

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

PALM COVE TOWNHOMES - PHASE I

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS DECLARATION, made on the date hereinafter set forth by ISLAND EQUIPMENT COMPANY, a Texas corporation, d/b/a The Island Company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A"; and

WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the value of such property, to create an agency to which will be delegated and assigned the powers of maintaining and administering the Common Area and administering and enforcing the assessments and charges created in the Declaration and all Supplemental Declarations; and

WHEREAS, Palm Cove Townhomes Homeowners Association shall be incorporated under the laws of the State of Texas, as a non-profit corporation, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that the real property described in Exhibit "A", save and except that certain 0.0844 acre tract of land described in Exhibit "A" attached hereto, is and shall be held, transferred, sold, conveyed, occupied and enjoyed subject to the covenants, restrictions, easements, charges and liens (sometimes referred to herein collectively as "covenants and restrictions") hereinafter set forth. These covenants and restrictions shall run with the property described and shall be binding on all parties having or acquiring any right, title or interest in the above described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to Palm Cove Townhomes Homeowners Association, its successors and assigns.

(b) "Common Area" shall mean and refer to all those areas of land (including easements) within The Properties or provided herein, except the Lots (hereinafter defined) and the Yacht Basin (hereinafter defined); such Common Areas being more particularly described in Exhibit "B" attached hereto and incorporated herein for all purposes. Common Area shall also include such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof or any other matters of record affecting The Property.

(c) "Declarant" shall mean and refer to Island Equipment Company d/b/a The Island Company, its successors or assigns, excluding purchasers of Lots.

(d) "Living Unit" shall mean and refer to any portion of a building or improvement situated upon a Lot.

(e) "Lot" and/or "Lots" shall mean and refer to each of the 5 lots described on Exhibit "C" attached hereto and incorporated herein for all purposes. The Lots are more particularly described in the map or plat ("Plat") thereof recorded in Plat Record 18, Map Number 7 of the Plat Records of Galveston County, Texas. References herein to "the Lots (each Lot) in the Subdivision" shall mean and refer to Lots as defined herein.

(f) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 3 hereof.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(h) "The Properties" or "The Property" as used herein shall mean and refer collectively to the properties described in Exhibit "A" which are subject to this Declaration, save and except that certain 0.0844 acre tract of land described in Exhibit "A" attached hereto.

(i) "Yacht Basin" shall mean and refer to the facility designated as such on the Plat and being located on the tract of land described in Exhibit "D" attached hereto and incorporated herein for all purposes, including the boat slips appurtenant thereto.

ARTICLE II

Reservations, Exceptions and Dedications

Section 1. Existing Easements. The Properties are subject to certain dedications, limitations, reservations and restrictions of record affecting the Property and subject to those easements, restrictions and limitations created in the Plat.

Section 2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements or constructing Living Units. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for cable television and public utility purposes, (including, without limitation, gas, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to The Properties.

Section 3. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any portion of the Yacht Basin or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Properties, and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

Section 4. Easement for Encroachment. Each Lot shall be subject to an easement for encroachments created by construction, settling and overhang of the structures built by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event a Living Unit is partially or totally destroyed, then rebuilt, the Owners of the Living Units agree that valid easements shall exist for any encroachment resulting therefrom.

Section 5. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, and other service vehicles to enter upon The Properties in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter The Properties at any time to render any service.

Section 6. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of The Properties for ingress and egress in connection with installing, replacing, repairing and maintaining cable television and similar transmission facilities, and all utilities, including, but not limited to, water, sewer, telephones, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under The Properties within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines or other utilities or appurtenances thereto may be installed or relocated on The Properties until approved by Declarant or the Association's Board of Directors. In the event that any utility company furnishing a service covered by the general easement herein provided requests a specific easement by separate recordable instrument, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 7. Landscape Maintenance. There is hereby created an easement upon, across, over and under all portions of the Lots, except the interior of Living Units, in favor of the Association, its agents, employees and contract workers, for the purpose of maintaining all exterior landscaping and planting materials.

Section 8. Surface Areas: The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. The Declarant or suppliers of any utility or service using any easement area shall expressly have the right to remove or trim all shrubbery, trees, lawns or flowers located on or abutting such easements. Neither the Declarant nor any supplier of any utility or service using any easement area, however, shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any easement area.

Section 9. Underground Utility Services.

(a) **Underground Electric Service.** An underground electric distribution system will be installed to all Lots. The Owner of each Lot, at his own cost, shall own and maintain (all in accordance with the requirements of local governing authorities) the electrical connection between the electric company's meter and the individual electric panel for the residence constructed on such Owner's Lot.

(b) **Telephone Service.** Telephone service shall be available to each Lot. Service between the telephone company's main lines and an individual residence shall be by way of underground conduit. Such conduit system shall be owned and maintained by the Association, but all service wires therein shall be installed, owned and maintained by the telephone utility.

(c) **Water Service.** Water service shall be provided to each Lot by way of a water distribution system. The Association shall be responsible for the water supply pipe between the point of connection to the City of Galveston mains and the points where the pipes connect to individual meters for each Living Unit. The Lot Owner shall own and maintain the pipe from the meter to the point where the pipe penetrates the exterior wall of the residence. Each residence shall be separately metered.

(d) **Sanitary Sewer Service.** Sanitary sewer service shall be provided to each Lot by means of a sanitary sewer collection system, which sanitary sewer collection system shall be connected to City of Galveston sanitary sewer system for final treatment. The portion of the sanitary

sewer service line from the point that it connects to the collection system at the Lot line shall be owned and maintained by the Association. The lines throughout the residence shall be owned and maintained by the Owner.

(e) Use of Easements. Easements for underground utility services may be crossed by driveways and walkways provided the Declarant or a builder makes prior arrangements with the utility furnishing service. Such easements for underground services shall be kept clear of all other improvements, including buildings, patios or other pavings, other than crossing walkways or driveways and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easement.

ARTICLE III

Property Subject to this Declaration

Section 1. Description. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration consists of the property described in Exhibit "A", save and except that certain 0.0844 acre tract of land described in Exhibit "A" attached hereto. The Property may be expanded by subsequent Declaration.

ARTICLE IV

The Association

Section 1. Organization. The Declarant shall cause the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas.

Section 2. Purpose. The purpose of the Association in general is to provide for and promote the health, safety and welfare of the Members, to collect the annual maintenance charges and to administer the Maintenance Fund (as defined herein), to provide for the acquisition, construction, management, maintenance, repair, preservation, upkeep and protection of the Common Area and such other purposes as are stated in the Articles of Incorporation consistent with the provisions of The Declaration.

Section 3. Members. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically be a Member of the Association. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued. Ownership of such Lot shall be the sole qualification for membership.

Section 4. Voting Rights. The Association shall have two classes of voting membership:

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Declarant. Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Article IV, Section 3. When more than one person holds such interest in any Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event the persons holding such interests in any Lot cannot agree in respect to the vote for such Lot, then such Owners shall not have a right to vote on such matter, as there shall be no fractional vote.

(b) Class "B". The Class "B" Member shall be the Declarant. The Class "B" Member shall be entitled to four (4) votes for each Lot in which it holds the interest required for membership in Article IV, Section 3, provided that the Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class "A" membership equal or exceed the total votes outstanding in the Class "B" membership, or

(ii) On January 1, 1989.

Section 5. Eighty Percent Vote Needed in Certain Instances. Unless at least eighty percent (80%) of the first mortgagees (based upon one vote for each first mortgage owned) and Owners (other than the Declarant) of the Lots have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of the common property walks or common fences and driveways, or the upkeep of lawns and plantings in The Properties;

Section 6. Association to be Furnished with the Name and Address of all First Mortgagees. Each Owner is required to furnish the Association the name and address of the first mortgagee, if any, on the Owner's Lot. The Board of Directors of the Association shall be required, upon request, to notify in writing any such first mortgagee when the Owner upon whose Lot such first mortgagee has taken a mortgage defaults in the performance of any obligation owed the Association, which is not cured within 60 days.

Section 7. First Mortgagee's Right to Examine Books and Records. First mortgagees shall have the right to examine the books and records of the Association.

ARTICLE V.

Property Rights in the Common Area

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article V, every Member shall have a common right and easement of enjoyment in and to the Common Area and such right and easement shall be appurtenant to and shall pass with the title to each Lot.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in its discretion, to make, publish and enforce reasonable rules and regulations governing the use and enjoyment of the Common Area or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Area by guest or invitees of the Members, including, without limitation, provisions to govern and control the number of guests or invitees who may use such Common Area or any part thereof at the same time; and

(b) The right of the Association to grant or dedicate easements in, on, under or above such Common Area or any part thereof to any public or governmental agency or authority or to any utility company for any service to The Properties or any part thereof for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast four fifths (4/5) of the votes of the membership has been recorded,

agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than fifteen (15) days nor more than thirty (30) days in advance; and

(c) The right of the Association to enter management and/or operating contracts or agreements relative to the maintenance and operation of such Common Area in such instances and on such terms as its Board of Directors may deem appropriate; and

(d) The right of the Association to suspend the voting rights of a Member or his right to use any Common Area for any period during which any assessment against his Lot remains unpaid; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in The Declaration or in its By-Laws or at law or in equity on account of any such default or infraction; and

(e) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II and Article VI hereof, in The Declaration; and

(f) The restrictions as to use of the Common Area provided for in Article X hereof; and

(g) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and Facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinated to the rights of the Members hereunder.

Section 3. Delegation of Use. Any Member may delegate his right of use and enjoyment of the Common Area and Facilities, together with all easement rights granted to Members in The Declaration, to the members of his family, his tenants, guests (subject to Section 2(a) above) or contract purchasers who reside on his Lot. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

ARTICLE VI

Annual Assessments:

Section 1. The Maintenance Fund. All funds collected by the Association from the annual assessments and special assessments for capital improvements provided for in this Article, together with all funds collected by the Association from the regular annual maintenance charges imposed on the Lots by The Declaration shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used and expended by the Association for the common benefit of all Members for the following purposes, to-wit: to promote the health, safety, recreation and welfare of the Members, including, without limitation, the installation, construction, erection and relocation of improvements related to the enhancement and beautification of the Common Area and any other areas provided by The Declaration to be developed or maintained by the Association, such as shrubbery, trees, walkways and lights; the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of The Properties by the Members; the payment of insurance premiums for the purchase of any policies authorized or required by this Declaration; and for any other purpose or expense authorized by this Declaration, the By-Laws of the Association or by the members. The Maintenance Fund shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area and Facilities that must be replaced on a periodic basis and are payable in regular installments rather than by special assessments.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1 preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

Section 2. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within The Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges for capital improvements and Subdivision maintenance services, including but not limited to gas or electric current for street lamps, water and sewer service for the Common Area, garbage collection, security patrols, cable television, maintenance of Common Areas, including but not limited to the Private Drives, sidewalks, Common Area, landscaping, maintenance of Common Area, water and sewer facilities for all The Properties, reserves for replacement and insurance premiums as authorized herein, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and (ii) special assessments for capital improvements as set forth in Section 4 of this Article. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Subject to the conditions that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) all liens for taxes or special assessments levied by the City, County and State governments, or any political subdivision or special district thereof; and

(b) all liens securing amounts due or to become due under any term Contract of Sale dated, or any mortgage, vendor's lien or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable; and

(c) all liens, including, but not limited to, vendor's liens, deeds of trust and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Lot and the improvements thereof when the same is purchased, or for any part of the cost of constructing, repairing, adding to or remodeling the residence and appurtenances situated on any Lot to be utilized for residential purposes.

The title to a Lot of any mortgagee obtained pursuant to remedies provided in the mortgage shall be superior to, or any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party shall cut off and extinguish, the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be TWO THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$2,400.00) per Living Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased, from year to year, effective January 1 of any year without a vote of the membership, not more than 20 percent above the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 20 percent for the next succeeding one year by a vote of the Members and may be so increased from time to time thereafter as the Members deem necessary, provided that any such change shall have the assent of eighty percent (80%) of the votes of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting, setting forth the purpose of the meeting.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments 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 any construction or re-construction, unexpected repair or replacement of capital improvements upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of eighty percent (80%) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting to all Members setting forth the purpose of the meeting. These special assessments will also be needed in the event of damage to the private roads, docks, walkways and landscaping which are damaged by hurricane, flood, storm or other act of nature, such special assessment to be needed to raise sufficient funds to pay the cost of restoring such roads, docks, walkways and landscaping to their former condition after such damage.

Section 5. Collective Assessment. Both annual and special assessments may be collected on a monthly or annual basis, at the option of the Board of Directors of the Association.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum for purposes of voting on action authorized under Sections 3 and 4 above. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the date determined by the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and elect to collect the annual assessments on either a monthly or annual basis at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, at anytime, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Lots Owned by Declarant. Notwithstanding anything contained herein to the contrary, the Declarant shall pay to the Association one-half of the monthly assessment due on each Lot for each Lot owned by Declarant (unless occupied by Declarant or an officer of Declarant, in which case the full assessment shall be owing).

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate of interest permitted by the applicable law, and the Association may bring an action at law for judgment against

the Owner personally obligated to pay the assessment or foreclose the lien against the Lot or both, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Each Owner, by his acceptance of a deed to a Lot acknowledges that (to the extent permitted by applicable law) the lien for assessments constitutes a lien for purchase money financing for purposes of any homestead exemptions, and hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by judicial proceedings. The lien provided for in this section shall be in favor of the Association for the common benefit of all Owners. In the event that the Board has decided to foreclose the lien provided herein for the nonpayment of assessments by any Owner, the Board shall mail to such Owner or Owners and the mortgagee of the Lot for which the assessment has not been paid a demand for payment by posting same through the U.S. Postal Service, postage prepaid, certified or registered, return receipt requested, properly addressed to such Owner or Owners at their last known address according to the records of the Board. If not paid as demanded, suit may be filed to establish and foreclose the lien as provided for above.

At any foreclosure, the Association shall be entitled to bid up to the amount of its lien, together with cost and attorney's fees, and to apply as a cash credit against its bid all sums due the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Lot shall be required to pay a reasonable rent for the use of the Lot and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect same, and, further, shall be entitled to sue for recovery of possession of the Lot premises at forcible detainer without the necessity of giving any notice to the former Owner or Owners or any occupants of the Lot sold at foreclosure.

Section 10. Exempt Property. The Common Area and the Yacht Basin, subject to this Declaration, shall be exempt from the assessments created herein. No land or improvement devoted to dwelling use, however, shall be exempt from said assessments.

ARTICLE VII

Exterior Maintenance

Section 1. Exterior Maintenance Included in Annual Assessment. In addition to maintenance upon the Common Area, the Association shall provide maintenance, replacement, repair and care for the landscaping and plants (including grass, trees, shrubs and ground cover) on that portion of each Lot within The Properties that is not: (i) occupied by a Living Unit, or (ii) appurtenant areas to a Living Unit screened from public view by a wall or fence. The Association shall also maintain, repair or replace any improvements intended for the common use and benefit of all Owners placed upon a Lot. By way of illustration, such improvements may include, but not necessarily be limited to, walks, planters, lighting and other facilities considered necessary for the overall illumination or security of The Properties. The maintenance provided for in this Section shall be considered as service due each Owner in consideration of the annual assessment levied against his Lot. In the event that the need for any such maintenance, replacement or repair performed by the Association (in the sole judgment of the Board of Directors of the Association) is caused through the willful or negligent act of the Owner, his family or guests or invitees, the cost of such maintenance, replacement or repair shall be added to and become a part of the assessment to which such Lot is subject.

Section 2. Optional Exterior Maintenance Not Included in Annual Assessment. The Association may, at the request of the Owner of a Lot or as provided below, but in any event, at the election of the Association, provide additional exterior maintenance upon a Living Unit as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces and other exterior improvements. No such work may be performed by an Owner or caused to be performed by an Owner without prior written approval of the Association of the person or entity to perform such work and the plans therefor. The cost of such exterior maintenance as provided for in this Section shall be assessed against the Lot or Lots upon which is located the Living Unit having such maintenance and shall be added to and become part of the maintenance assessment or charge to which such Lot is subject under Article IV hereof, and it shall

be secured by a lien against such Lot or Lots and an obligation of the Owner of such Lot or Lots and become due and payable in all respects as provided for in Article VI hereof. At the option of the Board, any Owner, with respect to whose Unit work is to be performed by the Association, may be required to deposit with the Association the estimated amount of such repair, maintenance or replacement. The Board of Directors of the Association when establishing the annual assessment against each Lot for any assessment year as required under Article VI hereof, may add thereto the estimated cost of the exterior maintenance of any Living Unit on each Lot, but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof. If, after written notice by the Board of Directors of the Association to the Owner that maintenance, replacement or repair of a Living Unit on a Lot is needed, and the Owner thereof does not accomplish such maintenance, replacement or repair within sixty (60) days after such notice, the Association shall be empowered to perform or contract for the performance of such maintenance, replacement or repair, and the resulting costs shall be added to and become a part of the assessment to which such Lot is subject.

Section 3. Access at Reasonable Hours. For the sole purpose of performing the maintenance required in Section 1 hereof and as authorized in Section 2 hereof, the Association, through its duly authorized agents, contractors or employees, shall have the right to enter upon any Lot and the exterior of any Living Unit at reasonable hours on any day except Sunday.

ARTICLE VIII

Insurance

Section 1. The Owner of each Living Unit shall obtain and continue in effect a policy of property insurance in an amount equal to the full replacement value (i.e., 100 percent of current replacement cost) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement. Such insurance must name as the insured the Owner and such Owner's mortgagee, as their respective interests may appear. Such insurance must afford protection against at least the following:

(a) Loss or damage by fire or other hazards covered by the standard homeowners insurance, and by sprinkler leakage, debris removal, cost of demolition, vandalism, mischief, windstorm, and water damage; and

(b) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Each Owner agrees to provide the Association with proof of a paid policy as required above and the policy or endorsement must contain a provision that same cannot be cancelled without at least 10 days notice to the Association. In the event of a threatened cancellation, the Owner, by accepting title to his lot, hereby grants the Association a power of attorney to obtain the required insurance for the Owner and the cost of such insurance shall be a special assessment on the Owner not maintaining such insurance. Failure to pay such assessment shall give the Association the right to proceed to foreclose the lien securing such assessment in the manner provided for above.

Section 2. The Board of Directors of the Association shall obtain a comprehensive policy of public liability insurance covering all of the Common Area; insuring the Association, its Board of Directors, agents and employees, and other Owners from and against liability in connection with the Common Area. The scope of coverage must be not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence; such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others and such other risks as commonly required by private institutional mortgage investors for projects similar in construction, location and use. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 3. Each Owner shall be responsible, at his own expense and cost, for his own homeowners insurance covering not only the Living Unit but also the contents of his own Living Unit and garage and his additions and improvements thereto, including decorations, furnishings and personal property therein, and his personal property stored

elsewhere on The Properties; and for his personal liability not covered by liability insurance for all Owners obtained as a part of the common expense.

Section 4. All costs, charges and premiums for all insurance that the Board of Directors authorized, as provided herein, except for the homeowners insurance premiums paid in behalf of an Owner as provided above, shall be a common expense of all Owners and be a part of the maintenance assessment.

Section 5. Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors.

Section 6. No Owner shall permit anything to be done or kept in or on his Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

Section 7. In the event of the damage or destruction of any Living Unit or part thereof, the Owner of the Lot upon which the Living Unit is situated must within one hundred twenty (120) days from the date of the damage or destruction, commence reconstruction of the Living Unit and complete such reconstruction within eighteen (18) months after commencement in accordance with plans and specifications approved by the Board, as hereinafter provided. If the Owner of such damaged or destroyed Living Unit fails to comply with the requirements hereof, the Association may file suit to compel use of the insurance proceeds to rebuild the improvements or cause same to be rebuilt, and the cost of such rebuilding shall be the personal obligation of the Owner of such Lot and shall become a part of the assessment and lien to which such Lot is subject, in accordance with the terms and provisions of this Declaration, to the extent same exceeds such insurance proceeds. Further, and in addition to such rights, the Association shall have the right to reconstruct such destroyed dwelling in the same manner and with the same rights as contained in Article VII Section 2 above.

Section 8. No Owner or any other party shall have priority over any rights of first mortgagees of Lots pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area.

Section 9. All policies of homeowners insurance obtained by the Association must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which The Properties are located, if any of the insured property is subject to a mortgage. The mortgagee clause must provide that the insurance carrier shall notify the first mortgagee (or trustee) named at least 10 days in advance of the effective date of any reduction in or cancellation of the policy. This will be in addition to the endorsement in favor of the Association as provided for above.

ARTICLE IX

Architectural Control

Section 1. Plan Approval. No building or other improvement shall be erected, placed or altered on the exterior thereof on any of said Lots or upon the Common Area until two (2) sets of the building plans, specifications and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in this subdivision, and as to location of them with respect to topography and finished ground elevation by the Board. In this regard, the five (5) Living Units as originally constructed by Declarant shall be the basis of conformity and harmony. Reconstruction of any such existing Living Unit shall comply therewith.

Section 2. Authority. The Board shall have full power and authority to reject any plans and specifications that are not in keeping with the construction requirements or architectural design or that might not be compatible with the existing designs or with the development of The Properties, and any and all conditions or circumstances not covered herein shall be decided upon by the Board, at its complete discretion, and its decision shall be final.

ARTICLE X

Use Restrictions

It is the Declarant's intention that The Properties shall be developed solely as a residential subdivision, and all of the provisions of this instrument shall be construed so as to be consistent with that kind of development.

Section 1. Residential Use. None of said Lots shall be used except for residential purposes.

Section 2. Residential Structures. Each Living Unit shall consist of a residential structure with at least two levels of living area and a garage as a part thereof, all to be constructed within the building lines specified on the Plat.

Section 3. Party Walls.

(a) General Rules of Law to Apply. Each wall which has been built as a part of the original construction of the townhomes upon the Lots and placed on the dividing line between two Lots consists of a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto. At the point where the townhome's foundation crosses the line between two Lots, it shall be considered a portion of the party wall for all purposes.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by such Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 4. Side Walls. All side walls shall conform to the building code of the City of Galveston, Texas, and any change thereof must be approved by the Board.

Section 5. Exterior Walls. The exterior wall materials of all Living Units shall be of masonry veneer or wood or a combination of same. The exterior of each Living Unit, including walls and fences, shall at all times be kept and maintained in good condition by the Owner.

Section 6. Parking. No automobile, truck, bus, trailer, camping unit, recreational vehicle, or self-propelled or towable boat, equipment or machinery of any sort, shall be permitted to park on The Property or on any Lot except in a closed garage, boathouse or attached to a pier or boatslip, or unless otherwise approved by the Board of the Association. Parking shall be regulated and governed further by rules and regulations promulgated from time to time by the Board of Directors of the Association.

Section 7. Rights of Mortgagees. No violation of any of these restrictions, covenants or conditions shall affect or impair the rights of any mortgagee, trustee or lienholder under any mortgage or deed of trust, or the rights of any assignee of any mortgagee, trustee or lienholder under any such mortgage or deed of trust.

Section 8. Rubbish Removal. No rubbish, garbage or scrap material shall be placed on any of the Lots, streets or easements. All such material, if not disposed of immediately, shall remain on the Lot on which construction is in progress, and at the completion of such construction such material must be immediately removed from the property.

Section 9. Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become or be an annoyance to the neighborhood.

Section 10. Livestock and Poultry. The raising or keeping of hogs, horses, poultry, fowl or other livestock on any property in this Subdivision is strictly prohibited.

Section 11. Sewage Treatment. No water well, septic system or cesspool, nor sewage treatment shall be permitted on The Properties.

Section 12. Alcoholic Beverages. No spiritous, vinous, malt liquors or medicated bitters, capable of producing intoxication shall be sold or offered for sale on any Lot in this townhome Subdivision.

Section 13. Illegal Purposes. No Lot in this townhome Subdivision shall be used for any vicious, illegal or immoral purpose, nor for any purpose in violation of the laws of the State of Texas or the United States, or in violation of police, health, sanitary, building or fire codes, or regulations or instructions relating to or affecting the use of or occupancy or possession of any of said Lots.

Section 14. Signs. No sign of any kind shall be displayed to the public view, except that signs may be used by the Declarant to advertise the property for sale during the construction and sales period and one sign of not more than four (4) square feet may be used by an Owner to advertise his Living Unit for sale or lease may be placed by an Owner on his Lot (and not on the Common Area), without the consent of the Board of the Association.

Section 15. Oil and Mining Operations. No oil drilling, oil development operations, or oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derricks or other structures designed for use in the boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot.

Section 16. Garbage and Refuse Disposal. No Lot nor the Common Area shall be used or maintained as a dumping ground for rubbish, trash or garbage. Other wastes shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean, sanitary condition.

Section 17. Construction Working Hours. Except in the case of emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall only be permitted Monday through Saturday, after 7:00 AM and before 7:00 PM.

Section 18. Clothes Drying. No open air drying of clothes shall be permitted on the Owner's or resident's Lot or on any balcony of any improvements.

Section 19. Antennas. No television, CB or radio antennas or satellite disk of any sort shall be placed, allowed or maintained on any Lot or portion of the exterior of the Living Unit or other improvement located on a Lot, nor upon any portion of the Common Area and Common Facilities, except as installed by the Declarant, and maintained by the Association.

Section 20. Storage of Personal Property. No personal property of any kind of an Owner shall be stored on any lot outside of the residential structure or garage attached thereto, unless prior written consent is obtained from the Board of Directors of the Association.

Section 21. Business Use. No type or kind of business shall be permitted on any Lot in the Subdivision.

ARTICLE XI

Annexation of Adjoining Land

Declarant is the owner of land adjoining the subdivision, such land being described in deed recorded in Book 3129, Page 607 of the Deed Records of Galveston County, Texas. It is the current intent of Declarant to annex portions of such land into the scope and provisions of this Declaration and such right is so reserved to Declarant. Nothing in this paragraph will bind Declarant, however, to do so and this clause shall not obligate Declarant in any way as to the ultimate use of the said adjoining land.

ARTICLE XII

Miscellaneous

Any agreement for professional management of The Properties, or any other contract providing for services by the Declarant, must provide for termination by either party without cause or payment of a termination fee on 90 days or less written notice and shall have a maximum contract term of three years.

ARTICLE XIII

Piers and Yacht Basin

Section 1. Appurtenant Piers. The Owners of the Lots designated as Lots 2 through 5 on the Plat shall have the right (in common with the adjacent Lot Owner) to use the piers which Declarant has constructed adjacent to such Lots, provided that the Owner of Lot 2 may dock boats only on the eastern side of the pier adjacent to Lots 2 and 3; the Owner of Lot 3 may dock boats only on the western side of the pier adjacent to Lots 2 and 3; the Owner of Lot 4 may dock boats only on the eastern side of the pier adjacent to Lots 4 and 5; and the Owner of Lot 5 may dock boats only on the western side of the pier adjacent to Lots 4 and 5. Such right to use such piers shall be exclusive (except for the right of the adjacent Lot to share such pier, subject to the exclusive right to dock boats on one side of such piers as provided above) and shall be a right which shall be appurtenant to the respective Lots and shall run with the land.

Section 2. Duties of Maintenance Repair. The Owners of Lots 2 through 5 are hereby imposed with the duty of maintaining their half of the piers adjacent to their respective Lots in good condition and repair. In the event a pier is damaged for any reason, except through the fault or negligence of one of the Lot Owners, their tenants, guests or family members, to such an extent that it must be repaired or replaced, it shall be the obligation of both the two Lot Owners, which such pier is adjacent, to cause such pier to be repaired or replaced and such two Owners shall share equally in the cost of such repair or replacement.

Section 3. Obligation to Repair. In the event any Owner, or such Owner's tenants, family members or guests shall damage any pier adjacent to the Lots, such Owner shall promptly cause such damage to be repaired.

Section 4. Failure to Repair. If an Owner is obligated to maintain, replace or repair a pier in accordance with the provisions of Section 2 or 3 above and fails to do so within sixty (60) days after receipt of the written demand therefor from the Board of Directors of the Association, the Association shall be empowered to perform or contract for the replacement or repair and the resulting costs thereof shall be added to and become a part of the assessment to which the Owner's Lot is subject. The Association, and its employees, agents and contractors shall have the right to enter upon any pier for the purpose of performing the repair and replacement herein authorized.

Section 5. Yacht Basin. The Yacht Basin shall not initially be part of the Common Area and the Owners of Lots shall have no right to use same unless such right is granted to an Owner by separate instrument; however, Declarant reserves the right (but shall not have the obligation) to add all or part of the Yacht Basin to the Common Area, upon such terms and conditions as Declarant desires, by separate instrument filed of record by Declarant at a future date. Prior to such time, Declarant reserves

the absolute right to assign, lease, sell or otherwise designate the use of all or part of the Yacht Basin and the boatslips appurtenant thereto to Owners of Lots or their third parties.

Section 6. Alteration. No construction or alteration shall be made to any slip, pier or other Common Area by any Lot Owner without the prior written consent of the Board of Directors of the Association.

Section 7. Miscellaneous Provisions. All garbage, oil, sludge, refuse material, sewage and waste material of any kind shall be deposited in refuse containers. No waste material of any kind or character shall be thrown from any boat or pier unto the water or on the piers. No signs or markings shall be placed or made upon any pier or the Yacht Basin without the written consent of the Board of Directors of the Association having been first obtained. All piers and walkways shall be kept clear and may not be used for storage purposes.

Section 8. Indemnity. Each Owner using the piers adjacent to their Lots or the Yacht Basin (if such right is hereinafter granted by Declarant) agrees to release Declarant and the Association from any or all liability for damages of whatever nature to such Owner's boat, its appurtenances, hull, equipments, and other gear or other property belonging to the owner or in the custody of the Owner arising out of or in any way connected with fire, theft, collision, hurricane, conditions of tide, wind, current, or other natural forces or by the sole or concurrent negligence of Declarant and the Association.

Section 9. Condition of Boats. Each Owner maintaining a boat upon The Properties hereby agrees to maintain the boat in a staunch and seaworthy condition with the decks, masts, standing rigging, and all exterior surfaces in a neat and orderly appearance, and to take all steps necessary to maintain the boat safely afloat with her bilges and interior spaces properly pumped and free of any dangerous, explosive or noxious fumes, vapors, gasoline, or other substances. Such Owner further agrees at his sole expense to promptly refloat and remove the boat should it sink at its moorings.

ARTICLE XIV

General Provisions

Section 1: Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended at any time by an instrument signed by the Owners of eighty percent or more of the Lots. Any amendment must be properly recorded in the Official Records of Real Property of Galveston County, Texas. However, the Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend the Declaration by any instrument in writing duly signed, acknowledged and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

Section 4. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting

interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of the Declaration shall govern.

Section 5. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in the Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 7: Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 4 day of April, 1985.

ISLAND EQUIPMENT COMPANY d/b/a
The Island Company

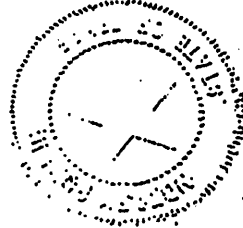
By: Stephen Wayne Greenberg
STEPHEN WAYNE GREENBERG,
President of Island Equipment Company

THE STATE OF TEXAS S
 S
COUNTY OF GALVESTON S

This instrument was acknowledged before me on the 4th day of April, 1985, by Stephen Wayne Greenberg, as president of Island Equipment Company, a Texas corporation, in behalf of said corporation.

Oralia Vasquez
Notary Public in and for
The State of T E X A S

My commission expires: 1-21-89



PAIM COVE TOWNHOMES

COMMON AREA - PHASE I

A DESCRIPTION OF A TRACT OF LAND OUT OF THE EAST 165.0 FEET OF LOT 535, SECTION 1, OF THE TRIMBLE AND LINDSEY SURVEY OF GALVESTON ISLAND AND PART OF THE ABANDONED RIGHT OF WAY OF 71ST STREET LYING SOUTH OF INTERSTATE HIGHWAY 45 IN GALVESTON COUNTY, TEXAS.

And being more fully described by metes and bounds as follows:

BEGINNING at a 1 inch iron pipe at the point of intersection of the East right of way line of 71st Street (abandoned) with the South right of way line of the Interstate Highway 45 South Frontage Road, said point also being a point of intersection in the said South right of way line of Interstate Highway 45;

THENCE S 77° 35' 15" W, along the said South right of way line of Interstate Highway 45, a distance of 51.28 feet to a 1 inch iron pipe for corner on the West right of way line of 71st Street;

THENCE N 58° 42' 40" W, continuing along the said South right of way line of Interstate Highway 45, a distance of 42.89 feet to a 1 inch iron pipe for corner;

THENCE in a Southwesterly direction, continuing along the said South right of way line of Interstate Highway 45, said line being a curve, concave to the South, having a radius of 5575.00 feet, a Delta of 1° 29' 32" and a chord of 145.192 feet that bears S 77° 57' 54" W, a distance along the arc of 145.196 feet to a 1 inch iron pipe for corner;

THENCE S 25° 15' E, along a line parallel to the East line of said Lot 535, a distance of 218.85 feet to the corner of a concrete bulkhead for corner;

THENCE in a Northeasterly direction, along and with the face of a concrete bulkhead to a point for corner that bears N 62° 51' 47" E a distance of 16.71 feet;

THENCE N 25° 15' W, along a line parallel to the East line of said Lot 535, a distance of 124.0 feet to a point for corner;

THENCE N 64° 45' E a distance of 25.84 feet to a point of curvature;

THENCE in an Easterly direction along the arc of a curve, concave to the Southwest, having a radius of 4.70 feet, a Delta of 51° 08' 38" and a chord of 4.06 feet that bears S 89° 40' 41" E, a distance along the arc of 4.20 feet to a point for corner;

THENCE S 25° 15' E, along a line parallel to the East line of Lot 535, a distance of 6.42 feet to a point for corner;

THENCE N 64° 45' E a distance of 25.34 feet to a point of curvature;

THENCE in an Easterly direction along the arc of a curve, concave to the Southwest, having a radius of 4.70 feet, a Delta of 51° 08' 38" and a chord of 4.06 feet that bears S 89° 40' 41" E, a distance along the arc of 4.20 feet to a point for corner;

THENCE S 25° 15' E, along a line parallel to the East line of said Lot 535, a distance of 7.02 feet to a point for corner;

THENCE N 64° 45' E a distance of 25.24 feet to a point of curvature;

THENCE in an Easterly direction along the arc of a curve, concave to the Southwest, having a radius of 4.70 feet, a Delta of 53° 07' 48" and a chord of 4.20 feet that bears S 88° 41' 06" E, a distance along the arc of 4.36 feet to a point for corner;

THENCE S 25° 15' E, along a line parallel to the East line of said Lot 535, a distance of 5.39 feet to a point for corner;

THENCE N 64° 45' E a distance of 25.24 feet to a point of curvature;

THENCE in an Easterly direction along the arc of a curve concave to the Southwest, having a radius of 4.70 feet, a Delta of 53° 07' 48" and a chord of 4.20 feet that bears S 88° 41' 06" E, a distance along the arc of 4.36 feet to a point for corner;

THENCE N 64° 45' E a distance of 23.96 feet to a point on a curve;

THENCE in a Northeasterly direction along the arc of a curve, concave to the Southeast, having a radius of 4.59 feet, a Delta of 40° 01' 57" and a chord of 3.14 feet that bears N 58° 00' 02" E, a distance along the arc of 3.21 feet to a point for corner;

THENCE N 83° 17' 19" E a distance of 51.45 feet to a point for corner;

THENCE S 25° 15' E, along a line parallel to the East right of way line of 71st Street, a distance of 151.66 feet to a point for corner;

THENCE S 25° 12' 25" E a distance of 103.21 feet to a point for corner;

THENCE N 64° 47' 35" E a distance of 6.01 feet to a point for corner on the East right of way line of 71st Street;

THENCE N 25° 15' W, along the East right of way line of 71st Street, a distance of 310.89 feet to the PLACE OF BEGINNING, and containing 0.4746 Acres of land, more or less.

(c) "Declarant" shall mean and refer to Island Equipment Company d/b/a The Island Company, its successors or assigns, excluding purchasers of Lots.

(d) "Living Unit" shall mean and refer to any portion of a building or improvement situated upon a Lot.

(e) "Lot" and/or "Lots" shall mean and refer to each of the 5 lots described on Exhibit "C" attached hereto and incorporated herein for all purposes. The Lots are more particularly described in the map or plat ("Plat") thereof recorded in Plat Record 13, Map Number 7 of the Plat Records of Galveston County, Texas. References herein to "the Lots (each Lot) in the Subdivision" shall mean and refer to Lots as defined herein.

(f) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 3 hereof.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(h) "The Properties" or "The Property" as used herein shall mean and refer collectively to the properties described in Exhibit "A" which are subject to this Declaration, save and except that certain 0.0844 acre tract of land described in Exhibit "A" attached hereto.

(i) "Yacht Basin" shall mean and refer to the facility designated as such on the Plat and being located on the tract of land described in Exhibit "D" attached hereto and incorporated herein for all purposes, including the boat slips appurtenant thereto.

ARTICLE II

Reservations, Exceptions and Dedications

Section 1. Existing Easements. The Properties are subject to certain dedications, limitations, reservations and restrictions of record affecting the Property and subject to those easements, restrictions and limitations created in the Plat.

Section 2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements or constructing Living Units. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for cable television and public utility purposes, (including, without limitation, gas, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to The Properties.

Section 3. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any portion of the Yacht Basin or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Properties, and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

Section 4. Easement for Encroachment. Each Lot shall be subject to an easement for encroachments created by construction, settling and overhang of the structures built by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event a Living Unit is partially or totally destroyed, then rebuilt, the Owners of the Living Units agree that valid easements shall exist for any encroachment resulting therefrom.

