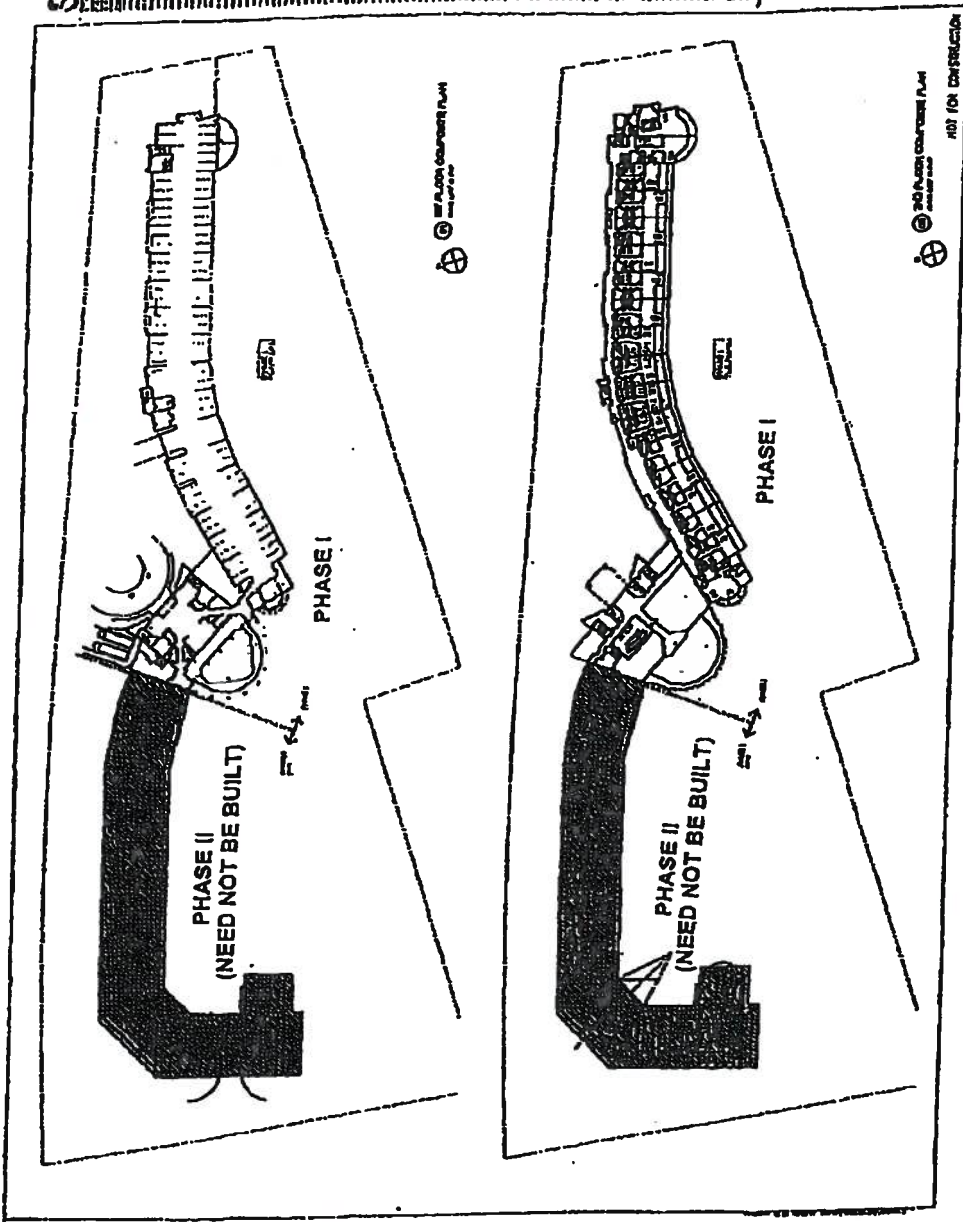
SITE PLAN



SPA

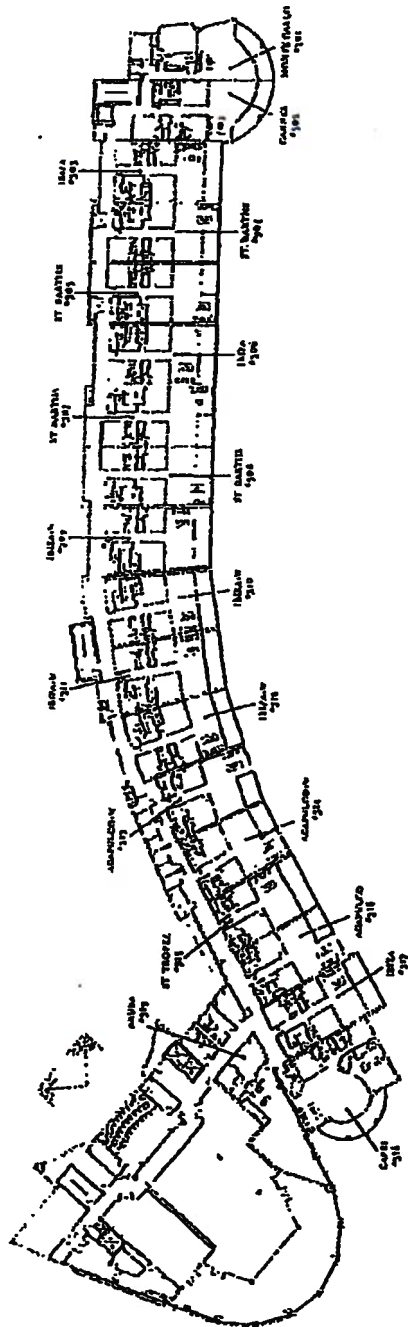
200 FLOOR COMPOSITE PLAN

NOT FOR CONSTRUCTION



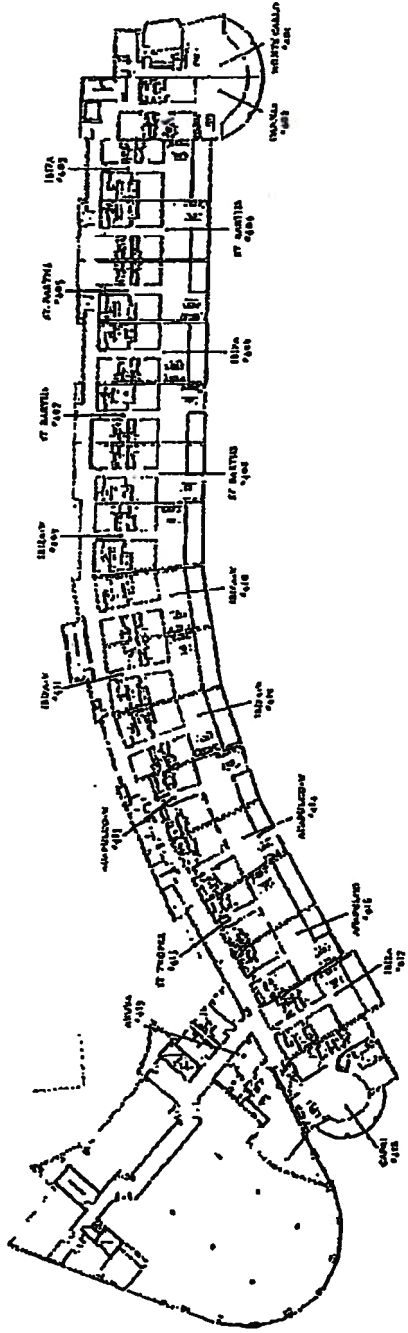
SECOND FLOOR COMPOSITE PLAN





THIS FLOOR PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE ARCHITECT'S OFFICE IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHERS.

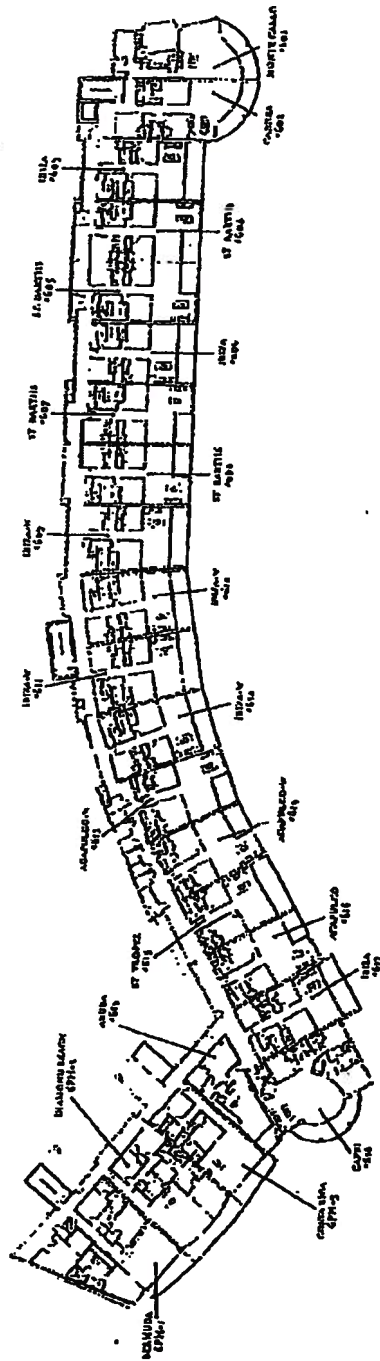
**THIRD FLOOR SITE PLAN  
PHASE I**



NOT TO SCALE. THIS PLAN IS A REPRESENTATION OF THE PROPOSED WORK AND IS NOT A CONTRACT DOCUMENT. THE CONTRACT DOCUMENTS SHALL CONTROL IN THE EVENT OF A DISCREPANCY BETWEEN THIS PLAN AND THE CONTRACT DOCUMENTS.

**FOURTH FLOOR SITE PLAN  
PHASE I**

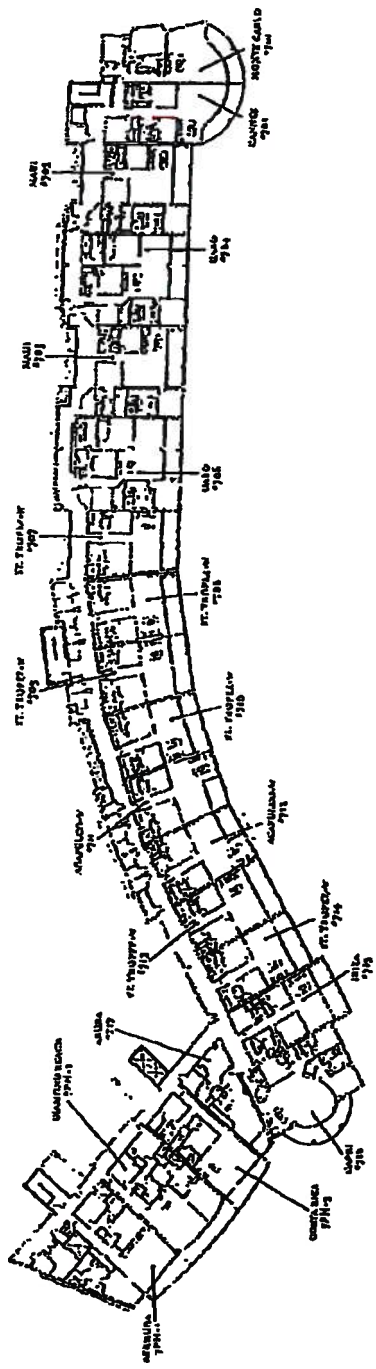




Notwithstanding any other provisions to the contrary, the undersigned hereby certifies that the information contained herein is true and correct to the best of their knowledge and belief, and that the same has been prepared and submitted to the City of Los Angeles for its consideration and approval as a part of the City's development plan for the City of Los Angeles.

**SIXTH FLOOR SITE PLAN  
PHASE I**

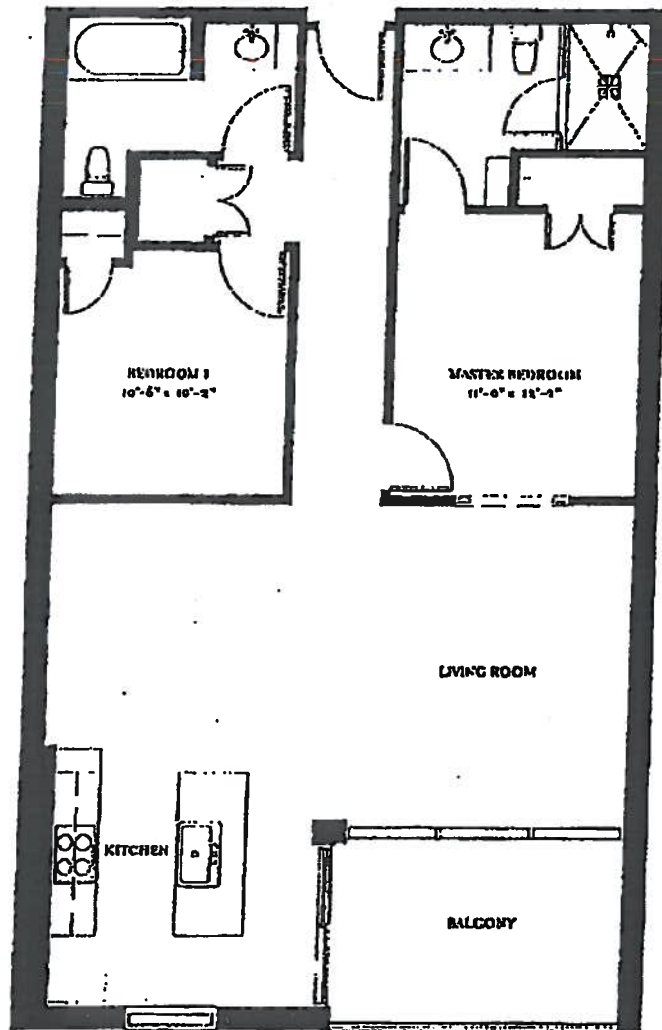
Handwritten notes and markings along the left margin of the page.



Architectural drawing showing the seventh floor site plan, including room numbers, corridors, and structural elements. The drawing is oriented vertically on the page.

**SEVENTH FLOOR SITE PLAN  
PHASE I**

# ACAPULCO



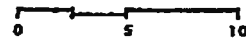
2 BDRM | 2 BATH

2ND FLOOR

3RD-7TH FLOORS

1,330 S.F. TOTAL

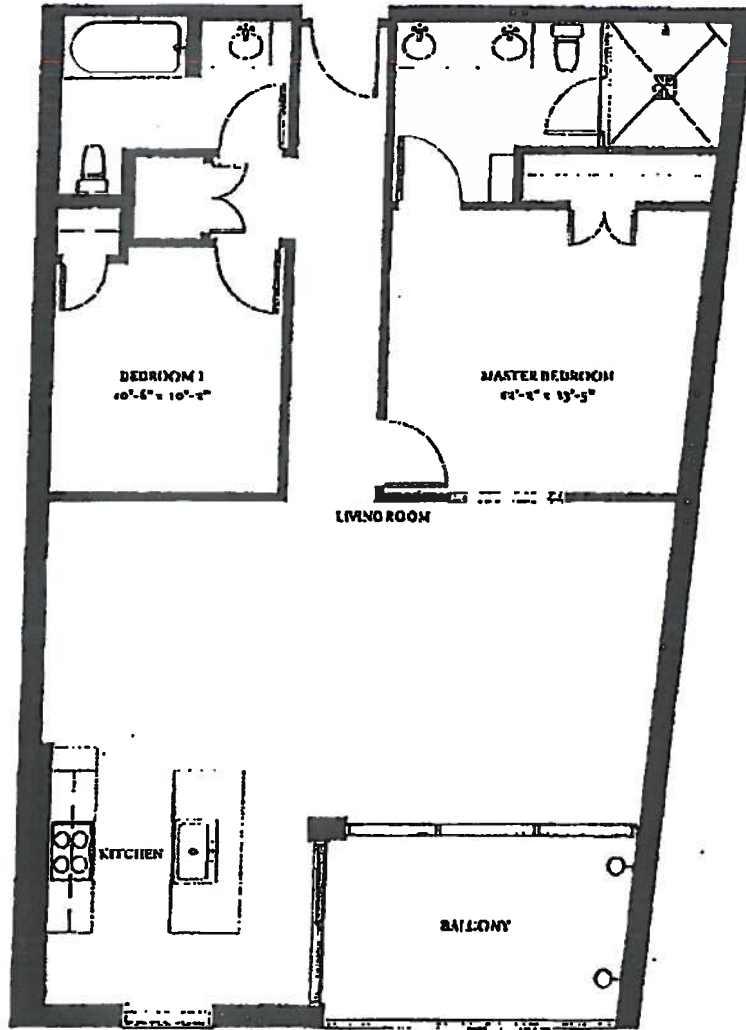
1,195 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any recording, sales, advertising, brochures, or similar information) of price, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.



# ACAPULCO - W



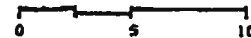
2 BDRM | 2 BATH

2ND FLOOR

3RD-7TH FLOORS

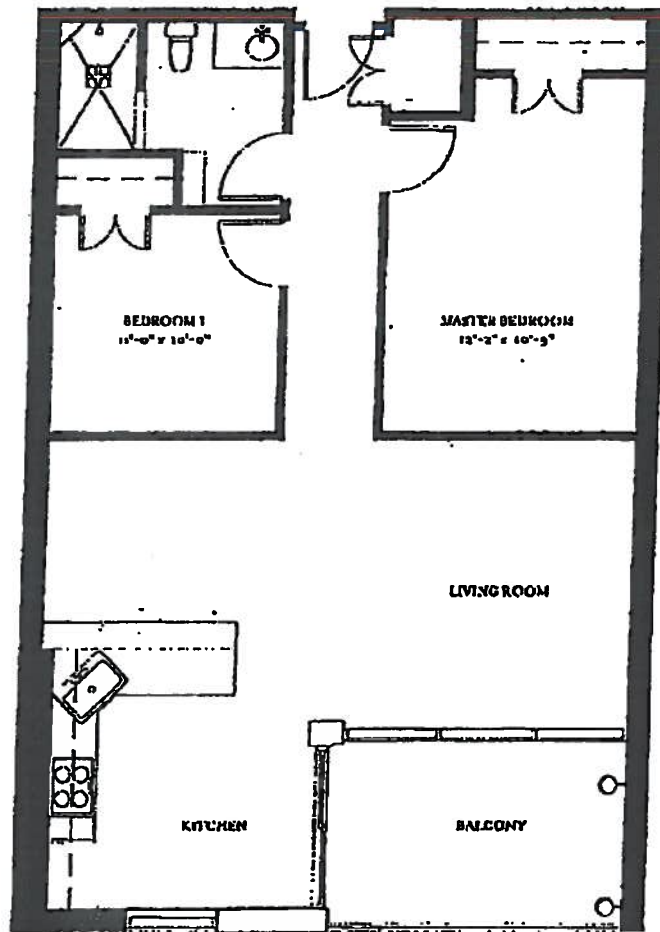
1,417 S.F. TOTAL

1,282 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or other information), all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

# CAYMAN



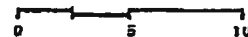
2 BDRM | 1 BATH

2ND FLOOR

3RD-7TH FLOORS

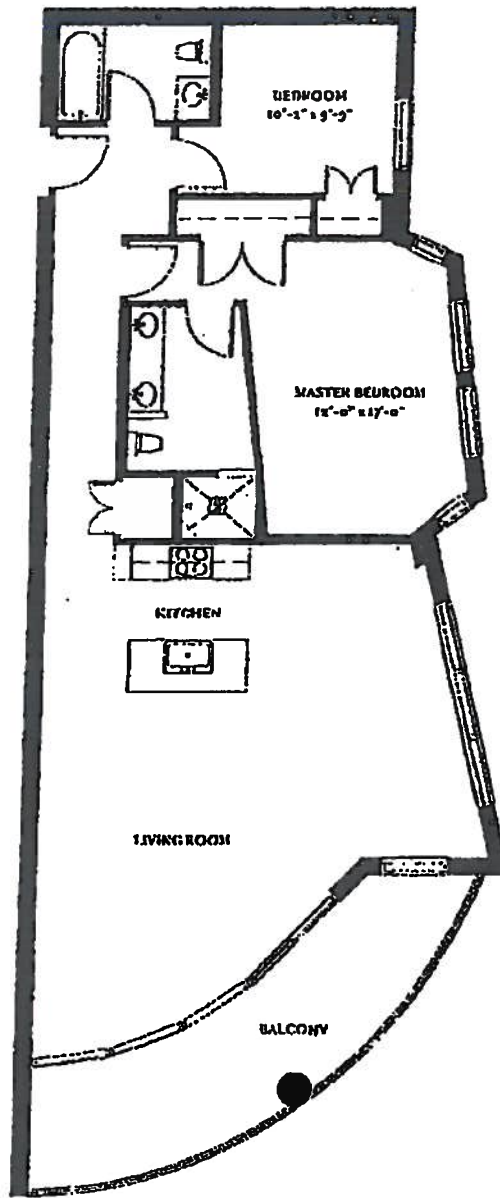
1,377 S.F. TOTAL

1,080 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information), all prices, building design, architectural renderings, plans, specifications, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

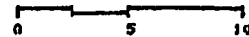
# MONTE CARLO



2 BDRM | 2 BATH

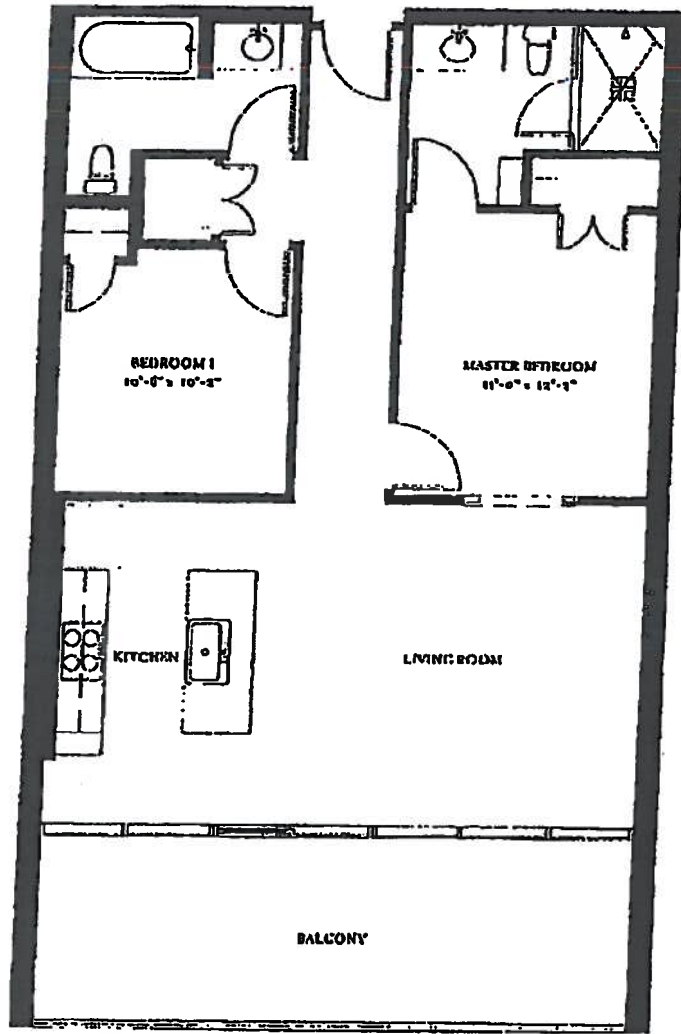
2ND-7TH FLOORS

1,595 s.f. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or other information), all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

# ST. TROPEZ



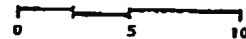
2 BDRM | 2 BATH

2ND FLOOR

3RD-7TH FLOORS

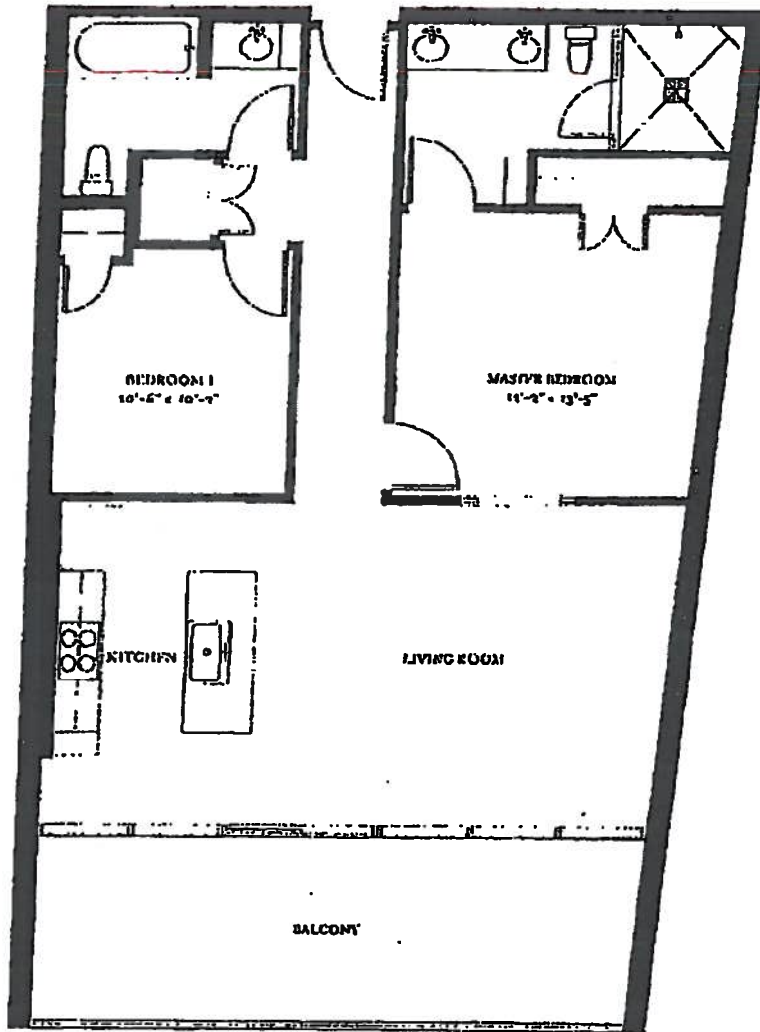
1,330 S.F. TOTAL

1,195 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, title, advertising, brochures, or similar information), all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

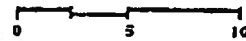
# ST. TROPEZ - W



2 BDRM | 2 BATH

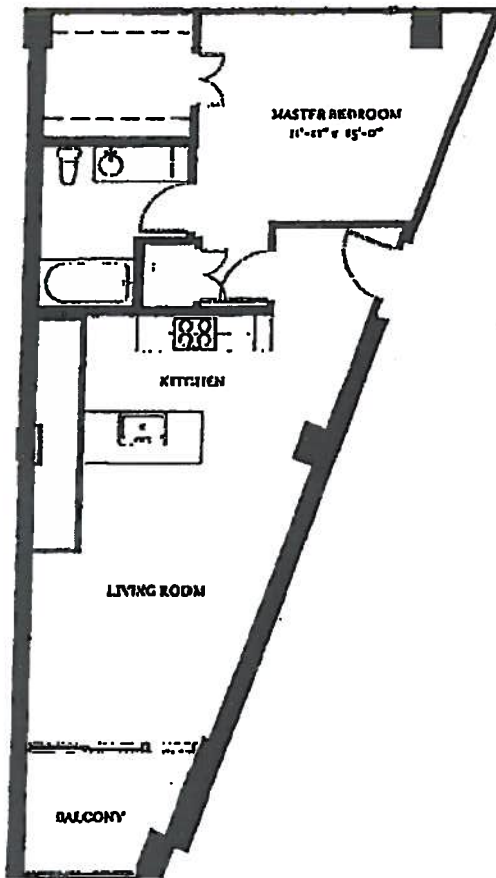
7TH FLOOR

1,282 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information, displays, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property) are subject to change or modification without notice.

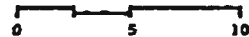
# ARUBA



1 BDRM | 1 BATH

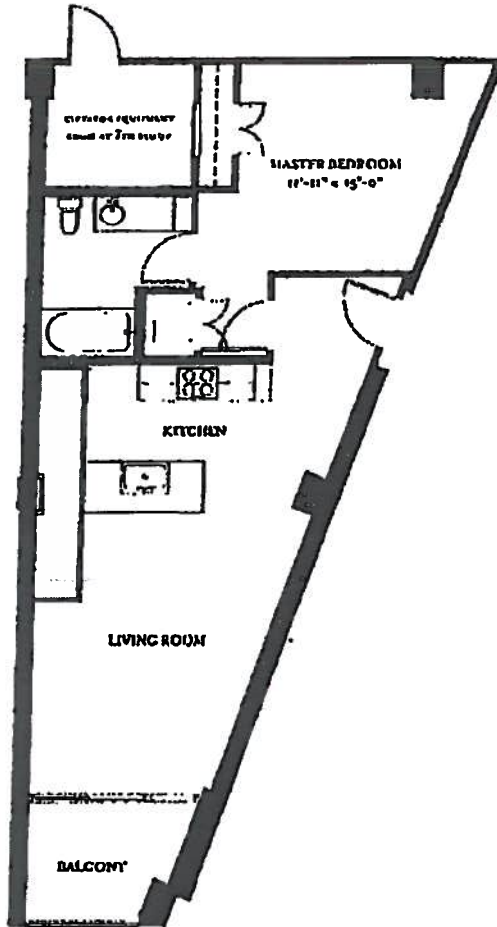
5TH-6TH FLOORS

884 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information), all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

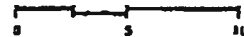
# ARUBA



1 BDRM | 1 BATH

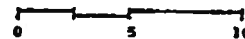
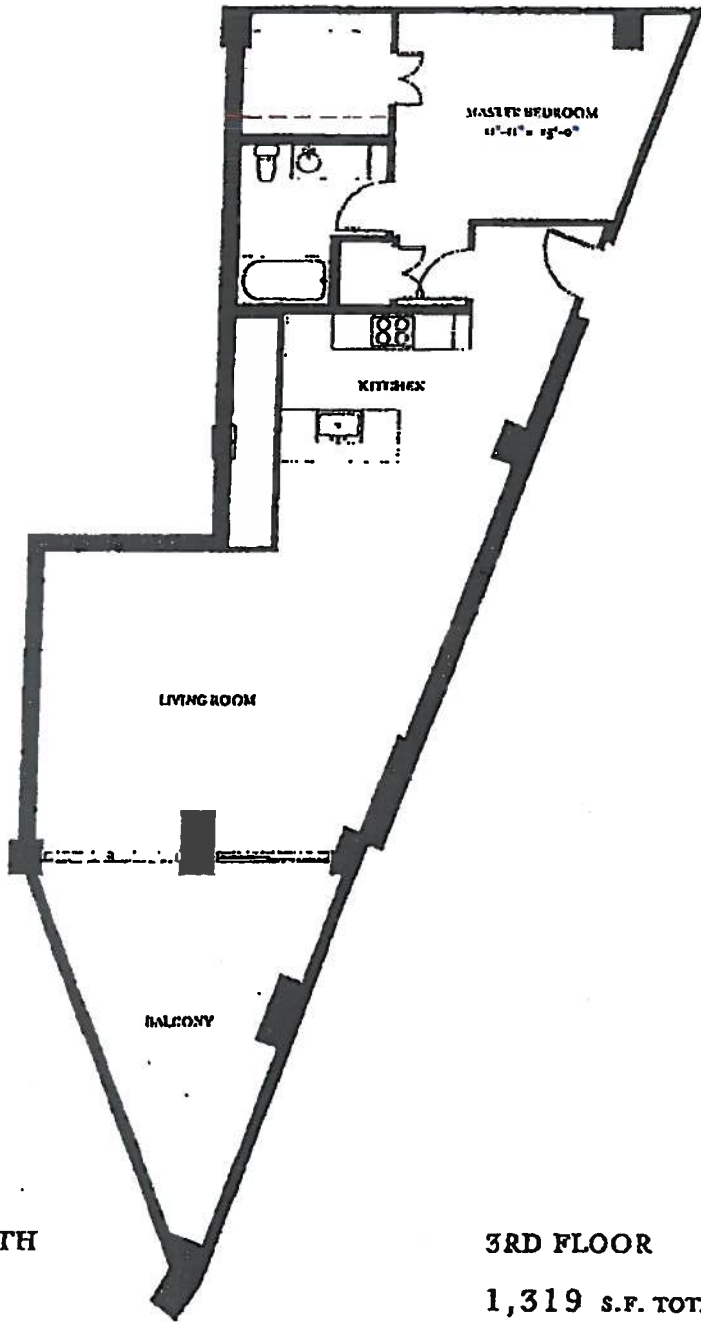
7TH FLOOR

800 s.f. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochure, or similar information), all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements in any part of the Condominium or Property are subject to change or cancellation without notice.

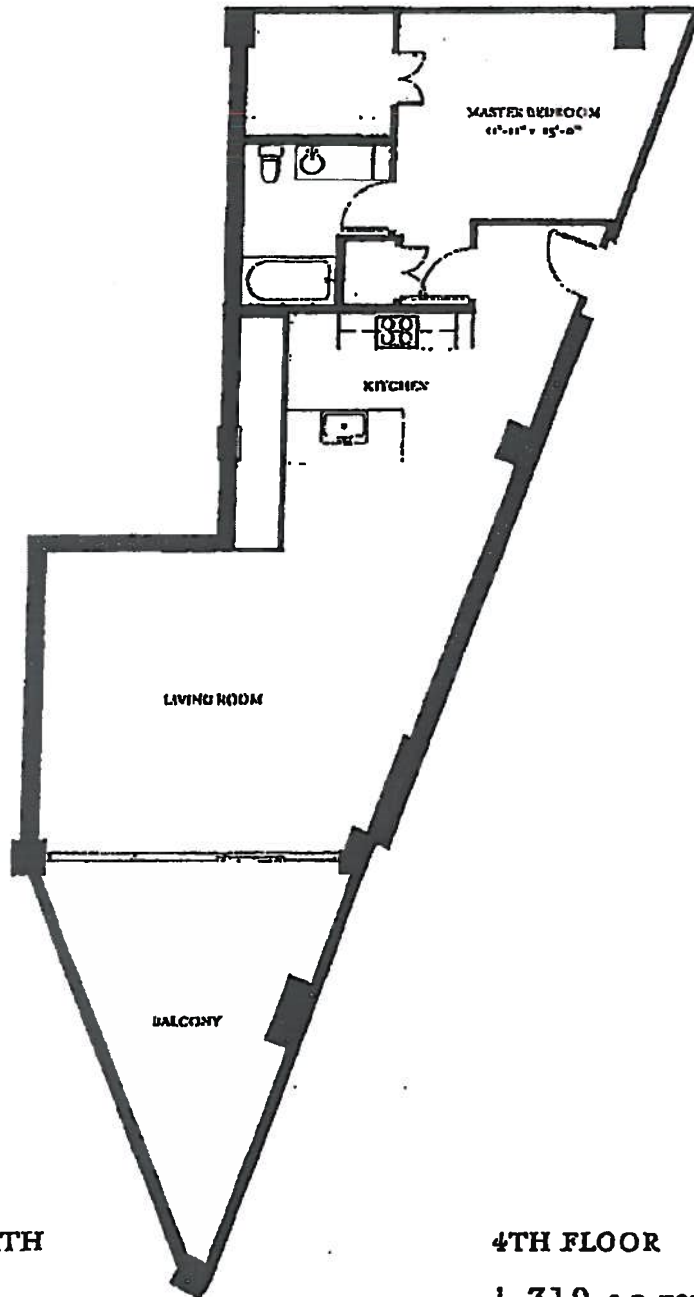
# ARUBA



*Notwithstanding any other information including, without limitation, any marketing, sales, advertising, brochures, or similar information, all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.*



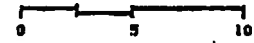
# ARUBA



1 BDRM | 1 BATH

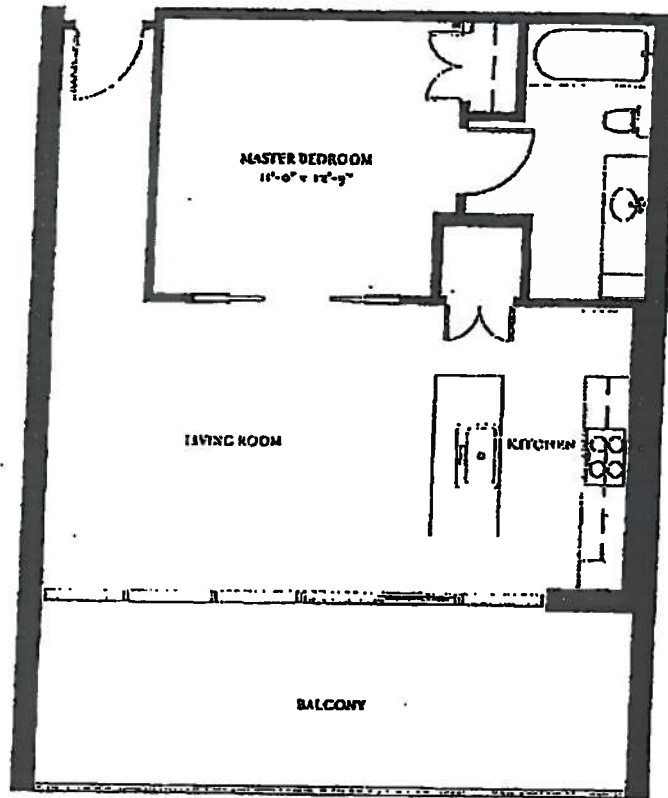
4TH FLOOR

1,319 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information), all plans, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

# BAHAMA



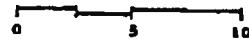
1 BDRM | 1 BATH

2ND FLOOR

3RD-7TH FLOORS

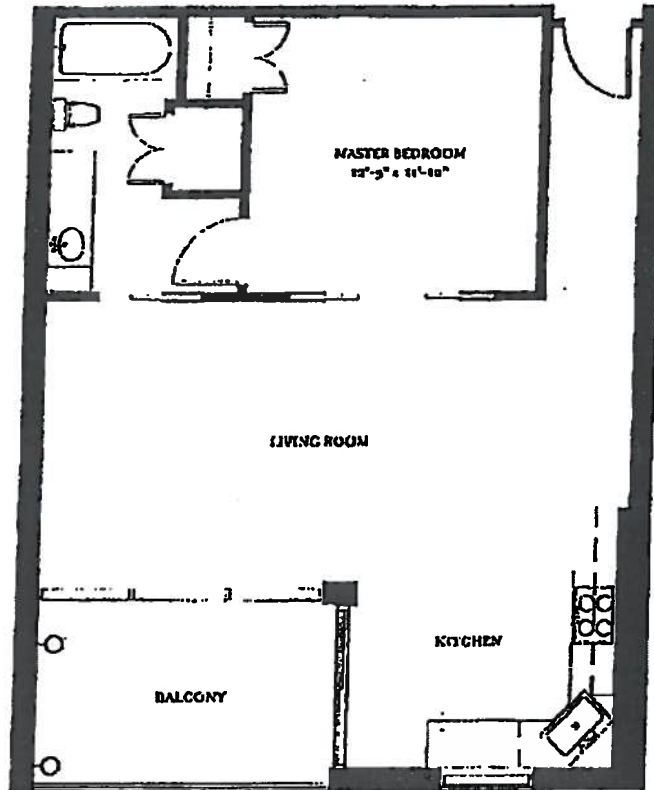
1,215 S.F. TOTAL

919 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or other information), drawings, building design, architectural and engineering plans, specifications, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

# BELIZE



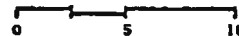
1 BDRM | 1 BATH

2ND FLOOR

3RD-7TH FLOORS

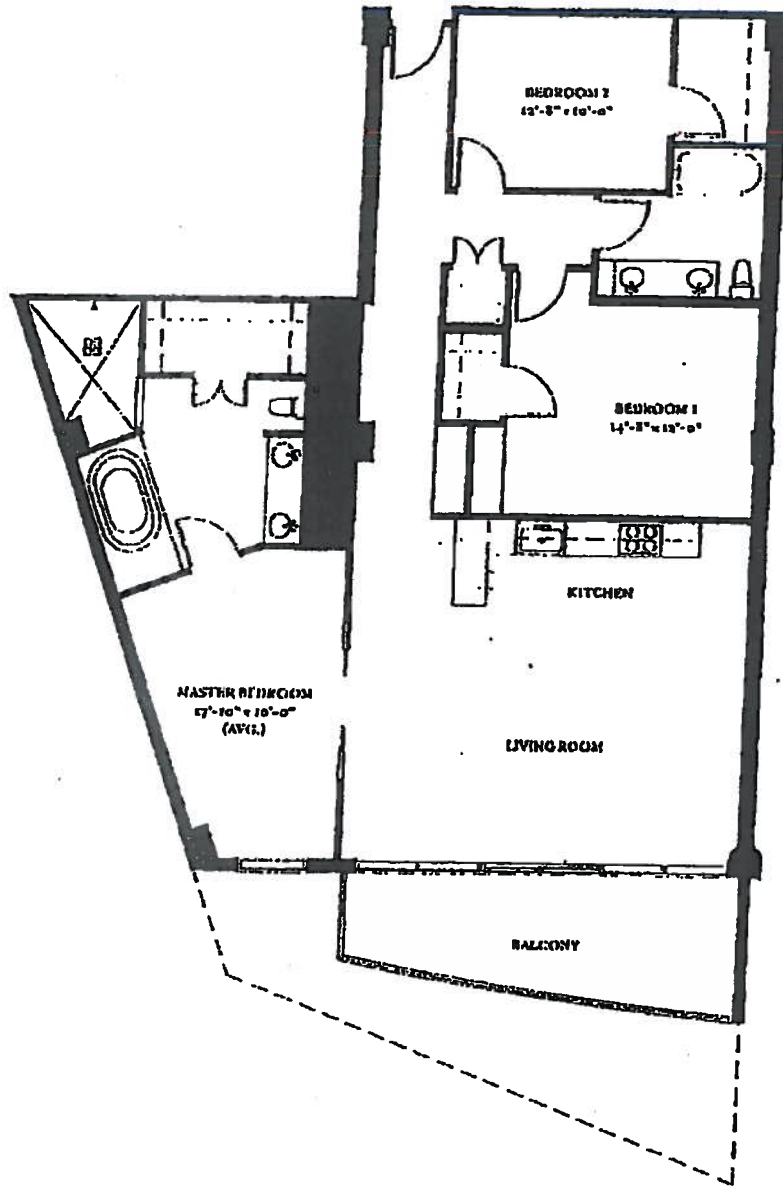
1,215 S.F. TOTAL

919 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information) in print, holding design, architectural rendering, plan, or similar, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or elimination without notice.

# BERMUDA - PENTHOUSE



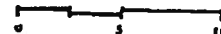
3 BDRM | 2 BATH

5TH FLOOR

6TH-7TH FLOORS

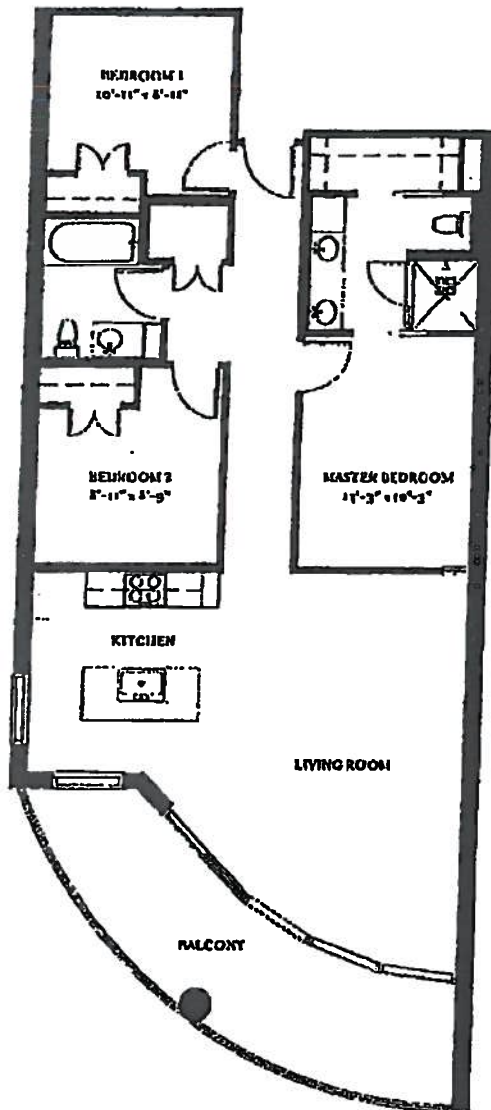
1,999 S.F. TOTAL

1,807 S.F. TOTAL



Notwithstanding any other information including, without limitation, any marketing, sales, advertising, brochures, or similar information, all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

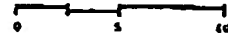
# CANNES



3 BDRM | 2 BATH

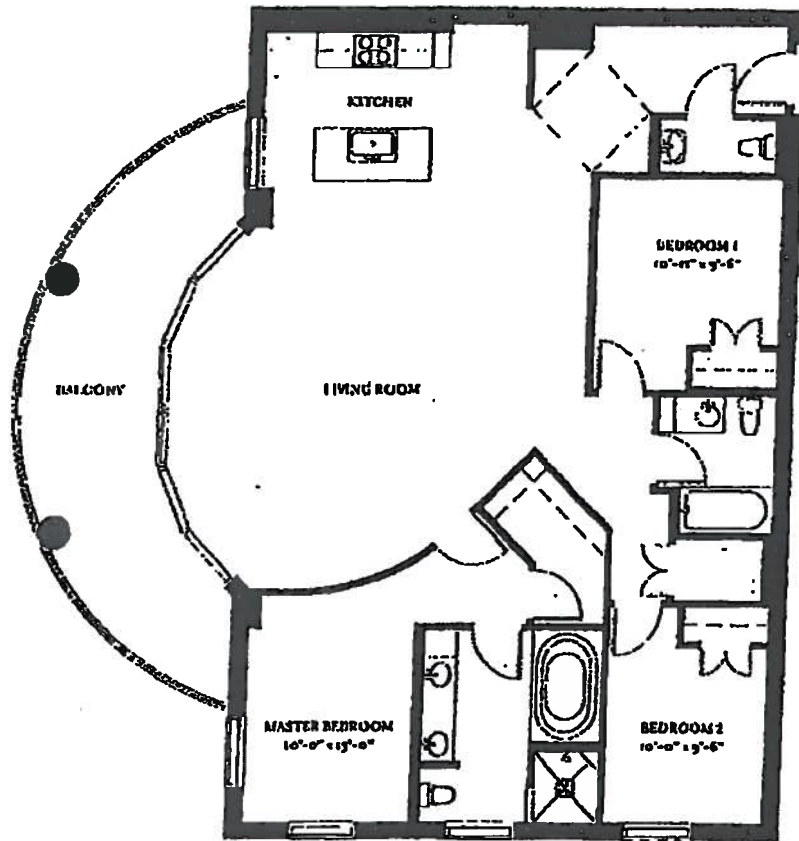
2ND-7TH FLOORS

1,474 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information, all plans, including design, architectural renderings, plans, brochures, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

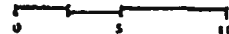
# CAPRI



3 BDRM | 2.5 BATH

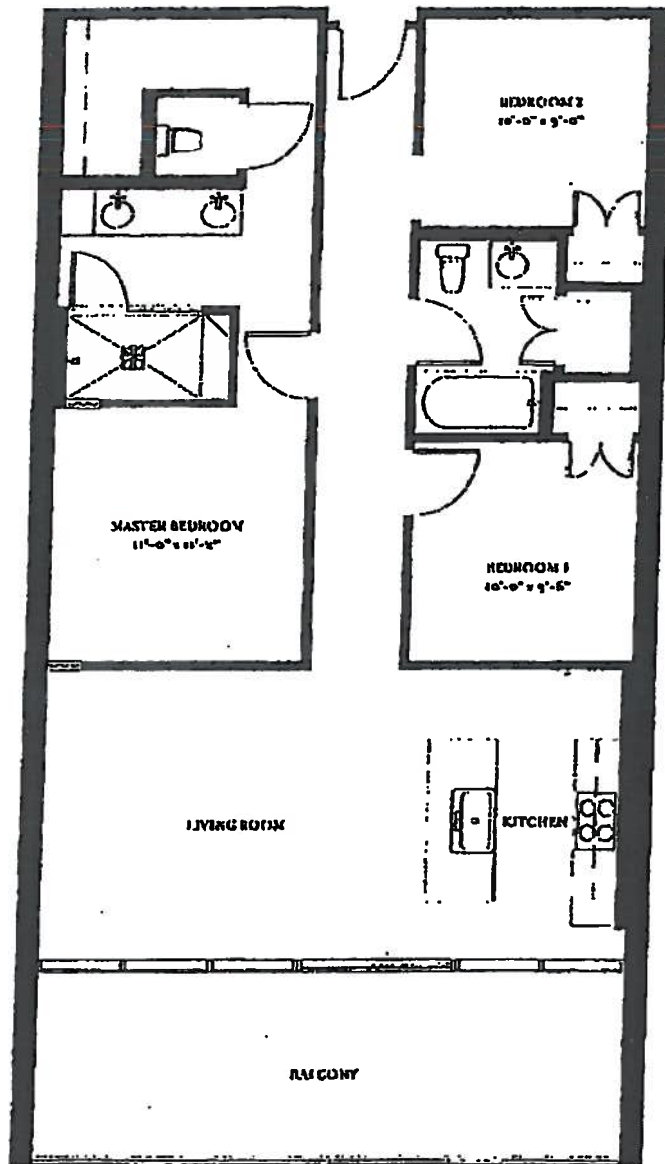
2ND-7TH FLOORS

1,907 S.F. TOTAL



Notwithstanding any other information including, without limitation, any marketing, sales, advertising, brochures, or similar information, all prices, building design, architectural renderings, plans, materials, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

# IBIZA



3 BDRM | 2 BATH

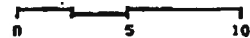
2ND FLOOR

1,485 S.F. TOTAL

UNIT 217 &

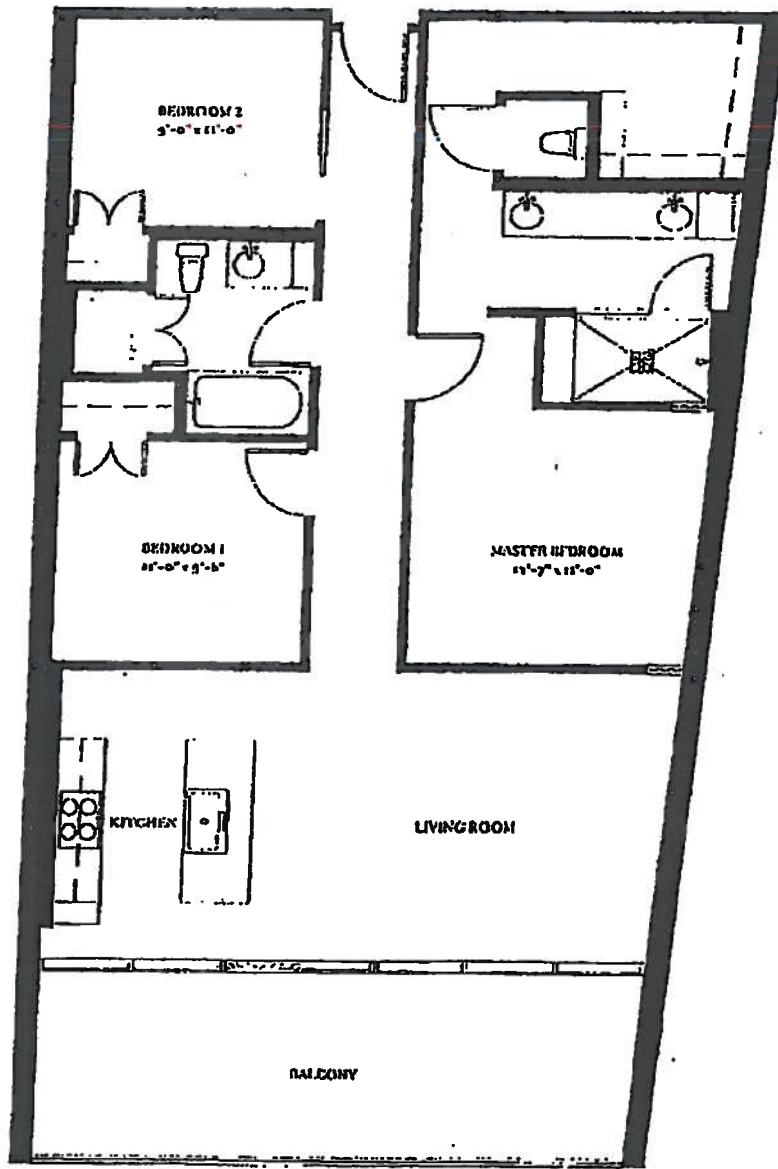
3RD-7TH FLOORS

1,350 S.F. TOTAL



No liability for any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information), or prices, building design, architectural renderings, plans, or details, features and specifications of any and all improvements to any part of the Condo/struck or Property are subject to change or cancellation without notice.

# IBIZA - W



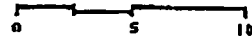
3 BDRM | 2 BATH

2ND FLOOR

3RD-7TH FLOORS

1,596 S.F. TOTAL

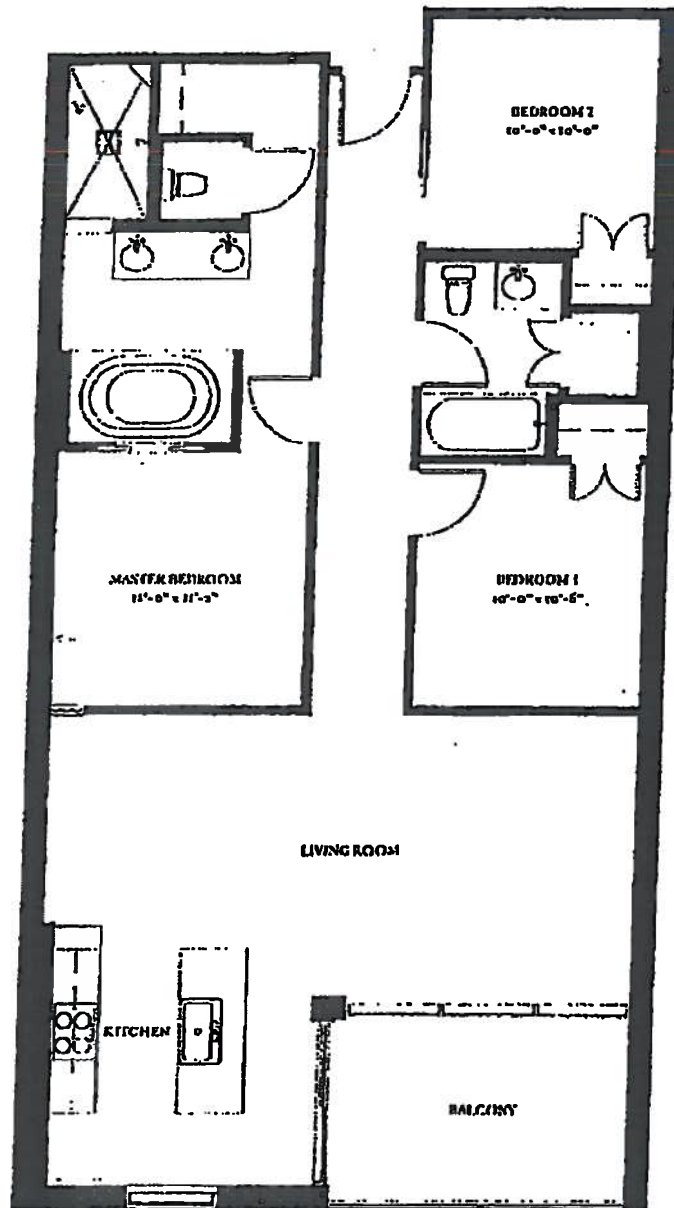
1,461 S.F. TOTAL



Notwithstanding any other information furnished, without limitation, any map, listing, sale, advertising, brochure, or similar information, all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.



# ST. BARTHS



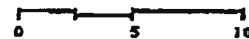
3 BDRM | 2 BATH

2ND FLOOR

3RD-7TH FLOORS

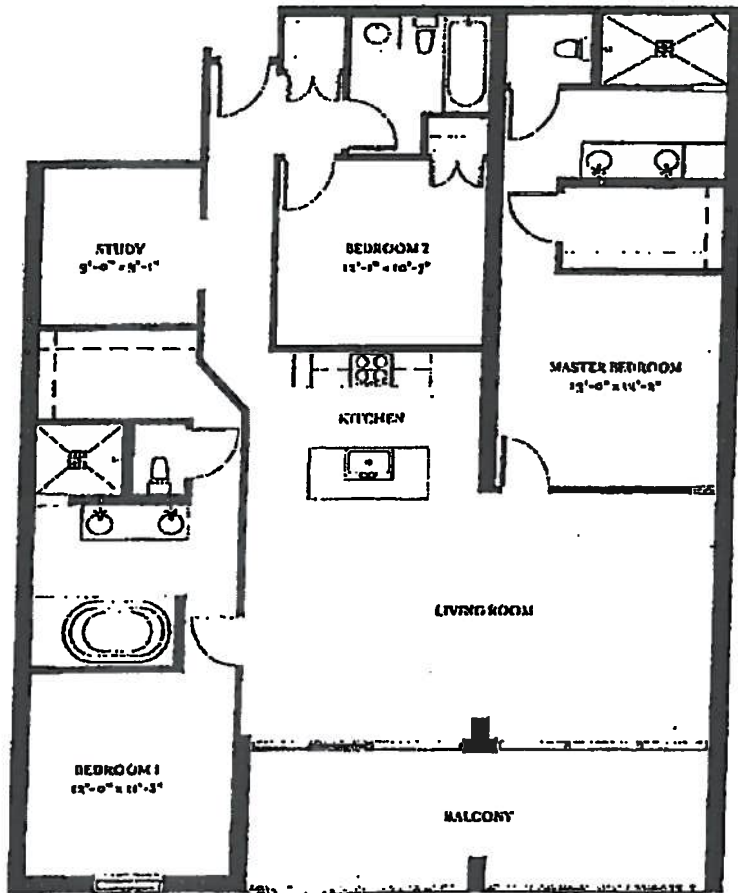
1,507 s.f. TOTAL

1,372 s.f. TOTAL



Notwithstanding any other information including, without limitation, any marketing, sales, advertising, brochures, or similar information, all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

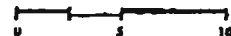
# CABO - PENTHOUSE



3 BDRM/STUDY | 3 BATH

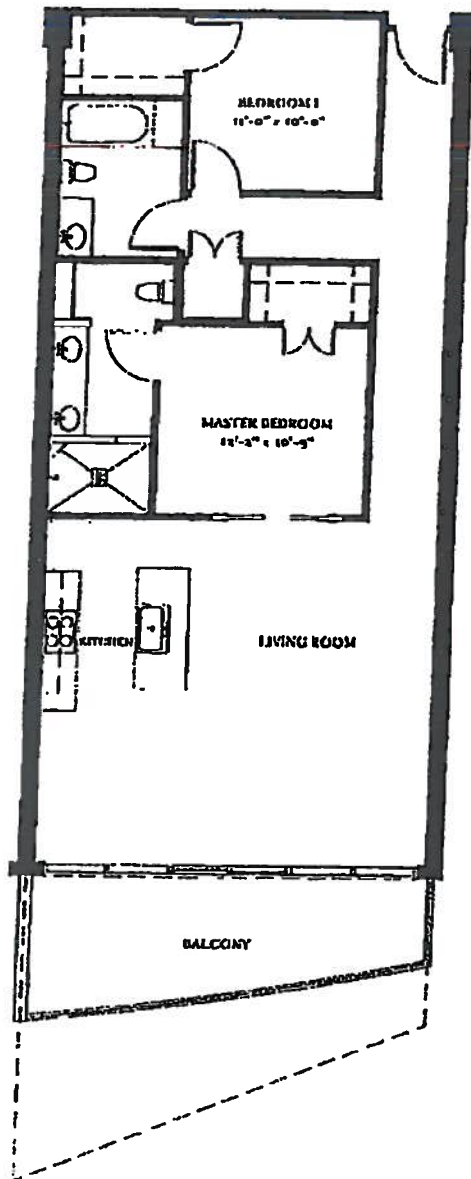
7TH FLOOR

1,999 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochure, or similar information), all prices, building design, architectural renderings, photos, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

# COSTA RICA – PENTHOUSE



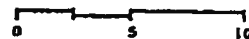
2 BDRM | 2 BATH

5TH FLOOR

6TH-7TH FLOORS

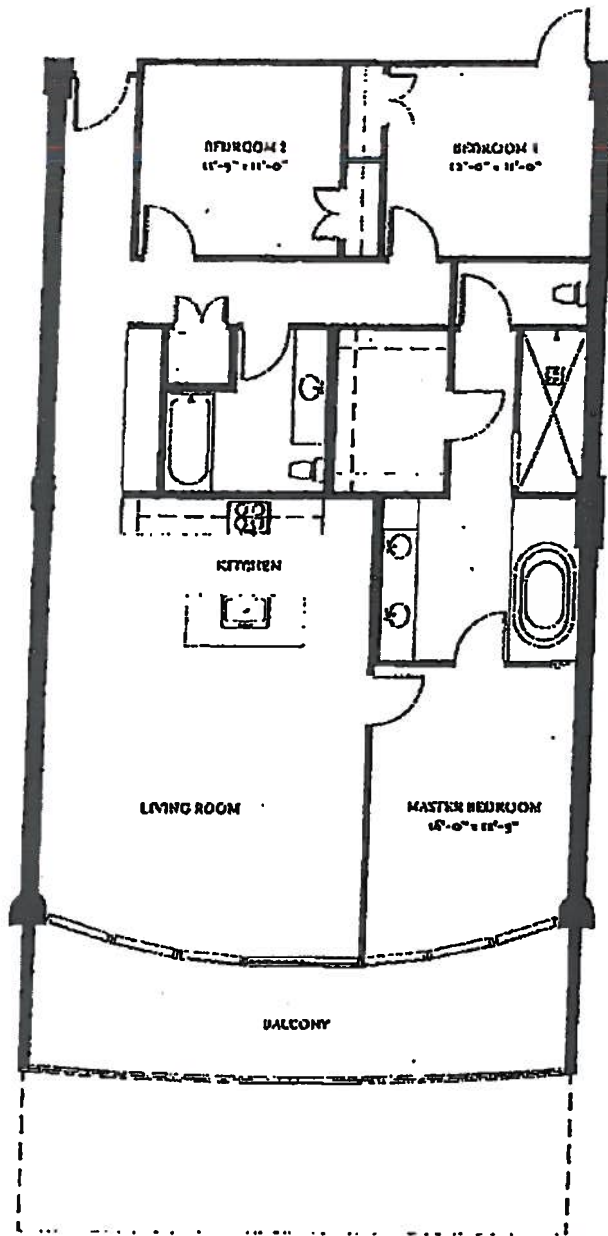
1,509 S.F. TOTAL

1,370 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochure, or similar information), all prices, building design, architectural rendering, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

# DIAMOND BEACH – PENTHOUSE



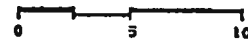
3 BDRM | 2 BATH

5TH FLOOR

6TH-7TH FLOORS

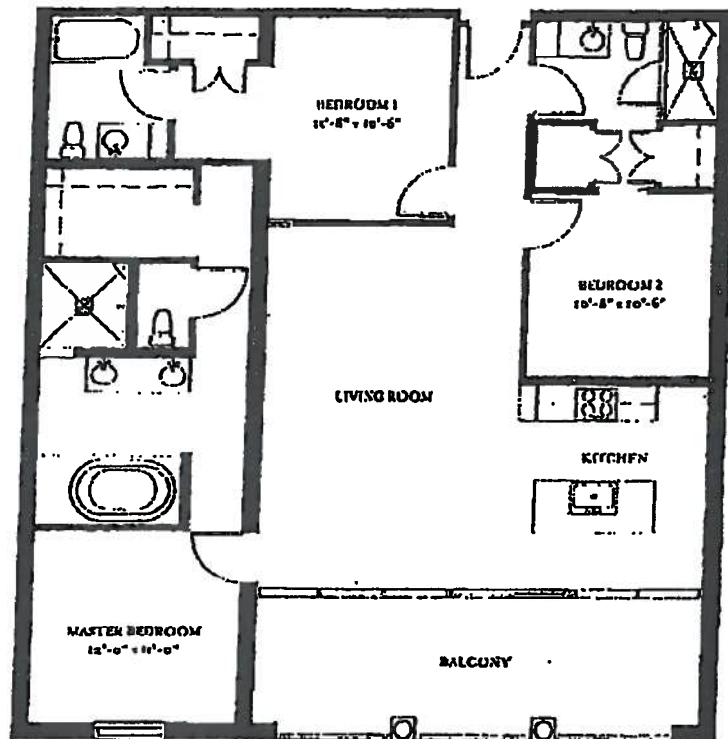
2,166 S.F. TOTAL

1,875 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any listing, sales agreement, brochure, or similar information), all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.

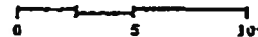
# MAUI - PENTHOUSE



3 BDRM | 3 BATH

7TH FLOOR

1,690 S.F. TOTAL



Notwithstanding any other information (including, without limitation, any marketing, sales, advertising, brochures, or similar information), all prices, building design, architectural renderings, plans, amenities, features and specifications of any and all improvements to any part of the Condominium or Property are subject to change or cancellation without notice.



**SECOND AMENDMENT TO DECLARATION  
OF  
DIAMOND BEACH CONDOMINIUMS**

This Second Amendment to Declaration of Diamond Beach Condominiums, dated effective December 15, 2010, is executed and entered into by Diamond Beach VP, LP, a Texas limited partnership, as Declarant ("Declarant") and amends the Declaration of Diamond Beach Condominiums executed by Declarant January 14, 2009, and filed of record under Clerk's File No. 2009003602 in the Official Public Records of Real Property of Galveston County, Texas (as previously amended by that certain First Amendment to Declaration of Diamond Beach Condominiums executed by Declarant on April 3, 2009, and filed of record under Clerk's File No. 2009018080 in the Official Public Records of Real Property of Galveston County, Texas, the "Declaration").

**RECITALS:**

- A. Capitalized terms not defined herein shall have the definitions set forth in the Declaration.
- B. The Declarant Control Period remains in effect as of the date of execution hereof.
- C. Declarant has exercised a development right pursuant to Section 8.4 of the Declaration and desires to amend the Declaration in accordance with its terms and Texas Property Code Sections 82.059(f) and 82.067(b)(1).

NOW THEREFORE, in accordance with the Declaration and the Texas Uniform Condominium Act, Declarant hereby amends the Declaration as follows:

**ARTICLE I.**

Pursuant to Section 8.4 of the Declaration, Declarant has combined separate Declarant-Owned Units and as set forth on Schedule "1" attached hereto and incorporated herein by reference.

**ARTICLE II.**

The Declaration is hereby modified throughout to the extent in conflict with the contents of this Amendment or Exhibit "B" attached hereto and incorporated herein by reference. The Declaration is unmodified and in full force and effect except as expressly set forth herein.

IN WITNESS WHEREOF, the Declarant has caused this Second Amendment to the Declaration to be executed by a duly authorized agent this 25 day of February, 2011.

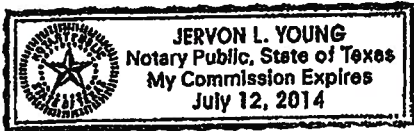
DIAMOND BEACH VP, LP,  
a Texas limited partnership

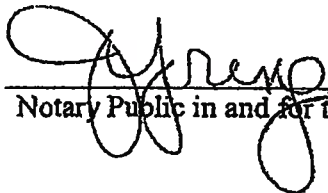
By: Diamond Beach GP, LLC  
a Texas limited liability company,  
its general partner

By:   
RANDALL J. DAVIS, President

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

Before me, the undersigned authority, on this 25 day of February, 2011, personally appeared RANDALL. J. DAVIS, known to me to be the person whose name is subscribed to the foregoing instrument as President of Diamond Beach GP, LLC, a Texas limited liability company that is the general partner of Diamond Beach VP, LP, a Texas limited partnership and acknowledged to me that he executed the same on behalf of such limited partnership.



  
Notary Public in and for the State of Texas

After Recording Return To:  
Susan George  
Andrews Myers, P.C.  
3900 Essex Lane, Ste. 800  
Houston, TX 77027

PAID

## CONSENT OF MORTGAGEE

INTERNATIONAL BANK OF COMMERCE as beneficiary of Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated September 20, 2006, filed for record in the Galveston County Property Records, executed by Randall J. Davis, President of Portland Corporation, a Texas corporation, the in its capacity as the general partner of Diamond Beach VP, LP, a Texas limited partnership, for and on behalf of said corporation and partnership to Jay Rogers, Trustee to secure the payment of one note of even date therewith in the original principal sum of FORTY-ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$41,900,000.00) payable to the order of IBC; and as

Assignee of an Assignment of Leases dated September 20, 2006, filed for record in the Galveston County Property Records.

Assignee of an Assignment of Contracts with respect to Condominium Documents recorded in the Galveston County Property Records; and as

The undersigned hereby subordinates its mortgage lien and security interests and any and all other liens owned or held by it (in and to the Property of the condominium regime to be created) to the terms and provisions of the above and foregoing Declaration of Diamond Beach Condominiums (to which this Consent of Mortgagee is annexed) and to the condominium regime to be created thereby (or to be created thereby upon recordation) all with the same effect and intent as if said Declaration had been executed and recorded prior to the execution and recordation of the mortgage and other instruments created said liens and security interests. This consent shall not be construed operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the individual Units and all appurtenances thereto, and all of the undivided shares and interest in the Common Elements of the Property and of said condominium regime established by said Declaration, until said mortgage and liens are otherwise released by the undersigned.



IN WITNESS WHEREOF, the said Mortgagee has caused this instrument to be signed on its behalf on this 29 day of March, 2011.

**INTERNATIONAL BANK OF COMMERCE**

By: [Signature]

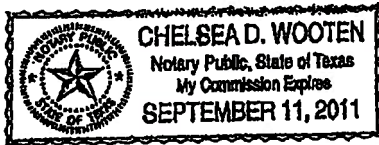
Name: Jeff Samples

Title: President

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on this 29 day of March 2011, by Jeff Samples as President of INTERNATIONAL BANK OF COMMERCE, on behalf of said bank.

[Signature]  
Notary Public, State of Texas



**SCHEDULE "1"**

|

# AMENDMENT TO DECLARATION

Pursuant to Section 8.4 (c) of the Declaration, the declarant, hereby exercises his right under (iii) to combine the following residences into one unit; however, the percentage interest in the common elements of the other units shall not be changed.


<u>Original</u>	<u>Combined</u>	<u>New</u>
518	518/519	518
519		
709	709/710	709
710		
711	711/712	711
712		
713	713/714	714
714		

  
\_\_\_\_\_  
Randall Davis

12/15/10  
Date

  
\_\_\_\_\_  
Natalie Davis

12/15/10  
Date

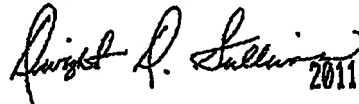
  
\_\_\_\_\_  
Martie J Terry

12/15/10  
Date

## FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

  
2011016032

March 30, 2011 01:24:04 PM

FEE: \$36.00

Dwight D. Sullivan, County Clerk  
Galveston County, TEXAS



**THIRD AMENDMENT TO DECLARATION  
OF  
DIAMOND BEACH CONDOMINIUMS**

This Third Amendment to Declaration of Diamond Beach Condominiums, dated effective June 16 2011, is executed and entered into by Diamond Beach VP, LP, a Texas limited partnership, as Declarant ("Declarant") and amends the Declaration of Diamond Beach Condominiums executed by Declarant January 14, 2009, and filed of record under Clerk's File No. 2009003602 in the Official Public Records of Real Property of Galveston County, Texas (as previously amended by that certain First Amendment to Declaration of Diamond Beach Condominiums executed by Declarant on April 3, 2009, and filed of record under Clerk's File No. 2009018080 in the Official Public Records of Real Property of Galveston County, Texas, and as further amended by that certain that certain Second Amendment to Declaration of Diamond Beach Condominiums executed by Declarant effective December 15, 2010, filed of record under Clerk's File No. 2011016032 in the Official Public Records of Real Property of Galveston County, Texas, the "Declaration").

**RECITALS:**

- A Capitalized terms not defined herein shall have the definitions set forth in the Declaration
- B. The Declarant Control Period remains in effect as of the date of execution hereof.
- C Declarant previously exercised a development right pursuant to Section 8.4 of the Declaration and amended the Declaration in accordance with its terms and Texas Property Code Sections 82.059(f) and 82.067(b)(1).
- D. As a result of such exercise, the total number of residential condominium units in Phase I is 116.

NOW THEREFORE, in accordance with the Declaration and the Texas Uniform Condominium Act, Declarant hereby amends the Declaration as follows:

**ARTICLE I.**

As set forth in the Second Amendment to the Declaration of Diamond Beach referenced above, pursuant to Section 8.4 of the Declaration, Declarant combined separate Declarant-Owned Units and as set forth on Schedule "1" attached hereto and incorporated herein by reference.

**ARTICLE II.**

As of the effective date hereof, there are a total of 116 residential condominium units in Phase I.

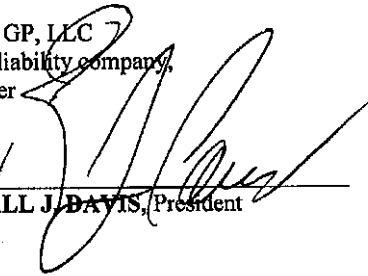
**ARTICLE III.**

The Declaration is hereby modified throughout to the extent in conflict with the contents of this Amendment or Schedule "I" attached hereto and incorporated herein by reference. The Declaration is unmodified and in full force and effect except as expressly set forth herein.

IN WITNESS WHEREOF, the Declarant has caused this Third Amendment to the Declaration to be executed by a duly authorized agent this 16 day of June, 2011.

**DIAMOND BEACH VP, LP,**  
a Texas limited partnership

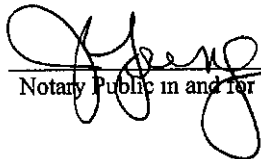
By. Diamond Beach GP, LLC  
a Texas limited liability company,  
its general partner

By   
\_\_\_\_\_  
RANDALL J. DAVIS, President

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

Before me, the undersigned authority, on this 16 day of June, 2011, personally appeared **RANDALL J. DAVIS**, known to me to be the person whose name is subscribed to the foregoing instrument as President of Diamond Beach GP, LLC, a Texas limited liability company that is the general partner of Diamond Beach VP, LP, a Texas limited partnership and acknowledged to me that he executed the same on behalf of such limited partnership.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

## CONSENT OF MORTGAGEE

INTERNATIONAL BANK OF COMMERCE as beneficiary of Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated September 20, 2006, filed for record in the Galveston County Property Records, executed by Randall J Davis, President of Portland Corporation, a Texas corporation, the in its capacity as the general partner of Diamond Beach VP, LP, a Texas limited partnership (the "Borrower"), for and on behalf of said corporation and partnership to Jay Rogers, Trustee to secure the payment of one note of even date therewith in the original principal sum of FORTY-ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$41,900,000 00) payable to the order of IBC; and as

Assignee of an Assignment of Leases dated September 20, 2006, filed for record in the Galveston County Property Records

Assignee of an Assignment of Contracts with respect to Condominium Documents recorded in the Galveston County Property Records; and as

The undersigned hereby subordinates its mortgage lien and security interests and any and all other liens owned or held by it to the Borrower to the terms and provisions of the attached Third Amendment to Declaration of Diamond Beach Condominiums (the "Third Amendment") with the same effect and intent as if the Third Amendment had been executed and recorded prior to the execution and recordation of the mortgage and other instruments created said liens and security interests This consent shall not be construed operate as a release of any mortgage, liens or security interests owned and held by the undersigned, or any part thereof, but the undersigned agrees that said mortgage, liens and security interests shall remain in full force and effect until said mortgage and liens are otherwise released by the undersigned

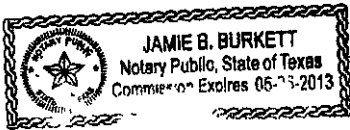
IN WITNESS WHEREOF, the said Mortgagee has caused this instrument to be signed on its behalf on this 17 day of June, 2011

**INTERNATIONAL BANK OF COMMERCE**

By Robert B. Barnes  
Name Robert B. Barnes  
Title President

STATE OF TEXAS     §  
                              §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on this 17 day of June, 2011,  
Robert B. Barnes by  
President as  
INTERNATIONAL BANK OF COMMERCE, on behalf of said bank of



Jamie B. Burkett  
Notary Public, State of Texas

**SCHEDULE "1"**



**AMENDMENT TO DECLARATION**

Pursuant to Section 8.4 (c) of the Declaration, the declarant, hereby exercises his right under (iii) to combine the following residences into one unit, however, the percentage interest in the common elements of the other units shall not be changed

<u>Original</u>	<u>Combined</u>	<u>New</u>
518	518/519	518
519		
709	709/710	709
710		
711	711/712	711
712		
713	713/714	714
714		

  
 \_\_\_\_\_  
 Randall Davis

12/15/10  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Natalie Davis

12/15/10  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Martie J Terry

12/15/10  
 \_\_\_\_\_  
 Date

**PAID**  
 Andrews Myers, PC  
 3900 Essex Lane #800  
 Houston TX 77027  
 Attn: Susan George

**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

  
 2011030959

June 20, 2011 02 22 28 PM

FEE \$36 00

Dwight D Sullivan, County Clerk  
 Galveston County, TEXAS