

**AMENDED DEED RESTRICTION  
FOR  
TROPICAL BAY SUBDIVISION**

WHEREAS Tropical Bay Subdivision in Big Pine Key, Florida, is a duly recorded subdivision as recorded in Plat Book 4, Page 102 [First Addition]; Plat Book 5, Page 73 [Second Addition]; and Plat Book 5, Page 81 [Third Addition] of the Public Records of Monroe County, Florida; and

WHEREAS, Declaration of Restrictions for Tropical Bay Subdivision, First Addition were recorded for Lots 2 through 53 and Lots 32A through 44A in Volume 149, Pages 443 in April 1959 and Volume 155, Page 587 in April 1959 in the Public Records of Monroe County; Second Addition were recorded for Block 1 - Lots 1 through 10, and Block 2 - Lots 1 through 8, in Volume 294, Pages 274 and Tract C, Volume 307, Page 529 in the Public Records of Monroe County in April 1964; and Third Addition Blocks 3 to 12, a subdivision of Part of Government Lot 6, Section 14, Township 66 South, Range 29 East, Big Pine Key, Monroe County, Florida, in volume 387, pages 716 of the Public Records of Monroe County, Florida in March of 1967 and Volume 314, Page 88 of the Public Records of Monroe County, Florida in April of 1965; and

WHEREAS, said Declarations of Restrictions allow for the renewal and/or amendment of these Deed Restrictions thirty years after recording, and at ten year intervals thereafter on the condition that an instrument signed by persons then owning a majority of said lots agree to the amendment and that said amendment is recorded in the Public records of Monroe County, Florida; and

WHEREAS, the Deed Restriction for Tropical Bay Subdivision, First Addition were recorded 1959, Second Addition were recorded 1964 and Third Addition were recorded in 1967; and

WHEREAS; thirty years have passed on all the Declaration of Restrictions and it is the intent of the current owners of Tropical Bay Subdivision, First Addition, Second Addition and Third Addition to Amend the Declaration of Restrictions in accordance with requirements of these Restriction and the Laws of the State of Florida.

NOW THEREFORE in considerations of the mutual covenants and conditions contained herein and for other good and valuable consideration, the parties agree as follows:

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned property owners of Tropical Bay Subdivision, First Addition, Second Addition and Third Addition, compromising a majority of the present owners with the subdivision, do hereby declare and publish this Amended Deed Restriction for Tropical Bay Subdivision, First Addition, Second Addition and Third Addition, on the following described property, to wit:

All of Tropical Bay Subdivision, First Addition were recorded for Lots 2 through 53 and Lots 32A through 44A in Volume 149, Pages 443 in April 1959 and Volume 155, Page 587 in April 1959 in the Public Records of Monroe County; Second Addition were recorded for Block 1 - Lots 1 through 10, and Block 2 - Lots 1 through 8, in Volume 294, Pages 274 and Tract C, Volume 307, Page 529 in the Public Records of Monroe County in April 1964; and Third Addition Blocks 3 to 12, a subdivision of Part of Government Lot 6, Section 14, Township 66 South, Range 29 East, Big Pine Key, Monroe County, Florida, in volume 387, pages 716 of the Public Records of Monroe County, Florida in March of 1967 and Volume 314, Page 88 of the Public Records of Monroe County, Florida in April of 1965

The undersigned hereby make the following Declarations as to Limitations, restrictions, and uses to which the said land above described may be put, imposing said Restrictions upon each and every lot, part, or parcel of said land, we hereby specify that said Declaration shall constitute covenants to run with the land, as provided by law, and shall be above described, or any part thereof, this Amendment being for the benefit of land in limitation upon all future owners of the land or lands as above described and being suitable for the purposes as herein specified.

### **USE RESTRICTIONS:**

1. No building whatsoever except a private dwelling house with necessary out buildings including only garages, carports and porches and detached boat houses shall be erected, placed or permitted on the subject premises or any part thereof. Such dwelling house shall be used as a single-family private residence only. Attached garages, carports and porches and detached boat houses may be erected on any of said lots at the time of or after the erection of a private single family residence, provided that no such accessory structure shall be occupied prior to the completion of said residence. The exterior of the permitted dwelling house and the necessary out buildings to be located on the premises shall be of cement block stucco (CBS) construction of new material (not wood frame) and shall be completed within one year subsequent to the commencement of construction. Finish grading and canal stabilization shall be completed within eighteen months of construction commencement.
2. No residence within Tropical Bay shall be rented or subleased, for occupancy by any individual or group of individuals for a period of less than 28 days. The short term use of residences within Tropical Bay are considered to be not in keeping with the residential nature of the Subdivision and is thus in violation of these Deed Restrictions.
3. No trailers, mobile homes, travel motor homes, tents, shacks, or any other structure of a temporary character shall be constructed or placed on any of the subject premises except during construction to be used only by the construction company and shall be removed within five days after the completion of construction. No trailer, mobile homes, travel motor homes, tenants shacks or any structure shall ever be used as a residence nor for

temporary residential purposes, or stored for a period of more than two weeks in any part of the subdivision except as directed and with approval of the Board of Directors of the Association.

4. All buildings erected on the lots above described shall be of concrete block and stucco construction of new materials and shall not be more than 17 ½ feet in height from top of the lower most tie (support) beam to the peak of the roof. Buildings shall be no more than one story from the lowest tie (support) beam. No flat roofs will be permitted on any of the residential buildings erected on any lot in this subdivision; however attached garages, carports, and porches may have a flat roof. Minimum floor area, i.e., the area above the lower most tie (support) beam and exclusive of ground floor area closed within inside perimeter walls, excluding screening, for all residences erected on said lots shall be as follows:
  - a. on lots having bay frontage a minimum of 1150 square feet;
  - b. on lots having no bay frontage a minimum of 1000 square feet;
5. No building on any of said lots shall be erected nearer than 20 feet nor more than 30 feet from the front line (street line) nor within 7 ½ feet of any side lot line. No boathouse, wharf, pier, dock or other type of construction shall extend over the water of any canal. Slips may be constructed within property lines. Boats and other vessels may not be docked or tied in any canal in the subdivision or hung on davits in such a manner that they will interfere with navigation in any canal.
6. All of said lots shall be kept clear of debris, brush, weeds, trash or rubbish with a minimum of one mowing every three months. There shall not be created or permitted to exist on any part of said property any dumping ground, accumulation of debris, exposed garbage or any foul smelling matter whatever. This specifically includes a prohibition against the storage of lobster traps, crab traps, nets, buoys and related fishing equipment. All household garbage, and necessary storage of unsightly articles shall be stored in sanitary containers located in appropriate areas concealed from public view. No animals, live stock, poultry or anything else which may draw insects or rodents may be raised, bred, or kept on any said lots except that ordinary household pets may be kept providing that the keeping thereof shall not constitute a nuisance in the subdivision.
7. No obnoxious, illegal or offensive activity shall be conducted on any part of the land situated in the subdivision, nor shall anything be done thereon, nor shall it be so maintained which would tend to annoy the community, or injure the health of the community, or become manifestly injurious to the moral or manners of the residents of the subdivision, such activity being hereby declared to be nuisance and is prohibited.

8. All vehicles, which are inoperative, and/or unlicensed, are prohibited to be stored on any of the lands described herein except inside a closed garage or carport.
9. Each owner shall, at his sole cost and expense, maintain and repair his residence and all structures appurtenant thereto, landscaping, driveways and yards keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, expecting only normal wear and tear.
10. No building shall be erected, placed or altered on any building plot in the subdivision unless the building plans, specifications and plot plan showing the location of such building have been approved in writing as to conformity and harmony with these Restrictions and with the existing structures in the subdivision, such approval to come from an Architectural Review Committee selected by the Board of Directors of the Association. In the event of a denial by the Architectural Review Committee the affect unit owner may appeal said decision within 30 days to the Board of Directors of the Association whose decision as to the conformity of the submitted plans with the Deed Restrictions shall be final.
11. Signs erected in the subdivision, for whatever purpose, shall not exceed 4 square feet in size.
12. Liveaboard vessels shall not be allowed to be tied up within the subdivision.
13. The Monroe County Land Use Regulation, particularly those applicable to Big Pine Key, along with the Department of Environmental Regulation relating to the construction of seawalls and docks, State Law, ordinances and regulations relating to construction methodology, permitting and all other federal; State and local regulations that may impact on construction within Tropical Bay Subdivision, thereto and are hereby incorporated within and made a part hereof and each property owner within the subdivision shall abide by them. Any violation of any local, State or Federal rule, regulation, ordinance or statue shall also be a violation of these Deed Restrictions and may be subject to the enforcement proceedings referenced herein.

#### **MEMBERSHIP AND ASSOCIATION VOTING RIGHTS:**

1. "The Association" shall refer to the Tropical Bay Property Owners Association, Inc., its successors and assigns.
2. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot. Each member shall be entitled to one vote for each lot owned. When more than one person holds an interest in a given lot, all such persons shall members and the

vote for such lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect any one lot.

3. The declarant hereby covenant for each lot in the subdivision, and each owner of each lot is hereby deemed to covenant, whether or not it shall be so expressed in his deed, to pay to the Association (1) annual assessments; and (2) special assessments as herein defined. The annual and special assessments, together with interest, shall be a charge on the land for each lot against which such an assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, if required, shall also be the personal obligation of the person or persons who owned the lot at time the assessments fell due, but such personal obligation shall pass to the successors in title to such person or persons.

### **Annual ASSESSMENTS:**

The annual assessments levied by the Association (which shall not exceed \$50.00 per annum unless approved by a majority of the members) shall be used exclusively to promote the health, safety, welfare and recreation of the residents in the subdivision and for the improvement and maintenance of common areas, and of the subdivision and of the property and canals situated within the subdivision. Annual assessments shall include, and the Association shall acquire and pay for out of funds derived from the annual assessments the following:

- c. Maintenance and repair of the common area, i.e., storage area, used by the membership.
- d. The mowing of vacant lots and vegetation management of canal banks as may be determined by the Association.
- e. Acquisition of furnishings and equipment necessary to carry out the purposes of the Association as may be determined by the Association.
- f. Liability insurance insuring the Association against any and all liability to the public, to any owner, or to the invitees or tenants of any owner arising out of the activities and functions of the Association.
- g. Workmen's Compensation to comply with applicable law and other insurance deemed necessary by the Board of Directors of the Association and approved by a majority vote of the membership.
- h. Any other materials, supplies, furniture, labors, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law or which shall be necessary or proper in the opinion of the Board of Directors or the Association for the operation

of the common areas or for the benefit of the lot owners or for the enforcement of these restrictions.

### **SPECIAL ASSESSMENTS:**

1. In addition to the annual assessment authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of construction, reconstruction, repair, replacement, capital improvements, or fixtures related to the common areas, canals and waterways or the subdivision as a whole or to undertake any activity for the benefit of the subdivision as a whole which is approved a vote of no less than 51% of the lot owners at that time.
3. Written notice of any meeting called for the purpose of levying an annual or a special assessment shall be sent to all members not less than 15 and no more than 30 days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast, or in the case of a special assessment more than 51% of the votes cast, but less than the requisite amount of total ownership of the lots, members who are present in person or by proxy may give their assent in writing within 30 days after the date of such meeting.

### **ANNUAL AND SPECIAL ASSESSMENTS:**

1. Both annual and special assessments must be fixed at a uniform rate for all lots regardless of square footage area.
2. Any assessment not paid within 90 days after the due date shall be deemed in default. The Association may bring an action at law against the owner personally obligated to pay the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas, abandonment of his lot or the defense that he has received no benefits from the assessment so levied.
3. The assessment against any lot shall be subordinate to the lien of any mortgage recorded against the property. The sale or transfer of any lot shall not affect the validity of the assessment, except that a mortgage foreclosure may extinguish the assessment as to assessments, which became due prior to the issuance of the final judgment of foreclosure. No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due. In the event an unpaid assessment is reduced to final judgment, that judgment plus interest at the highest rate allowed by law, along with a reasonable attorneys fee shall be recorded against the property and shall be a continuing charge against the property until paid. Nothing in this section shall limit the association from taking any action to enforce or foreclose a judgment levied against the property pursuant to law.

## **ENFORCEMENT:**

1. The Association, or any owner of record in the subdivision, shall have the right to enforce, by any proceedings at law or equity, all restrictions, conditions, covenants, easements, reservations, assessments and charges now or hereafter imposed by the provision of the Declaration. Failure by the undersigned, or the Association, or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the other provisions, which shall remain in full force and effect.
3. Covenants and restrictions of this Declaration may be amended in ten year intervals after the date of the recording of this amendment by recording an instrument executed and acknowledged by no less 51% of each owner of record.
4. The covenants and restriction of this Declaration shall run with and bind the land and shall insure to the benefit of and be enforceable by the Association or any member thereof from the date hereof forward and shall thereafter continue automatically in effect for an additional period of ten years unless otherwise amended. At the expiration of said ten year period without amendment these covenants shall be automatically extended for successive periods of ten years and shall continue in force and effect.
5. Enforcement of these restrictions shall be by suit in equity or at law which may be maintained by any owner or owners of land in said subdivision or by the Association in said subdivision. In the event said suit shall result in a judgment against the lot owner or owners shall be required to pay to the party or party's plaintiff a reasonable attorney's fee for the attorney for the plaintiff or plaintiffs in such proceeding including appellant proceedings, together with any and all costs reasonably incurred by such plaintiff owners or Association in such suit.

IN WITNESS WHEREOF we have placed our hands and seals