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2006224858

KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FLORIDA

**DECLARATION OF COVENANTS AND RESTRICTIONS  
RESTRICTING DEVELOPMENT AND LAND USES**

ASAMS Receipt#866268

This Declaration of Covenants and Restrictions Restricting Development and Land Uses ("Covenant") is made, entered into and imposed this 21 day of September, 2006 by BAYONNE DEVELOPMENT, LLC, a Florida Limited Liability Company ("Owner"), for itself, its successors and assigns.

RECITALS:

Owner is the present record owner of a parcel of land within unincorporated Sarasota County, Florida, as described in Exhibit "A" attached hereto and made a part hereof by reference (the "Property"). The parcel fronts Little Sarasota Bay, is approximately 13 acres in size (more or less) and is also referred to herein as "the Residential Parcel". The Residential Parcel adjoins that certain parcel identified on Exhibit "B" attached hereto and made a part hereof by reference (the "Branch Parcel").

NOW, THEREFORE, Owner does hereby voluntarily and without any request or coercion, duress or influence, direct or indirect, by Sarasota County to do so, declare that the Property shall hereafter be subject to the following covenants and restrictions:

1. **Development Restrictions.** Notwithstanding any other development standards provided for under the Sarasota County Zoning Regulations, Land Development Regulations and any other applicable regulations, the development and ongoing configuration and use of the Property shall be in accordance with the Concept Plan attached hereto as Exhibit "C" and made a part hereof by reference (the "Plan"), subject to such adjustment and modifications as may be required/permitted by Sarasota County or other governmental authorities, and/or otherwise desired by Owner, provided such adjustments and/or modifications shall not reduce the size of buffers or Buffer-Zones; change the location, height, or extent of the wall contemplated by this Covenant; reduce the size of building setbacks or any other setbacks contemplated by this Covenant; increase the number of residential units contemplated by 1(a) below; relocate any paved or unpaved access road any closer to the northern Property boundary than as depicted on the Plan; nor increase the building heights contemplated by the Plan. Subject to the foregoing, the development and the ongoing configuration and use of the Property shall be subject to the following conditions and limitations:

a. The Residential Parcel shall be developed and used for a residential condominium project in a building or buildings containing not more than one hundred and fifty-two (152) residential units.

b. The Property shall be subject to the following restrictions/requirements with regard to building height and location:

i. No portion of any building(s) on the Property may exceed three (3) stories of units over one (1) additional story of covered parking (with the exterior surface of the roof of the Building, excluding decorative elements, parapets, antennae, elevator shafts, and mechanical rooms/screening/equipment, not to exceed forty-five (45) feet in height over the floor/surface of any below building parking) within one hundred and seventy (170) feet from the northern Property boundary. The portion of any building(s) lying outside of one hundred and seventy (170) feet from the northern Property boundary may not exceed four (4) stories of units over one additional story of covered parking (with the exterior surface of the roof of the Building, excluding decorative elements, parapets, antennae, elevator shafts, mechanical rooms/screening/equipment, not to exceed fifty six (56) feet in height over the floor/surface of any below building parking). No building(s) shall have observation decks or platforms

on or extending above the roofline at any given point on the top of any portion of the building that has fourth story units, and any such platforms situated on top of third story units shall be designed as balconies to accommodate specific fourth floor units adjacent to such platforms.

ii. The building(s) situated on the Property from shall be located/setback as follows:

(A) from the northwestern Property boundary to a point three hundred eighteen (318) feet to the east thereof, any buildings situated south thereof within the Property shall be located no closer than ninety (90) feet from the northern Property line;

(B) from a point which is three hundred eighteen (318) feet east of the northwestern Property boundary to a point which is the northeast Property boundary, any buildings situated south thereof within the Property shall be located no closer than one hundred twenty two (122) feet from the northern Property line; and

(C) from a point which is the northwestern Property boundary to a point one hundred seventy eight (178) feet due south thereof, any buildings situated easterly of the western boundary of the Property shall be located no closer than one hundred sixty four (164) feet from the western Property boundary as it existed as of April 1, 2006.

The configuration and distance of the northern building's northern face from various points from the northern Property boundary shall be depicted on the Plan.

c. The Property shall be subject to the following restrictions/requirements with regard to the establishment and maintenance of setback and Buffer-Zone areas: The area north of the Wall (as hereinafter defined) to the northern Property boundary is herein defined as the Northern Buffer-Zone (or Buffer-Zone). The term Buffer-Zone and the area it encompasses (herein defined) is not to be confused with the "Landscape Buffer" as depicted and referenced on the plan. The Northern Setback as defined herein is the area between the northernmost portions of the building structure and the northern Property boundary. The Northern Setback area includes the Buffer-Zone.)

i. No portion of any building structure (other than roads, parking areas, drainage and retention areas, gates and fences securing the Residential Parcel, the Wall (as hereinafter defined) and utilities/utility infrastructure) on the Residential Parcel shall be located within ninety (90) feet from the northern Property boundary. However, no road or parking lot may be situated north of the Wall.

ii. The Northern Setback area shall only consist of (a) natural vegetation north of the Wall (as hereinafter defined), including, without limitation, mature and/or new trees, shrubs, plants, and grassy areas, and such other vegetation as may be required by Sarasota County or which may otherwise exist within the Northern Buffer-Zone from time to time; (b) the roads and driveways to, from, and within the Residential Parcel, provided they are situated southerly and/or easterly of the Wall (as hereinafter defined) (c) drainage, sewer, and other utility facilities/infrastructure (as hereinafter defined), (d) gates and fences securing the Residential Parcel, and (d) the Wall, including such gates/passages therein as may be required to provide maintenance to the Northern Buffer-Zone.

iii. Except in connection with the construction/placement of the Wall, no trees and/or vegetation of greater than 15 feet in height within the Northern Buffer-Zone shall be removed or otherwise intentionally destroyed from the Northern Buffer-Zone without prior notice to and consent of

the Association, other than in connection with the maintenance of the Northern Buffer-Zone from time to time or which may otherwise be required by Sarasota County, or by code or to remedy a safety, health, or hazardous condition. Grantor shall use reasonable efforts in connection with the initial placement of the Wall to preserve as many trees as possible.

iv. The Northern Buffer-Zone (north of the Wall) shall be maintained by the owners of the Property, their successors and/or assigns, in a natural vegetative state. Neither the Association nor any owner in Holiday Harbor shall have any right to enter upon and/or provide maintenance within the Northern Buffer-Zone or otherwise on the Property without written permission from the owner of the Property, which consent may be withheld in its sole discretion.

d. The Property shall be subject to the following restrictions/requirements with regard to the placement of walls within the Northern Setback area:

i. Prior to the completion of construction on the Property and prior to any residential occupancy, a continuous stucco surfaced wall shall be constructed and maintained by the owners of the Property, their successors and/or assigns (the "Wall") from a point which lies seventy-two (72) feet east of the northwestern boundary of the Property and fifty (50) feet south of the northern Property boundary to a point on the northern boundary of the Property which lies seven hundred and twenty (720) feet east of the northwestern boundary of the Property. The Wall shall be not less than six feet high within three hundred and eighty (380) feet of the northwestern boundary of the Property, and no less than eight (8) feet high from a point which is three hundred and eighty (380) feet from the northwestern boundary of the Property extending to the east. The Wall shall contain such gates as may be required to provide for the maintenance of the Northern Buffer, provided such gates shall remain locked at all times except during maintenance activities. Said gates shall contain a solid surface and not contain any significant openings. Subject to e(i)(D) below, the Wall shall be located/setback as follows:

(A) from the northwestern Property boundary to a point 140 feet to the east thereof, the Wall shall be located no closer than fifty (50) feet from northern Property boundary;

(B) from a point which is 140 feet east of the northwestern Property boundary to a point which is two hundred and forty (240) feet to the east thereof, the Wall will vary from 44 fifty (50) to sixty-eight (68) feet from the north Property boundary, but shall extend essentially in a straight line generally in an southeasterly direction from west to east such that the Wall distance is no less than 68 feet from the Northern Property boundary at three hundred and eighty (380) feet from the northwestern Property boundary;

(C) from a point which is three hundred and eighty (380) feet from the northwestern Property boundary to a point which is two hundred and fifty-four (254) feet to the east thereof, the Wall shall be located no closer than sixty-eight (68) feet from the north Property boundary;

(D) from a point which is six hundred and thirty-four (634) feet from the northwestern Property boundary to a point which is forty-five (45) feet easterly thereof, the Wall may be located no closer than forty-seven (47) feet the north Property boundary, but shall extend essentially in a strait line generally in an northeasterly direction from west to east such that the Wall distance is no less than forty-seven (47) feet from the Northern Property boundary at six hundred and eighty-one (681) feet from the northwestern Property boundary; and -

(E) from a point which is six hundred and eighty-one (681) feet from the northwestern Property boundary and all points easterly thereof on the Property, the Wall may be located no closer than twenty-five (25) feet from Holiday Harbor; and

(F) notwithstanding anything contained in A through E above to the contrary, the Wall may be placed up to five (5) feet closer or five (5) feet further (but no more than three (3) feet closer or three (3) feet further over the distance covered by (E) above) than the distances set forth therein to avoid disruption to trees and plant material, provided the average Wall setback over the distances set forth above equals the Wall setback(s) contemplated above, plus or minus two (2) feet.

e. The drainage areas now or to be hereafter located within the Northern Buffer shall be improved and/or modified, then maintained to accommodate reasonably efficient surface water drainage from the parcels immediately adjacent to, and abutting the Property.

f. The lighting fixtures serving any building, parking lot or garage on the Property shall be designed, positioned, and directed in accordance with local governmental requirements regarding lighting. Such lighting fixtures shall be angled and/or otherwise configured to minimize light intrusion into Holiday Harbor in accordance with local governmental requirements.

g. Owner shall use commercially reasonable efforts to insure that all internal access roads and paved parking areas to be initially constructed and thereafter maintained within its Parcel, including but not limited to the parking garages, shall have a paved surface that will minimize or eliminate, to the greatest extent possible and practical, noise from automotive traffic (such as the squealing of tires). The Parties agree that the use of pavers, brick, concrete (with a non-shiny surface), and similar materials is and shall be an approved surface. Speed bumps/humps and/or other traffic calming devices, such as stop signs and security gates, shall be installed to control vehicle speed on the Primary Access Road. Each Owner for itself and on behalf of its successors and/or assigns, hereby waives any conflict between any term of this subparagraph and any term of the Access, Drainage, Signage, and Utility Easement Agreement recorded as Instrument Number 2005232629 in the Official Records of Sarasota County, Florida such that the terms of this subparagraph shall prevail in the event of any such conflict.

2. **Covenants to Run with the Title to the Property.** The provisions of this Declaration shall be deemed to run with the title to the Property and shall be binding upon Owner, its successors and assigns, and will inure to the benefit of the owner of the Branch Parcel only.

3. **Enforcement.** The provisions of this Declaration are for the benefit of and shall be enforceable by the fee simple title holder to the Branch Parcel. In the event any party shall commence an action as described herein, the prevailing party shall be entitled to recover all costs, expenses and reasonable attorneys' fees (trial and appellate) incurred in connection with such action.

4. **Amendment.** This Declaration may be amended by Owner, its successors or assigns by recording an amendment in the Public Records of Sarasota County, Florida with the joinder and consent of the Branch Parcel fee simple owner.

5. **Effective Date.** This Declaration shall be recorded in the Public Records of Sarasota County, Florida promptly upon approval by Sarasota County of the rezoning of the Property to RMF-3 and upon the expiration of all applicable periods to appeal that rezoning with no appeal pending, and shall be effective upon that recording. However, if this Declaration is recorded prior to the rezoning of the Property to RMF-3, the requirements herein shall be of no force and effect unless and until the Property is rezoned to RMF-3.

3. **Duration.** This Declaration shall continue in full force and effect against the Property from its recording in the public records and shall continue in full force and effect for a period of ninety-nine (99) years. Owner and its successors and assigns, including all owners of the Property, shall execute any documents and perform any acts needed to preserve this Declaration from expiration under the Florida Marketable Record Title Act or any other law then applicable.

IN WITNESS WHEREOF, Owner has caused this Declaration of Covenants and Restrictions Restricting Development and Land Uses on the Property to be executed in its name on the date first above written.

Signed, sealed and delivered  
in the presence of:

Sign: Susan C Swett

Print Name: SUSAN C. SWETT

Sign: Melanie Underwood

Print Name: Melanie Underwood

BAYONNE DEVELOPMENT, LLC,  
a Florida limited liability company

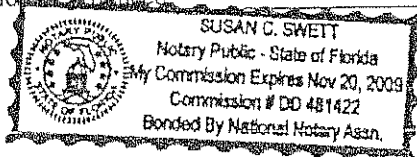
By: [Signature]

Print Name: Thomas LeFevre

Title: Manager

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of Sept., 2005 6  
by Thomas LeFevre as Manager of BAYONNE DEVELOPMENT,  
LLC, a Florida limited liability company, on behalf of said company, who is personally known to me or  
who has produced \_\_\_\_\_ as identification.



[Notary Seal]

NOTARY PUBLIC:

[Signature]  
Signature of Notary

Print Name of Notary SUSAN C. SWETT

My Commission Expires:

EXHIBIT "A"  
(THE "PROPERTY")

(Residential Parcel Description)

BEGIN AT THE CONCRETE MONUMENT MARKING THE SW CORNER OF THE NW ¼ OF THE NE ¼ OF SECTION 28, TOWNSHIP 37S, RANGE 18E; THENCE S 89°53'03"E ALONG THE SOUTH LINE OF SAID NW ¼ OF THE NE ¼, A DISTANCE OF 132.00' TO A CONCRETE MONUMENT MARKED #858; THENCE S 00°17'19"W, 668.33' TO A 5/8" IRON ROD; THENCE N 89°53'51"W, A DISTANCE OF 665.74' +/- TO THE INTERSECTION WITH THE MEAN HIGH WATER LINE OF LITTLE SARASOTA BAY; THENCE MEANDER ALONG THE MEAN HIGH WATER LINE TO THE INTERSECTION WITH THE NORTH LINE OF THE SE ¼ OF THE NW ¼ OF SAID SECTION 38, THENCE S 89°54'32"E ALONG SAID NORTH LINE A DISTANCE OF 692.59' +/- TO THE POINT OF BEGINNING.

TOGETHER WITH THAT CERTAIN ACCESS, UTILITY, AND DRAINAGE EASEMENT AS RECORDED AS INSTRUMENT NUMBER 20052369 OF THE PUBLIC RECORDS OF SARASOTA COUNTY, STATE OF FLORIDA.

EXHIBIT B - LEGAL DESCRIPTION

PARCEL I:

The Westerly 380 feet of the Southerly 150 feet of the Northerly 1320 feet of U.S. Lot 1, Section 28, Township 37 South, Range 18 East, Sarasota County, Florida; TOGETHER with an easement for ingress and egress along the Northerly 20 feet of the East 309.85 feet of the Southerly 150 feet of the Northerly 1320 feet of U.S. Lot 1, Section 28, Township 37 South, Range 18 East, Sarasota County, Florida.

PARCEL II:

A 15 foot wide strip of land being the Westerly 380 feet lying between the South 150 feet of the North 1320 feet of U.S. Lot 1, Section 28, Township 37 South, Range 18 East and the South line of the North  $\frac{1}{2}$  of said Lot 1, Sarasota County, Florida.

PARCEL III:

Together with an easement for ingress and egress over the Easterly 30 feet of the following described property as set forth in instrument recorded in O.R. Book 1449, Page 743, Public Records of Sarasota County, Florida:

The Easterly 379.4 feet of the North 15 feet of the South 650 feet of the North 1320 feet of U.S. Lot 1, Section 28, Township 37 South, Range 18 East, Sarasota County, Florida.

TOGETHER with an easement for ingress and egress over the Easterly 30 feet of the following described property as set forth in instrument recorded in O.R. Book 1442, Page 720, Public Records of Sarasota County, Florida:

The North 200 feet of the South 500 feet of the North 1320 feet of U.S. Lot 1, Section 28, Township 37 South, Range 18 East, Sarasota County, Florida.

Located at 1726 Questar Lane, Sarasota, FL 34233  
Sarasota County Parcel ID #0125-06-0013

