

This Instrument Prepared By:  
John R. Allison, III  
The Allison Firm, P.A.  
6803 Overseas Highway  
Marathon, Florida 33050

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**DECLARATION OF CONDOMINIUM  
ESTABLISHING  
RAILWAY CONDOMINIUM**

OLD TOWN KEY WEST DEVELOPMENT, LLC, a Florida limited liability company,  
as Developer, does hereby declare as follows:

**ARTICLE I**  
Creation of Condominium

The Developer hereby submits its 99-year leasehold interest in that certain Lease Agreement (the "Master Lease") between Utility Board of the City of Key West, Florida, as Lessor, and Old Town Key West Development, LLC, as Lessee, as recorded in Official Record Book 2072 at Page 1629, Public Records of Monroe County, Florida, as amended by the unrecorded First Amendment, dated November 28, 2007 and the Corrective Second Lease Amendment and Estoppel Certificate, as recorded in Official Record Book 2356 at Page 2291, Public Records of Monroe County, Florida, copies of which are attached hereto as Exhibit A, to the extent that the Master Lease relates to the Condominium Property situate in the County of Monroe, State of Florida, as legally described in Exhibit B attached hereto, and all improvements erected thereon and as depicted in Exhibit C or hereafter erected hereon, and all other property, real, personal or mixed, now or hereafter situated on or within the Condominium Property in the manner provided for in the Florida Condominium Act as it exists on the date hereof. The condominium created by this Declaration shall be known as RAILWAY CONDOMINIUM.

**ARTICLE II**  
Definitions

The following terms when used in this Declaration and its exhibits, and as they may hereafter be amended, shall have the meanings stated as follows, except where the context requires otherwise:

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

B. "Articles" or "Articles of Incorporation" means the Amended and Restated Articles of Incorporation of the Association, as same may be amended from time to time.

C. "Assessment" means a share of the funds required for payment of Common Expenses, which from time to time is charged to the Unit Owner(s).

D. "Assigns" means any person to whom some or all rights of a Unit Owner have been validly transferred by sale, lease, mortgage or otherwise.

E. "Association" or "Condominium Association" means Railway Condominium Association, Inc., a not-for-profit Florida corporation, which is the entity responsible for the operation of the Condominium.

F. "Board of Directors" or "Board" or "Directors" means the board of directors responsible for administration of the Association.

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

H. "By-Laws" means the by-laws of the Association, as they exist from time to time.

I. "Common Elements" mean and include:

1. The portions of the Condominium Property that are not included within the Units, including all security systems.

2. An easement of support in every portion of a Unit which contributes to the support of the Building and easements through Units for conduits, pipes, ducts, vents, plumbing, wiring, cables and other facilities, equipment and/or fixtures for the furnishing of utility services and/or heating, cooling, ventilation, cable television, communication, data and security systems, or other services to more than one (1) Unit or to the Common Elements, together with related property and installations.

3. The property and installations required for the furnishing of utilities for electric, water and sewer and other services to more than one Unit or to the Common Elements.

4. Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.

J. "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation:

1. all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; and

2. subject to the requirements in Article VI.M, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract with the Developer or other provider designated by or with the consent of Developer; and

3. if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house and/or interactive communications and surveillance systems; and

4. the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses owed in connection with any Units leased by the Association; and

5. any assessments, charges and/or sums payable to the Ground Lessor under the Master Lease, including without limitation, annual base rent of \$1.00 as provided in Section 4.01 of the Master Lease, real estate taxes as provided in Section 4.04 of the Master Lease, and insurance as provided in Section 10 of the Master Lease; and

6. any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure. Common Expenses shall not include any separate obligations of individual Unit Owners; and

7. all public utility services, including electric, water, sewage, provided to the Condominium by a utility provider, except and to the extent that such utilities are provided to individual Units.

K. "Common Interest" means the proportionate undivided interest in fee simple in the Common Elements and the Common Surplus appurtenant to a Unit as expressed in the Declaration.

L. "Common Receipts" means the following items collected by the Association on behalf of the Condominium:

1. rent and other charges derived from leasing or licensing the use of the Common Elements or Condominium Property;

2. funds collected from Unit Owners for payment of Common Expenses or otherwise; and

3. receipts designated as common by law, this Declaration or the By-Laws.

M. "Common Surplus" means the excess of all Common Receipts over Common Expenses.

N. "The Condominium" means the Railway Condominium, which is a form of ownership of real property created pursuant to the Act and under this Declaration providing for ownership by one or more persons or entities of improvements together with an undivided interest in Common Elements appurtenant to each such Unit.

O. "Condominium Property" means the land and personal property that are subject to condominium ownership under Declaration, all improvements on the land, and all easements and rights appurtenant thereto which are intended for use in connection with the Condominium, including without limitation, the Deposit as required in Section 4.06 of the Master Lease.

P. "Cross Access Easement" means that certain Declaration and Agreement for Cross Access, Drainage & Utility Easements among Ground Lessor, Developer and Railway Apartments, Ltd., a copy of which is attached hereto as Exhibit G.

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

R. "Developer" means Old Town Key West Development, LLC, a Florida limited liability company, and those of its successors and assigns who shall create or offer for sale or lease Condominium Units in the Condominium in the ordinary course of business, but expressly excluding all other Owners and lessees acquiring Units. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association.

S. "Dispute", for purposes of Paragraph D Article XII, means any disagreement between two or more parties that involves: (1) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (a) require any Owner to take any action, or not to take any action, involving that Owner's Unit; or (b) alter or add to a Common Element; or (2) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (a) properly conduct elections; (b) give adequate notice of meetings or other actions; (c) properly conduct meetings; or (d) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.



T. "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.

U. "Ground Lessor" means the Utility Board of the City of Key West, Florida, its successors or assigns, as lessor under the Master Lease.

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

W. "Institutional Lender" means (1) any bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, agency of the United States Government, mortgage banker or any other lender generally recognized as an institutional type lender, or (2) any mortgage banking company doing business in the State of Florida; or (3) any secondary mortgage market institution, including the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal Housing Authority ("FHA"), the Veterans Administration ("VA") and such other secondary mortgage market institution as the Association shall hereafter approve in writing; or (4) the Developer. "Institutional First Lender" or "Institutional First Mortgagee" means an Institutional Lender that has acquired a first mortgage lien upon a Unit. A "Majority of Institutional First Mortgagees" means Institutional First Mortgagees of Units by which greater than one-half (1/2) of the voting interest of Units subject to first mortgages held by Institutional First Mortgagees are encumbered. "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, first mortgages on Units securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.

X. "Key West Work Force Housing Code" means Section 122-1465 et seq. of the City of Key West Code regulating the criteria for and resale and leasing of work force housing units within the City of Key West, as the same relates to median and moderate income work force housing including all amendments thereto adopted by the City of Key West from time to time.

Y. "Limited Common Elements" means those Common Elements, which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, including balconies, terraces, and assigned parking spaces.

Z. "Master Lease" means that certain Lease Agreement between Keys City Electric, Inc. and Old Town Key West Development, LLC, as recorded in Official Record Book 2072 at Page 1629, Public Records of Monroe County, Florida, as amended, a copy of the Master Lease and amendments are attached hereto as Exhibit A.

AA. "Member of the Association" means the owner or co-owner of a Unit.

BB. "Person" means an individual, firm, partnership, association, trust or other legal entity, or any combination thereof.

CC. "Rules and Regulations" means guidelines adopted by the Association concerning the use of the Condominium, as they may be amended from time to time.

DD. "Special Assessment" means any assessment levied against any Unit Owner(s) other than the assessments provided for in the Annual Budget.

EE. "Unit" means a part of the Condominium Property that is subject to exclusive possessory interest and which includes a proportionate undivided interest in the Common Elements and Common Surplus appurtenant thereto as set forth in this Declaration of Condominium or any amendment thereof.

FF. "Unit Lease" means a sublease agreement transferring exclusive possession of a Unit to a Unit Owner which shall be in recordable form.

GG. "Unit Owner" means the person(s) or entity having exclusive possessory interest in a Unit through a Unit Lease.

HH. "Voting Certificate" means a document which designates one of the record title owners or the corporate partnership or entity representative who is authorized to vote on behalf of a Unit owned by more than one owner or by any entity.

II. "Voting Interest" means the voting rights distributed to the members of the Association pursuant to the Act.

### ARTICLE III Description of Condominium

A. Condominium of Leasehold Interest. The Condominium has been created on land held under the Master Lease, which long-term lease has an initial term of 99 years. All of the terms and conditions of the Master Lease are hereby incorporated herein by reference, and the Master Lease is and all of the obligations of the lessee under the Master Lease are assumed by the Association. Each Unit Owner shall pay its Percentage Interest of the Security Deposit as required under Section 4.06 of the Master Lease, which payment shall be made to the Developer as a reimbursement in the event Developer has prepaid the security deposit to the Ground Lessor.

B. Survey and Plans. Attached hereto and made a part hereof as Exhibit C are a survey of the land and graphic description and plot plans of the improvements constituting the Condominium identifying the Units and Common Elements and their ultimate locations and approximate dimensions.

C. Identification of Units. The Condominium Property consists of three (3) buildings (each a "Building") containing a total of thirty-eight (38) Units such that each Unit is identified by a separate alpha-numerical designation. The designation of each of such Units is set forth in Exhibit C attached hereto. Exhibit C consists of a survey of the Condominium Property, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit C, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (1) an undivided share in the Common Elements and Common Surplus; (2) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (3) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; and (4) membership in the Association with the full voting rights appurtenant thereto.

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

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

a. Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the Unit as originally constructed by Developer, the elevation of which is anticipated to vary for each Unit based upon available area as limited by utility lines, conduits, drainage pipes and other Common Elements, and within some Units drainage pipes from bathroom fixtures for Units situated directly above a Unit.

b. Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.

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

3. Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that the exteriors of doors to each Unit shall not be included in the boundaries of the Unit.

4. Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit C hereto shall control in determining the boundaries of a Unit, except that the provisions of subparagraph (3) above shall control unless specifically depicted and labeled otherwise on such survey.

E. Description of Appurtenances. Each Unit shall be deemed to include the following items (even though all or a portion thereof may not be located within the Unit):

1. all interior walls and partitions that are not load-bearing;
2. the inner decorated or finished surfaces of all walls, floors and ceilings including plaster, gypsum board, ceramic tile, marble, paint, wallpaper and floor covering;
3. all appliances and built-in features;
4. air-conditioning and heating systems;
5. plumbing system; and all utility meters not owned by the public utility or agency supplying service; and
6. all electrical wires and fixtures.

No Unit shall be deemed to include any pipes, wires, conduits, lines, or other utility lines running through such Unit which are utilized for more than one Unit, the same being deemed Common Elements.

F. Common Element Easements For Ingress and Egress

A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, driveways, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph E shall be encumbered by a leasehold or lien other than those on the Condominium Units. Any such lien encumbering such easements (other than those on Condominium Units) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

G. Limited Common Elements. The following appurtenances to each Unit shall be Limited Common Elements, all as shown in Exhibit C: the balcony or terrace contiguous to a Unit, the use of which shall be subject to the rules and regulations set by the Association and the restrictions herein, and at least one (1) parking space which shall be assigned to a Unit Owner by the Developer at the time of closing. There are sixty-two (62) parking spaces as shown in

Exhibit C. Developer shall assign, at its discretion, one (1) or two (2) parking spaces to each Unit. The Association shall maintain a parking plan for such assignments, which may be reassigned from time to time in the discretion of the Developer or Association. The assigned parking spaces shall be treated as Limited Common Elements, and the Unit assigned a parking space(s) shall have the exclusive right to use the assigned parking space(s) during the assignment period.

H. Developer's Right to Alter. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, but without obligation, to make alterations, additions or improvements, structural and non-structural, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Building).

#### ARTICLE IV Ownership of Units and Common Elements

A. Leasehold Interest. Each Unit shall be transferred to a Unit Owner pursuant to a 99-year sublease (a "Unit Lease") having a term coterminus with the Master Lease. Included within the possessory interest under the Unit Lease to each Unit shall be an undivided interest in the Common Elements and in the Common Surplus. The ownership share in the Common Elements and in the Common Surplus is equal for each Unit in the Condominium, i.e., 1/38th.

B. Ownership and Conveyance of Undivided Interest in the Common Elements and in the Common Surplus. The undivided interest of each Unit in the Common Elements and in the Common Surplus shall be transferred or encumbered with its respective Unit, even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

C. Change of Undivided Interest. The undivided interest appurtenant to each Unit shall not be changed except with the unanimous consent of the Unit Owners and record owners of liens encumbering the Units.

D. Voting Rights of Unit Owners. On all matters on which the Unit Owners shall be entitled to vote, there shall be only one (1) voting interest (or vote) for each Unit in the Condominium, which vote may be cast by the owner of each Unit or the person designated in the Voting Certificate for the Unit. Should any person own more than one Unit, such person shall be entitled to cast one (1) vote for each Unit owned.

E. Distribution of Common Surplus. The Common Surplus shall be held and distributed by the Association in the manner and subject to the terms, provisions and conditions thereof. Except for distribution of any insurance indemnity herein provided or termination of the Condominium, any distribution of Common Surplus which may be made from time to time shall be made to the then Unit Owners in accordance with their respective Common Interests.

ARTICLE V  
Utilization; Restrictions

In order to provide for residential environment of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

A. Use and Occupancy. Each Unit shall be used only for general residential purposes, and shall at all times be used, operated and maintained in accordance with applicable zoning and other requirements, conditions and restrictions applicable to same. Units shall not be used for tourist housing or vacation rental use. Units shall not be used for commercial or business purposes.

B. Work Force Housing Restrictions. Each Unit shall be owned and occupied by a person meeting the work force housing income limitations and other requirements under the Key West Work Force Housing Code. Units restricted to Median Income Families (i.e., 100% of the median household income for Monroe County as adjusted for family size) and Moderate Income Families (i.e., 120% of the median household income for Monroe County as adjusted for family size) are designated in Exhibit F to this Declaration.

C. Ownership by Corporations or Other Business Entities. Notwithstanding that a Units may be owned by a corporation or other business entity (e.g., a foreclosing mortgagee having acquired the Unit in a foreclosure sale or deed-in-lieu of foreclosure), no Unit shall be occupied by individuals who do not qualify under the Key West Work Force Housing Code.

D. Children. Children shall be permitted to be occupants of Units. Unit Owners shall be responsible for the conduct of all children residing within their respective Units or visiting their respective Units. The Association shall adopt rules and regulations governing the use of the Common Elements (including, without limitation, the recreational facilities of the Condominium) by children.

E. Pet Restrictions. Unit Owners, nor their guests, tenants or invitees, are permitted to maintain or otherwise bring pets or other animals onto the Condominium Property as permitted by the rules and regulations adopted by the Board from time to time.

F. Alterations. No Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements or Common Elements, including, but not limited to, the penetration of the Common Element or Limited Common Element structure or membrane by the use of screws, bolts, nails or similar devices, raising of the finished ceiling of a Unit above that originally established by Developer for the original construction of the Unit, alteration of the fire protection system as originally installed by Developer, installing any electrical wiring, television antenna, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written



consent of the Association. Curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Units shall be white or off-white in color and shall be subject to disapproval by the Association, in which case they shall be removed and replaced with acceptable items.

G. Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the single-family residential use and occupancy of Units.

H. Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its occupants, including the Members.

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

J. Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in areas where initially installed as of the recording of this Declaration in the public records of the County. Installation of hard surfaced floor coverings (other than by the Developer) in any other areas is not permitted except with the consent of the Association, and those areas are to receive sound absorbent, less dense floor coverings, such as carpeting. Any and all replacements of hard surface floor coverings are to be of the same material as originally installed or as approved by the Association. Also, the installation of any improvement or placement of any heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations of these restrictions and for all damages resulting there from and the Association has the right to require immediate removal of violations. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. Each Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a building such as the Condominium is very difficult to control,



and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

K. Exterior Improvements. Subject to any provision of this Declaration specifically permitting same, and except for the display of one portable, removable United States Flag in a respectful way and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veteran's Day may display in a respectful way portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags as permitted by Fla. Stat. 718.113(4), no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, interior shutters or blinds, furniture, fixtures and equipment), without the prior written consent of the Association. No additional locks, bolts or other locking devices may be installed in or to the entrance door of any Unit without the consent of the Association.

L. Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in this Article V and Article VII hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units to the Association to use in the performance of its functions. No Owner shall change the locks to his Unit without so notifying the Association and delivering to the Association a set of keys, to such Unit.

M. Antennas, Satellite Dishes. Except to the extent that an Owner is otherwise granted the right under any applicable law, no Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Unit (and/or areas appurtenant thereto), without the prior written consent of the Association.

N. Parking. There are sixty-two (62) parking spaces within of the Condominium Property that have been designed for vehicular parking. All vehicle parking shall be subject to the procedures, rules and regulations adopted from time to time by the Association. Initially, Developer will specifically assign one (1) parking space to each Unit Owners with the exception of a limited number of Unit Owners in Buildings A and B where two (2) parking spaces may be assigned for two tandem parking spaces. Unassigned parking spaces shall be controlled by Developer so long as Developer owns a Unit. The Association shall maintain a parking plan for all parking spaces, including assigned spaces. The Developer, and upon Developer turning control of the Association to Unit Owners, the Association, shall have the right to re-assign parking spaces to Unit Owners without the consent of Unit Owners. Developer shall have the right, but not the obligation, to designate unassigned parking spaces for general parking of vehicles. In such event, the Association shall regulate the use of such parking spaces by

adopting rules and regulations for such use. There shall be no assignment fee payable by the Association in connection with the designation of such parking spaces for general parking. While controlled by Developer, unassigned parking spaces may be temporarily assigned, leased or otherwise used by Developer in its sole discretion without interference by the Association or any Unit Owner.

No parking shall be permitted on any roadway, and adequate, permanent, paved parking shall be constructed and maintained in accordance with standards acceptable to Developer for such use. All vehicles must be registered with the Association. No vehicles belonging to a Unit Owner or other occupant a Unit shall be permitted on the Condominium Property without a pass, permit or decal administered by the Association or shall be parked in such a manner as to impede or prevent access to another parking space. No more than two (2) vehicles shall be permitted to be parked at any one time within the Condominium by the occupants of any Unit. Unit Owners and lessees, their respective employees, agents, visitors, and families shall obey the parking regulations posted within the parking areas, if any, and other regulations promulgated in the future for the safety, comfort, and convenience of the Unit Owners. No motor vehicle that cannot operate on its own power shall remain upon the Condominium Property for more than twelve (12) hours, and no repair of vehicles, except for emergency repairs, shall be made. Vehicles must be parked carefully within the painted lines and pulled up close to the bumper. As a security measure, all automobiles doors should be locked. Vehicle alarm systems shall be in working order, or the Association shall have the right to disarm it and the right to remove or otherwise insist upon Owner clearing of unsightly vehicles, in the discretion of the Association.

O. Trucks, Commercial Vehicles, Buses, Recreational Vehicles, Mobile Homes, Boats, Campers and Trailers.

1. Subject to such rules and regulations as the Board may, from time to time, promulgate, and except for pickup trucks, sport utility vehicles or other trucks weighing 3/4 ton or less, no truck, or commercial vehicle of any kind shall be permitted to be parked on the Condominium Property for a period of more than four (4) hours unless said vehicles are temporarily present and necessary in the actual construction or repair of Units or Building on the Condominium Property, or are necessary and incident to the business on the Condominium Property. No truck or commercial vehicle incident to business shall be parked overnight unless parked within the designated area or areas as approved by Developer or the Association.
2. No buses may be parked on the Condominium Property.
3. No recreational vehicles, mobile homes, boats, campers and trailers shall be parked or stored in the Condominium Property.
4. None of the vehicles named herein shall be used as a domicile or residence, either permanent or temporary.

P. Storage on Balconies and Terraces. No equipment, materials or other items shall be kept or stored on any balcony or terrace area, including but not limited to towels, clothing, bicycles, and furniture other than furniture approved by the Association. The foregoing shall not prevent, however, placing and using of patio-type furniture, planters and other related items in such areas, but all such patio furniture, planters and other items must be reasonably acceptable to the Association and shall conform to the restrictions of the rules and regulations of the Association. There shall be no outdoor cooking equipment on any balcony or terrace. No gas containers of any kind may be stored within a Unit. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Association shall be final and dispositive.

Q. General Restrictions. The Units and the Common Elements (including Limited Common Elements) shall be subject to the restrictions, easements, conditions and covenants prescribed and established in this Declaration, the By-Laws and the Rules and Regulations, governing the use of the Units and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Unit. The Units and the Common Elements further shall be subject to all laws, zoning ordinances and regulations of governmental authorities having jurisdiction over the Condominium.

R. Prohibited Uses. No immoral, improper, offensive or unlawful use shall be made of any Unit or of the Common Elements, or any part thereof. No Unit Owner shall permit or suffer anything to be done or kept in his Unit or the Common Elements which would: (1) increase the rate of insurance on the Condominium; (2) obstruct or interfere with the rights of other occupants of the Condominium; (3) annoy other occupants by unreasonable noises or otherwise create a nuisance; (4) interfere with the peaceful possession and proper use of any other Unit or of the Common Elements; or (5) violate any governmental law, ordinance or regulation. No item of any kind shall be affixed or attached to or permanently placed on the Common Elements (including Limited Common Elements) without the prior written consent of the Association.

S. Leases. All Units are intended to be owner-occupied and not subleased. To the limited extent that the leasing of a Unit is permitted under the Key West Work Force Housing Code, such leasing shall be conditioned upon the City of Key West's prior written approval as provided in Article VIII, Section C of this Declaration and the Master Lease. Notwithstanding the foregoing, Developer shall be free to rent any Unit owned by Developer subject only to complying with Key West Work Force Housing Code and Master Lease.

T. Prohibition of Subdivision of Units. No Unit shall be subdivided or broken into smaller parts than as shown in Exhibit C. No Unit shall be subdivided by time through a timeshare condominium, cooperative or other timesharing subdivision.

U. Prohibition of Separation of Common Elements, Common Interests or Easements from Unit. Any attempt to separate the fee title to a Unit from the undivided interest in the Common Elements and/or in the Common Surplus appurtenant to such Unit or from the easements appurtenant to such Unit shall be null and void. No Unit Owner may assign, hypothecate or transfer in any manner his share in the funds and assets of the Association as an appurtenance to his Unit.

V. Discharge of Firearms and Weapons. No guns or other weapons shall be discharged on any portion of the Condominium Property including the Common Elements and Units. The terms "firearms and weapons" shall include all dangerous instruments including, but not limited to, rifles, shotguns, pistols, dart guns, BB guns, sling shots and spear guns.

W. Restrictions for Underground Water Use and Excavation Within Condominium Property. Remediation of petroleum contaminated soil and groundwater at the Condominium Property were conducted and completed in July, 2000, and DEP issued a Conditional Site Rehabilitation Completion Order on September 7, 2000. As a result of these activities, groundwater use at the property is restricted as noted in the Declaration of Restrictive Covenants which is recorded in Book 1646, Pages 1092 Public Records of Monroe County, Florida ("2000 Declaration"). The groundwater at Condominium Property may not be used for drinking or irrigation. The presence of arsenic was identified in surface soil at levels exceeding Florida Department of Environmental Protection's ("DEP") residential soil cleanup target level. Developer has addressed this condition through an excavation and disposal of some of the contaminated soil and by placing two feet of clean fill material above any remaining contaminated soil. The two-foot soil cap was designed to separate normal human activity from the contaminated soil. This cap design was approved by DEP and meets DEP regulations as set forth in Rule 62-780.680(2), Florida Administrative Code). Developer has filed Restrictive Covenants ("Developer Environmental Covenants") prohibiting the use of underground water for drinking or irrigation and the excavation and construction below two feet surface elevations as set forth in that certain Declaration of Restrictive Covenants, as recorded in Official Records Book ~~2356~~ at Page ~~2282~~, Public Records of Monroe County, Florida. Florida Department of Environmental Protection, Developer and Steamplant Condominiums, LLC, as developer of the proposed condominium for the Market Rate Units, will be required to entered into a supplemental Declaration of Restrictive Covenants which will be recorded in the Public Records of Monroe County, Florida (the "DEP Covenants"). The intent of the DEP Covenants will be to reduce or eliminate the risk of exposure of contaminants to the environment and to users or occupants of the Condominium Property from underground water use and exposure to contaminants within the underground soil, and to reduce or eliminate the threat of migration of the contaminants in addition to the restrictions set forth in the 2000 Declaration and Developer Environmental Covenants. The DEP Covenants will require the Condominium Property remain permanently covered and maintained by two (2) feet of clean and uncontaminated soil and further prohibit use of underground water for drinking or irrigation and the excavation and construction below two feet surface elevations except under controlled conditions pursuant to Chapter 62-770, F.A.C. The DEP will be granted access rights to the Condominium Property for

monitoring purposes and will provide enforcement remedies for the DEP. This Declaration shall be deemed subordinate to the DEP Covenants notwithstanding the Declaration's earlier filing in the Public Records of Monroe County, Florida. Association and Unit Owners shall comply with all restrictions and covenants as set forth in the DEP Covenants upon its execution and recording in the Public Records of Monroe County, Florida.

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

Y. Effect on Developer. Subject to the following exceptions, the restrictions and limitations set forth in this Article V shall not apply to the Developer nor to Units owned by the Developer. The Developer shall not be exempt from the Key West Work Force Housing Code restrictions, if any, relating to the leasing of Units to qualified occupants, pet restrictions, vehicular restrictions, except as such vehicular restrictions relate to the Developer's construction, maintenance and marketing activities.

#### ARTICLE VI

##### Easements

A. Easement in Common Elements. Except for those portions that are reserved for exclusive use as Limited Common Elements, the Common Elements shall be subject to a non-exclusive easement in favor of each Unit Owner, its guests and invitees, for all proper and normal purposes. Such easement shall run with each Unit. A non-exclusive easement shall exist for ingress and egress over, through and across streets, common areas, elevators within the Building and walkways, including the hallways within the Building for the purpose of going from one portion of the Condominium Property to another. Nothing contained herein shall be construed to allow any person or entity to enter upon the Condominium Property unless it is upon an area specifically designated for such traffic and necessary for such ingress and egress as described above. Under no circumstances shall such traffic be allowed through any Unit.

B. Right of Access to Units; Utility Services; Drainage; Maintenance. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units. Easements are reserved under, through and over the Condominium Property as may be required for utility services and drainage serving the Condominium. The Association shall have the right of access to each Unit and its Limited Common Elements to inspect, install, maintain, repair or replace all equipment pipes, wires, ducts, vents, cables, conduits and other utility service facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property and to remove any improvements interfering with or impairing the utility service or easements herein reserved. Developer, so long as it owns any Units, and the Association each shall have the following rights, provided that such rights do not prevent or unreasonably interfere with use of the Units



for proper purposes: (1) to establish, grant or create additional electric, gas, water, sewer, telephone, burglar alarm, drainage, cable television, master antenna or other utility easements; (2) to relocate any access easements concerning such utility easements; (3) to install, maintain and inspect lines and appurtenances for public or private water, sewer, telephone, burglar alarm, drainage, cable television, master antenna and other utility services; (4) to tap into or connect with and make use of wires, pipes, conduits, flues, ducts, television cables, master antenna, sewers, burglar alarm lines, water lines, drainage lines or other utility lines located in the Condominium Property, and (5) to dedicate any or all of such utility easements to any governmental body, public benefit corporation or utility company if Developer shall deem it necessary or desirable for the proper operation and maintenance of the Condominium Property or any portion thereof, or for the general health or welfare of any Unit Owner, or in connection with the development of the Condominium Property, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the proper use of any Unit. No Unit Owner shall commit or allow to be committed any act within or without his Unit which would interfere with or impair any of the utility using the easements granted herein.

C. Encroachments Easements. In the event that any Unit shall encroach upon any portion of the Common Elements for any reason not caused by the purposeful or negligent act of the Unit Owner(s) or agent(s) of such Owner(s), then an easement appurtenant to such Unit shall exist for continuance of such encroachment for so long as such encroachment naturally shall exist. In the event that any portion of the Common Elements shall encroach upon any Unit, then an easement appurtenant to the Common Elements shall exist for the continuance of such encroachment for so long as such encroachment naturally shall exist.

D. Developer's Reservation. Developer reserves easements, rights and licenses in, through, over, under and across the Common Elements for the following purposes: (1) to complete sale of Units; (2) to repair, replace and maintain the Condominium Property where the Association has failed in performing its duties for same; (3) to develop or operate other projects in the vicinity of the Condominium Property; and (4) to erect, maintain, repair and replace, from time to time, signs on the Condominium Property advertising the sale, leasing and/ or renting of Units in the Condominium or in the vicinity of the Condominium Property.

E. Airspace Easement. Each Unit Owner shall have an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any airspace which is vacated.

F. Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications security and monitoring systems, and other services and drainage in order to serve the Condominium and/or members of the Association. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other

service or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit to maintain, repair or replace any Common Element or (wires, ducts, cables, conduits and other components of the telephone, cable television, communications, security and similar systems, elevator system, and interior hallways and stairs of the Building), hot water heaters, service and drainage facilities, and Common Elements contained within the Unit or elsewhere in or around the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

G. Encroachments. If (1) any portion of the Common Elements encroaches upon any Unit; (2) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; (3) any encroachment shall hereafter occur as a result of (a) construction of the Improvements and/or any "improvements" of or upon The Land; (b) settling or shifting of the Improvements; (c) any alteration or repair to the Common Elements, made by or with the consent of the Association or Developer, as appropriate; or (d) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements or the relevant "improvements upon The Land, shall stand."

H. Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction of any and all improvements upon any portion of The Land, or any part thereof, or any Improvements or Units located or to be located on the Condominium Property, and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so.

I. Sales and Rental Activities. For as long as there are any Units owned by the Developer, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing, rental and construction offices relating to the Condominium, to show model Units and the Common Elements to prospective purchasers of Units, and to erect on the Condominium Property and Association Property signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium Property, for sale, lease or occupancy.

J. Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Building and/or any improvements constructed upon The



Land, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjoining structures which are necessarily or conveniently located within the Condominium Property, the Association Property and/or The Land.

K. Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time, to enter the Common Elements and Units for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for the Developer to fulfill any of its warranty obligations. Failure of the Association or any Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Article XVI below.

L. Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for residential purposes.

M. Cable Television. The Association shall have the right to enter into a bulk service agreement with a cable television provider. The costs associated with such service shall be a Common Expense, and no Unit Owner shall be entitled to any reduction, setoff or other credit should the Unit Owner elect not to use the cable services under the bulk service agreement by the Association.

N. Ground Lessor's Electric Facilities. Pursuant to Section 19.04 of the Master Lease, the Ground Lessor may install and maintain underground electric or other utility lines or equipment under the condominium property. It shall be the Ground Lessor's responsibility to maintain any such equipment it installs, and Ground Lessor shall be entitled to go upon the condominium property where utility lines are located but only for the purpose of performing installation, maintenance, repair, removal, or the like as to such equipment. Ground Lessor shall

be responsible to repair, at Ground Lessor's expense, any damage to the condominium property caused by such maintenance, repair or removal. The Ground Lessor's right includes the right to have vehicular access over and across the condominium property necessary to obtain access to the facilities at any and all times so long as such access does not uneasily interfere with the use of the condominium property by unit owners in the Association.

O. Cross Access Easement. The Developer, developer of the Market Rate Units and The Utility Board of the City of Key West, Florida d/b/a Keys Energy Services entered into that certain Declaration and Agreement for Cross Access, Drainage Utility Easements, recorded Official Records Book 2069 at Page 438, Public Records of Monroe County, Florida were the parties granted cross access easements, utility easements and drainage easements as more particularly set forth in the Cross Access Easement, a copy of which is attached hereto as Exhibit G. This perpetual, non-exclusive cross easement provides for ingress/egress to the Condominium Property and the Units over the Parking Parcel owned by Ground Lessor (and shown in Exhibit C to this Declaration), easements in favor of Ground Lessor for installation, operation and maintenance of sewers, water, gas, electric, telephone and other utility lines, easements for drainage, easement for access and maintenance of the Substation Parcel and utility lines, and easement to permit the installation, operation, maintenance, repair, relocation and removal of any type of utility improvement used by the Ground Lessor in its operations, and easements in favor of the Units for ingress/egress, installation, operation and maintenance of sewers, water, gas, electric, telephone and other utility lines, for drainage and maintenance. The condominium association for the Market Rate Units (Steamplant Condominium Association, Inc., hereinafter the, "Market Rate Association") has the primary obligation to reasonably maintain the easement property as generally described in the Cross Assess Easement, and the Market Rate Association for the Market Rate Units shall, in its sole discretion, charge the Association a portion of the major maintenance expenses incurred by the Market Rate Association for such items as surface replacement and other non-daily, major maintenance. The Association will not be charged more than one-half of such major maintenance expenses, with the Market Rate Units being responsible for any maintenance not charged to the Association. Recurring cleaning, litter cleanup and non-major maintenance shall be chargeable to and made the responsibility of the Association. The Developer and/or Association shall have the further right, without the consent of Unit Owners or Institutional Lenders, to further grant or restrict existing grants of easement rights over the easement property generally described in the Cross Assess Easement.

P. Water Cool System Easement for Market Rate Units. The developer of the Market Rate Units has been granted an easement by Developer to, *inter alia*, install and maintain underground lines for the water cooling towers and other underground infrastructure that traverse the Condominium Property, which Grant of Easement is recorded in Official Records Book 2085 at Page 1022, Public Records of Monroe County, Florida, as amended by that certain Amended and Restated Easement Agreement is recorded in Official Records Book 2354 at Page 2091 Public Records of Monroe County, Florida.