

**DECLARATION OF RESTRICTIONS
FOR
FUTURA YACHT CLUB TOWNHOUSES**

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Parcels, the Parcel Owners in this Community have agreed, on their behalf and on behalf of their successors and assigns, to subject to their Parcels and any other property that may hereafter become part of this Community to this Declaration of Restrictions, which will be recorded in the Official Records Book of Monroe County, Florida.

A legal description of the Community is attached hereto as Exhibit "A".

All real property in the Community shall be held, owned, sold, transferred, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth, which shall be binding upon persons having any right, title or interest in or to the subject real property, and their heirs, successors and assigns and shall constitute covenants running with the land.

The name of the Homeowners' Association created to operate the Community is the Futura Yacht Club Townhouses Association, Inc., hereinafter called the "Association."

1. DEFINITIONS

1.1 "Act", or "Homeowners' Association Act", or "HOA Act" means Chapter 720 Florida Statutes, as it now exists or as it may be amended from time to time including the definitions therein contained.

1.2 "Articles" means the Articles of Incorporation of the Association, a copy of which is attached hereto as Exhibit "B" and made a part hereof.

1.3 "Architectural Review Committee", or "ARC" means and refers to the Board of Directors of the Association, or a Committee appointed by the Board of Directors of the Association, for the purposes set forth in this Declaration as to the Architectural Review Committee.

1.4 "Assessment" means the assessments levied by the Association against the Parcels, and shall be deemed to include both Regular Assessments and Special Assessments.

1.5 "Association" shall mean and refer to Futura Yacht Club Townhouses Association, Inc., a Florida Corporation Not For Profit, its successors and assigns.

1.6 "Board" means the Board of Directors of the Association.

1.7 "Bylaws" means the Bylaws of the Association, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

1.8 "Charge" means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Parcel Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

1.9 **"Common Area" or "Common Properties"** means real property owned by the Association for the common use and enjoyment of the Owners, or property that has been dedicated to the Association or Parcel Owners for common use or enjoyment. At the time this Declaration is adopted and recorded, the Association owns no such Common Areas or Common Properties, but such could be added at some time in the future.

1.10 **"Common Expenses"** means the expenses payable by the Parcel Owners to the Association for the purposes and in the manner set forth in this Declaration, the Articles or Bylaws.

1.11 **"Community"** means the land described in Exhibit "A" attached hereto, which is comprised of the Parcels and any Common Areas or Common Properties owned by the Association or property that has been dedicated to the Association or Parcel Owners for common use or enjoyment (now or in the future), all of which are subjected to this Declaration of Restrictions.

1.12 **"Declaration"** means this Declaration of Restrictions and all other terms and provisions contained in this document, as the same may be amended from time to time.

1.13 **"Dwelling Unit"** means a home or residential dwelling constructed on a Lot.

1.14 **"Governing Documents"** means this Declaration of Restrictions, the By Laws and Articles of Incorporation of Futura Yacht Club Townhouses Association, Inc. and any Rules and Regulations of Futura Yacht Club Townhouses Association, Inc., all as may be amended from time to time.

1.15 **"Guest"** means a person who enters upon the Community or a Parcel at the invitation of a Parcel Owner, Resident or Occupant, for the purpose of visiting.

1.16 **"Improvement"** means any structural component built or constructed on a Lot or added to a Dwelling Unit, or placed on a Lot, including but not limited to houses, swimming pools, garages, spas, fences, and recreational equipment which is affixed to the Lot.

1.17 **"Invitee"** means a person or persons that enter the Community for purposes of personal business with an Owner or Occupant.

1.18 **"Lot"** means any individual plot of land located within the Community and, to the extent a Plat of the Community exists, designated as a "Lot" on the Plat of the Community. A Lot is intended for residential use, but shall not include the Common Areas or Common Properties as herein defined.

1.19 **"Maintenance"** means the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related improvements and fixtures within the Community in a condition comparable to their original condition, normal wear and tear excepted.

1.20 **"Member"** means those Owners who are holders of membership interests in the Association, as such interests are set forth in Article 2.

1.21 **"Occupant"** means the person(s) occupying a Dwelling Unit as a Resident or Guest.

1.22 "Owner", "Lot Owner" or "Parcel Owner" means the record Owner of fee simple title to any Lot and the Dwelling Unit thereon, if any, whether one or more persons or entities.

1.23 "Parcel" means the underlying real property, the Lot, and the Dwelling Unit thereon, if any, which may be owned in fee simple and is designated as a parcel or lot in the records of Monroe County, but shall not include the Common Areas or Common Properties as herein defined.

1.24 "Rules and Regulations" means the rules, regulations and policies governing the Community that may be promulgated by the Board from time to time by resolution.

1.25 "Resident" means the person or persons occupying a Parcel and may be an Owner, Guest or Tenant.

1.26 "Tenant" means a person occupying a Parcel, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-owner involves consideration, the payment of money, the exchange of goods and services, etc.

1.27 "Voting Interests" Shall mean the total number of votes that may be cast by all of the Members of the Association.

2. MEMBERSHIP AND VOTING RIGHTS

2.1 Member. Every Owner of a Parcel shall be a Member of the Association. Membership is appurtenant to and not divisible from ownership of a Parcel. Owners agree to maintain such membership in good standing as long as they own such property.

2.2 Transfer. Transfer of ownership, whether voluntary or by operation of law, shall terminate membership in the Association and said membership is then vested in the transferee.

2.3 Multiple Owners. When more than one person or entity shall at any time be the Owner of a Parcel subject to a membership interest, the vote attributed to such Parcel shall be exercised as provided in the Bylaws.

3. ASSESSMENTS

3.1 Common Expense. The costs and expenses incurred by the Association with regard to the administration of affairs of the Association shall constitute Common Expenses. Other expenses properly and reasonably incurred by the Association in performing and carrying out its duties and obligations as specified in this Declaration shall constitute Common Expenses.

3.2 Allocation of Assessments. Except for any maintenance surcharge which may be imposed on any Parcel pursuant to this Declaration, assessments of the Association shall be apportioned and assessed against each Parcel on a 1/34 basis.

3.3 Purpose of Assessment. There is hereby imposed upon each Parcel and its Owner, the affirmative covenant and obligation by acceptance of a deed or title to a Parcel to pay to the Association all Assessments and Charges to pay for the Association's Expenses allocated thereto and as further described herein. There is also hereby imposed upon the Association, the obligation to

assess the Parcels and collect and expend for the Association's expenses and Common Expenses. The Association's Common Expenses include but are not necessarily limited to:

- a. The premiums on any policy or policies of insurance required herein, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest of the Association.
- b. The cost to the Association of purchasing adequate fidelity insurance or bonds to protect against dishonest acts on the part of Officers, Directors, trustees, agents and employees of the Association and other persons who operate or are responsible for operating the Association.
- c. The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under the Declaration, Articles or Bylaws. In addition, the Association may retain a manager or management company to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company so retained are a Common Expense.
- d. The costs to the Association to indemnify its Officers and members of the Board for costs and expenses incurred in pursuance of their duties, obligations and functions hereunder.
- e. The costs of establishing an adequate reserve fund for replacement and/or capital refurbishment of the sewers, water and outside painting or maintenance in amounts determined proper and sufficient by the Board. Each Owner understands that no Owner shall have any separate or divisible interest, claim or right to any such funds comprised of the same.
- f. Special assessments that may be levied to defray Common Expenses for which insufficient funds exist or are expected to be produced under the budget.
- g. Expenses properly incurred by the Association, including but not limited to costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as Common Expense by the Act, the Declaration, or the Bylaws.
- h. Other costs and expenses determined by the Board to be reasonable and necessary in carrying out and accomplishing the purposes, duties and obligations of the Association that are not inconsistent with this Declaration, the Articles or Bylaws.

3.4 Budget. The Board shall prepare and adopt an estimated annual budget, as required by the Bylaws of the Association, which shall reflect the estimated Common Expenses for the next succeeding year.

3.5 Amendment of Budget. Adjustments may be made by the Board in assessments from time to time to allow for any changes for Common Expenses.

3.6 Time of Payment. Assessments shall be payable by Parcel Owners to the Association in advance as set forth in the Bylaws and as determined by the Board.

3.7 Special Assessments. In addition to the regular assessments the Board may levy a special assessment for defraying in whole or in part Common Expenses not met or expected to be met by regular assessments

3.8 Lien. Assessments for Common Expenses, including Regular Assessments, Special Assessments, and Charges and installments thereof, with interest thereon and costs and expenses of collection, including reasonable attorney's fees and costs incurred in attempting to collect said Assessments or Charges before suit or after the filing of suit, at the trial level, appellate level or otherwise, are hereby declared to be a continuing lien upon the Parcel against which such Assessments or Charges are made. Each Assessment or Charge against a Parcel, together with interest thereon at the highest rate allowed by law, late fees, and costs and expenses of collection thereof, including attorney's fees, shall be the personal obligation of the person, persons or entity owning the Parcel assessed or charged and shall be the joint and several liability of all Owners of the Parcel. Except as provided below, any person or entity which acquires title to a Parcel, including a purchaser at a judicial sale, shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his/her share of the Charges and Assessments, including attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. Said lien shall be effective from the date of recordation amongst the Public Records of Monroe County, Florida. The lien shall set forth the amounts due to the Association as of the date the lien is signed and shall be acknowledged by an Officer or agent of the Association. The lien shall secure additional amounts that become due, as well as interest, late fees, attorney fees, and other costs and expenses of collection. Upon recordation, the lien shall relate back to the date of recording the Declaration, except as to the first mortgages of record. As to first mortgages of record, the Association's lien is only effective from and after recording of a claim of lien against the Parcel. Upon full payment of all sums secured by the lien and costs and fees accrued, the party making payment shall be entitled to a recordable satisfaction of lien. If any first mortgagee or other person, persons or entity obtains title to a Parcel as a result of a foreclosure of a first mortgage or a deed is given in lieu of foreclosure of a first mortgage of record, such acquirer of title, shall be liable for the share of Assessments or Charges pertaining to such Parcel or chargeable to the former Owner, and which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure of said first mortgage of record in the maximum amounts provided in the Act, as amended from time to time.

3.9 Remedies for Delinquency. In the event any Owner fails to pay assessments or any installment thereof charged to the Parcel ten days after the same becomes due, an administrative late charge as authorized by law, shall become due along with interest at the maximum rate permitted by law, and the Association, through its Board, shall have, but not be limited to, the following remedies.

- a. To accelerate the entire amount of any assessments for the remainder of the calendar year, notwithstanding any provisions for the payment thereof in installments.
- b. To advance on behalf of said Owner funds to accomplish the needs of the Association. The amount or amounts of money so advanced, including attorney's fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of said Owner, together with interest at the highest rate allowable by law, may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.
- c. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a like manner as the foreclosure of a mortgage on real property or as otherwise provided by law.
- d. To file an action at law to collect said assessments, plus interest at the highest rate allowable by law plus court costs, without waiving any lien rights and/or rights of foreclosure by the Association.
- e. The Association may apply to a court of competent jurisdiction, either in connection with the institution of a foreclosure suit, a personal suit, or otherwise to have rental proceeds of a Parcel in default paid directly to the Association, the court registry, or a receiver, as the court may direct.
- f. The Association may elect to terminate any existing leases with respect to Parcels in default and prohibit the Parcel from being rented in the future until the default is cured.
- g. The Association may suspend the voting rights and the rights to use any Common Amenities, Properties or Areas that may exist, in the event any Owner is delinquent more than 90 days in the payment of assessments. Should the Act at any time be amended to allow such suspension of rights upon a delinquency of less than 90 days, the Association may suspend such rights upon the delinquency allowed in the Statutes.
- h. The Association may choose any of these courses of action, as the Board deems appropriate, without same constituting a waiver or election of remedies. Tenants who rent Parcels in this Association are deemed to assent to terms of this provision.
- i. Payments received after the due date established by the Board shall be applied first to interest, late fees, costs and attorney fees and then to the principal owed regardless of any restrictive endorsement included with the payment.

4. EASEMENTS, PROPERTY RIGHTS - Each of the following easements and easement rights is reserved through the Community and Parcels and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Community, unless released by termination of this Declaration. None of these easements may be encumbered by any leasehold or lien other than those on the Parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements.

4.1 Utility and Other Easements. The Association, through the Board of Directors, has the power, without joinder of any Owner, to grant, modify or move easements such as electric, gas, cable television, or other communications, information or internet services, or other access, utility or service easements, or relocate any existing easements, in any portion of the Common Areas or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Community. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Parcels or Dwelling Units. With respect to the Common Areas or Association Property, the Association, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and may take any other action to satisfy the requirements of any utility company or governmental agency..

4.2 Encroachments. If any Dwelling Unit encroaches upon any of the Common Areas or upon any other Parcel or Dwelling Unit for any reason other than the intentional act of the Owner, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

4.3. Ingress and Egress. A non-exclusive easement shall exist in favor of each Owner and Occupant, their respective Guests, Tenants, and Invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portion of the Common Areas 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 portion of the Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

4.4 Easements through, over and beneath the Dwelling Units and Common Areas for reasonable maintenance, repair and replacement of the Dwelling Units and/or installations, lines or pipes that serve another Dwelling Unit or Units, and subject to the limitations as set forth in more detail herein. Such access to the Dwelling Units shall be only during reasonable hours and after reasonable notice, except in case of emergency, and in all cases the easement for access described herein shall only extend as reasonably necessary for the benefit and protection of the Community or other Dwelling Units..

4.5 Support. Every portion of a Dwelling Unit contributing to the support of the Dwelling Unit or Building shall be burdened with an easement of support for the benefit of all other Dwelling Units in the Building.

5. USE RESTRICTIONS

All Owners agree to abide by this Declaration, the Bylaws and Rules and Regulations of the Association as they may be amended from time to time.

5.1 Signs. "For sale" signs, "for rent" signs or other window displays, signs, or advertising that are visible from the Common Areas are not permitted on any part of the Common Areas or in any Dwelling Unit or on any Parcel without approval of the Board of Directors, including signs in or on vehicles (except that lettering on commercial vehicles shall not be prohibited) parked on a Parcel. Security signs are permissible, as provided in the Act.

5.2 Except as otherwise herein provided, no wires, masts, towers, antennae, aerial, weathervanes, anemometers, or exposed wiring for any purpose or other equipment or structures may be erected, constructed or maintained on the exterior of any Dwelling Unit or Parcel, unless approved by the ARC.

Television and Other Outdoor Antennae. No television, radio, satellite, or other antenna or satellite system may be installed on the Common Areas by any person other than the Association, except as provided herein. To the extent any such television, satellite, or other antenna systems are already erected or installed on Parcels/Dwellings at the time of the adoption of this Declaration, such television, satellite, or other antenna systems may remain in such location (unless otherwise in violation of any local, state or federal governing authority) and may be replaced, so long as the replacement is of like kind and quality as the existing system, without further approval of the ARC. Certain television, satellite, or other antenna systems may be erected or installed on Parcels/Dwellings subject to compliance with the following requirements and prior approval of the ARC. Permitted antennas include (collectively hereinafter referred to as "antennas"):

- Direct broadcast satellite dishes (DBS) that are less than one meter in diameter.
- Multi-channel, multi-point distribution service devices (MMDS) that are less than one meter in diameter or diagonal measurement. Such devices may be mounted on "masts" to reach the height needed to establish line of sight contact with the transmitter provided no mast may be higher than twelve feet above the roof line of a residence without prior written approval of the Association.
- Television broadcast antennas for local stations, which may be any reasonable size, which may be secured to a mast located no higher than twelve feet above the roof line. Any mast located higher than twelve feet above the roof line must be approved in writing by the Association.

Location of Antennas. To the extent feasible, all antennas must be placed in locations that are not visible from any street and in a location to minimize annoyance or inconvenience to other residents of the Community if this placement would still permit reception of an acceptable quality signal.

Color and Screening of Antennas. All antennas shall be painted to blend into the background against which it is mounted for so long as the paint will not interfere with an acceptable quality signal. If the antenna is not mounted on a building, it must be made the color of the exterior walls of the residence on that Parcel. All antennas shall be screened from view from neighboring properties, and pedestrian and vehicular access areas, with landscaping plants commonly used in or

about the Community at a height of at least 48 inches. Taller antennas shall be screened to their full height if reasonably practicable and if the screening would not impair the reception of an acceptable quality signal.

Safety Requirements. To safeguard the safety of the Owners, occupants of the residence in which the antenna is located, neighboring property owners, and other Owners and Members in the Community, it shall be the obligation of the Owner to comply with all applicable local, state and federal safety requirements, including but not limited to obtaining a permit for the installation of the antenna, if any, hiring licensed contractors with sufficient expertise and adequate insurance to protect their work, installing the antennas away from power lines and other potentially dangerous areas, installing and using the antenna in accordance with safety recommendations and requirements of the antenna manufacturer, and in accordance with the customs and standards for the antenna industry, including compliance with electrical code requirements to properly ground the antenna, and installation requirements to properly secure the antenna. Antennas shall be properly secured and installed so as to cause no damage to the building, such as compromise of its water-proof integrity. An Owner shall indemnify and hold harmless the Association, and all other Owners, for any damage that an antenna causes to the property or to persons or other property.

5.3 Personal Property. No barbecue grills or other outdoor cooking equipment, patio or other furniture, bicycles, toys or other personal property may be kept or stored outside of the footprint of the Parcel or approved patio unless approved by the ARC. Such personal property may be kept, stored, installed or maintained within the footprint of the Parcel, so long as it complies with any other restriction contained in this Declaration.

5.4 Dangerous Materials. No Owner shall store, keep or dispose of any flammable, combustible, explosive, hazardous or toxic fluids, chemicals or substances except those sold and required for normal household use.

5.5 Window Treatments. No Owner shall install or maintain aluminum foil or other reflective material on any window or glass door except as approved by the Board for energy conservation purposes.

5.6 Commercial Activity. No business or commercial activity of any kind shall be conducted on or from any Parcel nor in or from any residence except as provided herein. Nor may the address or location of the residence or Association's name be publicly advertised as the location of any business or commercial activity. Parcels may not be used for commercial or business purposes, including, without limitation, caring for children or adults or any use that requires an occupational license. Occupants may use Parcels for "home office" or "telecommuting" purposes, so long as such uses do not involve customers or clients coming onto the property, the posting of any signage in the Community, or the storage of equipment, products, or materials in the Community. Notwithstanding anything else contained herein, this restriction shall not be construed to prohibit any Owner from renting or leasing his Parcel, maintaining a personal or professional library, from keeping personal business or professional records in his residence, or from handling personal, business or professional communication and written correspondence in and from his residence.

5.7 Structural Changes. No structural additions or alterations may be made to any improvements on the Parcel without the approval of the Architectural Review Committee or Board,

other than repair or replacement of existing structures or improvements that do not visibly alter the previously existing ones, erection or removal of non-support carrying interior partitions wholly within the home and other than the interior work done in a Dwelling Unit, which is not visible from the exterior.

5.8 Nuisance. Neither Owners nor Occupants shall permit any nuisance to exist upon or within the Dwelling Unit or Parcels or any conduct that creates an annoyance or disturbance to be detrimental or bothersome to any other Parcels, Occupants or Owners or interferes with the peaceful possession and proper use of the Community by its Residents.

5.9 Subdivision. No Owner shall divide nor subdivide a Parcel for purposes of sale or lease and no portion less than all of any Parcel, nor any easement or other interest granted herein, shall be conveyed or transferred by an Owner without the approval of the Board. This provision shall not prohibit corrective deeds, deeds to resolve boundary line disputes and other similar corrective documents. Combining of adjoining Parcels is permissible but the Owners of the combined Parcels shall remain responsible for the full assessment applicable to each Parcel.

5.10 No Owner or Occupant may allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefor. Each Parcel and the Common Areas shall be kept in a clean and sanitary condition.

5.11 Members and other Residents shall not engage in any abusive, pejorative or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Members, Residents, Guests, Occupants, Invitees, or directed at management of the Association, its agents, its employees, or vendors.

5.12 Owners, their family, Invitees, Guests And Tenants shall abide by Rules and Regulations promulgated from time to time by the Board or committee established by the Board; provided, however, that copies of such Regulations shall be made available to each Member prior to the time said Regulations become effective.

5.13 No Owner shall install or allow to be installed any window mounted or through the wall mounted air conditioning unit. Notwithstanding this restriction, any window or wall mounted air conditioning units existing at the time of the adoption of this Declaration shall be allowed to remain and these may be replaced, so long as the new replacement air conditioning unit is replaced in the same location.

5.14 In the event the Association is required to seek enforcement of any provision of the Declaration, Articles, Bylaws or the Rules and Regulations, the offending Owner (for himself or his family, Guests, Invitees or Tenants) shall be liable to the Association for costs incurred in the enforcement action, including reasonable attorney's fees and costs, whether incurred before the filing of suit, after filing, and in connection with trial or appellate proceeding or otherwise.

6. MAINTENANCE, REPAIR AND REPLACEMENT

6.1 Maintenance of Parcels by the Association. The Association shall not be responsible for the maintenance of any interior portion, including landscaping, of any screened patio or porch, or any fenced or walled in area appurtenant to any Parcel.

6.2 Permits, Licenses and Easements. Subject to the easements already in existence, the Association shall have the right to grant permits, licenses and easements over, upon, across, under and through the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property, as so determined by the Board.

6.3 Maintenance of Dwelling Units and Parcels by Owners. Subject to the duties and obligations of the Association described herein, every Owner must keep and maintain his Parcel and the exterior of his Dwelling Unit and other improvements thereon, at his expense, in reasonably good order, condition and repair, and must perform promptly maintenance and repair work on his Parcel and the exterior of his Dwelling Unit. In this regard, each Owner shall be responsible for the maintenance and repair and shall keep his Parcel and the exterior of his Dwelling Unit in a neat and orderly fashion.

Additionally, all Owners are required to properly and within a reasonable time, repair or reconstruct his or her Dwelling Unit, or any part thereof, in the event of damage to, deterioration of or any destruction of the same. Such Owner's obligation shall exist regardless of whether such damage, deterioration or destruction is caused by windstorm, flood, fire, passage of time, negligence or any other cause. In the event the need for such repair or reconstruction is visible and/or evident from the exterior of the Dwelling Unit, the "reasonable time" for such repair or reconstruction to be completed shall not exceed three (3) months from the date of the event that caused the need for repair or reconstruction. This time frame may be extended by the Board of Directors upon a showing by the Owner of extreme hardship or inability, due to no fault of his own, to complete the repairs. Notwithstanding anything else contained herein, the Association shall have the rights set forth in Article 6.8 of this Declaration, as well as any other rights contained in the Association's Governing Documents, to complete the repairs and/or reconstruction at the Owner's cost upon the Owner's failure to do so in a proper or timely manner.

6.4 Owner Maintenance of Items Common to more than one Owner: Each Owner shall, at his or her expense, maintain, repair and replace the roof and/or gutters over his or her Dwelling Unit as may be necessary and within a reasonable time after damage to the same or deterioration requiring such maintenance, repair or replacement, so as to avoid damage to other portions of the roof or other Dwelling Units. Should more than one portion of the roof require maintenance, repair or replacement, the Owners owning the Dwelling Units under those portions of the roof shall agree on the maintenance, repair or replacement and shall share the costs associated therewith proportionately amongst them. If there is disagreement amongst the affected Owners about the procedures, contractor or other details regarding the necessary repair, replacement or maintenance, the decision of the majority of the affected Owners in the block of Dwelling Units shall be implemented. If one or more Owners refuse to agree to reasonable efforts to resolve the matter, the Association may, but shall not be obligated to, pay for or contract for the maintenance, repair or replacement and assess each of the affected Owners that refuse to pay proportionately for the associated costs. Similarly, extermination of termites shall be coordinated amongst those Dwelling

Units that share walls and roofs and to which infestation will likely spread. Such extermination shall take place within a reasonable time after discovery of infestation so as to avoid damage to other portions of the roof or other Dwelling Units. The Owners of the Dwelling Units in the block requiring extermination shall share the costs thereof evenly. If there is disagreement amongst the affected Owners about the procedures, exterminator or other details regarding the necessary extermination, the decision of the majority of the affected Owners in the block of Dwelling Units shall be implemented. If one or more Owners refuse to agree to reasonable efforts to reach an agreement on contracting for or paying for such extermination, the Association may, but shall not be obligated to, pay for or contract for the extermination itself and assess each of the affected Owners that refuse to pay proportionately for the associated costs. Should evacuation of the Dwelling Units be required for any duration of the necessary repairs or extermination, each Owner shall be responsible for the costs associated with the temporary relocation of the Occupants of his Dwelling Unit.

Further, each Owner shall, at his or her expense, maintain, repair and replace any electric, cable, sewer, water or other similar installation, line or pipe that serves only his Dwelling Unit as may be necessary. Should the electric, cable, sewer, water or other similar installation, line or pipe that requires maintenance, repair or replacement cross through the walls, floor or other portion of any other Dwelling Unit or Parcel, and/or should repair, replacement or maintenance of the electric, cable, sewer, water or other similar installation, line or pipe require access through another Dwelling Unit or Parcel, the owner of the Dwelling Unit or Parcel through which access is required shall grant such access as reasonably necessary and the Owner whose installation, line or pipe needs repair, replacement and maintenance shall pay for any damage caused to the Dwelling Unit or Parcel through which access was required and shall restore such Dwelling Unit or Parcel to the same or similar condition as it was before the access, within a reasonable time after damage to the same. Should the electric, cable, sewer, water or other similar installation, line or pipe requiring maintenance, repair or replacement, serve more than one Dwelling Unit, the Owners owning the installation, line or pipe serves shall agree on the maintenance, repair or replacement and shall share the costs associated therewith proportionately amongst them. Should the electric, cable, sewer, water or other similar installation, line or pipe that requires maintenance, repair or replacement cross through the walls, floor or other portion of any other Dwelling Unit, and/or should repair, replacement or maintenance of the electric, cable, sewer, water or other similar installation, line or pipe require access through another Dwelling Unit, the owner of the Dwelling Unit through which access is required shall grant such access as reasonably necessary and the Owners whose installation, line or pipe needs repair, replacement and maintenance shall equally pay for any damage caused to the Dwelling Unit through which access was required and shall restore the Dwelling Unit to the same or similar condition as it was before the access, within a reasonable time after damage to the same. If there is disagreement amongst the affected Owners about the procedures, contractor or other details regarding the necessary repair, replacement or maintenance, the decision of the majority of the affected Owners in the block of Dwelling Units shall be implemented. If one or more Owners refuse to agree to reasonable efforts to resolve the matter, the Association may, but shall not be obligated to, pay for or contract for the maintenance, repair or replacement and assess each of the affected Owners that refuse to pay proportionately for the associated costs.

6.5 Prohibition. Each Owner is prohibited from improving, modifying or maintaining any Common Area or from performing any maintenance duties of the Association without the prior written consent of the Board.

6.6 Owner Liability. Should any Owner do any of the following:

- a. Fail to perform the responsibilities as set forth in this Article 6 or,
- b. Cause any damage to any improvement which the Association has the responsibility to maintain, repair and/or replace; or
- c. Undertake unauthorized improvements or modifications to his Parcel, Dwelling Unit or to the Common Area; then

Except in an emergency, when no notice is required, the Association upon reasonable prior written notice to the Owner, shall have the right (but not the obligation), through its agents and employees, to enter upon said Parcel or Dwelling Unit and cause the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof shall be added to and become a part of the assessment to which the Owner is subject, and shall be due and payable within thirty days after rendition of a bill therefor by the Association. The costs incident to said repair, maintenance or removal shall be the personal obligation of the Owner to the Association and become a lien against the subject Parcel or Dwelling Unit with the same force and effect of the lien that would be created by the said Owner's failure to pay the Regular or Special Assessments hereunder when due.

6.7 Each Owner shall be responsible for and pay the cost of maintaining, repairing and replacing everything within the confines of the Dwelling Unit and on the Parcel that is not to be maintained by the Association.

6.8 In the event an Owner fails to maintain the Parcel and the improvements situated thereon, in a time frame or manner reasonably satisfactory to the Board or any committee established by the Board, upon direction of the Board the Association shall have the right (but not the obligation) through its agents and employees, to enter upon said Parcel to maintain and restore the improvements erected thereon. The cost of any such service, repairs or maintenance supplied by the Association pursuant to this Article or the Governing Documents shall be added to and become part of the assessment to which such Parcel is subject. Such assessment shall be secured by a lien, which may be foreclosed, in the same manner as a lien for regular assessments.

Notwithstanding anything else contained herein or elsewhere, the Association is expressly not required to exercise its rights to cause the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications, as set forth in this Article 6. The Association may exercise this right or choose to exercise any other legal remedy available to it, in the event of an Owner's failure to comply with the Governing Documents, including filing an action to require the Owner to comply with the Governing Documents. The

choice of one remedy shall not preclude the Association's ability to exercise any other legal remedy available to it.

6.9 Party Walls

- a. **General.** Each wall that is built as a part of the original construction of the Dwelling Unit upon the Lot and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- b. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- c. **Damage or Destruction of Party Wall.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall shall restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- d. **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- e. **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article 6 shall be appurtenant to the land and shall pass to such Owner's successors in title.

7. **THE FUTURA YACHT CLUB HOMEOWNERS' ASSOCIATION, INC.** The Owner of any Parcel in this Community is also a member of and subject to the governing documents and assessments payable to the Futura Yacht Club Homeowner's Association, Inc., which are separate and apart from the governing documents of and assessments payable to the Futura Yacht Club Townhouses Association, Inc. and the obligations of this Declaration. To the extent there is any express conflict between the governing documents of this Association and the governing documents of the Futura Yacht Club Homeowner's Association, the governing documents of Futura Yacht Club Homeowner's Association shall prevail. However, should Futura Yacht Club Homeowner's Association governing documents be silent on a particular topic that the governing documents of Futura Yacht Club Townhouses Association, Inc. address, the governing documents of Futura Yacht Club Townhouses Association, Inc. shall govern. The absence of such a provision or reference in the governing documents of the Futura Yacht Club Homeowner's Association, Inc. shall not be deemed to conflict with the existence of a provision regarding a particular topic in the governing documents of Futura Yacht Club Townhouses Association, Inc. To the extent any approval is needed

from this Association for any Owner's actions and it is received, such approval shall not obviate the Owner's need to obtain any approval for the same action that may be necessary from the Futura Yacht Club Homeowner's Association.

8. ASSOCIATION INSURANCE. The following provisions shall govern insurance covering the Association:

8.1 Insurance policies purchased by the Association must be issued by an insurance company authorized to do business in Florida.

8.2 The named insured shall be the Association itself and as agent for Owners without naming them and as agent for their mortgagees without naming them.

8.3 One copy of each insurance policy, or a certificate evidencing such policy, and endorsements thereto, shall be furnished by the Association to each first mortgagee if requested in writing.

8.4 The provisions of this Article notwithstanding, each Owner releases and indemnifies the Association, its members, employees and agents and shall hold them harmless for injuries or damages to persons or property because of the Owner's neglect, recklessness or intentional acts, or that of his family, guests or tenants.

8.5 The Association shall maintain insurance covering the following:

- a. The Association shall obtain and maintain adequate insurance or fidelity bonding of persons who control or disburse funds of the Association. The fidelity bond or insurance policy shall cover the maximum funds that will be in the custody of the Association or its managing agent at any one time. As used in this Article, the term "persons who control or disburse funds of the Association" includes, but is not limited to, individuals authorized to sign checks, the President, Vice President, Secretary, and Treasurer of the Association.
- b. Workers Compensation coverage if required by law.
- c. Umbrella liability coverage as deemed appropriate by the Board.
- d. Directors and Officers liability coverage as deemed appropriate by the Board.
- e. Other insurance as the Board shall determine from time to time to be desirable.

8.6 When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to:

- a. subrogation against the Association and against the Owners individually and as a group,

- b. pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk,
- c. avoid liability for a loss that is caused by an act of the Board, or by a member of the Board or by one or more Owners.

8.7 Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Parcels or their appurtenances or of the common areas by particular Owners shall be assessed against and paid by such Owners.

8.8 Insurance policies obtained by the Association shall be for the benefit of the Association and the Owners

8.9 The Association is irrevocably appointed agent for each Owner and for each owner of a mortgage or other lien upon a Parcel and for each owner of any other interest in the Association property to adjust claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

8.10 The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within or upon their Parcel or Dwelling Unit nor casualty or theft loss to an Owner's property or that of the Parcel's occupant. It shall be the obligation of the individual Owner or occupant if such Owner or occupant so desires to purchase and pay for insurance as to such and other risks.

9. OWNER INSURANCE. The following provisions shall govern insurance covering the Owners:

9.1 Liability Insurance. Each Parcel Owner shall be responsible for purchasing and maintaining such policies of liability for accident or injury occurring on or about his Parcel, as he may deem appropriate.

9.2 Casualty Insurance. Each Owner shall be responsible for purchasing and maintaining policies of fire, flood, wind and other hazard coverage insurance on his Dwelling Unit and all other insurable improvements situated upon his Parcel as he may deem appropriate or as may be required by law from time to time. Regardless of whether any Owner has insurance, should his or her Dwelling Unit be damaged by fire, flood, wind or other casualty, the Owner is responsible for timely and properly repairing and reconstructing the Dwelling Unit at his cost, as required the Association's Governing Documents.

10. ENFORCEMENT

10.1 Each Owner and the Owners' family, tenants, guests, and invitees, Parcel occupants and the Association, are governed by, and must comply with, the Act and the Governing Documents, each as they may be amended from time to time. Actions for damages or for injunctive relief, or both, for failure to comply with these may be brought by the Association or by an Owner against: the Association, an Owner or anyone who occupies a Parcel in any capacity, including as an Owner,

family member, tenant, or guest. Owners shall be jointly and severally liable for violations of the Governing Documents by their family members, tenants, guests, invitees and occupants.

In the event of a violation of the Governing Documents or Rules and Regulations by an Owner, occupant, tenant, guest or invitee, (other than the non-payment of any Assessment or other charges), the Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable after receipt of such written notice, or if any similar violation is thereafter repeated, the Association may, at its option:

- a. Impose a fine against the Parcel as provided in Florida Statutes and in the Governing Documents; and/or
- b. Commence an action to enforce the performance on the part of the Owner or other party, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
- c. Commence an action to recover damages; and/or
- d. Take any actions reasonably necessary to correct such failure which action may include, when applicable, but shall not be limited to, removing any addition, alteration, improvement or change which has not been approved by the Association or performing any maintenance required to be performed by this Declaration; and/or
- e. Elect any or all other remedies, restrictions or penalties available under law.

All expenses incurred by the Association in connection with enforcing these Governing Documents and Rules and Regulations, including reasonable attorneys' fees and costs, shall be assessed against the applicable Owner as a separate assessment, and shall be due upon written demand by the Association. The Association shall have a lien for any such Assessment and any interest, costs or expenses associated therewith, including attorneys' fees and costs incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of Monroe County.

No Election of Remedies. All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Governing Documents, or at law or in equity.

10.2 Enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms or to prevent violation or breach of any of the covenants or terms herein or both. The Association or any individual may seek enforcement, and should the party seeking enforcement be the prevailing party, then the person against whom enforcement has

been sought shall pay costs and reasonable attorney's fees at trial and appellate levels to the prevailing party.

10.3 Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Dwelling Unit or occupying his Parcel, including family members, Tenants, Guests and Invitees. If any act or omission shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association, but without rights of subrogation as to the Association's carrier.

11. AMENDMENTS. Except as elsewhere provided herein, this Declaration may be amended in the following manner:

11.1 A proposed amendment may be proposed by the President of the Association, a majority of the Board, or by or by petition of twenty percent (20%) of the Voting Interests.

11.2 The subject matter of a proposed amendment must be included in the notice of any meeting at which a proposed amendment is to be considered.

11.3 An amendment so proposed shall be adopted if it is approved by a majority of the Voting Interests. Approval of any amendment may be made in person or by proxy at a meeting called for such purpose. Alternatively, the amendment may be approved by a majority of the Voting Interests via written consent, in lieu of a meeting.

11.4 An amendment shall be evidenced by a certificate of the Association that must include recording data identifying the Declaration and be executed in the form required for execution of a deed. An amendment of the Declaration is effective when properly recorded in the public records of Monroe County.

11.5 Automatic Amendment. This Declaration shall be amended, if necessary, so as to make the same consistent with the provisions of the Bylaws and the Articles of Incorporation and whenever Chapter 720, 607 or 617 of the Florida Statutes or other statutes or administrative regulations regulating the operation of the Association. are amended to impose procedural requirements less stringent than set forth in this Declaration, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the Members, may adopt such amendments as it may reasonably deem to be necessary to reflect the changes described in this Article 11.5 or to comply with such operational changes as may be authorized by future amendments to the Florida Statutes upon the affirmative vote of not less than three members of the Board. Such a vote shall be taken at a meeting called for such purpose.

11.6 Proviso - Notwithstanding anything else contained herein, Article 12 regarding Leasing or Occupancy of Parcel may not be amended without the approval of at least 80% of the entire Voting Interests voting in person or by proxy at a meeting called for such purpose.

11.7 Amendments to Correct Scrivener's Errors and Errors and/or Incompletions due to Uncertainty of Number of Owner Joinders - Notwithstanding anything else contained

herein, this Declaration may be amended by a majority vote of the Board of Directors to correct any scrivener's error in this document or in the attached legal descriptions, as may be necessary. Additionally, because this Declaration was drafted, voted upon and Joined in by the Owners on an individual basis and prior to knowing exactly how many Owners would Join and Consent to the same, it may contain references to 34 Members, 34 Parcels and 34 total Votes in the Association, as this is the total number of Parcels existing in the area currently commonly referred to as the Futura Yacht Club "Townhouses." Further, the Legal Description of the "Community", Exhibit "A" to this Declaration, may be incomplete at the time of the Owners' initial Consent and Joinder to this Declaration, due to, among other things, the uncertainty of the number of Owners that will Consent to and Join in this Declaration and subject their Parcels thereto. In order to address the possibility that one or more Owners of the Parcels existing in the area currently commonly referred to as the Futura Yacht Club "Townhouses" fails to Consent to and Join in this Declaration and the Futura Yacht Club Townhouses Governing Documents, the Owners expressly agree that a majority of the Board of Directors voting at a meeting at which a quorum is present may amend this Declaration and the Futura Yacht Club Townhouses Governing Documents, without an Owner vote, for the limited purpose of correcting the total number of Members, Parcels and Voting Interests and also inserting the correct Legal Descriptions in Exhibit "A" hereto, as may be necessary. These amendments shall properly reflect the number of Members, Parcels and Voting Interests and the proper legal descriptions of the Parcels subject to this Declaration and Futura Yacht Club Townhouses Governing Documents, as indicated by the Consents and Joinders of the Owners that have executed Consent and Joinder forms expressing their agreement to subject their Parcels, and occupants thereof, including themselves, their families, guests, tenants, heirs and assigns, to the restrictions contained in the Declaration and the Futura Yacht Club Townhouses Governing Documents.

12. LEASE OR OCCUPANCY OF PARCEL. In order to assure a Community of congenial residents and thus protect the value of the Parcels, Owners may lease their Parcels subject to the following provisions:

12.1 No Subdivision. Only entire Parcels may be rented or leased. A lease is any use of a Parcel by a person other than the Owner for consideration. All leases must be in writing. There shall be no subdivision of Parcels.

12.2 Nuisance. Every Owner is responsible for the actions of his or her Tenants, their Invitees and family. Every Owner specifically agrees to ensure his or her Tenants, their invitees, family and guests comply with the Governing Documents of the Association, and that in the event they do not, the Owner will take prompt action to require such compliance. The Owner shall either exercise any legal remedies available to him or her to obtain compliance or shall take action to remove such Tenants, their invitees, family and guests from the Parcel via eviction or otherwise. In the event the Owner refuses, after demand by the Association, to take such action to obtain compliance or to remove the noncompliant persons from the Parcel within a reasonable amount of time, it shall be deemed that the Owner assigns to the Association the rights to act as the Owner. In such case, the Association, may (but is not obligated to) file an action for eviction to evict such tenants, their invitees and family using Summary Proceedings as allowed by the Florida Statutes. Any attorney's fees and costs the Association incurs in such eviction action shall be charged to the Owner in the same manner as an Assessment hereunder would be charged. Notwithstanding its rights to take any action against the Tenants, their invitees, family and guests from the Parcel via

eviction or otherwise as stated herein, the Association has no obligation to do so and may choose to exercise legal remedies against the Owner to compel him or her to obtain compliance or take action to remove such Tenants, their invitees, family and guests from the Parcel via eviction or otherwise.

In addition, the Owner may be subject to fines for failure to correct the violation of the Governing Documents by his or her sTenants, their family and/or Invitees.

12.3 Federal, State or Local Governing Authorities. Every Owner is required to abide by any governing Federal, State and Local laws or ordinances. At the time of the adoption of this Declaration, the City of Isla Morada or other local governing authority may regulate rentals and/or Vacation Rentals, which regulations may affect certain types of rentals of Parcels or Dwelling Units within this Community. The City of Isla Morada or other local governing authority may also require particular permits and/or licenses in order for an Owner to lease his or her Lot or Dwelling Unit. As long as the City of Isla Morada or other local governing authority, Monroe County, the State of Florida or the Federal government requires any Permits, Licenses or other documentation or regulations in order for an Owner to lease his or her Parcel or Dwelling Unit, the Owner must comply with those Federal, State or Local requirements, and obtain any such required Permits or Licenses. Any Owner who rents his Parcel or Dwelling Unit, gives the Association the right to ask any Governmental Authority as to the status of any rental license or permit that such Governmental Agency may require of the Owner. If any Governing Authority requires the Association to provide Owner's consent before making an inquiry about that Owner's license or permit status, the Owner renting or attempting to rent his Parcel or Dwelling Unit agrees to provide the Association with his consent to inquire as to his rental license or permits. If any Owner renting or attempting to rent his Parcel or Dwelling Unit does not want to give the Association the consent to inquire as to his required license or permits then such Owner shall provide the Association with copies of the required licenses or permits within 30 days of the Association's request. Every rental agreement shall be deemed to include an agreement by the Tenant to abide by the governing documents of the Association.

12.4 Amendment. Notwithstanding anything else contained herein, this provision may not be amended without the approval of at least 80% of the entire Voting Interests voting in person or by proxy at a meeting called for such purpose.

13. SALE OF PARCELS: In order to assure a Community of congenial residents and thus protect the value of the Parcels, the sale or other transfer of the Parcels by an Owner shall be subject to the following provisions:

13.1. Forms of Ownership:

- a. **One Person.** A Parcel may be owned by one natural person whose acquisition of title has been approved to the extent and in the manner elsewhere provided herein.
- b. **Two or More Persons.** Co-ownership of a Parcel by two or more natural persons who are not husband and wife is not prohibited.

- c. **Ownership by Corporations, Partnerships or Trusts.** A Parcel may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein.
- d. **Designation of Primary Contact .** If the Owner is or are other than one natural person, the Association shall require the designation of one approved natural person as "Primary Contact", who shall receive all notices and correspondence on behalf of all Owners of the Parcel. Any change in Primary Contact must be communicated to the Association certified mail return receipt requested. Until the Association receives the notice of change in Primary Contact, the previously listed Primary Contact shall be deemed the correct contact.
- e. **Life Estate.** A Parcel may be subject to a life estate, either by operation of law or by a voluntary conveyance approved pursuant to this Declaration. In that event, the life tenant shall be the only Association member from the Parcel, and occupancy shall be as if the life tenant was the only Owner. The life tenant shall be liable for all assessments and charges against the Parcel. Any consent or approval required of Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners, as described above, for purposes of determining voting and occupancy rights. Upon termination of the life estate, the holders of the remainder interest shall designate a Primary Contact in writing to the Association.

13.2 Types of Transfers of Ownership.

- a. **By sale or gift.** No Parcel Owner may dispose of a Parcel or of any ownership interest in a Parcel by sale or gift (including agreement for deed) without prior written approval of the transfer by the Board of Directors. Notwithstanding anything else contained herein, the approval shall not be withheld from or denied to any transfer resulting from the sale or gift to a transferee, where the transferee is related to the prior Owner by marriage, blood or adoption, or is a trust, corporation, or other legal entity for the benefit of, or owned or controlled by, the prior Owner and/or any party or parties related to the prior Owner by marriage, blood, or adoption.
- b. **By devise or inheritance.** If any Owner acquires title by devise or inheritance, his right to occupy or use the Parcel shall be subject to the approval of the Board of Directors. Notwithstanding anything else contained herein, the approval shall not be withheld from or denied to any devisee or heir who was the prior Owner's lawful spouse at the time of death, or who was related to the Owner by blood or adoption, or is a trust, corporation, or other legal entity for the benefit of, or owned or controlled by, the prior Owner and/or any party or parties related to the prior Owner by marriage, blood, or adoption.

- c. **Other methods.** If any person acquires title in any manner not covered in the foregoing subsections, that person shall have no right to occupy or use the Parcel before his occupancy has been approved by the Board of Directors. Notwithstanding anything else contained herein, the approval shall not be withheld from or denied to any transfer, where the transferee is related to the prior Owner by marriage, blood or adoption, or is a trust, corporation, or other legal entity for the benefit of, or owned or controlled by, the prior Owner and/or any party or parties related to the prior Owner by marriage, blood, or adoption..

13.3 Procedures.

a. Notice to Association.

- 1 **Sale or Gift.** An Owner intending to make a sale or gift of his Parcel or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and all other information the Board may reasonably require. The Board may require a reasonable screening or transfer fee and/or a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval, where said interview is reasonably necessary for determining whether good cause reasonably exists for disapproving the transfer hereunder.
- 2 **Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information and screening or transfer fee as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the Parcel following the procedures in this Declaration.
3. **Screening Information.** Any information the Association may require a prospective purchaser or transferee to provide shall not be disclosed to any other owner or used for any purpose other than for the legitimate review of the documentation for purposes of screening. The information may be given to the Association's attorney for purposes of counseling the Association with respect to the screening, as may be necessary. The Association shall use reasonable efforts to protect such information from disclosure in accordance with the provisions of Florida Statute Section 720.303(5) as the same may be amended from time to time.
4. **Demand.** With the notice required above, the Parcel Owner or transferee seeking approval may make a written demand that if the

transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the Parcel at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Parcel determined as provided below.

5. **Failure to Give Notice.** If no notice is given, the Board of Directors, at its election, may approve or disapprove occupancy by the transferee at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Parcel, such failure shall create a rebuttable presumption that the seller and the purchaser intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.
- b. **Board Action.** Within thirty (30) days after receipt of the required notice and all fees, information or interviews requested, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or a Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.
 - c. **Disapproval.**
 - 1 **With Good Cause.** Approval of the Association shall be withheld for good cause only if at least three members of the Board so vote. Such a vote shall be taken at a Board meeting properly called for such purpose, after receiving a written opinion of counsel that good cause exists pursuant to these Governing Documents. Only the following may be deemed to constitute good cause for disapproval:
 - i. The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
 - ii. The person seeking approval has a record of financial irresponsibility, including without limitation if within the last seven years the person has had prior bankruptcies, foreclosures or bad debts and/or, during the application process, has given the Association insufficient evidence of his or her ability to meet the financial obligations to the Association;
 - iii. The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner

inconsistent with the covenants and restrictions applicable to the Community;

- iv. The person seeking approval has evidenced an attitude of disregard for Association rules or the rights or property of others, by his past conduct as a Tenant or Occupant in the Community;
- v. The person seeking approval has failed to provide the information, fees or interviews reasonably required to process the application in a timely manner, or has provided false information during the application process; or
- vi. The transaction, if a sale or gift, was concluded by the parties without having both sought and obtained the prior approval required herein.

2. **Without Good Cause.** Approval shall not be denied unless all of the members of the Board of Directors vote to deny the approval unanimously. The vote shall be taken at a properly called Board meeting. If the Board disapproves without good cause, and if the Owner or transferee has made the demand set forth herein, then within thirty (30) days after the Board meeting at which the transaction was disapproved, the Board shall deliver in writing to the Owner (hereafter "the seller") the name of an approved purchaser who will purchase the Parcel at the same price, and upon the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the buyer shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and assessments for common expenses shall be prorated to the day of closing and the parties shall bear their own attorney's fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval, or thirty (30) days after determination of fair market value by appraisal, whichever occurred last. Failure or refusal to close by either party shall constitute a breach of contract, and shall entitle the other party to seek specific performance or damages.

3 If the Board fails to deliver the name of an approved purchaser within thirty (30) days as required above, the original proposed purchaser shall

be deemed approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

13.4 Unapproved Transfers. Any sale or transfer of ownership that is not approved, or is disapproved pursuant to the terms of this Declaration, shall be void or voidable by the Association unless subsequently approved in writing by the Board.

14. TERM OF DECLARATION AND TERMINATION

14.1 The Declaration has an initial term of 30 years and shall automatically renew for successive 10-year periods unless terminated upon the affirmative written consent of ninety percent (90%) of the entire Voting Interests, and upon the affirmative written consent of first mortgagees holding mortgages encumbering Parcels.

14.2 If this Declaration is terminated in accordance herewith, every Owner by acquiring title covenants and agrees that the termination documents shall require Common Areas, if any, shall be owned and held in equal shares by the Owners as tenants in common.

15. INDEMNIFICATION

15.1 The Association shall indemnify any officer, director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that they are or were a Director, Officer, or Committee Member of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful; provided however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence, misfeasance or malfeasance in the performance of their duty to the Association unless and only to the extent the court in which such action or suit was brought shall determine upon application, that despite the adjudication of liability, but in view of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption the person did not act in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe their conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, directors, and committee members as permitted by Florida law.

15.2 To the extent a Director, Officer or Committee Member of the Association is successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article or in defense of any claim, issue or matter therein, they shall be indemnified against expenses

(including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by them in connection therewith.

15.3 Any indemnification under this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, Officer or Committee Member is proper in the circumstances because they met the applicable standard of conduct set forth in this Article. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs.

15.4 Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon approval of the majority of the uninvolved Board of Directors and receipt of an undertaking by or on behalf of the affected director, officer, or committee member, in a form and manner satisfactory to the Association, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article **15.5** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any law, agreement, vote of members or otherwise, both as to action in their official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be a Director, Officer or Committee Member and shall inure to the benefit of the heirs, executors and administrators of such person.

15.6 The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, Committee Member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against them and expenses incurred by them in any such capacity, or arising out of their status as such, whether or not the Association would have the duty to indemnify them against such liability under the provisions of this Article.

16. ASSOCIATION LIABILITY

16.1 Limitation of Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Community, the Association shall not be liable to Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Common Areas. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Owners, regardless of whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

Notwithstanding anything contained herein or in the Governing Documents, or Rules and Regulations, Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, Tenant, Invitee or Guest. Without limiting the generality of the foregoing:

- a. It is the express intent of the Association documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the Community have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Association property and the value thereof;
- b. The Association is not empowered, and has not been created, to act as an entity that enforces or ensures the compliance with the laws of the United States, State of Florida, Monroe County and/or any other jurisdiction or the prevention of tortious activities; and
- c. Any provisions of the Governing Documents or Rules and Regulations setting forth the uses of assessments that relate to health, safety and/or welfare shall be interpreted and applied only as limitations on or enabling authority for the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person, even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of his acceptance of title and/or Joinder and Consent to this Declaration) and each other person having an interest in or lien upon, or making any use of, any portion of the Association property (by virtue of accepting such interest or making such uses) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision.

As used in this Article, "Association" shall include within its meaning all of the Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns.

17. ARCHITECTURAL CONTROL. The Association, acting through the Board or the Architectural Review Committee (ARC), shall have the authority to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on the Parcel, and to enforce standards for the external appearance of any structure or improvement located on the Parcel, as set forth in the Governing Documents and in any architectural guidelines promulgated by the Board. If there are any conflicts between this Declaration and architectural guidelines, if any, the Declaration will control. The Architectural Review Committee shall consist of at least three Members of the Association appointed by the Board of Directors. The Board may act as the ARC and in the absence of the Board's appointment of an ARC, the Board shall be the ARC. The Board of Directors in its sole and absolute discretion may remove members of the ARC at any time, with or without cause.

17.1 Approval Necessary. No dwelling, building, outbuilding, garage, pool, decking, paving, fence, wall, retaining wall, patio, screened enclosure, pier, dock, walkway or other structure or improvement of any kind shall be erected, constructed, placed or maintained on or adjacent to any Parcel, nor shall the exterior of any Dwelling Unit or other Improvement (including any roofing or other building materials) be altered or modified, nor shall any other Improvements on any exterior of any Parcel be altered, changed, or modified, nor shall any landscaping or vegetation be materially

altered, changed or modified or additional landscaping be installed by an Owner, nor shall any material exterior changes (including the installation of storm shutters, screen doors, security bars and the like) be made, unless prior to the commencement of any work thereof, two complete sets of plans and specifications therefor, including, as applicable, front, side and rear elevations, time line for completion and floor plans, two Parcel plans indicating and fixing the exact location of such improvements, structures or such altered structure on the Parcel with reference to the street and side lines thereof, shall have been first submitted in writing for approval and approved in writing by the ARC. The foregoing prior approval is also intended to specifically apply to painting or any other maintenance or repair which changes the color or exterior appearance of an Improvement, and it is specifically intended that the ARC shall be empowered to approve or disapprove the colors of the exteriors of dwellings and other improvements constructed on the property at the time of any repainting or other resurfacing thereof.

17.2 Architectural Review Committee. All required approvals or disapprovals of the ARC must be in writing to be valid for purposes of this Declaration. Decisions of the ARC shall be based on aesthetics, harmony, balance and compatibility of the proposed improvements with the then existing structures within the Community. Improvements or changes shall be performed by licensed contractors or Owner contractor in accordance with plans and specifications prepared by licensed architects, where applicable. The ARC shall either grant such approval or deny the same based upon its sole discretion as to whether the improvements will be aesthetically pleasing, consistent with the architecture of the buildings in the Association, and similar to other such improvements previously allowed.

17.3 Endorsement of Plans. Approvals of plans, specifications and location of improvements by the ARC shall be endorsed on both sets of said plans and specifications, and one set shall be returned to the person submitting the same. The approval of the ARC of plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver by the ARC of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use by others. The work to be performed shall be commenced within a reasonable time and once work has started, the project shall continue with adequate manpower, uninterrupted to conclusion within eighteen months with the exception of materials shortage, inclement weather or acts of God.

17.4 Construction to be in Conformance with Plans. After such plans and specifications and other data submitted have been approved by the ARC, no building, outbuilding, garage, fence, wall, retaining wall, or other Improvement or Structure of any kind shall be erected, constructed, placed, altered or maintained upon any Parcel unless the same shall be erected, constructed or altered in conformity with the plans and specifications and Parcel plans approved by the ARC.

17.5 Local Building Code. This Article shall not be deemed to excuse any Owner from compliance with local building and construction codes, ordinances and/or regulations and improvements constructed shall conform to the requirements of such laws, codes, ordinances and regulations, nor shall the ARC's approval create any presumption that Owner's plans comply with

applicable laws, codes, ordinances and regulations, or that the work will serve its purpose as intended by Owner.

17.6 Restoration in Event of Damage or Destruction. In the event any Improvement on a Parcel is damaged or destroyed, in whole or in part, the Parcel Owner shall take action deemed necessary by the ARC to correct any unsightly or dangerous condition resulting from such damage or destruction. The Parcel Owner shall take corrective action to either restore or remove the condition. The work shall be completed within six-months after the date of the damage or destruction, which may be extended by the ARC for good cause shown. The Owner shall undertake such corrective action as soon, as is practicable in order to avoid unsightly or dangerous conditions. In the event the Owner fails or refuses to take the required corrective action, as deemed appropriate by the ARC, or in the aftermath of a catastrophic event, such as hurricane, the Association shall have the right, but not the obligation, to go upon the Parcel and remove or correct the damaged or destroyed property, which shall be accomplished at the sole cost and expense of the Owner of the property, in which event, the Association shall have the right to place a lien on the Parcel for the full amount of the corrective work, together with attorneys' fees and costs, if any, which lien shall be enforceable in the same manner as other liens created by this Declaration.

17.7 Non-Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC shall not be deemed to be or constitute approval of any right to withhold approval as to any similar proposals, plans and specifications or matter subsequently or additionally submitted for approval.

17.8 Fill and Grade. No fill shall be added to or removed from any Parcel nor shall the Owner of any Parcel do anything to change or interfere with the drainage of storm water; no change shall be made with respect to the original grade and contour of swales unless first approved in writing by the ARC. The approval of South Florida Water Management District may also be required.

17.9 In the event the ARC fails to approve or disapprove the requested item within thirty-days after the ARC has acknowledged receipt of a complete application, it shall be considered as being approved. Should the ARC be a body other than the Board, a decision of the ARC may be appealed by any Owner to the Board and such appeal must be filed in writing and received by the Board within ten days of the decision of the ARC. The Board shall render a decision with respect to the matter appealed within thirty-days after the Board receives such appeal, and the decision of the Board will be final. If the Board fails to reach a decision as to the matter within said thirty-day appeal period, the Owner's request shall be deemed approved.

18. GENERAL PROVISIONS

18.1 The Association, or any Owner, has the right to enforce, by any proceeding at law or in equity, restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents or the Rules and Regulations. Failure by the Association or any Owner to enforce any of the above shall in no event be deemed a waiver of the right to do so thereafter.

18.2 The invalidity in whole or in part of any covenant or restriction, or any Article, subsection, sentence, clause, phrase, word, or other provisions of the Governing Documents or Rules and Regulations shall not affect the validity of the remaining portions.

18.3 Additional residential property and Common Areas or Common Properties may be annexed to the Community only by amendment of this Declaration. However, if an Owner of one of the currently existing 34 Townhouses does not Join and Consent to this Declaration at the time it is initially proposed to the Owners of the Townhouses, and such Owner later desires to Join and Consent to this Declaration, he or she may do so at a later time and the effect of his Joinder with respect to the number of Members, Voting Interests and Parcels shall be evidenced by an amendment to this Declaration that shall be approved by the Board of Directors as set forth in Article 11.7 of this Declaration.

18.4 Notices. Except as provided specifically by law, notices to the Association required or desired hereunder or in the Bylaws may be sent by first class mail or hand delivery to the address as may be designated by from time to time, in writing to the Owners. Except as provided specifically by law, notices to any Owner may be sent by electronic transmission, first class mail or hand delivery to the address as may be designated by him from time to time, in writing to the Association.

18.5 Exhibits. There are hereby incorporated in this Declaration any materials contained in the exhibits annexed hereto.

18.6 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder and is not available, the signature of a Vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder and is not available, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

18.7 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida, and venue shall lie in Monroe County.

18.8 Severability. The invalidity in whole or in part of any covenant or restriction, or any Article, sub-section, sentence, clause, phrase or word, or other provision of the Governing Documents or the Rules and Regulations adopted, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.

18.9 Waiver. No provisions contained in the Governing Documents or Rules and Regulations shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

18.10 Ratification. Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) or by Joining and Consenting to this Declaration and

each occupant by reason of his occupancy shall be deemed to have acknowledged and agreed that all the provisions of this Declaration, the Articles, Bylaws and Rules and Regulations of the Association, are fair and reasonable in all material respects.

18.11 Plurality; Gender. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

18.12 Captions. The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the particular document or any provision thereof.

Dated: January 17, 2012

Witnesses:



Robert H. Brockhaus
By and on behalf of Futura Yacht Club Townhouses Association, Inc., as its President

Sign: Michael Gallo

Print Name: MICHAEL GALLO

Sign: Joshua P Gallo

Print Name: JOSHUA P GALLO

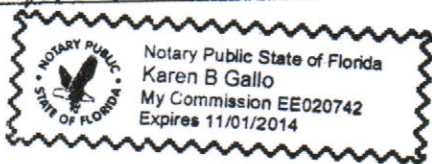
STATE OF FL)

) SS.

(SEAL)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 17 day of JAN, 2012 by Robert Brockhaus. He is personally known to me or has produced MO DL as identification and has taken an oath.



Karen Gallo
Signature of person taking acknowledgment

KAREN GALLO
Name typed, printed or stamped

My commission expires: 11-1-14

ACTIVE: F08378/324108:3375791_17