

23.50  
24.50

DECLARATION OF CONDOMINIUM  
OF  
FUTURA YACHT CLUB MARINA, A CONDOMINIUM

1. PREAMBLE, NAME AND LEGAL DESCRIPTION

The undersigned, PLANTATION KEY PROPERTIES, INC., hereinafter referred to as the "Developer", being the owner of fee simple title of record to those certain lands located and situate in Monroe County, Florida, as more particularly described in composite Exhibit "A" attached hereto does hereby submit fee simple title to the said lands and any improvements that may currently and in the future be situated thereon to condominium ownership in accordance with the provisions of Chapter 718, Florida Statutes, hereinafter referred to as the "Condominium Act". The name by which this condominium is to be identified is FUTURA YACHT CLUB MARINA, A CONDOMINIUM, hereinafter referred to as the "Condominium".

2. DEFINITIONS

The terms used in this Declaration and in its exhibits, including the Articles of Incorporations and By-Laws of the Association, shall be defined in accordance with the provisions of the Condominium Act, and as follows unless the context otherwise requires:

- a. Association means FUTURA MARINA CONDOMINIUM ASSOCIATION, INC., a non-profit Florida corporation and its successors. The Articles of Incorporation of the Association are attached hereto as Exhibit "C" and incorporated herein by reference. The By-Laws of the Association are attached hereto as Exhibit "D" and incorporated herein by reference.
- b. Common Elements shall include all Condominium Property not included in the Slips.
- c. Common Expenses include:
  - (1) Expenses of administration and management of Condominium Property.
  - (2) Expenses of maintenance, operation, repair or replacement of the Common Elements, and Limited Common Elements to be maintained by the Association, including but not limited to repair of bulkhead and seawalls, wharfs, finger piers, landscaping, parking areas basin silt removal, common grounds, and security equipment.
  - (3) The Costs of carrying out the powers and duties of the Association.

JAN 20 AM 11:45

- (4) expenses declared Common Expenses by the provisions of this Declaration or the Condominium Documents or the Condominium Act.
- (5) Any valid charge against the Condominium Property as a whole.
- d. Common Surplus shall include all receipts of the Association over the amount of expenses.
- e. Condominium Documents shall include the Declaration of Condominium together with all exhibits attached hereto and all other documents expressly incorporated herein by reference, as the same may be amended from time to time.
- f. Condominium Parcel is a Slip together with the undivided share in the Common Elements and Common Surplus which are appurtenant to the Slip.
- g. Condominium Property means and includes the lands and leaseholds that are subject to condominium ownership whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with this Condominium.
- h. Developer means PLANTATION KEY PROPERTIES, INC., S.A., its successors and assigns, particularly including but in no way limited to successors through mortgage foreclosure or grantees of deeds given in lieu of foreclosure, unless the context otherwise requires.
- i. Institutional Mortgagee or Institutional Lender shall be synonymous and may be used interchangeably, and shall mean any trust, savings and loan association credit union, mortgage company, bank, insurance company, or commercial loan company licenses to do business in the State of Florida, holding a first mortgage on any portion of the Condominium Property.
- j. Limited Common Elements means and includes those Common Elements which are reserved for the use of a certain Slip or Slips to the exclusion of other Slips.
- k. Slip means a part of the Condominium Property which is subject to private ownership. The terms Parcel and Unit shall be construed to have the same meaning as "Slip" for purposes of this Declaration and the Exhibits hereto.
- l. Slip Owner or Owner of a Slip means the owner of a Condominium Parcel.
- m. Utility Services shall include but not be limited to electric power, water garbage and telephone together with all other public service and convenience facilities.

**3. EXHIBITS**

Exhibits attached to this Declaration of Condominium and made a part hereof include the following:

- a. Exhibit "A". A survey of the land in the Condominium and a graphic description of the improvements in which Slips are located and a site plan thereof which, together with the Declaration, are of sufficient detail to identify the Common Element and each Slip and their relative locations and approximate dimensions.
- b. Exhibit "B". Share of Common Elements, Expense and Surplus.
- c. Exhibit "C". The Articles of Incorporation of the Association.
- d. Exhibit "D". The By-Laws of the Association.

**4. EASEMENTS**

Easements are expressly provided for and reserved in favor of the Developer, the sales and service entity, the Slip Owners, their lessees, their guests and invitees, as follows:

- a. Utilities. Easements are reserved under, through and over the Condominium Property as may be required for utility service in order to serve the Condominium adequately.
- b. Traffic. An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, docks, wharfs and other portions of the Common Elements as may be from time to time intended and designated for such purpose and use; and for marine traffic over, through and across such portions of the Common Elements intended for such purposes, and such easement shall be for the use and benefit of the Slip Owners within this Condominium, and those claiming by, through or under the aforesaid; provided, however, nothing herein shall be construed to give or create in any person the right to park any vehicle marine or otherwise upon any portion of the Condominium Property except to the extent that an area may be specifically designated and assigned for such purposes. An easement shall exist for marine traffic over, through and across portions of the Common Elements intended for marine traffic, in particular the turning basin, and an easement shall exist across portions of the Common Elements for pedestrian, vehicular equipment and other use as required for the operation of the Condominium. In addition, further easements shall exist for ingress and egress over such streets, walks and other rights of way serving the Slips as shall be necessary to provide for reasonable access to the Public ways.

- c. Creation of Easements. Should the intended creation of any easement fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to be so created shall nevertheless be considered as having been granted directly to the Association for the purpose of allowing the original party or parties to whom the easements were originally granted the benefit of such easement. In such event the Slip Owners designate the Developer and/or the Association as their attorney in fact to execute any instrument on their behalf as may hereafter be required or deemed necessary for the purpose of creating such easement.
- d. Easement for Unintentional and Non-Negligent Encroachments. If a Slip shall encroach upon any common element, limited common element or upon any other unit, by reason of original construction or by the non-negligent or non-purposeful act of the unit owner or Developer, then an easement appurtenant to such encroaching Slip to the extent of such encroachment, shall exist so long as such encroachment shall exist. If any common element or limited common element shall encroach upon any Slip by reason of original construction of the non-purposeful or non-negligent act of the Association or the Developer, then an easement appurtenant to such common element or limited common element, to the extent of such encroachment, shall exist so long as such encroachment shall exist.
- e. Additional Easements. The Developer (during any period in which there are any unsold Slips in the Condominium) and the Association each shall have the right to grant such additional electric, telephone, gas or other utility easements, and to relocate any existing easement in any portion of the Condominium Property, and to grant access easements and relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the improvements, or any portion thereof, or for the general health or welfare of the Slip Owner, or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Slips for their intended purposes. The joinder of the Association or any Slip Owner shall not be required in the event the Developer declares an additional easement pursuant to the provisions hereof.

5. SLIP BOUNDARIES

Each Slip shall include that part of the property containing the Slip that lies within the boundaries of the Slip, which boundaries are as follows:

- a. Upper and Lower Boundaries: The upper and lower boundaries of the Slip shall be the following boundaries extended to an intersection with the perimeter boundaries:
- (1) Upper Boundaries. The upper boundaries are unlimited.
  - (2) Lower Boundaries. The horizontal plane adjoining but not including the upper surface of the land underlying the slip.
- b. Perimeter Boundaries. The perimeter boundaries of the Slip shall be the imaginary vertical planes adjoining with but not including the surfaces of the fixed moorings, pilings, docks or wharfs.

6. APPURTENANCES TO SLIPS

- a. Undivided Interests. Each Slip Owner shall have an undivided share of the Common Elements, ownership of Common Surplus and liability for Common Expenses, which share and interest shall be appurtenant to the Slip, as set forth in Exhibit "B" attached hereto.
- b. Limited Common Elements. Fixed pilings, docks, (including but not limited to water and electric connections and cleats) piers and other supports situated so as to be adjacent to more than one slip shall hereby be assigned to each such adjacent slip. The right to the adjacent and contiguous Slip Owners' exclusive use of any fixed supports shall pass as an appurtenance to the Slip to which the fixed support is designated. A Slip Owner shall not transfer or assign use of the designated fixed supports except in connection with the conveyance of the Slip, at which time the use of the fixed supports shall pass as an appurtenance to the Slip.

7. MAINTENANCE, ALTERATION AND IMPROVEMENT

Responsibility for the maintenance of the Condominium Property, and restrictions upon its alteration and improvement shall be as follows:

- a. Slips and Fixed Moorings
- (1) By The Association. The Association shall maintain repair and replace at the Association's expense:
    - (a) All Common Elements and Limited Common Elements except as otherwise provided in the Condominium Documents.
    - (b) All conduits ducts, plumbing, wiring, telephone installations and other facilities for the furnishing of Utility Services that service part or parts of the Condominium Property, including Slips.

- (c) Electric service for the common elements, water service and garbage service.
- (2) By The Slip Owner. The responsibility of the Slip Owner for maintenance, repair and replacement shall be as follows:
- (a) To not paint or otherwise decorate or change the appearance of any portion of the Condominium Property without the prior written approval of the Association.
  - (b) To promptly report to the Association any defect or need for repairs for which the Association is responsible.
  - (c) To repair and replace at his expense any portion of the Condominium property which is negligently abused. Said repairs may be made by the Association and assessed to the Owner upon notice to the Slip Owner.
  - (d) To promptly pay for water, electric, telephone, cablevision, etc., as may be applicable.
- b. Alteration and Improvement. The cost of any alteration or improvement shall be a Common Expense and so assessed. Any alteration or improvement shall not interfere with the rights of any Slip Owner without his consent.
- c. Association's Access to Slips. The Association has the irrevocable right to access to each Slip during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements or when necessary for maintaining the Condominium Property or for making emergency repairs necessary to prevent damage to the Common Elements or to another Slip or Slips.
8. ASSESSMENTS AND COMMON EXPENSES
- a. Common Expenses. Each Slip Owner shall be liable for a share of the Common Expenses, as set forth in Exhibit "B" attached hereto.
  - b. Developer's Exemptions. The Developer guarantees that the assessment for common expenses of the condominium imposed upon unit owners will not increase over the quarterly amount stated in the estimated operating budget contained herein and does herein obligate themselves to pay any amount of common expenses incurred during the guaranty period and not produced by the assessments at the guaranteed level receivable from other units. This guarantee shall exist for a period of six (6) months from the date of the filing of the Declaration of Condominium. This guaranty may be renewed for subsequent six (6) month period by the Developer upon approval of a majority of the unit owners other than the Developer. The guaranteed assessment may vary in amount during the initial guaranty

period or any subsequent renewals to be an amount that equals the actual operating budget as determined and set by the provisions of the Declaration of Condominium and By-Laws of the Association.

- c. **Assessments.** The making and collection of assessments against each Slip Owner for Common Expenses, for the costs or expenses for which an individual Slip Owner may be solely responsible pursuant to the terms of the Condominium Documents, and for reserves as may from time to time be established by the Association, shall be pursuant to the By-Laws of the Association, subject to the following provisions:

- (1) **Interest: Application of Payments.** Assessments and installments on such assessments paid on or before fifteen (15) days after the date when due, shall not bear interest, but all sums not paid on or before fifteen (15) days after the date when due shall bear interest at the maximum legal rate from the date when due until paid. All payments on accounts shall be first applied to interest and then to the assessment first due.
- (2) **Lien For Assessments.** The Association shall have a lien against each Slip for any unpaid assessments and for interest accruing thereon, which lien shall also secure reasonable attorneys' fees incurred by the Association incident to the collection such assessment or enforcement of such lien, whether or not legal proceedings are initiated. The lien is effective from and after recording a claim of lien in the Public Records of Monroe county stating the legal description of the Slip, the name of the record owner, the amount claimed to be due and the due dates. The lien shall continue in effect for one (1) year unless action to enforce the lien is commenced in court. Such claims of lien shall be signed and verified by an officer of the Association, or by an agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared by and recorded at such party's expense. All such liens shall be subordinate to any mortgage recorded prior to the date of recording the claim of lien, and all such liens may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. The Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien. When the mortgagee of a first mortgage of record, or other purchaser of a condominium unit obtains title to the condominium parcel by a purchase at the public sale resulting from the first mortgagee's foreclosure judgement in a foreclosure suit in which the association has been properly named as a defendant junior lien holder, or, as a result of a deed give in lieu of foreclosure, such acquiror of title and his successors and assigns is not liable for the share of common expenses or assessments attributable to the condominium

parcel or chargeable to the former unit owner of the parcel which became due prior to the acquisition of title as a result of the foreclosure unless the share is secured by a claim of lien for assessments that was recorded prior to the recording of the foreclosed mortgage. The unpaid share of common expenses or assessments are common expenses collectable all the unit owners, including such acquiror and his successors and assigns. This provision shall apply to mortgage of record and shall not be restricted to first mortgages of record. No one acquiring such title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure shall during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

- (3) Payment of Assessments. No Slip Owner may withhold payment of any quarterly assessment or special assessment or any portion thereof because of any dispute which may exist between that Slip Owner and other Slip Owners, the Association, the Directors of the Association, or the Developer, or among any of them, but rather each Slip Owner shall pay all assessments when due pending resolution of any dispute.

d. Refunds of Common Surplus. If the Association shall refund all or a portion of Common Surplus to Slip Owners for any fiscal year in which the Developer paid any assessment, such refund shall be prorated as of the date of closing of any Slip upon which a sale was closed by the Developer during such year, and the prorated amount allocable to the period of the Developer's ownership shall be refunded directly to the Developer by the Association.

e. Certificate. Any slip Owner shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Slip. The holder of a mortgage or other lien shall have the same right as to any Slip upon which he has a lien. Any person who relies upon such certificate shall be protected thereby.

## 9. ASSOCIATION

The operation of the Condominium shall be by the Association, which shall fulfill its functions pursuant to the following provisions:

- a. Membership in Association. Membership of each Slip Owner in the Association shall be acquired pursuant to the provisions of the Articles of Incorporation and By-Laws of the Association. Each slip shall be entitled to one vote in the Association.



- b. Articles of Incorporation. The Articles of Incorporation of the Association, which set forth its powers and duties, are attached hereto as Exhibit "C" and incorporated herein by reference.
- c. By-Laws. The By-Laws of the Association are attached hereto as Exhibit "D" and incorporated herein by reference.
- d. Rules and Regulations. The Board of Directors is and shall be authorized to adopt reasonable rules and regulations to govern the use and enjoyment of the Condominium Property, so long as consistent herewith.
- e. Restraint upon Assignment of Shares and Assets. The Slip Owner's share in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Slip.

#### 10. INSURANCE

The insurance other than title insurance, if any, that shall be carried upon the Condominium Property and the property of the Slip Owners shall be governed by the following provisions:

- a. Authority to Purchase: Named Insured. All insurance policies upon the Condominium Property shall be purchased by the Association. The named insured shall be the Association individually and as agent for the Slip Owners, without naming them, and as agent for their mortgagees. Provisions shall be made for the issuance of the mortgagee endorsements and memoranda of insurance to the mortgagees of Slip Owners. Such policies shall provide that payments by the insurer or losses shall be made to the Association or the Insurance Trustee designated below, and all policies and their endorsements shall be deposited with the Association or the Insurance Trustee.
- b. Property of Slip Owner. Slip Owners should obtain insurance coverage at their own expense upon their personal property and for their personal liability and such insurance shall not be the responsibility of the Condominium Association.
- c. Coverage
  - (1) Casualty. All structures and improvements comprising Common Elements upon the Condominium Property shall be insured in an amount equal to One Hundred (100%) percent of the replacement cost value, as shall be determined annually by the Board of Directors of the Association. The Board of Directors may propose a co-insurance factor, as it deems advisable in its sole discretion. Any deductible provisions shall be determined by the Board of Directors in its sole discretion. All such coverage, including the amount thereof and the

insurance company issuing same, shall be subject to the approval of the Institutional Mortgagee holding the greatest dollar amount of first mortgages against Slips in the Condominium. Such approval shall be conclusively deemed given if such Institutional Mortgagee fails to notify the Association otherwise within ten (10) days of being notified by the Association of the proposed coverage amount and insurance company. The Board of Directors shall review and adjust the insurance coverage at least once every year so as to assure reasonable protection of the Condominium improvements. Coverage shall afford protection against:

- (a) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, generally known as All Risks Physical Damage Insurance, if available, and
  - (b) Such other risks as from time to time shall be customarily covered with respect to improvements similar in construction, location and use as the improvements on the land, including but not limited to vandalism, malicious mischief and flood insurance, if available.
- (2) Public Liability. Public liability insurance shall be carried in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired vehicles, owned, and non-owned vehicle coverages, known as Employers Automobile Non-Ownership Liability Insurance and with cross liability endorsements to cover liabilities of the Slip Owners as a group to a Slip Owner as an individual.
  - (3) Workmen's Compensation. Workmen's compensation insurance shall be carried so as to meet the requirements of law.
  - (4) Association. Fidelity Insurance Coverage shall be carried in the name of the Association for bonding all officers or directors of the Association.
  - (5) Other. Such other insurance may be carried as the Board of Directors of the Association shall determine from time to time to be desirable.
- d. Premiums. Premiums upon insurance policies purchased by the association shall be paid by the Association as a Common Expense.
  - e. Insurance Trustee: Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Slip Owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to a named Insurance Trustee (hereinafter referred to as the Insurance Trustee), as Trustee, which shall be a commercial bank with trust powers, authorized to do business in Florida,

as may be designated as Insurance Trustee from time to time by the Board of Directors of the Association when required by this Declaration. The selection of the Insurance Trustee is subject to the approval of the Institutional Mortgagee holding the greatest dollar amount of first mortgages against the Slips in the Condominium. Such approval shall be conclusively deemed given if such Institutional Mortgagee fails to notify the Association otherwise within ten (10) days of being notified by the Association of the proposed coverage amount and insurance company. The Insurance Trustee shall not be liable for payment of premiums nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes stated herein for the benefit of the Slip Owners and their mortgagees in the following shares, provided, however, such shares need not be set forth on the records of the Insurance Trustee:

- (1) Proceeds on Account of Damage to common Elements and Limited Common Elements. Proceeds on account of damage to Common Elements and Limited Common Elements shall be held in undivided shares for each Slip Owner, such share being the same as the undivided share in the Common Elements and Limited Common Elements appurtenant to each Slip.
- (2) Slips. Proceeds on account of damage to Slips, when the improvement is not to be restored, shall be held in undivided shares for each Slip Owner, such share being the same as the undivided share in the Common elements appurtenant to the Slip.
- (3) Mortgagees. In the event a mortgagee endorsement has been issued, any share for the Slip Owner shall be held in trust for the mortgagee and the Slip Owner as their interest may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the Slip Owner and mortgagee pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums of insurance proceeds applicable to its mortgaged Slip in any of the following events:
  - (a) Its mortgage is not in good standing and is in default.
  - (b) Insurance proceeds are insufficient to restore or repair the improvement to the condition existing prior to the loss and additional monies are not available for such purpose.

- (4) Insurance Trustee. An Insurance Trustee shall be appointed when there exists a major damage as defined in subparagraph 11.e.(2)(b) herein.
- f. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:
- (1) All expenses of the Insurance Trustee shall be paid first or provisions made for such payment.
  - (2) If the damage for which the proceeds are paid is to be repaired or reconstructed the proceeds shall be paid to defray the cost thereof as provided herein. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners, remittances to Slip Owners and their mortgagees being payable by, any mortgagee of a Slip.
  - (3) If it is determined in the manner provided herein that the damage for which proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners, remittances to Slip Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, the mortgagee of a Slip.
  - (4) In making distribution to Slip Owners and their mortgagees, the Insurance Trustee may rely upon a Certificate of the Association made by its President and Secretary as to the names of the Slip Owners and their respective shares of the distribution.
- g. Association as Agent. The Association is hereby irrevocably appointed Agent for each Slip Owner and for each Owner of any other interest in the Condominium Property to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

#### 11. RECONSTRUCTION OR REPAIR AFTER CASUALTY

- a. Determination to Reconstruct or Repair. If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:
- (1) Common Elements and Limited Common Elements. If the damaged improvement is a Common Element or a Limited Common Element then the damaged property shall be reconstructed or repaired, unless it is determined that the Condominium shall be terminated.

(a) Minor Damage. If the damage is to Common Elements and if thirty-five (35%) percent or more Slips are found by the Board of Directors of the Association to be operational and as moorings according to original standards, the damaged property shall be reconstructed or repaired, unless within sixty (60) days after the casualty, it is determined by agreement that the Condominium shall be terminated.

(b) Major Damage. If the damage is to Common Elements and if sixty-six (66%) percent or more of the Slips are found by the Board of Directors of the Association to be unusable moorings according to the original standards, then the damaged property will not be reconstructed or repaired, and the Condominium will be terminated without agreement, unless within sixty (60) days after the casualty, the Owners of sixty-six (66%) percent of the Slips agree in writing to such reconstruction or repair.

(2) Certificate. The Insurance Trustee may rely upon a Certificate of the Association made by its President and attested by its Secretary as to whether or not the damaged property is to be reconstructed or repaired.

- b. Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original improvements, or in lieu thereof, according to the plans and specifications approved by the Board of Directors of the Association and by the Owners of not less than sixty-six (66%) percent of the Slips including the Owners of all damaged Slips, together with the approval of the Institutional Mortgagees holding first mortgages upon all damaged Slips, which approval shall not be unreasonably withheld.
- c. Estimate of Cost. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost of rebuild or repair.
- d. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds from insurance for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against all Slip Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the Owner's obligation for Common expenses.

e. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association or the Insurance Trustee and funds collected by the Association from assessments against Slip Owners, shall be disbursed in payment of such costs in the following manner:

- (1) Association. If the total of assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair that is the responsibility of the Association is more than \$50,000.00, then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.
- (2) Insurance Trustee. The proceeds of insurance collected on account of casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessments against Slip Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) Association - Minor Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than \$20,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association, provided however, that upon request by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(b) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair that are the responsibility of the Association is more than \$20,000.00, then the construction fund shall be applied by the Insurance Trustee to the payment of such cost, and shall be paid to or for the account of the Association from time to time as the work progresses, but not more frequently than once in any calendar month. The Insurance Trustee shall make payments upon the written request of the Association for withdrawal of insurance proceeds accompanied by a certificate, dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association and by an architect in charge of the work, who shall be selected by the Association, setting forth that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and

materials and any amounts paid prior to the request, and stating that the sum requested does not exceed the value of the services and material described in the certificate; that except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the person signing such certificate after due inquiry, which might become the basis of a vendor's, mechanic's, materialmen's or similar lien upon such work against the common elements for any individual Slip; and that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of insurance proceeds or other funds remaining in the hands of the Insurance Trustee after the payment of the sum so requested.

(c) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund; except, however, that only those portions of a distribution to the beneficial Owners in excess of assessments paid by a Slip Owner to the construction fund shall be made payable to any mortgagee.

(d) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether sums paid by the Slip Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the Insurance Trustee may rely upon a Certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and promptly payable and stating the name of the payee and the amount to be paid; provided, that when a mortgagee is required in this instrument to be named payee, the Insurance Trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a Slip Owner; and further, provided, that when the Association, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association prior to disbursements in payment of costs of reconstruction and repair.

## 12. USE RESTRICTIONS

The use of the Condominium Property shall be in accordance with the following provisions as long as the Condominium exists upon the property:

- a. Slips. Each of the Slips shall be occupied only as a single boat mooring. No Slip may be divided or subdivided. At no time may more than one boat occupy any one Slip, with the exception of a dingy or tender.
- b. Common Elements and Limited Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Slips.
- c. Nuisances. No nuisance shall be allowed upon the Condominium Property or within a Slip, nor any use or practice that is the source of annoyance to Slip Owners or which interferes with the peaceful possession and proper use of the property by its Owners. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Slip Owner shall permit any use of his Slip or make any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.
- d. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or a Slip, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property or a Slip shall be the same as the responsibility for the maintenance and repair of the property concerned.
- e. Leasing of Slips. After approval by the Association required herein, entire Slips may be rented provided the mooring is only by the Lessee, his family and guests, provided such written approval when once given or relied upon may not thereafter be revoked or terminated without the consent of the Slip Owner. A lease of any Slip shall not release or discharge the Owner thereof from compliance with any of his obligations and duties as a Slip Owner, and said Slip Owner shall be liable jointly and severally for any violation of the Rules and Regulations by a tenant. All of the provisions of the Condominium Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Slip as a tenant to the same extent as against a Slip Owner, and a covenant upon the part of each such tenant to abide by the Rules and Regulations of the Association, and the terms and provisions of the Condominium Documents, and designating the Association as the Slip Owner's agent for the



purpose of and with the authority of such covenant shall be an essential element of any such lease or tenancy agreement, whether oral or written, and whether specifically expressed in such agreement or not. Lease approval by the Association shall not be unreasonably denied to the developer or any unit owner.

- f. Signs. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the Common Elements, Limited Common Elements, or Slips, except that the right is specifically reserved in the Developer to place and maintain "For Sale" or "For Rent" signs in connection with any unsold or unoccupied Slip the developer may from time to time own, and the same right is reserved to any Institutional Mortgagee which may become the owner of a Slip, and to the Association as to a Slip which it may own.
- g. Regulations. Reasonable Rules and Regulations concerning the use of Condominium Property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. One copy of such Rules and Regulations and amendments shall be furnished by the Association, free of charge, to all Slip Owners of the Condominium.
- h. Developer's Exemption. The Developer may make such use of the unsold Slips and Common Elements as may facilitate the sale of Slips by the Developer, including, but not limited to, showing of the property and the display of signs and other promotional devices.
- i. Exterior Appearance. No Slip Owner shall decorate or alter any part of his Slip so as to affect the appearance without the prior written approval of the Board of Directors of the Association.
- j. Boats. The Association shall have the right to board a boat occupying any Slip within the Condominium Property for purposes of resecuring to fixed moorings, pumping, or any time that the boat poses a hazard or threat to Condominium Property or the property of other Slip Owners. The Association shall not be obligated to resecure, pump or prevent a dangerous condition created by any boat occupying a Slip, nor shall the Association be liable for any damage sustained to the Slip Owner's boat while attempting to resecure, pump or prevent a dangerous condition or for damage sustained as a result of no attempt to resecure, pump or prevent a dangerous condition. The Association shall have the right to board a boat occupying any slip within the Condominium Property to inspect and test with mechanical devices to determine the soundness of the craft, however, the Association shall have no responsibility or obligation to inspect or test. A Slip may be occupied only by a boat of such size that would not obstruct the turning

522387

OFF REC 1038 PAGE 2470

basin for those boats presently, or designated to be moored within the Condominium Property. The Association shall have the right to condemn and cause to be removed any boat occupying a Slip within the Condominium Property where the boat or lines are not properly maintained or where the boat poses a threat or hazard to any other boat. All boats shall maintain a current Coast Guard inspection and display same upon request of the Association.

- k. Boats for Sale. If a Slip Owner holds a boat for sale within the Condominium Slip the Slip Owner or an authorized agent of the Management Firm must accompany the prospective Purchaser(s) when viewing the boat with the Condominium Property. This measure is to preserve the security and privacy of the Condominium. This section of the Declaration of Condominium may be amended only by unanimous consent of Slip Owners and the Board of Directors.
- l. Guests. An owner must notify the Association in advance of the expected period of use of any guest of an Owner when using the Slip in the Owner's absence. The Owner of the Slip shall remain liable for the conduct of his guest while using the condominium facilities. The Association or its authorized agent shall have the right to refuse the entrance of a guest when not properly authorized by the record owner.
- m. Notice. The Owner of a Condominium Slip must notify the Association in writing on forms as promulgated by the Association of the particular boat that will occupy a Condominium Slip.
- n. Occupancy. No boat or vessel shall be used or maintained for sleeping or living purposes or as a place of residence which is not sound, seaworthy and equipped with self-propelled machinery in good operating condition. Vessels that are to occupy slips may not be used principally as a residence nor to provide on a long-term basis the essential services typically associated therewith.
- o. Storm Precaution. During hurricanes and other high velocity wind threat, the Slip Owner shall be responsible for following all safety precautions that may be outlined by the Miami Hurricane Center. If a Slip Owner's boat or any other boat authorized to occupy a Slip sinks as a result of a storm, or for any other reason, the Slip Owner must remove the sunken boat from the Condominium Property within five (5) days after the occurrence of such event or else the Association may remove the sunken boat whereupon the slip owner shall be responsible for all costs of removing such sunken boat and all costs of enforcing this provision, including but not limited to reasonable attorneys' fees, whether suit be brought or not. A mechanics lien for labor and services on the sunken boat shall be imposed according to the provisions of Chapter 713, Florida Statutes, as amended.

MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain congenial Owners who are financially responsible and thus protect the value of the Slips, the transfer of Slips by an Owner other than the Developer shall be subject to the following provisions as long as the Condominium exists upon the property:

- a. Transfers Subject to Approval. No Slip Owner, except the Developer, may either acquire or dispose of any Slip by sale, lease, gift, devise, inheritance, or other transfer of title or possession without the written consent of the Association except as hereinafter provided. In the event of transfer of title by operation of law the continued ownership is subject to the written approval of the Association except as hereinafter provided. The Association reserves the right to approve the size of any boat which may be docked within the Condominium Property so as to assure the safe use of all marine vehicles.
- b. Approval by Association. The written approval of the Association that is required for the transfer of title of a Slip shall be obtained in the following manner:
  - (1) Sale. A Slip Owner intending to make a bona fide sale of his Slip or any interest therein shall give to the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the association may reasonably require. Such notice at the Slip Owner's option may include a demand by the Slip Owner that the Association furnish a purchaser of the Slip if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.
  - (2) Lease. A Slip Owner intending to make a bona fide lease of his Slip to any interest therein shall give to the Association notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require and an executed copy of the proposed lease.
  - (3) Gift, Devise, Inheritance, or Other Transfers. A Slip Owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously specified, shall give to the Association notice of the acquiring of his title, together with such information concerning the Slip Owner as the Association may reasonably require, and a certified copy of the instrument evidencing the Owner's title.

- (4) Failure to Give Notice. If the above required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Slip, the Association at its election and without notice may approve or disapprove the transaction, ownership, or possession.

c. Certificate of Approval.

- (1) Sale. If the proposed transaction is a sale then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be by a certificate in recordable form executed by the Association.
- (2) Lease. If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be by a certificate in a non-recordable form executed by the Association.
- (3) Gift, Devise or Inheritance: Other Transfers. If the Slip Owner giving notice has acquired his title by gift, devise or inheritance or in any other manner, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the continuance of the Slip Owner's ownership of his Slip. If approved, the approval shall be by a certificate in recordable form executed by the Association.
- (4) Approval of Corporate Owner or Purchaser. Inasmuch as the Condominium may be used only for mooring purposes and a corporation cannot occupy a Slip for such use, if the Slip Owner, purchaser or lessee of a Slip is a corporation, the approval of ownership or lease by the corporation may be conditioned by requiring that all persons occupying the Slip be approved by the Association and contingent upon the occupation of the Slip only by those persons who have been approved.
- (5) Screening Fees. The Association shall require the payment of a reasonable screening fee, not to exceed Fifty (\$50.00) Dollars, for the purpose of defraying the Association's expenses incurred in determining whether to approve or disapprove the transaction.
- (6) Acceptance. The acceptance of a deed or conveyance, or the entering into a lease shall constitute an adoption and ratification by such Owner, tenant or occupant of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited

to, a ratification of any appointments of attorneys-in-fact, contained therein. The title to the Condominium Property is subject to conditions, restrictions, limitations and easements of record, if any.

- d. Disapproval by Association. If the Association shall disapprove a transfer of ownership of a Slip, the matter shall be disposed in the following manner:
- (1) Sale. If the proposed transaction is a sale and if the notice of sale given by the Slip Owner shall so demand, then within thirty (30) days after receipt of such notice and information the Association shall deliver or mail by registered mail to the Slip Owner an agreement to purchase the Slip by a purchaser approved by the Association, or an agreement to purchase signed on behalf of the Association by its President and attested by its Secretary, in which event the Slip Owner shall sell the Slip to the named purchaser at the price and upon the terms stated in the disapproved contract to sell, or upon mutually agreed terms.
    - (a) The sale shall be closed within sixty (60) days after delivery or mailing of the agreement to purchase, or upon the date designated in the disapproved contract, whichever date shall be later.
    - (b) If the Association shall fail to purchase or provide a purchaser upon demand of the Slip Owner in the manner provided, or if the purchaser furnished by the Association shall default in his agreement to purchase, the proposed transaction shall be deemed to have been approved, and the Association shall furnish a certificate of approval in recordable form.
  - (2) Lease. If the proposed transaction is a lease, the Slip Owner shall be advised of the disapproval in writing, and the lease shall not be made.
  - (3) Gift, Devise or Inheritance: Other Transfers. If the Slip Owner giving notice hereof acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the Slip Owner of the notice and information required to be furnished, the Association shall deliver or mail by registered mail to the Slip Owner an agreement to purchase the Slip concerned by a purchaser approved by the Association who will purchase and to whom the Slip Owner must sell the Slip upon the following terms:
    - (a) The sales price shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration

Association, except that the arbitrators shall be two appraisers appointed by the American Arbitrators Association who shall base their determination upon an average of their appraisals of the Slip; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

- (b) The purchase price shall be paid in cash.
  - (c) The sale shall be closed within sixty (60) days following determination of the sale price.
  - (d) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval in recordable form, to the Slip Owner.
- e. Mortgage. No Slip Owner may mortgage his Slip nor any interest in it without approval of the Association except to an Institutional Mortgagee or to a seller to secure a portion or all of the purchase price. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld. The provisions of this subparagraph shall not apply to lease or lessee approval by the Association, restrictions on presence of pets, restrictions on occupancy of units based on age, or restrictions on the type of vehicles allowed to park on condominium or Association property.
- f. Exceptions. The provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer or purchase by an Institutional Lender that acquires its title as the result of owning a mortgage upon the Slip concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such provision apply to a transfer, sale or lease by an institutional lender that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a Slip at a duly advertised public sale with open bidding provided by law, such as but not limited to, execution sale, foreclosure sale, judicial sale or tax sale. Neither shall such provisions apply to the Developer, who shall have the right to freely sell, lease, transfer or otherwise deal with the title and possession of a Slip without complying with the provisions of this section, and without the approval of the Association.

- g. Unauthorized Transactions. Any sale, mortgage, lease, or transfer not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association or otherwise cured by the terms of this Declaration.
- h. Notice of Lien or Suit.
- (1) Notice of Lien. A Slip Owner shall give notice, in writing, to the Association of every lien upon his Slip other than for authorized mortgages, taxes and special assessments within five (5) days after the attaching of the lien.
  - (2) Notice of Suit. A Slip Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his Slip, such notice to be given within five (5) days after the Slip Owner shall receive knowledge or notice thereof.
  - (3) Failure to Comply. Failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.
- i. Association Waiver of Transfer Approval. Whenever in this section an approval is required of the Association in connection with the sale, transferring, leasing or pledging of any Slip, and such approval shall not have been obtained pursuant to the provisions hereof, failure upon the part of the Association to object in writing to such sale, transfer, pledging or leasing within ninety (90) days after the date thereof, or within thirty (30) days of the date upon which the purchase, transferee or lessee shall take possession of the premises, whichever date shall be later, shall constitute waiver by the Association of objection to the written consent otherwise required by this section and the Association upon demand shall forthwith deliver consent in recordable form.

#### 14. PURCHASE OF SLIPS BY ASSOCIATION

The Association shall have the power to purchase a Slip or Slips subject to the following provisions:

- a. Decision. The decision of the Association to purchase a Slip shall be made by the affirmative vote of at least fifty-one (51%) percent of the Slip Owners.
- b. Limitation. If at any time the Association shall be the Owner or agreed purchaser of one (1) or more Slips, it may not purchase any additional Slips without the prior written approval of seventy-five (75%) percent or more of the Slip Owners. The Slip Owner whose Slip is the subject matter of the proposed purchase shall be ineligible to vote thereon provided, however, that the limitations hereof shall not apply

522387

OFF REC 1038 PAGE 2476

to Slips to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent assessments where the bid of the Association does not exceed the aggregate of the amounts due by virtue of any and all senior or superior liens against the Slip plus the money due the Association, nor shall the limitation of this paragraph apply to Slips to be acquired by the Association in lieu of foreclosure of such liens if the consideration therefor does not exceed the cancellation of such lien.

**15. RIGHTS OF DEVELOPER**

Notwithstanding anything in this Declaration to the contrary and in addition to any other rights which may be reserved to the developer herein, the Developer shall have the following rights:

- a. Purchase of Slips. The Developer shall have the right of first refusal to purchase any Slip which the Association shall have the right to purchase upon the same price and at the same terms available to the Association, such right of first refusal to continue until such time as the Developer shall have sold and closed on the sale of all Slips in the Condominium, or for a period of two (2) years from the date of the recording of this Declaration of Condominium, whichever is sooner.
- b. Alteration of Slip Boundaries and Dimension: The Developer reserves the right to change the interior design and arrangement of all Slips so long as the Developer owns the Slips so changed and altered, provided such change shall be reflected by an amendment to this Declaration, provided, further, that an amendment for such purpose shall be signed and acknowledged only by the Developer and need not be approved by the Association or Slip Owners, whether or not elsewhere required for an amendment. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or affected by such Units, provided that such relocation or alteration does not materially adversely affect the market value (in the Developer's opinion) or ordinary use of Slips owned by Slip Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this paragraph may be effected by the Developer alone. The provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

**16. COMPLIANCE AND DEFAULT**

Each Slip Owner shall be governed by and shall comply with the terms of the Condominium Documents and the Rules and Regulations adopted pursuant to those documents, and as they may be amended from time to time. Failure of a Slip Owner to comply with the provisions of such documents and regulations shall entitle the Association or other



Slip Owners to pursue any and all legal and equitable remedies for the enforcement of such provisions, including but not limited to an action for damages, an action for injunctive relief or an action for declaratory judgment. All provisions of the Declaration shall be enforceable, equitable servitudes and shall run with the land and shall be effective until the Declaration is revoked.

Additionally, the Association shall be entitled to the following relief:

- a. Negligence. A Slip Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, or lessee, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. A Slip Owner shall pay the Association the amount of any increase in its insurance premiums occasioned by misuse, occupancy or abandonment of a Slip or its appurtenances, or of the Common Elements, by the Slip Owner.
- b. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Slip Owner or the Association to comply with the terms of the Condominium Documents, or the Rules and Regulations adopted pursuant to them, and the documents and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding, and recover such reasonable attorneys' fees as maybe awarded by the Court.
- c. No Waiver of Rights. The failure of the Association or any Slip Owner to enforce any covenant, restriction or other provision of the Condominium Act, the Condominium Documents, or the Rules and Regulations shall not constitute a waiver of the right to do so thereafter.
- d. Compliance. In the event a Slip Owner or tenant fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to suspend voting rights in Association matters, to assess the Slip Owner and the Slip for the sums necessary to put the Slip Owner or Slip in compliance and to collect such Assessment and have a lien therefor as elsewhere herein provided. No fine or special assessment or charges against less than all unit owners may be collected or enforced through the statutory lien process afforded by the Florida condominium act, unless subsequently and specifically amended to allow such enforcement and collection.

**17. AMENDMENTS**

Except as otherwise provided herein, this Declaration of Condominium may be amended in the following manner:

- a. **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.
- b. **Adoption.** A resolution shall be adopted in the following manner:
  - (1) **Board of Directors.** Until the first election of all directors of the Association by Slip Owners other than the Developer, proposal of an amendment and approval thereof shall require only the affirmative action of sixty-six (66%) percent of the entire membership of the Board of Directors of the Association and no meeting of the Slip Owners nor any approval thereof need be had, provided, the amendment does not increase the number of Slips or alter the boundaries of the Common Elements.
  - (2) **Board of Directors and Slip Owners.** In addition to the procedure set forth above, a resolution for the adoption of a proposed amendment may be proposed by the Board of Directors of the Association or by the Owners of Slips within this Condominium. Slip Owners may propose such an amendment by instrument in writing directed to the President or Secretary of the Board signed by not less than thirty-three (33%) percent of the Slip Owners. Amendments may be proposed by the Board of Directors by action of a majority of the Board at any regularly constituted meeting thereof. Upon an amendment being proposed as herein provided, the President, or, in the event of his refusal or failure to act, the Board of Directors, shall call a meeting of the Slip Owners of this Condominium to be held not sooner than fifteen (15) days nor later than sixty (60) days thereafter for the purpose of considering said amendment. Directors and Slip Owners not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary at or prior to the meeting. Except as provided herein, such approvals must be by:
    - (a) Not less than sixty-six (66%) percent of the entire membership of the Board of Directors and not less than seventy-five (75%) percent of the Slip Owners within this Condominium; or
    - (b) Not less than ninety (90%) percent of the votes of all Slip Owners within this Condominium, or

- (c) An agreement signed and acknowledged by all Slip Owners within this Condominium in the manner required for the execution of a deed.

c. Limitations. No amendment shall discriminate against any Slip Owner nor against any Slip or class or group of Slips, unless the Slip Owners so affected shall consent; no amendment shall change any Slip nor the share in the Common Elements appurtenant to it nor increase the Owner's share of the Common Expenses, unless the Slip Owner concerned and all Institutional Mortgagees of record of such Slip shall join in the execution of the amendment; no amendment shall make any change in the section entitled "Insurance" nor in the section entitled "Reconstruction or Repair after Casualty" unless all Institutional Mortgagees of record on any of the Condominium Property shall join in the execution of such amendment; no amendment shall make any change which would in any way affect any of the rights, privileges, powers and/or options herein provided in favor of or reserved to the Developer, unless the Developer shall join in the execution of such amendment.

Execution and Recording. Each amendment shall be attached to or shall contain a certificate certifying that the amendment was duly adopted, and the certificate shall be executed by the President of the Association and attested by the Secretary-Treasurer with the formalities of a deed, and said amendment shall be effective upon recordation of the amendment and certificate in the Public Records of Monroe County, Florida.

e. Developer's Rights. Notwithstanding the foregoing paragraphs, but subject to the provisions of Florida Statute 718.113(3), the Developer reserves the right to change the interior designs and arrangement of all Units and to alter the boundaries between Units, as long as the Developer owns the Units so altered; however, no such change shall increase the number of Units nor alter the boundaries of the common elements, except the party wall between any Units and as herein provided, without amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in Units, as provided in this paragraph, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of Units, and said amendment need only be executed and acknowledged by the Developer and any Institutional Mortgagee whose mortgage encumbers the said altered Units. The survey shall be certified in the manner required by the Act. If more than one Unit is concerned, the Developer shall apportion between the Units if shares in the common elements appurtenant to the Units concerned, together with apportioning common expenses and common surplus of the Units concerned and such shares of common elements, common expenses and common surplus

shall be duly noted in the amendment of the Declaration. Developer reserves the right to amend this Declaration of Condominium, without the consent of the Slip Owners. Notwithstanding anything to the contrary herein, the Developer reserves the right to amend the Declaration and its Exhibits so as to correct any legal description contained herein, which legal description may have been incorrect by reason of a scrivener's or surveyor's error, so long as such amendments do not materially affect the rights of unit owners, lienors or mortgagees. Such amendment need be executed and acknowledged by the Developer only, and need not be approved by the Association, unit owners, lienors or mortgagees of Units whether or not elsewhere required for amendments. The execution and recording of any amendment by the Developer pursuant hereto shall be conclusive evidence that the amendment does not materially adversely affect substantial property rights of Slip Owners who did not join in or consent to such execution, and any such amendment shall be effective as provided below unless subsequently rescinded.

#### 18. TERMINATION

The Condominium may be terminated in the following manners, in addition to the manner provided by the Condominium Act:

- a. Devastation. If it is determined as provided herein that the damaged area shall not be reconstructed because of major damage, the Condominium plan of ownership shall be terminated without agreement, except as otherwise provided.
- b. Agreement. The Condominium may be terminated at any time by the approval in writing of all Slip Owners and all mortgagees of record of Slips. Notice of a meeting at which the proposed termination is to be considered shall be given not less than thirty (30) days prior to the date of such meeting. Provided that the approval of Owners of not less than eighty (80%) percent of the Slips, and the approval of all record Owners of Mortgages upon the Slips, are obtained at the meeting or within thirty (30) days thereafter, then the approving Owners shall have an option to buy all of the Slips of the Owners not approving of termination, said option to continue for a period of sixty (60) days from the date of such meeting. Approval by an Owner of a Slip, or of a mortgage encumbering a Slip, shall be irrevocable until expiration of the aforesaid option to purchase the Slip of Owners not so approving, and if the option to purchase such Slip is exercised, then such approval shall be irrevocable. The option to purchase the Slips not approving of termination shall be exercised upon the following terms:
  - (1) Exercise of Option. The option shall be exercised by delivery or mailing by registered mail to each Owner of the Slips to be purchased an agreement to purchase signed by the Owners of

Slips who will participate in the purchase. Such agreement shall indicate which Slips will be purchased by each participating Owner and shall require purchase of all Slips owned by Owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

- (2) Price. The sale price for each Slip shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association by appraisers appointed by the American Arbitration Association who shall base their determination upon an average of the appraisals of the Slip; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any Court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser. In any such action for specific performance the prevailing party shall also be entitled to his reasonable attorneys' fees and costs incurred in connection therewith.
- (3) Payment. The purchase price shall be paid in cash, provided, in the event there shall be a pre-existing first mortgage on the Slip, then the purchaser shall have the option of assuming the remaining principal obligation thereof if available, and that portion of the purchase price which is in excess of such mortgage shall be payable in cash at closing.
- (4) Closing. The sale shall be closed within sixty (60) days following determination of the sale price.
- c. Certificate. Termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its President and Secretary certifying to the facts effecting the termination, said certificate to become effective upon being recorded in the Public Records of Monroe County, Florida.
- d. Shares of Owners after Termination. After termination of the Condominium, the Owner of each Slip shall own an undivided share of the Condominium Property and all assets of the Association as tenants in common, as set forth in Exhibit "B" attached hereto.
- e. Amendment. This section concerning termination cannot be amended without consent of all Slip owners and mortgagees of record of the Slips.

#### 19. SLIP NUMBERS

The Condominium Slips in this Condominium shall be known as: Slips # 1 through 53, inclusive.

20. SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any section, sub-section, sentence, clause, phrase or word, or other provision of the Condominium Documents and Rules and Regulations of the Association shall not affect the validity of the remaining portions.

21. CLUB MEMBERSHIP

Each slip owner must be a member of Futura Yacht Club which owns and operates the swimming pool area and tennis courts adjacent to the condominium. The club membership dues for each slip owner shall be part of the common expenses for each slip owner and shall be collected by the condominium association and otherwise enforced under the provisions of Section 8, ASSESSMENTS AND COMMON EXPENSES, herein. In the event a slip owner is a current member of Futura Yacht Club, no duplicate club membership fees shall be collected by the condominium association.

AMJ  
5/20/93  
Adding Article  
22. Slip Ownership

IN WITNESS WHEREOF, the Developer has executed this Declaration this 14th day of December, 1987.

Signed, sealed and delivered in the presence of:

PLANTATION KEY PROPERTIES, INC.

Joyce H. Curtis  
[Signature]

By: [Signature]  
Ricardo L. Bandrich

STATE OF FLORIDA  
COUNTY OF MONROE

BEFORE ME, the undersigned authority, personally appeared RICARDO L. BANDRICH, of PLANTATION KEY PROPERTIES, INC., who did acknowledge to me that he signed the foregoing Declaration of Condominium of Futura Yacht Club Marina, a Condominium, freely and voluntarily for the purposes stated therein.

WITNESS my hand and official seal this 14th day of December, 1987.

Joyce H. Curtis  
Notary Public



My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. MAR. 2, 1989  
BONDED THRU GENERAL INS. UND.

Legal Description:

EXHIBIT "A" 522387

OFF REC 1038 PAGE 2483

A portion of Vacation Village according to the plat thereof as recorded in plat book 4 at page 101 of the Public Records of Monroe County, Florida; said parcel of land being located in Section 7, Township 67 South, Range 18 East, Monroe County, Florida; being more particularly described as follows:

Commence at the intersection of the Southerly line of said "Vacation Village", and the Northwest-ly Right of Way line of State Road No. 5 (U.S. #1); thence run N89 59'15"W along the South line of said Vacation Village for 311.00 feet, thence run N07 50'17"W for 44.00 feet to the Point of Beginning of the herein described parcel, thence continue N07 50'17"W along the Easterly edge of an eight feet concrete dock for 504.01 feet, thence run N82 09'43"E for 34.00 feet; thence run N07 50'17"W for 114.00 feet; thence run N88 53'25"W for 56.57 feet, thence run N43 58'25"W for 80.00 feet to the actual Mean High Water Line as approved and filed by State of Florida Department of Natural Resources on April 24, 1978; thence run S33 46'55"W for 44.37 feet, thence run S29 14'56"W for 89.12 feet, thence run S14 21'31"W for 75.45 feet, thence run S03 16'51"E for 95.01 feet, thence run S01 01'50"W for 22.21 feet, thence run S48 15'11"W for 39.51 feet, thence run S63 12'46"W for 73.15 feet, the last seven courses being traverse between points at Mean High Water Line, thence run S38 22'14"E for 1.80 feet across the canal to the actual Mean High Water Line as approved and filed by State of Florida Department of Natural Resources on April 24, 1978; thence run N64 32'08"E for 90.19 feet; thence run N42 14'24"E for 27.59 feet to a point being the Southeastly corner of a five feet concrete dock, thence run N83 58'45"E for 11.20 feet, thence run S15 01'15"E for 20.85 feet; thence run S74 58'45"W for 30.50 feet to a point being the Southeastly corner of said five feet concrete dock; thence run S11 51'15"E for 26.50 feet; the last four courses being coincident with the Southerly, Westerly, Northerly and Westerly edge of said five feet concrete dock, thence run S78 08'45"W for 6.00 feet being the dividing line between Parcel #1 and Parcel #2; thence run S11 51'15"E for 204.00 feet; thence run S54 44' 27"E for 115.10 feet; thence run N83 22'43"E for 70.89 feet to the Point of Beginning.

RECORDERS MEMO:  
LEGIBILITY OF WRITING, TYPING, OR PRINTING WAS  
UNSATISFACTORY ON THIS DOCUMENT WHEN RECEIVED

We Hereby Certify: That the attached sketch of survey of the above described property is true and correct to the best of our knowledge and belief as recently surveyed under our direction, also that there are no encroachments unless shown, and this survey meets minimum technical standards set by the Florida Board of Land Surveyors. As set forth in Chapter 472.027 (F.S.) and Chapter 21 § 6 of the Florida Administrative Code.

Professional Land Surveyor No. 3706  
State of Florida  
Date July 10, 1987

For: Futura Yacht Club  
Order No.: 8706-191

Prepared by: Caribbean Land Surveyors, Inc.  
7175 S.W. 8th Street Suite 216  
Miami, Florida 33144

Phone: (305) 264/9151