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**MASTER DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND EASEMENTS  
FOR TERN BAY TOWNHOMES**

**THIS DECLARATION** (the "Declaration") is made on the date hereinafter set forth by **PELICAN ISLE DEVELOPMENT, INC., a Florida Corporation, HEREINAFTER REFERRED TO AS THE 'DECLARANT'.**

**WITNESSETH:**

**WHEREAS,** the Declarant is the owner of certain real property in Pinellas County, Florida, included within and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS,** Declarant desires to create an exclusive residential community known as "**TERN BAY TOWNHOMES**" on the "Exhibit A" land, and such other land as may be added thereto pursuant to the terms and provisions of this Declaration;

**NOW THEREFORE,** the Declarant hereby declares that the real property described on attached Exhibit "A" shall be subject to, and shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

**Section 1. "Additional Properties"** shall mean and refer to any real property submitted by the Declarant to which the provisions of this Declaration from time to time may be extended or hereinafter provided.

**Section 2. "Annexation Amendment"** means any declaration of covenants, conditions and restrictions or easements that may be recorded by the Declarant for the purpose of supplementing, amending or extending the provisions of this Declaration to all or any portion of the Additional Properties.

**Section 3. "Articles"** shall mean and refer to the Articles of Incorporation of the Association, including any and all amendments or modifications thereof.

**Section 4. "Association"** shall mean and refer to Tern Bay Townhomes Homeowner's Association, Inc., a Florida non-profit corporation, its successors and assigns.

**Section 5. "Building"** shall mean and refer to any structure located on a lot or lots.

PREPARED BY:  
GABRIELLE BETTIG  
PELICAN ISLE DEVELOPMENT  
1117 PINELLAS BAYWAY,  
TIERRA VERDE, FL 33715

RETURN TO  
STEWART TITLE OF PINELLAS, INC.  
1110 PINELLAS BAYWAY #111  
TIERRA VERDE, FL 33715

COPIED

**Section 6.** "By Laws" shall refer to the By Laws of the Association, including any and all amendments or modifications thereof.

**Section 7.** "Common Area" shall mean all real property located on the plat but outside the Lots (including the improvements thereon) now or hereafter owned by the Association for the common use and enjoyment of the Owners, including any portion of the Additional Properties designated as a Common Area in any Annexation Amendment.

**Section 8.** "Common Roof Area" shall mean and refer to any roof installed, constructed or erected by Declarant as a part of the original construction of the Buildings on the Lots and which serves one or more lots together with any replacement thereof.

**Section 9.** "Declarant" shall mean and refer to Pelican Isle Developments, Inc. a Florida Corporation.

**Section 10.** "Declaration" shall mean and refer to this Master Declaration of Covenants, Conditions and Restrictions and Easements for TERN BAY TOWNHOMES, and any amendments, modifications or supplemental declarations thereof hereafter made from time to time.

**Section 11.** "Lot" shall mean and refer to any of the lots included in attached Exhibit "A" and which are platted on the plat of TERN BAY TOWNHOMES, plat filed by the Declarant which consists of a total of thirty one (31) Lots. The word "lot" does not include any lands comprising any portion of the Common Area.

**Section 12.** "Mortgage" shall mean and refer to any mortgage, encumbering any interest in a Lot, or creating a lien upon a Lot, in either case as security for the performance of an obligation. The term "Mortgage" does not include judgments, involuntary liens, or liens arising by operation of Law.

**Section 13.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lots which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.

**Section 14.** "Party Wall" shall mean and refer to any wall or fence installed, constructed, or erected by Declarant as a part of the original construction of the Buildings on the Lots located on or along the common boundary line between any two lots, together with any replacement thereof.

**Section 15.** "Properties" shall mean and refer to that certain real property described on Attached Exhibit "A", and the additional properties. The properties include **TERN BAY TOWNHOMES** which will be platted in the Public Records of Pinellas County, Florida.

**Section 16** "Leases" shall mean and refer to rentals, leases, time share. No units to be leased or rented more than seven (7) times over a three (3) year period.

### PROPERTY SUBJECT TO DECLARATION

The Real Property initially subject to this Declaration is that real property ("The Properties"), located in Pinellas County, Florida particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant may from time to time, designate all or any portion of the Additional Properties as being subject to this Declaration by placing of record an Annexation Amendment which supplements, amends or extends the provisions of the Declaration to such portions of the Additional Properties as may be submitted.

### ARTICLE III EASEMENTS

The Following easements are created in favor of the Association, Owners and Declarant, as the case may be as follows:

**Section 1. Easement for Ingress and Egress.** The Owners, Declarant and the Association are hereby granted a nonexclusive easement of ingress and egress over, across, and under all sidewalks, paths, roadways and streets located on the Properties or Common Area, now or hereafter subject to this Declaration.

**Section 2. Easement for Utilities.** The properties and common areas now or hereafter subject to this Declaration shall be subject to nonexclusive easements for present and future services to the Lots and Common Areas including but not limited to, easements for water pipe, sanitary sewer pipe, emergency sewer lines, storm drainage pipes, sprinkler pipes, electrical wires, cable television wires, telephone cables, security wires and street lights. Said utility easements shall be in favor of any entity or utility company furnishing utility services for the properties or common areas now or hereafter subject to this Declaration. The Association, Declarant, Owners, and utility companies, as the case may be shall have the right to enter upon any portion of the Properties or Additional Properties if submitted and common Areas for the purpose of installing, constructing, maintaining, operating, servicing, repairing, and replacing underground water and utility mains, lines, pipes, and other facilities necessary for the furnishing of utilities to the Properties, Additional Properties or Common Areas now or hereafter subject to this Declaration.

**Section 4. Easement for Support.** There shall be reciprocal appurtenant easements between the Lots to either side of a party wall or common wall between the Lots for lateral and subjacent support, and for encroachments caused by the unwillfully placement, settling and shifting of any such walls as constructed or reconstructed.

**Section 5. Easement for Encroachments.** In the event that the roof, gutter or other appurtenance to any Lot encroaches upon the Common Areas or any other Lot, then an exclusive easement shall continue to exist to the extent of such encroachment so long as same shall continue. In the event that any Common Area shall encroach upon any Lot, then a nonexclusive easement shall exist to the extent of such encroachment so long as the same shall continue. Additionally, in the event that a Lot encroaches upon any utility easement either granted or reserved hereby, such encroachment shall entitle the Owner of such encroaching property to an automatic nonexclusive easement on said utility easement for as long as such encroachment shall continue.

**Section 6. Easement for Governmental, Health, Sanitation, and Emergency Services.** A nonexclusive easement is hereby granted to the appropriate governmental authorities and to the appropriate private organizations supplying health, sanitation, police services and any emergency services, such as fire, ambulance and rescue services for purpose of ingress and egress over the Properties and Common Areas now or hereafter subject to this Declaration.

**Section 7. Easement for Use of Common Area.** There is hereby granted to the Association, Declarant and Owners a nonexclusive easement for the use of the recreational facilities, and other improvements situated on the Common Area now or hereafter owned by the Association, in accordance with those rules and regulations now or hereafter promulgated by the Association.

**Section 8. Reservation of Easement for Ingress and Egress.** Developer hereby reserves for itself, and its successors and assigns an easement over, across and under all sidewalks, paths, walks, roadways and streets located on the Properties or Common Areas for access to and from the Additional Properties.

#### ARTICLE IV

#### PURPOSE

**Section 1. Operation, Maintenance and Repair.** The purpose of the Association shall be to operate, maintain and repair the Common Area, and any improvements thereon; to maintain the decorative entranceways to the Properties and

streets, walkways and roadways within the Properties; to maintain and repair the fences appurtenant to the Lots; to maintain and repair any irrigation and drainage facilities servicing land which the Association is obligated to maintain; to pay for the costs of street lighting for Common Areas or other areas designated by the Board of Directors, and take such other action as the Association is authorized to take with regard to the Properties pursuant to its Articles of Incorporation and By-Laws, or this Declaration.

**Section 2. Exterior Maintenance to Lots.** The Association shall provide exterior maintenance upon the exterior of the Buildings on the Lots or Lots, including, but not limited to, the following: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, exterior improvements, lawn care, or shrubbery maintenance which may be located on the Lot or Lots and maintenance of all glass surfaces and the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

**Section 3. Expansion of Common Area.** Additions to the Common Area may be made in accordance with the terms of this Declaration which provides for additions to the Properties at the option of Declarant. The Declarant shall not be obligated, however, to make any such additions.

#### ARTICLE V

#### PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment.** Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association from time to time in accordance with its By-Laws to establish, modify, amend and rescind reasonable rules and regulations regarding use of the Common Area;
- (b) The right of the Association to charge reasonable admission and other fees for use of any facilities situated upon the Common Area;
- (c) The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment levied under this Declaration against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, as provided by its Articles;

(e) The right of the Association to grant easements as to the Common Area or any part thereof as provided by its Articles;

(f) The right of the Association to otherwise deal with the Common Area and Properties as provided in its Articles.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers provided the foregoing actually reside at the Lot. For purposes of this Declaration, the term "reside" is defined as occupancy of a Lot for any period greater than two (2) weeks in any one calendar year.

**Section 3. Prohibition of Certain Activities.** No damage to, or waste of, the Common Area, the improvements thereon, or any part thereof, shall be committed by any Owner or any tenant or invitee of any Owner. No noxious, destructive or offensive activity shall be permitted on or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become an unreasonable annoyance or nuisance to any other Owner. No Owner may maintain, treat, landscape, sod, place or erect any improvement or structure of any kind on the Common Area, any Building, or any Lot without the prior approval of the Architectural Control Committee as provided in the By-Laws.

**Section 4. Signs Prohibited.** No sign of any kind shall be displayed in or on any Lot or in or on the Common Areas. This section, however, shall not apply to the Declarant.

**Section 5. Animals.** No animals or pets shall be permitted on the Lots or in the Common Area at any time except an Owner shall be permitted to have one (1) pet reside on the Lot provided said pet does not exceed twenty (20) pounds in weight at all times.

**Section 6. Rules and Regulations.** No owner or other permitted user shall violate the reasonable Rules and Regulations for the use of the Common Area, as the same are from time to time adopted by the Association. The initial Rules and Regulations of the Association are as follows:

(a) Lots shall be used only for residential purposes; there shall be no business or commercial use of any Lot. Specifically, the Common Area shall never be developed for business or commercial uses.

(b) No Lot shall be occupied at the same time by more than one (1) family, its servants and guests. A "Family" shall be defined herein as that collective body of persons living together including a father, mother, children and immediate blood relatives dependent upon the head of the household for support.

(c) No nuisance shall be allowed to exist upon the Properties or Common Area, nor shall any use or practice be allowed that is the source of annoyance to other residents or which interferes with the peaceful possession and proper use of any of the Properties by its residents.

(d) No immoral, improper, offensive or unlawful use shall be made of the Properties, Common Area, nor any part of it, and all valid laws, zoning ordinances and regulations of all governmental bodies having having jurisdiction shall be observed.

(e) At no time are pets permitted on the Common Areas or in any improvements that me be located on the Lots or Common Areas. A Lot Owner shall be responsible for all violations of this Rule by lessees of his Lot and said Lot Owner shall be subject to such fines or penalties as the Association imposes for each violation. Any violation of the rules governing the right to maintain pets may result in a revocation of the right to keep the pets.

(f) The terms of any lease or other use rights relating to each Lot or Building shall be for a term of not less than thirty (30) days. Upon entering into a lease agreement, the Lot Owner waives in favor of the tenant any right to use the recreational facilities situated on the Common Area. A tenant of any Lot Owner or of Declarant shall have the same right to use the recreational facilities as the owner of said Lot had; and said tenant shall abide and be bound by the same restrictions, covenants, conditions, rules and regulations, as the Lot Owner.

(g) No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the Lot or Common Area; provided, however, the right is specifically reserved in Declarant to place "For Sale" or "For Rent" signs in connection with any Lots it may from time to time own, and in any first Mortgagee which may become the owner of a Lot, and in the Association as to any Lots which it may own.

(h) All drying or hanging, for any purpose, of clothes, towels or other unsightly objects by line, rack or otherwise, which is visible outside the Lot, shall be prohibited.

(i) No exterior antennas or areals of any type shall be erected, except as provided in these Rules and Regulations.

(k) Parking in assigned, unassigned, or guest spaces shall be limited to passenger automobiles, passenger station wagons, vans, trucks under a one (1) ton weight, and motorcycles. Such trucks must be used in the daily business of the Lot Owner. All other vehicles, trailers and other objects and matters not specifically authorized herein, including recreational vehicles, trailers and boats, shall not be permitted in said parking spaces unless the Association gives its prior written

consent. This prohibition on parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pickup, delivery and other commercial services as may be necessary to effectuate deliveries to the Lots, Common Areas, the Association, Lot Owners and residents.

(l) No reflective film or other type of window treatment shall be placed or installed on the inside or outside of any Lot without the prior written consent of the Architectural Control Committee.

(m) Any drapes, curtains, blinds, shades or other window coverings of any type or kind placed or installed in any and all exterior windows of any Lot shall have a white/neutral colored surface or drape lining facing the outside. It is the intent of the Declarant and the Association to maintain uniformity in the exterior window appearance of all Lots and Buildings. In addition, no window or wall air-conditioning units shall be installed in any portion of the building including any garage unless the Association consents to the same in writing.

(n) All repairs to any plumbing or to electrical wiring within a Lot shall be made by plumbers or electricians authorized to do such work by proper governmental authorities.

(o) No mechanical work may be done on any car, truck or other vehicle on the Lot or Common Area.

(p) No changes to the exterior of any Lot or Building may be made without the prior written consent of the Architectural Control Committee, as it is the intent of the Association to maintain a uniformity of appearance in the Lots and Buildings.

(q) All garage doors that may be located on any Building improvements on the Lots shall be continuously kept closed except for entry and exiting of automobiles from time to time.

(r) No fencing of any type may be erected or installed on any Lot or Common Area.



**Section 7. Title to Common Area.** The Declarant shall dedicate any convey title to any Common Area to the Association, subject to such easements, reservations, conditions and restrictions as may then be of record.

## ARTICLE VI

### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Every Owner of a Lot, which is subject to assessment shall be a member of the Association, subject to and bound by the Associations' Articles of Incorporation, By-Laws, Rules and Regulations, and this Declaration. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership, as defined above, shall be the sole qualification for membership. When any Lot is owned by two or more persons or other legal entity, all such persons or entities shall be members. An Owner of more than one lot shall be entitled to one membership for each Lot owned by him. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot. The Declarant shall also be a member so long as is owns one or more Lots.

**Section 2. Voting.** The Association shall have two classes of voting membership, Class A and Class B. All votes shall be cast in the manner provided in the By-Laws. When more than one person or entity holds an interest in any Lot, the vote for such Lot shall be exercised, as such persons determine, but in no event shall more than the number of votes hereinafter designated be cast with respect to any such Lot, nor shall any split vote be permitted with respect to such Lot. The two classes of voting memberships, and voting rights related thereto, are as follows:

(a) **Class A.** Class A members shall be all Owners of Lots subject to assessment; provided, however, so long as there is Class B membership the Declarant shall not be a Class A member. Owner of Class A Lots situate on the Properties subject to the Declaration shall be entitled to one (1) vote for each Lot owned.

(b) **Class B.** Class B membership shall be the Declarant. Class B Lots shall be all Lots which the Declarant owns and is allowed to develop on the Properties and Additional Properties. The Declarant shall be entitled to three (3) votes for each Class B Lot which it owns.

(c) **Termination of Class B.** From time to time, Class B membership may cease and be converted to Class A membership, and any Class B

Lots then subject to the terms of this Declaration shall become Class A Lots, upon the happening of any of the following events, whichever occurs earlier: (i) when the total votes outstanding in the Class B membership; or (ii) on June 1, 2000; or (iii) when the Declarant waives in writing its right to Class B membership.

#### ARTICLE VII

#### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**Section 1. Responsibilities.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area, and shall keep the same in good, clean and proper condition, order and repair. The Association shall also maintain and care for the land and improvements described in Article IV hereof, in the manner therein required. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the operation, administration and management of the Common Area, maintenance and care of the land and improvements described in Article IV hereof, and performance of its other obligations hereunder.

**Section 2. Manager.** The Association may obtain, employ and pay for the services of an entity or person, hereinafter called the "Manager", to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are furnished or employed directly by the Association or by the Manager. Any management agreement must be terminable for cause upon thirty (30) days notice, be for a term not to exceed one (1) year, and be renewable only upon mutual consent of the parties.

**Section 3. Personal Property for Common Use.** The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Associations' Articles or By-Laws.

**Section 4. Insurance.** The Association at all times shall procure and maintain adequate policies of public liability, property and casualty insurance, and such other insurance as it deems advisable or necessary on the Common Area and improvements situated thereon. The property and casualty insurance on the Common Area and improvements situated thereon shall be in an amount equal to the maximum insurable value thereof. All damaged property in the Common Area shall be repaired and restored to the original condition using the insurance proceeds. In the event the insurance proceeds are inadequate to cover the costs of repair and restorations, a

Special Assessment shall be assessed against each Lot Owner as set forth in the By-Laws. In the event the insurance proceeds shall be greater than the amount required to repair and restore the damage, the excess shall be deposited with the Association for the operation of the Association and/or maintenance of the Common Area and improvements situated thereon. Prior to the end of each policy year, the Association shall cause the insured properties to be reappraised and shall adjust the insurance coverage so that the insured properties are insured for their maximum insurable value. The Association additionally shall cause all persons responsible for collecting and disbursing Association moneys to be insured or bonded with adequate fidelity insurance or bonds, as provided in the By-Laws.

**Section 5. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, its Articles or By-Laws, or by law and every other right or privilege reasonably implied from the existence of any right or privilege granted herein or therein or reasonably necessary to effectuate the exercise of any right or privileges granted herein or therein.

#### ARTICLE VIII

#### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** The Declarant, for each Lot within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed or other conveyance thereto, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (1) monthly or annual assessments or charges; (2) special assessments or charges against a particular Lot; and (3) such other assessments as more particularly described in the By-Laws. Such assessments and charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a lien upon the property against which such assessment is made. Each such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties, and for the improvement and maintenance of the Common Area and improvements situate thereon, and the land and improvements described in Article IV, and the carrying out of the other responsibilities and obligation of the Association under this Declaration, the Articles and the By-Laws. Without limiting the generality of the foregoing, such funds may be used for the acquisition, improvement and maintenance of Properties, services and facilities related to the use and

enjoyment of the Common Area and improvements thereon and the land and improvements described in Article IV, including the costs of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes and assessments made or levied against the Common Area; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the maintenance, landscaping and beautification of the Common Area, and such public lands as may be designated by the Declarant or the Association; the employment of security personnel to provide services which are not readily available from any governmental authority; and such other needs as may arise.

**Section 3. Increase in Annual Assessments.** As long as the Declarant is in control of the Board of Directors of the Association, the maximum annual assessment may not be increased for any subsequent year unless such increase is approved by two-thirds (2/3) of each class of voting representatives as provided in the By-Laws. The Declarant shall not be obligated to pay monthly assessments for each Lot that Declarant owns but rather will pay the difference between what is collected and what is actually expended under the budget items. Assessments shall be paid monthly on the first (1st) of each month. The first annual budget shall be prepared by the Association.

**Section 4. Special Assessments.** In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto. Such special assessments must be approved by the Lot Owners as set forth in the By-Laws.

**Section 5. Notice of Meeting and Quorum for Any Action Authorized Under Sections 3 and 4.** Notice of any members meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article and the quorum necessary therefore shall be as set forth in the By-Laws. Action under Sections 3 and 4 shall be valid only with the assent of two-thirds (2/3rds) of the votes of each class of voting representatives as provided in the By-Laws.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 7. Declarants' Assessment.** Notwithstanding any provision of the Declaration or the Associations' Articles or By-Laws to the contrary, as long as there is Class B membership in the Association, the Declarant shall not be obligated for, nor subject to, any annual assessment for any Lot which it may own, provided: (i) the annual assessment paid by the Owners shall not exceed the maximum assessment permitted by Section 3 of this Article; and (ii) the Declarant shall be responsible for paying the difference between the Associations' expenses of

operation otherwise to be funded by monthly assessments and the amount received from Owners, other than the Declarant, in payment of the monthly assessments levied against their respective Class A Lots. Such difference, herein called the "Deficiency", shall not include any reserve for replacements, operating reserves, depreciation reserves or capital expenditures. The Declarant may at any time give written notice to the Association one (1) month prior to the end of the fiscal year, thereby terminating effective as of the end of such fiscal year its responsibility for the Deficiency, and waiving, its right to exclusion from monthly assessments. Upon giving such notice, Declarant shall thereafter be assessed on a per Lot basis in an amount equal to the assessments for other Lots owned by Owners. Upon transfer of title of a Lot owned by the Declarant, the Lot shall be assessed in the amount established for Lots owned by Owners other than the Declarant, prorated as of and commencing with, the month following the date of transfer of title.

**Section 8. Exemption from Assessments.** The assessments, charges and liens provided for or created by this Article VIII shall not apply to the Common Area, any property dedicated to and accepted for maintenance by a public or governmental authority or agency, any property owned by a public or private utility company or public or governmental body or agency, and any property owned by a charitable or nonprofit organization.

**Section 9. Date of Commencement of Assessments; Due Dates.** The assessments provided for herein shall commence as to all Class A Lots subject thereto on the first day of the month following the dedication of the initial Common Area from the Declarant to the Association.

**Section 10. Lien for Assessments.** All sums assessed to any Lot pursuant to this Declaration, together with interest and all costs and expenses of collection, including reasonable attorney's fees, shall be secured by a continuing lien on such Lot in favor of the Association.

**Section 11. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate permitted by law per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or improvements situate thereon or abandonment of his Lot.

**Section 12. Foreclosure.** The lien for sums assessed pursuant to this Declaration may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Florida. In any such foreclosure, the Owner shall be required to pay all costs and expenses of foreclosure, including reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the pe-

riod of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date the Owner's title is divested by foreclosure. The Association shall have the right and power to bid at the foreclosure or other legal sale to acquire the Lot, and thereafter to hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the owner thereof.

**Section 13. Homestead.** By acceptance of a deed thereto, the Owner and spouse thereof, if married, of each Lot shall be deemed to have waived any exemption from liens created the Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available by reason of the homestead exemption provisions of Florida law, if for any reason such are applicable.

**Section 14. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage which is given by any Owner. The sale or transfer of any Lot pursuant to foreclosure of such a mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association, shall upon written request report to any such mortgagee of a Lot, any assessments remaining unpaid for a period longer than thirty (30) days in which to cure such delinquency before instituting foreclosure proceedings against the Lot; provided, however, that such mortgagee first shall have furnished to the Association written notice of the existence of its mortgage, which notice shall designate the Lot encumbered by a proper legal description and shall state the address to which notices pursuant to this Section are to be given. Any such mortgagee holding a lien on a Lot, may pay, but shall not be required to pay, any amounts secured by the lien created by this Article.

**Section 15. Tierra Verde Community Association, Inc.** Each Lot is subject to an annual assessment by Tierra Verde Community Association, Inc., for maintenance of the common facilities on Tierra Verde. The annual assessment is established by the Board of Directors of Tierra Verde Community Center, Inc., each year and is based on the assessed value of the Lot as determined by the Pinellas County Property Appraiser.

**Section 16. Operating Capital.** In addition to the Association assessment set forth herein, each initial Lot purchaser shall pay to the Association at closing a sum equal to two (2) months' maintenance to provide the Association with initial working capital which is non-refundable.

**ARTICLE IX  
MAINTENANCE BY LOT OWNERS**

**Section 1. Lots.** All lot Owners shall be responsible for the maintenance and repair of the interior portions of the Building on the Lot owned by said Lot owner.

**Section 2. Party Walls.**

**1. General Rules of Law to Apply.** To the extent not inconsistent with this Declaration or this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**2. Repair and Maintenance of Party Walls.** Each Lot owner shall maintain in good condition, order and repair that portion of all Party Walls located on his Lot.

**3. Destruction by Fire or Other Casualty.** In the event of damage or destruction to a Party Wall (which damage or destruction extends onto both Lots adjoining the Party Wall) by fire, the elements, pests, act of God, or other casualty, or any occurrence not caused by an act or omission of a Lot Owner, or a tenant, licensee, or invitee of a Lot Owner, the cost of repairing and restoring the Party Wall shall be borne by the Lot Owners using the damaged or destroyed Party Wall in proportion to each such Lot Owners' use. If any Lot Owner undertakes to repair or restore a Party Wall, he shall be entitled to contribution from the Lot Owners adjoining the Party Wall for their share of the cost of all repairs or restoration. Any and all repairs or restoration shall be accomplished in a good and workmanlike manner with materials comparable in quality and quantity to the original construction and approved by the Architectural Control Committee. All repairs and restoration to any Party Wall required hereunder shall be commenced within thirty (30) days after the date of the occurrence giving rise to the damage to or destruction of the Party Wall.

**4. Destruction by One Owner.** Destruction or damage to a Party Wall resulting from any act or omission of one Lot Owner, or his tenant, licensee or invitee, whether or not the act or omission is willful, negligent, or merely inadvertent, shall be repaired or restored by said Lot Owner at his sole cost and expense within a reasonable time. Any and all repairs or restoration shall be accomplished in a good and workmanlike manner with materials comparable in quality and quantity to the original construction and approved by the Architectural Control Committee. All repairs and restoration to any Party Wall required hereunder shall be commenced within thirty (30) days from and after the date of the occurrence giving rise to the damage or destruction of the Party Wall.

**5. Right to Contribution Runs with Land.** The right of any Lot Owner to contribution from any other Lot Owner under this Article shall be appurtenant to the land and shall pass to and bind each of said Lot Owners' successors in title.

**6. Arbitration.** In the event of any dispute arising in regard to a Party Wall, or under the provisions of this Article, each Lot Owner shall

choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the dispute shall be resolved by decision of a majority of all the arbitrators. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

**Section 3. Common Roof Areas.**

**1. Repair and Maintenance of Common Roof Areas.**

Except as set forth below, the Association shall have the obligation to maintain in good condition, order and repair all Common Roof Areas within the Properties.

**2. Total Destruction by Fire or Other Casualty.** In the event of the destruction of a Common Roof Area by fire, the elements, pests, act of God, or other casualty, or any occurrence not caused by an act or omission of a Lot Owner, or a tenant, licensee, or invitee of a Lot Owner, the cost of repairing and restoring the Common Roof Area shall be borne by all Lot Owners using the Common Roof Area in proportion to each such Lot Owner's use. If any Lot Owner undertakes to repair or restore the Common Roof Area he shall be entitled to contribution from the Lot Owners of the Lots using the Common Roof Area for their share of the cost of all repairs or restoration. Any and all repairs or restoration shall be accomplished in a good and workmanlike manner with materials comparable in quality and quantity to the original construction and approved by the Architectural Control Committee. All repairs and restoration to a Common Roof Area required hereunder shall be commenced within thirty (30) days from and after the date of the occurrence giving rise to the destruction of the Common Roof Area.

**3. Destruction by One Owner.** Damage or destruction to a Common Roof Area resulting from any act or omission of a Lot Owner, or his tenant, licensee, or invitee, whether or not the act or omission is willful, negligent, or inadvertent, shall be repaired or restored by said Lot Owner at his sole cost and expense within a reasonable time. Any and all repairs or restoration shall be accomplished in a good and workmanlike manner with materials comparable in quality and quantity to the original construction and approved by the Architectural Control Committee. All repairs and restoration to any Common Roof Area required hereunder shall be commenced within thirty (30) days from and after the date of the occurrence giving rise to the damage to or destruction of the Common Roof Area.

**4. Right of Contribution Runs with Land.** The right of any Lot Owner to contribution from any other Lot Owner under this Article shall be appurtenant to the land and shall pass to and bind each of said Lot Owners' successors in title.

**5. Arbitration.** In the event of any dispute arising in regard to a Common Roof Area or under the provisions of this Article, each Lot Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the dispute shall be resolved by a decision of a majority of all the arbitrator. The arbitration shall be conducted in accordance with and under the rules of the American



Arbitration Association.

## ARTICLE X

### DOCKS AND BOAT SLIPS; SEAWALLS

**Section 1. Docks and Boat Slips.** The owners of Lots 1 through 6, which abut the Waterway as set forth in the Pelican Isle Tern Bay Townhomes Phase I Plat, shall have the first right to apply to the applicable governmental authorities to secure the necessary permits, submerged land lease, and other required consents of any kind for the installation of a dock or boat slip adjacent to their respective Lot. The cost of such applications, permits, leases and consents, and the cost of the construction and maintenance of any dock or boat slip shall be borne solely by the Lot Owner desiring such dock or boat slip. All maintenance obligations shall be enforced by the Association in accordance with the terms of Article VIII above. The Declarant makes no representations or warranties as to the ability of any Lot Owner to obtain the permits, leases or consents, necessary for a dock or boat slip.

**Section 2. Rules and Regulations.** Any dock or boat slip constructed by any Lot Owner shall be subject to the following rules and regulations:

(a) All docks or boat slips must be owned and registered to the owner of the applicable Lot at all times. Furthermore, all docks or boat slips may be used for the mooring of one boat only and such boat must be titled in the name of the applicable Lot Owner.

(b) The docks or boat slips may be used for one pleasure craft only and no commercial vessels of any kind may be moored at a dock or boat slip. Docks or boat slips may be leased or rented to any other party, provided such other party resides at Tern Bay Townhomes.

(c) No boats may be repaired at a dock or boat slip and all boats must be seaworthy and in good condition and appearance at all times.

(d) All docks or boat slips must be maintained in good condition and repair at all times.

(e) Fishing shall be permitted by residents from the Common Area adjacent to the waterway; no commercial fishing shall be permitted.

(f) Davits or boat slips may be installed by any owner on his Lot, dock or boat slip so long as all governmental permits are obtained for the construction or installation thereof, and the installation or use thereof does not damage or weaken the sea wall or other property located in the development. Furthermore, no davits or boat lifts may have any kind of roof enclosure.

**Section 3. Maintenance of Seawall.** The Association shall be

responsible for all seawall maintenance and repair.

**ARTICLE XI**  
**GENERAL PROVISIONS**

**Section 1. Deed Restrictions.** In addition to this Declaration, the Declarant may record for parts of the Properties specific deed restrictions applicable thereto either by master instrument or individual recorded instruments. Such deed restrictions may vary as to different parts of the Properties in accordance with the Declarant's development plan and the location, topography and intended use of the land made subject thereto. To the extent that part of the Properties are made subject to such specific deed restrictions, such land shall be subject to both specific deed restrictions and this Declaration. The Association shall have the duty and power to enforce such deed restrictions if expressly provided for therein, and to exercise any authority granted to it by them. Nothing contained in this Section 1 shall require the Declarant to impose uniform deed restrictions, or to impose deed restrictions of any kind on all or any part of the Properties.

**Section 2. Enforcement.** The Association, and any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, lien and charges now or hereafter imposed by the provisions of this Declaration or as may be expressly authorized by deed restrictions as described in Section 1 above.. Failure of the Association or any Owner to enforce any covenant or restriction herein or therein contained shall in no event be deemed a waiver of the right to do so thereafter. If a person or party is found in the proceedings to be in violation of or attempting to violate the provisions of this Declaration or such deed restrictions, he shall bear all expenses of the litigation, including court costs and reasonable attorney's fees (including those on appeal) incurred by the party enforcing them. Declarant shall not be obligated to enforce this Declaration or such deed restrictions and shall not in any way or manner be held liable or responsible for any violation of this Declaration or such deed restrictions by any person other than itself.

**Section 3. Severability.** Invalidation of any one of these covenants or restrictions by law, judgment or court order shall in no way effect any other provisions, and such shall remain in full force and effect.

**Section 4. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by the vote of seventy-five percent (75%) of the members of each class of membership present, in person or by proxy, at a meeting called for such purpose. This Declaration may be amended during the first forty (40) year period by the vote of not less than seventy five percent (75%) of the Owners of Lots. All amendments must be recorded and no amendment

Name Legibly Printed or Typewritten

STATE OF FLORIDA )  
COUNTY OF PINELLAS )

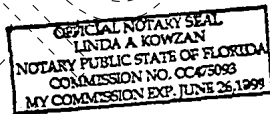
The foregoing instrument was acknowledged before me this 23<sup>RD</sup> day of DECEMBER, 1998, by SANFORD KATZ, the President of PELICAN ISLE DEVELOPMENT, INC. (A FLORIDA CORPORATION), on behalf of said Corporation, who is personally known to me or has produced (TYPE OF IDENTIFICATION): PERSONALLY KNOWN TO ME as identification and HE DID NOT take an oath.

Linda A. Kowzan  
NOTARY PUBLIC

Printed Name of Notary

(SEAL)

My Commission Expires:



60217321 MBP	12-31-1998	16:57:40
01 BCL-PELICAN ISLE DEV INC		
RECORDING	1	\$96.00
	TOTAL:	\$96.00
	CHECK AMT. TENDERED:	\$96.00
	CHANGE:	\$ .00

diminish, discontinue or in any way adversely effect the right of the Declarant under this Declaration, nor shall any amendment pursuant to (ii) or (iii) above be valid unless approved by the Declarant, as evidenced by its written joinder. Any amendment to these documents which would affect the surface water management system, including the water management portions of the common areas must have the prior written approval of the Southwest Florida Water Management District.

**Section 5. Architectural Control.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties or Additional Properties that may be submitted, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural Committee, composed of three (3) or more representatives appointed by the Board. In addition, the use of any materials for exterior maintenance to any improvements on the Lots shall be subject to approval by the Association or the Architectural Control Committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

**Section 6. Interpretation.** Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation". The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed by its duly authorized officers and affixed its corporate seal as of this 23rd day of February, 1998.

Signed, sealed & delivered in the presence of:

PELICAN ISLE DEVELOPMENT, INC.  
(a Florida Corporation)

*Linda A. Kowals*  
Signature LINDA A. KOWALS  
*Robert L. Woods*  
ROBERT L. WOODS

By: *[Signature]*  
Sanford Katz, President  
(CORPORATE SEAL)

*John C. Brenda and Associates, Inc.*  
Consulting Engineers and Land Surveyors

4015 - 82nd Avenue North  
Pinellas Park, Florida 33781

Phone  
(813) 576-7546  
FAX (813) 577-9932

PINELLAS COUNTY FLA.  
OFF REC BK 10359 PG 44

**EXHIBIT "A"**

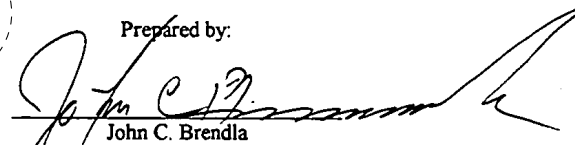
**LEGAL DESCRIPTION:**

A REPLAT OF A PORTION OF LOT 3, BLOCK 28, TIERRA VERDE UNIT ONE, SECOND REPLAT, AS RECORDED IN PLAT BOOK 59, PAGES 90 THROUGH 94, INCLUSIVE, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 20, TOWNSHIP 32 SOUTH, RANGE 16 EAST, RUN NORTH 00°36'51" WEST ALONG THE WEST LINE OF SAID SECTION, A DISTANCE OF 49.24 FEET TO A POINT OF INTERSECTION WITH THE WESTERLY BOUNDARY OF BLOCK 25 OF THE AFORESAID TIERRA VERDE UNIT ONE, SECOND REPLAT; THENCE NORTH 18°30'10" EAST ALONG SAID WESTERLY BOUNDARY OF BLOCK 25, A DISTANCE OF 655.77 FEET TO THE SOUTHWESTERLY CORNER OF LOT 9 OF SAID BLOCK 25; THENCE SOUTH 86°09'15" EAST ALONG A RADIAL LINE, 400.00 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF PINELLAS BAYWAY (STATE ROAD 693); THENCE 2053.30 FEET ALONG THE ARC OF A CURVE TO THE RIGHT BEING THE EASTERLY RIGHT-OF-WAY LINE OF SAID PINELLAS BAYWAY AND HAVING A RADIUS OF 5597.58 FEET SUBTENDED BY A CHORD BEARING NORTH 14°21'16" EAST FOR 2041.81 FEET TO THE NORTHWESTERLY CORNER OF LOT 4, AFORESAID BLOCK 28 AND THE POINT OF BEGINNING; THENCE CONTINUE 219.09 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 5597.58 FEET SUBTENDED BY A CHORD BEARING NORTH 25°59'04" EAST FOR 219.08 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE RUN SOUTH 63°50'31" EAST FOR 420.06 FEET TO THE SOUTHEASTERLY CORNER OF LOT 2, AFORESAID BLOCK 28; THENCE 209.60 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 5177.58 FEET BEING SUBTENDED BY A CHORD BEARING SOUTH 26°01'22" WEST FOR 209.59 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 4; THENCE NORTH 65°08'13" WEST FOR 420.00 FEET RETURNING TO THE AFORESAID EASTERLY RIGHT-OF-WAY LINE OF PINELLAS BAYWAY AND POINT OF BEGINNING.

SAID PARCEL CONTAINING 90025.72 SQUARE FEET OR 2.067 ACRES, MORE OR LESS.

Prepared by:



John C. Brenda  
Florida Registered Surveyor No. 1269  
Certificate of Authorization No. 760  
December 10, 1998