

Retn:
BAYSWATER FALLING WATERS
7200 DAVIS BLVD
NAPLES FL 34102

3003533 OR: 3060 PG: 1980

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06/24/2002 at 11:26AM DWIGHT B. BROCK, CLERK

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**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR FALLING WATERS BEACH RESORT**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FALLING WATERS BEACH RESORT (this "Second Amendment") is made as of June 21, 2002, by Bayswater Falling Waters, LLC, a Delaware limited liability company, whose mailing address is 100 South Bedford Road, Mount Kisco, New York 10549 ("Bayswater").

WITNESSETH:

WHEREAS, Bayswater, as successor in interest to Falling Waters Beach Resort, Limited, a Florida limited partnership, and Falling Waters Beach Resort, Inc., a Florida corporation, is the "Declarant" and "Developer" under that certain Declaration of Covenants, Conditions and Restrictions for Falling Waters Beach Resort, recorded May 9, 1997 in Official Record Book 2312, page 1187, of the public records of Collier County, Florida (the "Declaration"); and

WHEREAS, Section 6.1 of the Declaration provides that the Declarant or Developer may "amend [the] Declaration unilaterally, at any time, without prior notice and without the consent of any person or entity, upon such conditions, in such form and for such purposes as it shall in its sole discretion deem appropriate by preparing and recording amendments [thereto], provided, however, that [the] right of unilateral amendment shall expire after all portions of the Commercial Property and all condominium units controlled by the Declaration have been sold" (*emphasis added*); and

WHEREAS, pursuant to Section 6.1 of the Declaration, on or about March 12, 2002, the Declarant made the first amendment to the Declaration (the "First Amendment") pursuant to which, among other things, the Declarant provided that the Commercial Property may be used as a commercial self-storage facility with an office and manager apartment as provided in the Collier County Land Development Code; and

WHEREAS, Bayswater, is the current Declarant and Developer under the Declaration, and the owner of a condominium unit within the property subject to the Declaration; and

WHEREAS, Bayswater desires to further amend the Declaration to provide for, grant and reserve certain irrevocable easements and rights of way over, upon and under the Commercial Property, in favor of Falling Waters Beach Resort Master Association, Inc., all Condominium Associations within the Property, all Owners of a condominium unit within any one (1) or more of the Condominium Associations, all private and public utility companies that currently have improvements over, upon and/or under the Commercial Property, and Bayswater, all as more particularly described herein.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Bayswater, as Declarant and Developer under the Declaration, pursuant to Section 6.1 thereof, hereby further amends the Declaration as follows:

1. A new Section 15 is hereby added to the Declaration as follows:

"15. EASEMENTS AND RIGHTS OF WAY OVER COMMERCIAL PROPERTY:

15.1 Falling Waters Beach Resort Master Association, Inc.; all Condominium Associations within the Property; all Owners, lessees and all other occupants of a condominium unit within any one (1) or more of the Condominium Associations; and all private and public utility companies (individually a "**Beneficiary**" and collectively the "**Beneficiaries**"), in each case that currently own, have or use utility and utility related improvements, betterments, facilities and appurtenances over, upon and/or under the Commercial Property (individually a "**Third Party Utility Improvement**" and collectively the "**Third Party Utility Improvements**") shall have (i) a permanent, irrevocable easement for the continued existence and use of such improvements, betterments and facilities in their current location(s), for their current and any intended purpose, and in their current and intended state of construction (the "**Commercial Property Utility Easement**"), without interference from the Owner(s) or other users of the Commercial Property, and (ii) a permanent, irrevocable right of way over and upon the Commercial Property for the purpose of inspecting, maintaining, repairing, reconstructing, removing and replacing the Third Party Utility Improvements.

15.2 Notwithstanding the provisions of Section 15.1 of this Declaration, the Owner(s) of the Commercial Property shall have the right to relocate any Third Party Utility Improvement to another location within the Commercial Property pursuant to a site plan approved by (i) Collier County and (ii) the Declarant and/or Developer, for the improvement and/or development of the Commercial Property or any portion thereof, provided that (a) such relocation is at the sole and exclusive cost and expense of the Owner(s) of the Commercial Property who or which perform(s) such relocation, (b) such relocation does not impair, limit or otherwise interfere with the use of the utilities for which such to be relocated Third Party Utility Improvement(s) are utilized, (c) any permits, consents, permissions and approvals that are necessary to perform such relocation are procured by the Commercial Property Owner(s) who or which perform such relocation at its or their sole and exclusive cost and expense, (d) the Commercial Property Owner(s) who or which perform such relocation defend, indemnify and hold harmless any Beneficiary who or which is damaged or harmed as a consequence of such relocation and (e) the Commercial Property Owner(s) who or which perform such relocation must procure liability and property damage insurance

covering any loss, cost, damage and expense incurred by any Beneficiary as a consequence of such relocation.

15.3 The Commercial Property Owner(s) who or which performs such relocation must provide the Beneficiary with reasonable advance notice of any work to be performed by it, and its employees, agents and contractors, in order to minimize disruption of service, and inconvenience, to the Beneficiaries.

15.4 The Commercial Property Utility Easement shall run with the Properties in perpetuity and shall bind the Owner(s) of the Commercial Property and their respective successors, heirs, administrators, personal representatives and assigns."

2. Any capitalized term used in this Second Amendment that is not defined herein shall have the meaning assigned to the same in the Declaration and/or the First Amendment, as the case may be.

3. Invalidation of any one (1) or more of the provisions of this Second Amendment by judgment or court order shall not affect the validity of any other provisions, which shall remain in full force and effect.

4. All other provisions of the Declaration, as previously amended by the First Amendment, that are not amended hereby or that are not in conflict herewith or in contradiction hereof shall remain in full force and effect, as is such other provisions of the Declaration and First Amendment were set forth herein in their entirety.

WITNESSES:

BAYSWATER FALLING WATERS, LLC

Witness as to Sandra Risi
Sandra Risi
Witness as to Maria Robrigado
Maria Robrigado

By: [Signature]
Printed: Gary Friedland
Title: Vice President

STATE OF NEW YORK)
) SS:
COUNTY OF WESTCHESTER)

I hereby certify that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared GARY FRIEDLAND known to me to be the person described in and who executed the foregoing Second Amendment to Declaration of Covenants, Conditions and Restrictions for Falling Waters Beach Resort and acknowledged before me that he executed the same.

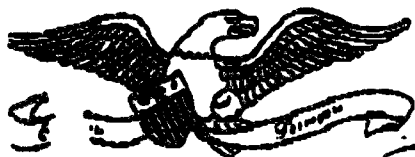
WITNESS my hand and official seal in the county and state last aforesaid this 21st day of June, 2002.

Notary Public - State of NEW YORK
ANTHONY J. KUNNY
(Print Commission Name of Notary Public)
Did _____ Did Not _____ Take an Oath
Personally Known /Produced ID _____
Type of Identification Produced _____



ANTHONY J. KUNNY
Notary Public, State of New York
No. 01KU5095078
Qualified in Westchester County
Commission Expires Oct. 24, 2006
JKR

NOT A CERTIFIED COPY



1072 South Avenue North
Naples, Florida 33940
(813) 267-5965
Fax (813) 267-2375

Bruns & Bruns, Inc.

FALLING WATERS BEACH RESORT MASTER ASSOCIATION

LEGAL DESCRIPTION

Commencing at the East 1/4 corner of Section 3, Township 51 South, Range 26 East, Collier County, Florida; thence run South 00° 41' 31" West for 629.67 feet; thence run North 54° 20' 16" West on a line 400 feet North of and parallel with the North right-of-way line of Florida State Road 90, (U.S. 41) for a distance of 608.25 feet to the East line of a Outfall Drainage Easement as recorded in Official Records Book 83, Page 125 of the Public Records of Collier County, Florida and the Point of Beginning; thence continue along said line North 54° 20' 16" West 1323.20 feet; thence South 35° 39' 44" West 400.00 feet to the Northerly right-of-way line of Florida State Road 90, (U.S. 41); thence North 54° 20' 16" West 40.00 feet along said right-of-way; thence North 35° 39' 44" East 400.00 feet; thence North 32° 05' 39" West 37.27 feet; thence North 54° 20' 16" West 106.20 feet; thence South 35° 39' 44" West 14.00 feet; thence North 54° 20' 16" West 1999.16 feet; thence North 35° 40' 08" West 220.00 feet; thence North 54° 20' 16" West 189.00 feet to the Easterly right-of-way line of State Road S-951; thence run North 35° 40' 08" East 100.00 feet along said right-of-way line; thence South 54° 20' 16" East 189.00 feet; thence North 35° 40' 08" East 600.00 feet; thence South 54° 20' 16" East 3249.77 feet to the Eastertly line of said Outfall Easement; thence South 20° 16' 12" West 954.23 feet along said easement to the Point of beginning.

LESS PARCEL I

Commencing at the East 1/4 corner of Section 3, Township 51 South, Range 26 East, Collier County, Florida; thence run South 00° 41' 31" West for 629.67 feet; thence run North 54° 20' 16" West on a line 400 feet North of and parallel with the North right-of-way line of Florida State Road 90, (U.S. 41) for a distance of 608.25 feet to the East line of a Outfall Drainage Easement as recorded in Official Records Book 83, Page 125 of the Public Records of Collier County, Florida; thence continue along said line North 54° 20' 16" West 3503.08 feet; thence North 35° 40' 08" West 139.20 feet; thence South 54° 19' 52" East 38.99 feet to the Point of Beginning;

thence North $35^{\circ} 39' 47''$ East 542.00 feet to a point on a curve;
 thence 314.16 feet along the arc of a tangential curve concave to
 the South, having a radius of 200 feet, central angle of $89^{\circ} 59' 57''$
 and subtended by a chord which bears North $80^{\circ} 39' 46''$
 East for 282.84 feet;
 thence South $54^{\circ} 20' 16''$ East 212.49 feet to a point on a curve;
 thence 77.91 feet along the arc of a tangential curve concave to
 the Southwest, having a radius of 188 feet, central angle of $23^{\circ} 44' 44''$
 and subtended by a chord which bears South $42^{\circ} 27' 54''$ East
 for 77.36 feet;
 thence South $30^{\circ} 35' 32''$ East 231.07 feet to a point on a curve;
 thence 299.05 feet along the arc of a tangential curve concave to
 the Northeast having a radius of 362 feet, central angle of $47^{\circ} 19' 54''$
 and subtended by a chord which bears South $54^{\circ} 15' 29''$ East for
 290.62 feet;
 thence South $77^{\circ} 55' 26''$ East 234.08 feet to a point on a curve;
 thence 77.39 feet along the arc of a tangential curve concave to
 the South having a radius of 188 feet, a central angle of $23^{\circ} 35' 10''$
 and subtended by a chord which bears South $66^{\circ} 07' 51''$ East for
 77.85 feet;
 thence South $54^{\circ} 20' 16''$ East 336.20 feet to a point on a curve;
 thence 104.72 feet along the arc of a tangential curve concave to
 the West having a radius of 200 feet, a central angle of $30^{\circ} 00' 00''$
 and subtended by a chord which bears South $39^{\circ} 20' 16''$ East for
 103.53 feet;
 thence South $24^{\circ} 20' 16''$ East 66.92 feet to a point on a curve;
 thence 203.22 feet along the arc of a tangential curve concave to
 the Northeast having a radius of 324 feet, a central angle of $35^{\circ} 56' 16''$
 and subtended by a chord which bears South $42^{\circ} 18' 24''$ East
 for 199.91 feet;
 thence South $60^{\circ} 16' 32''$ East 304.36 feet to a point on a curve;
 thence 118.48 feet along the arc of a tangential curve concave to
 the Southwest having a radius of 200 feet, central angle of $33^{\circ} 56' 27''$
 and subtended by a chord which bears South $43^{\circ} 18' 19''$ East for
 116.75 feet;
 thence South $26^{\circ} 20' 05''$ East 191.70 feet to a point on a curve;
 thence 159.10 feet along the arc of a tangential curve concave to
 the Northeast having a radius of 174 feet, central angle of $52^{\circ} 23' 27''$
 and subtended by a chord which bears South $52^{\circ} 31' 49''$ East for
 153.62 feet;
 thence South $78^{\circ} 43' 32''$ East 179.99 feet to a point on a curve;
 thence 115.08 feet along the arc of a tangential curve concave to
 the Southwest having a radius of 150 feet, a central angle of $43^{\circ} 57' 21''$
 and subtended by a chord which bears South $56^{\circ} 44' 52''$ East
 for 112.28 feet;
 thence South $34^{\circ} 46' 11''$ East 79.75 feet to a point on a curve;
 thence 145.95 feet along the arc of a tangential curve concave to
 the West having a radius of 150 feet, a central angle of $55^{\circ} 45' 00''$
 and subtended by a chord which bears South $6^{\circ} 53' 41''$ East for
 140.26 feet;
 thence South $20^{\circ} 58' 49''$ West 202.46 feet to a point on a curve;
 thence 62.03 feet along the arc of a tangential curve concave to
 the Northwest having a radius of 200 feet, central angle of $17^{\circ} 46' 13''$
 and subtended by a chord which bears South $29^{\circ} 51' 56''$ West for

61.78 feet;
 thence South $38^{\circ} 45' 02''$ West 129.37 feet to a point on a curve;
 thence 125.96 feet along the arc of a tangential curve concave to
 the North having a radius of 150 feet, central angle of $48^{\circ} 06' 40''$
 and subtended by a chord which bears South $62^{\circ} 48' 22''$ West for
 122.29 feet;
 thence South $86^{\circ} 51' 42''$ West 119.63 feet to a point on a curve;
 thence 101.58 feet along the arc of a tangential curve concave to
 the North having a radius of 150 feet, central angle of $38^{\circ} 48'$
 $02''$, and subtended by a chord which bears North $73^{\circ} 44' 17''$ West
 for 99.65 feet;
 thence North $54^{\circ} 20' 16''$ West 185.49 feet to a point on a curve;
 thence 65.62 feet along the arc of a tangential curve concave to
 the Northeast having a radius of 188 feet, central angle of $20^{\circ} 00'$
 $00''$ and subtended by a chord which bears North $44^{\circ} 20' 16''$ West for
 65.29 feet;
 thence North $34^{\circ} 20' 16''$ West 111.56 feet to a point on a curve;
 thence 148.00 feet along the arc of a tangential curve concave to
 the Southwest having a radius of 212 feet, central angle of $40^{\circ} 00'$
 $00''$ and subtended by a chord which bears North $54^{\circ} 20' 16''$ West for
 145.02 feet;
 thence North $74^{\circ} 20' 16''$ West 111.56 feet to a point on a curve;
 thence 65.62 feet along the arc of a tangential curve concave to
 the Northeast having a radius of 188 feet, central angle of $20^{\circ} 00'$
 $00''$ and subtended by a chord which bears North $64^{\circ} 20' 16''$ West for
 65.29 feet;
 thence North $54^{\circ} 20' 16''$ West 189.95 feet to a point on a curve;
 thence 212.37 feet along the arc of a tangential curve concave to
 the East having a radius of 338 feet, central angle of $36^{\circ} 00' 00''$
 and subtended by a chord which bears North $36^{\circ} 20' 16''$ West for
 208.90 feet;
 thence North $18^{\circ} 20' 16''$ West 103.85 feet to a point on a curve;
 thence 109.33 feet along the arc of a tangential curve concave the
 Southwest having a radius of 174 feet, central angle of $36^{\circ} 00'$
 $00''$, and subtended by a chord which bears North $36^{\circ} 20' 16''$ West
 for 107.54 feet;
 thence North $54^{\circ} 20' 16''$ West 111.00 feet to a point on a curve;
 thence 109.64 feet along the arc of a tangential curve concave to
 the South having a radius of 174.5 feet, central angle of $36^{\circ} 00'$
 $00''$ and subtended by a chord which bears North $72^{\circ} 20' 16''$ West for
 107.85 feet;
 thence South $89^{\circ} 39' 44''$ West 164.61 feet to a point on a curve;
 thence 94.56 feet along the arc of a tangential curve concave to
 the North having a radius of 150 feet, central angle of $36^{\circ} 00' 00''$
 and subtended by a chord which bears North $72^{\circ} 20' 16''$ West for
 93.01 feet;
 thence North $54^{\circ} 20' 16''$ West 325.76 feet to a point on a curve;
 thence 84.26 feet along the arc of a tangential curve concave the
 Northeast having a radius of 150 feet, central angle of $32^{\circ} 11' 05''$
 and subtended by a chord which bears North $38^{\circ} 14' 44''$ West for
 83.16 feet to a point on a reverse curve;
 thence 97.74 feet along the arc of a tangential curve concave to
 the Southwest having a radius of 174 feet, central angle of $32^{\circ} 11'$
 $05''$ and subtended by a chord which bears North $38^{\circ} 14' 44''$ West for

thence South 54° 20' 16" East 43.46 feet;
 thence North 35° 39' 44" East 8.00 feet;
 thence South 54° 20' 16" East 69.07 feet;
 thence North 35° 39' 44" East 398.21 feet;
 thence South 54° 20' 16" East 241.91 feet;
 thence South 30° 35' 32" East 270.31 feet;
 thence South 39° 01' 17" East 246.66 feet;
 thence South 77° 35' 26" East 327.88 feet;
 thence South 70° 55' 59" East 149.89 feet;
 thence South 54° 20' 16" East 208.62 feet;
 thence South 28° 57' 34" East 194.63 feet;
 thence South 48° 30' 14" East 268.87 feet;
 thence South 60° 16' 32" East 278.25 feet;
 thence South 26° 20' 05" East 241.05 feet;
 thence South 54° 20' 16" East 251.50 feet;
 thence South 78° 51' 41" East 274.80 feet;
 thence South 20° 58' 49" West 221.60 feet;
 thence South 38° 45' 02" West 205.61 feet;
 thence North 54° 20' 16" West 246.13 feet;
 thence North 34° 20' 16" West 263.48 feet;
 thence North 74° 20' 16" West 263.23 feet;
 thence North 54° 20' 16" West 225.00 feet;
 thence North 18° 20' 16" West 283.82 feet;
 thence North 54° 20' 16" West 55.72 feet;
 thence North 35° 39' 44" East 151.09 feet;
 thence North 26° 06' 09" West 189.30 feet;
 thence North 53° 34' 42" West 166.51 feet;
 thence North 79° 42' 26" West 152.71 feet;
 thence South 20° 48' 10" West 260.79 feet;
 thence South 69° 39' 44" West 156.83 feet;
 thence North 54° 20' 16" West 228.07 feet;
 thence North 34° 20' 16" West 263.71 feet;
 thence North 74° 20' 16" West 263.71 feet;
 thence North 54° 20' 16" West 465.68 feet to the Point of
 Beginning.


 David B. Bruns, PLS
 Fl. Cert. No. 4520