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**DECLARATION OF CONDOMINIUM**  
**FOR**  
**GULF HARBOR MARINA,**  
**A CONDOMINIUM**  
**(A NON-RESIDENTIAL CONDOMINIUM)**

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for  
Gulf Harbor Marina, a Condominium**

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**DECLARATION OF  
GULF HARBOR MARINA, A CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made this 23<sup>rd</sup> day of November 2005, by GULF HARBOR MARINA, LLC, a Florida limited liability company, whose address is 800 N. Highland Ave, Suite 200, Orlando, Florida 32803 ("Developer").

WHEREAS, the Developer intends to develop the Property (as hereinafter defined) into a Condominium which may include other amenities; and

WHEREAS, this Condominium is not a residential condominium, as defined in Florida Statute §718.103(23). The Units contained in this Condominium are intended to be used solely and exclusively for the storage of seaworthy vessels and lawful commercial purposes, and are not intended to be used as private residences; and

WHEREAS, the purpose of this Declaration is to submit the land and improvements described and constructed upon the Property to the Condominium Form of Ownership and use pursuant to Chapter 718 of the Florida Statutes, herein referred to as the "Condominium Act."; and

WHEREAS, the Developer desires to preserve and enhance the value of the Condominium and to provide for the maintenance of certain areas and improvements for the benefit of the Condominium and its unit owners subject to certain protective covenants, conditions, easements, restrictions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, the Developer intends to form a non-profit entity to own, maintain and operate the Condominium and to administer and enforce this Declaration, and to collect and disburse the assessments and charges hereinafter created.

NOW THEREFORE, Developer hereby declares that the Condominium shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the covenants, conditions, easements, restrictions, reservations, liens and charges in this Condominium Declaration, as hereinafter defined. The covenants, conditions, easements, restrictions, reservations, liens and charges set forth herein shall run with each Condominium Unit, shall be binding upon all parties having and/or acquiring any right, title or interest in the Unit or in any part thereof, and shall inure to the benefit of each and every person or entity, from time to time, owning or holding an interest in said Unit. The Developer makes the following declarations:

**ARTICLE I  
INTRODUCTION AND SUBMISSION TO CONDOMINIUM**

**INTRODUCTION.** The Developer owns the fee simple title to certain land and buildings located in Sarasota County, Florida, as more particularly described in **Exhibit "A"** attached hereto (the "Property").

**SUBMISSION TO CONDOMINIUM.** The Developer hereby submits the Property, and all improvements erected or to be erected thereon, and all other property, real or personal, now or hereafter

situated thereon, to the condominium form of ownership and use in the manner provided for in the Condominium Act as it exists on the date of this Declaration, subject to the reservations, easements and restrictions contained herein.

**NAME.** The name by which the condominium is to be identified is, GULF HARBOR MARINA, a Condominium (hereinafter "Condominium").

**DEVELOPMENT.** The Property has constructed upon it four (4) buildings containing approximately two hundred and eighty-eight (288) units, consisting of two hundred sixty-nine (269) dry slip units ("Dry Slip Units") that are intended to be used solely and exclusively for the storage of Vessels, and nineteen (19) commercial units ("Commercial Units") that are intended to be used for all lawful commercial purposes subject to the restrictions set forth herein.

**DEFINITIONS.** The terms used herein will have the meanings stated in the Condominium Act unless otherwise defined below, or unless the context otherwise requires.

"Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association, as amended from time to time. A copy of the Articles of Incorporation is attached to this Declaration as **Exhibit "B"**.

"Assessment" means the share of the funds required for the payment of Common Expenses and Limited Common Expenses which from time to time is assessed against a Unit Owner.

"Association" shall mean and refer to the Gulf Harbor Marina Condominium Association, Inc., a not-for-profit Florida corporation responsible for the operation of the Condominium, and its successor(s).

"Association Property" shall mean and refer to all real or personal property owned or leased by the Association or that is dedicated to the Association for the use of its Members, as distinguished from Common Elements which are owned in common by all Unit Owners.

"Board of Directors" or "Board" shall mean and refer to the Board of Directors responsible for the administration of the Association, referred to in the Condominium Act as the board of administration.

"By-Laws" shall mean and refer to the By-Laws of the Association, as amended from time to time. A copy of the By-Laws is attached to this Declaration as **Exhibit "C"**.

"Capital Improvement Assessment" shall have the meaning ascribed to such term in Section 7.2(b).

"Collateral Assignment of Rents" shall have the meaning ascribed to such term in Section 7.3.

"Commercial Buildings" means and refers to the Commercial Buildings located on the Property and as shown on the Condominium Plot Plan attached hereto as **Exhibit "D"**, which contain the Commercial Units.

"Commercial Units" shall mean and refer to the Units within the Condominium which are designated for commercial use, as more particularly described herein and designated as "C-1 through C-19" on the Condominium Plot Plan attached hereto as **Exhibit "D"**.

“Commercial Unit Owner” shall mean and refer to the record owner of legal title to a Commercial Unit(s).

“Commercial Limited Common Elements” shall mean and refer to all stairs, decking and mechanical rooms located on the First and Second Floor of the Commercial Office Building, and the signage located on the exterior of the Office and Dry Rack Storage Buildings, as identified on Exhibit “D” attached hereto

“Commercial Limited Common Expenses” shall mean and include all expenses incurred by the Association for operation, maintenance, repair, replacement and protection of the Commercial Limited Common Elements, and all reserves required by the Condominium Act.

“Common Elements” shall mean that portion of the Condominium Property not included in the Units. Common Elements shall include the tangible personal property required for maintenance of the Common Elements and the tangible personal property which is owned by the Condominium Association. Some components of the Condominium which are typical “common elements” have been designated as Commercial Limited Common Elements and Dry Slip Limited Common Elements. References herein to Common Elements shall include the Commercial Limited Common Elements and Dry Slip Limited Common Elements unless otherwise stated.

“Common Expenses” shall mean and refer to all expenses for which the Unit Owners are liable to the Association and assessments incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and the Association Property, and any other expense designated as a “Common Expense” by the Condominium Act, this Declaration, the Articles of Incorporation, or the By-Laws. For purposes of this Declaration, “Common Expenses” shall also include, without limitation: (i) all reserves required by the Condominium Act or otherwise established by the Association, regardless of when reserve funds are expended; (ii) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, building and equipment (including forklifts) maintenance and operation expenses, in-house and/or interactive communications and surveillance systems; (iii) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property; (iv) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure; (v) the cost of water service and other utilities to the Property and improvements thereon which are not directly allocated to specific Units in the budget, if applicable; (vi) the costs of carrying out the powers and duties of the Association; and (vii) any other expenses designated from time to time by the Board of Directors which are not inconsistent with the Condominium Act. Common Expenses shall not include any separate obligations of individual Unit Owners.

“Common Surplus” shall mean and refer to the excess of all receipts of the Association above the Common Expenses.

“Condominium” shall mean and refer to Gulf Harbor Marina, a Condominium, the condominium created by this document.

“Condominium Act” or “Act” shall mean and refer to Chapter 718, Florida Statutes, in its form as of the date of this Declaration. All references to Chapter 718, Florida Statutes, or any section or subsection thereof shall be deemed to refer to such Chapter, section or subsection in its form as of the date of this Declaration.

“Condominium Documents” shall mean and refer to this Declaration and the attached Exhibits. In the event of any conflict among the Condominium Documents, the order of priority of

the documents will be as follows: (i) the Declaration; (ii) the Articles of Incorporation; (iii) the By-Laws; and (iv) the Rules and Regulations.

“Condominium Parcel” shall mean and refer to a Unit, together with the Unit’s undivided share in the Common Elements which is appurtenant to the Unit.

“Condominium Plot Plan” shall mean and refer to the Survey, Condominium Plot Plan, and Graphic Description of improvements, as amended from time to time. A copy of the Condominium Plot Plan is attached to this Declaration as **Exhibit “D”**.

“Condominium Property” shall mean and refer to the real and personal property (including, the Property), both tangible and intangible, 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 the Condominium.

“Declaration” or “Declaration of Condominium” shall mean and refer to this Declaration of Gulf Harbor Marina, a Condominium, and any and all amendments thereto.

“Developer” shall mean and refer to Gulf Harbor Marina, LLC, a Florida limited liability company, and its successors and assigns.

“Dry Rack Storage Buildings” shall mean and refer to the dry rack storage buildings located on the Property and as shown on the Condominium Plot Plan attached hereto as **Exhibit “D”**, which contain the Dry Slip Units.

“Dry Slip Limited Common Elements” shall mean and refer to (a) all doors and open concrete areas located in the North and South Dry Rack Storage Buildings, as identified in **Exhibit “D”** attached hereto (b) all stairs, hallways and mechanical rooms located within the North and South Dry Rack Storage Buildings, as identified in **Exhibit “D”** attached hereto and (c) any tangible personal property owned by the Association serving only the Dry Slip Units.

“Dry Slip Limited Common Expenses” shall mean and include all expenses incurred by the Association for operation, maintenance, repair, replacement and protection of the Dry Slip Limited Common Elements, and all reserves required by the Condominium Act.

“Dry Slip” or “Dry Slip Unit” shall mean and refer to the Units within the Condominium which are designated for storage of Vessels, as more particularly described herein and designated as “S-1 through S-127” and “N-1 through N-142” on the Condominium Plot Plan attached hereto as **Exhibit “D”**.

“Exhibits” shall mean and refer to the Exhibits which are hereby incorporated into this Declaration by reference thereto.

- Exhibit “A”      Legal Description of the Property
- Exhibit “B”      Articles of Incorporation
- Exhibit “C”      By-Laws
- Exhibit “D”      Survey, Condominium Plot Plan and Graphic Description of Improvements

- Exhibit "E" Consent of Mortgagee
- Exhibit "F" Allocation of Percentage of Ownership in Common Elements
- Exhibit "F-1" Allocation of Commercial Limited Common Expenses
- Exhibit "F-2" Allocation of Dry Slip Limited Common Expenses
- Exhibit "G" Developer Guarantee for Commercial Units

"F.S." shall mean and refer to the Florida Statutes, as the same may be amended from time to time but which amendments shall not be deemed to be incorporated herein except where provided by law.

"Guest" shall mean and refer to any person who is physically present upon or who is otherwise traveling within the Property during ingress or egress to and from a Dry Slip Unit or otherwise to and from or within the Condominium Property including adjacent waters.

"Insurance Trustee" shall have the meaning ascribed to such term in Section 8.7.

"Insured Property" shall have the meaning ascribed to such term in Section 8.2.

"Institutional First Mortgagee" shall mean and refer to the mortgagee or its assignee of a first mortgage on a Condominium Parcel. The mortgagee or any successor mortgagee shall be a bank, savings and loan association, real estate investment trust, mortgage banker, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, any agency of the United States of America, any other lender generally recognized as an institutional lender, or the Developer.

"Lease" shall mean and refer to the grant by a Unit Owner of a temporary right of use of a Unit.

"Limited Common Elements" shall mean and refer to those portions of the Common Elements that are reserved for the use of a certain Unit or type of unit to the exclusion of the other Units, which property is reserved for the exclusive benefit and use of a specific Unit Owner or Unit Owners, as set forth herein, as shown on the Condominium Plot Plan, or as otherwise established by Developer or the Association. Reference in this Declaration to Common Elements shall also include all Limited Common Elements unless the context would otherwise stated.

"M.A.B." shall mean and refer to the Marina Appearance Board, a permanent committee of the Association, as further described in Section 11.14 herein, created for the purpose of establishing and enforcing criteria for regulating the appearance of the Condominium Property and the vessels kept within the Condominium.

"Member" shall mean and refer to a Unit Owner entitled to membership in the Association, as provided herein and in the By-Laws.

"Occupy" shall, as to the Dry Slip Units, mean and refer to the act of storing a Vessel in a Dry Slip. "Occupy" shall, as to the Commercial Units, mean and refer to the act of conducting business within a Commercial Unit. All such occupancies shall be subject to this Declaration and the Rules and Regulations and subject to all applicable governmental regulations, permits, laws and approvals applicable to the Property.

“Operation” shall mean and refer to the administration and management of the Condominium Property.

“Person” shall mean and refer to an individual, corporation, partnership, trust, or other legal entity capable of holding fee simple title to a Unit.

“Plat” shall mean and refer to any plat or plats, if any, and any amendments thereto recorded in the Public Records of Sarasota County, Florida, affecting any or all of the Property.

“Property” shall mean and refer to the property legally described in Exhibit “A” of this Declaration, as amended from time to time.

“Residential Condominium” means a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence as more specifically set forth in §718.103(23) Florida Statutes.

“Rules and Regulations” shall mean and refer to the Rules and Regulations of the Association, as amended from time to time.

“Special Assessment” shall have the meaning ascribed to such term in Section 7.2(a).

“Tender” shall mean and refer to a boat or other watercraft which is normally stored on the primary Vessel occupying a Dry Slip Unit.

“Termination Trustee” shall have the meaning ascribed to such term in Section 15.2(a).

“Unit” shall mean and refer to that part of the Condominium Property that is subject to exclusive ownership as described in this Declaration, also sometimes referred herein as a “Dry Slip”, “Dry Slip Unit” or “Commercial Unit” and where the context allows shall mean collectively Dry Slip Unit(s) and Commercial Unit(s).

“Unit Owner” or “Owner” shall mean and refer to the record owner of legal title to a Dry Slip Unit or Commercial Unit.

“Vessel” shall mean and refer to any leisure or recreational (and, when permitted by the Developer or Association, commercial) motor boat or other water craft which is self-propelled and in a seaworthy condition; provided, however, that this term shall exclude any houseboat, floating home, house-like barge, seaplane, non-displacement (i.e., air cushion) or commercial marine vessels except as otherwise permitted by Developer or Association in the manner provided elsewhere herein. In the event of any dispute as to whether a particular vessel or boat is permitted to be kept in a Dry Slip Unit or otherwise operated within the “Marina Property” the determination of a majority of the Board of Directors made in its sole discretion shall be dispositive. The term, “Vessel” shall include all vessels kept or stored in a Dry Slip Unit or otherwise operated, stored or serviced within the Property.

“Very Substantial Damage” shall have the meaning ascribed to such term in Section 9.1 herein.

“Voting Interest” shall mean and refer to the voting rights distributed to the Association members. Each Unit shall have one vote.

Wherever the context permits, use of the plural includes the singular, use of the singular includes the plural, and use of any gender includes all genders.

**ARTICLE II**  
**DESCRIPTION OF CONDOMINIUM PARCELS, BOUNDARIES, AND APPURTENANCES**

Each Unit and its appurtenances (including an undivided interest in the Common Elements, and the right to use any Limited Common Elements) constitute a separate parcel of real property that may be owned in fee simple. The Unit may be conveyed, transferred, and encumbered like any other parcel of real property, independently of all other parts of the Condominium Property, subject only to the provisions of the Condominium Documents and applicable laws.

**Section 2.1 CONDOMINIUM PLOT PLAN.** Attached to this Declaration as **Exhibit "D"** is a Survey of the Property, and a graphic description of the improvements and the Condominium Plot Plan (herein collectively referred to as the Condominium Plot Plan). **Exhibit "D"** identifies the Units of the Condominium, the Common Elements, Dry Slip Limited Common Elements, Commercial Limited Common Elements, and their relative locations and approximate dimensions.

**Section 2.2 UNIT IDENTIFICATION.** The Property has constructed upon it four (4) buildings containing approximately two hundred and eighty-eight (288) units, consisting of two hundred sixty-nine (269) Dry Slip Units and nineteen (19) Commercial Units. Each Unit is separately identified by a number as shown on **Exhibit "D"** and no Unit bears the same designation as any other Unit. Dry Slip Units are identified on the Condominium Plot Plan as Units S-1 through S-127 and N-1 through N-142. The Commercial Units are identified on the Condominium Plot Plan as C-1 through C-19.

**Section 2.3 NO SUBDIVISION OF UNIT.** Except as expressly stated in Section 2.10 of this Declaration, no Unit may be divided, subdivided, or combined in any manner without the prior written approval of the Association.

**Section 2.4 NO SEPARATION OF COMMON ELEMENTS OR LIMITED COMMON ELEMENTS.** Neither the use of any Limited Common Elements, nor any undivided interest in the Common Elements declared to be an appurtenance to a Unit, may be transferred, conveyed, devised or encumbered separately from the Unit to which such elements are appurtenant.

**Section 2.5 CONVEYANCE OR OTHER DISPOSITION OF UNIT.** The transfer, conveyance, devise or encumbrance of a Unit shall be deemed to include in the transfer, conveyance, devise or encumbrance: (i) an undivided interest in Common Elements and Common Surplus appurtenant to the Unit; (ii) the use rights in any Limited Common Elements appurtenant to the Unit, even though such undivided interest in Common Elements or rights in any parcel of Limited Common Elements are not expressly described in the instrument conveying, devising or encumbering the Unit; (iii) membership in the Association with the full voting rights appurtenant thereto; and (iv) other appurtenances as may be provided by this Declaration. Except as otherwise expressly provided herein, any instrument purporting to transfer, convey or encumber any Unit or its appurtenant interest in Common Elements or appurtenant rights in any Limited Common Elements separately or otherwise than as a unitary Condominium Parcel shall be null and void insofar as it purports to affect any interest in the Unit and its appurtenant undivided interest in Common Elements and any appurtenant Limited Common Element. Any instrument transferring, conveying, devising, encumbering or otherwise dealing with any Unit which describes said Unit by its designation assigned in **Exhibit "D"** without limitation or exception, shall affect the entire Unit and its appurtenant undivided interest in Common Elements and appurtenant rights in any Limited Common Elements. Nothing contained in the Condominium Documents shall be construed as prohibiting ownership of any Unit and its appurtenant undivided interest in

Common Elements and any appurtenant Limited Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.

**Section 2.6 EXCLUSIVE USE.** Each Unit Owner will have the exclusive use of such Unit Owner's Unit, except to the extent otherwise expressly stated herein.

**Section 2.7 OWNERSHIP.** The ownership of each Unit will carry with it, as appropriate, and whether or not separately described, all of the rights, title, and interest of a Unit Owner in the Condominium Property which will include, but not be limited to:

(a) **COMMON ELEMENTS AND COMMON SURPLUS.** An undivided 1/288 interest in and to the Common Elements and Common Surplus as set forth on **Exhibit "F"** attached hereto.

**COMMERCIAL LIMITED COMMON ELEMENTS.** The Commercial Limited Common Elements shall mean and refer to certain Limited Common Elements the use of which is reserved to Commercial Units, to the exclusion of the Dry Slip Units. Except only as provided below, all the costs of operating, maintaining, insuring, repairing, replacing and altering the Commercial Limited Common Elements shall be borne solely by the Commercial Unit owners. Without limiting the generality of the foregoing, the Commercial Limited Common Expenses shall include without limitation, all sums described in Section 1.5(m), any and all utility charges associated with the Commercial Limited Common Elements (and if the same are not separately metered the Association may make a reasonable allocation for such purpose), costs for maintenance and replacements in, on or around the Commercial Limited Common Elements, costs for repairs to pavers or other ground or floor coverings, and the costs of personnel assisting in the operation and/or maintenance of the Commercial Limited Common Elements. The Commercial Limited Common Element Expenses shall not however include any necessary repairs, maintenance, replacement or alterations to the structural component of the Office Building, or any roofing membranes of the Building, all of which shall be deemed a general Common Expense. The Commercial Limited Common Expenses shall be assessed against each Commercial Unit Owner in accordance with the percentage allocable to the applicable Commercial Unit as set forth on **Exhibit "F-1"** attached hereto. The Commercial Limited Common Elements shall be maintained by the Association.

**DRY SLIP LIMITED COMMON ELEMENTS.** The Dry Slip Limited Common Elements shall mean and refer to certain Limited Common Elements, the use of which shall be reserved to the Dry Slip Units, to the exclusion of the Commercial Units. Except only as provided below, all the costs of operating, maintaining, insuring, repairing, replacing and altering the Dry Slip Limited Common Elements shall be borne solely by the Dry Slip Unit owners. Without limiting the generality of the foregoing, the Dry Slip Limited Common Expenses shall include without limitation, all sums described in Section 1.5(aa), any and all utility charges associated with the Dry Slip Limited Common Expenses (and if the same are not separately metered the Association may make a reasonable allocation for such purpose), costs for maintenance and replacements in, on or around the Dry Slip Limited Common Elements, costs for repairs to pavers or other ground or floor coverings, and the costs of personnel assisting in the operation and/or maintenance of Dry Slip Limited Common Elements. The Dry Slip Limited Common Element Expenses shall not however include any necessary repairs, maintenance, replacement or alterations to the structural component of the North and South Dry Rack Storage Buildings, or any roofing membranes of the Building, all of which shall be deemed a general Common Expense. The Dry Slip Limited Common Expenses shall be assessed against each of the Dry Slip Units, in accordance with the percentage allocated to that certain Dry Slip Unit as set forth on **Exhibit "F-2"** attached hereto. The Dry Slip Limited Common Elements shall be maintained by the Association.

(d) **MISCELLANEOUS AREAS, EQUIPMENT.** Any fixtures or equipment serving a Unit or Units exclusively, (not otherwise designated as part of a Unit) and any area upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). The maintenance and

costs of any such equipment and/or areas so assigned shall be the sole responsibility of the Owner of the Unit(s) to which the fixtures and/or equipment are appurtenant.

(e) ASSOCIATION MEMBERSHIP. The record Owner(s) of all Units in the Condominium shall be members of the Association. Membership as to each Unit shall be established, and transferred, as provided by this Declaration, the Articles and the By-Laws.

(f) VOTING INTEREST. On all matters as to which the members of the Association shall be entitled to vote, there shall be only one vote for each Unit. Voting shall be governed by the Articles and the By-Laws.

**Section 2.8 EASEMENTS.** Each of the following easements is a covenant running with the land as to the Condominium:

(a) UTILITIES. Easements are reserved under, through and over the Property for utility services, drainage pipes, culverts and facilities, cable television, communications, security systems and other services as may be required to serve the Units, Common Elements and Limited Common Elements. However, such easements through Units shall exist only to the extent necessary or helpful to provide service to other Units, the Common Elements and Limited Common Elements. The Association shall have a right of access during reasonable hours to each Unit to maintain, repair or replace any elements providing such services and to remove any improvements interfering with such facilities; provided that, except in the case of emergencies, entry to the Commercial Units shall not be made without reasonable notice (one (1) day's notice or attempted notice shall be deemed reasonable) except that notice shall not be required if the Unit Owner is absent when the giving of notice is attempted). There is no notice requirement for entering a Dry Slip Unit. A Unit Owner shall do nothing within or outside the Unit Owner's Unit that interferes or impairs, or may interfere or impair, with the provision of such utility, cable television, communications and security systems and other services and drainage facilities or the use of these easements.

TRAFFIC. Non-exclusive easements are reserved for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, docks and other portions of the Common Elements as may be from time to time intended and designated for such use and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as may, from time to time be installed and intended for such purposes. No such easement shall be encumbered by any leasehold or lien but may be subjected to one (1) or more other easements as provided herein.

PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON ELEMENTS. A perpetual, non-exclusive easement in the Common Elements is hereby reserved for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended.

UNINTENTIONAL AND/OR NON-NEGLIGENT ENCROACHMENTS. If: (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto) or any other improvement on the Property; (b) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; (c) any encroachment shall hereafter occur as a result of (i) construction of improvements and other Common Elements, (ii) settling or shifting of the any improvements or other Common Elements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer, as appropriate, or (iv) any repair or restoration of the improvements to the Property (or any portion thereof) after damage by fire, windstorm, or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance, repair and replacement of same. If the

Vessel of any Owner shall encroach upon an adjoining Unit or other portion of the Property as the result of storms or other acts of God, then in any such event, a valid easement shall exist for such encroachment. The foregoing shall not, however, authorize the protrusion of any Vessel or anything attached thereto into the Common Elements except as specifically provided in this Declaration.

Notwithstanding any of the foregoing, however, a Unit Owner shall be liable for all damages to the Unit or Vessel of another Unit Owner or to the Property where the cause of such damage is the failure of such Unit Owner to properly secure, operate and maneuver (or, if required by the Marina Association, remove) his Vessel to (or from) pilings or the docks. Except as specifically prohibited by this Declaration or in the Rules and Regulations attached hereto, each Unit Owner and his family, guests, employees, invitees, lessees, contractors, subcontractors, agents and licensees shall have the right to proceed over, across and through the waters of the Property, if any, for the purpose of ingress and egress of the Vessel stored in the Unit to and from the Common Docks and the adjacent waters.

CONSTRUCTION MAINTENANCE. The Developer its successor and its designees shall have the right, in its sole discretion from time to time, to enter the Property and take all other action necessary or convenient for the purpose of completing any construction or reconstruction thereof on the Property or adjoining property, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance or warranty purposes where the Association fails to do so or where the Developer, in its sole discretion, determines that it is required or desires to do so.

SALES AND LEASING ACTIVITY. For as long as there are any Units owned by the Developer and/or the Developer (or an affiliate) is marketing Units for sale or lease, the Developer and its designees, shall have the right to use any such Unit (or Units leased by the Developer or its designee) and parts of the Common Elements of the Property; and to erect on the Property signs and other promotional material or any part thereof, or any improvements (including within buildings) or Unit located or to be located thereon.

ASSOCIATION EASEMENTS. The Association and its agents, employees, contractors and assigns shall have an easement to enter onto the Condominium Property, for the purpose of performing such functions as are permitted or required to be performed by the Association in connection with its duties.

ADDITIONAL EASEMENTS. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas, drainage, other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the improvements, or any portion thereof; for the general health and welfare of the Unit Owners or for the purpose of facilitating use of certain Commercial or Dry Slip Units, or 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 reasonable use of the other Units for permitted purposes.

(b) SPECIFIC EASEMENTS RESERVED TO C-17, C-18 and C-19. There is hereby reserved to the owners of Units C-17, C-18 and C-19, and their agents, employees, contractors and assigns a perpetual, non-exclusive easement, right, license, and privilege over, across, and upon that portion of the Common Element roof section and air space (as limited by applicable zoning laws) directly above their Units ("Easement Area") for the purposes of installing and maintaining communication related towers and facilities ("Communication Facilities") or such functions as are permitted or required by the Association or other

governmental agency, provided however, that the owners of such units shall perform, and shall bear the cost and expense of, the maintenance, repair and replacement of the Communication Facilities it has constructed or is using in the Easement Area, including all costs incurred in restoration of the Easement Area. The owner(s) of Units C-17, C-18 and C-19 shall indemnify and hold harmless the Association from and against any and all claims resulting from or occasioned from its use of the easement rights or such use by their tenants, licensees, invitees, employees or guests. The Association, hereby reserves unto itself, and its successors and assigns, the right to use the Easement Area at any and all times for any and all purposes which do not interfere with the exercise and use of the easement and other rights granted herein.

(j) SPECIFIC EASEMENT TO C-15. There is hereby reserved to the owner of Unit C-15, and its agents, employees, contractors and assigns a perpetual, non-exclusive easement, right, license, and privilege over, across, under and upon that portion of the Common Element Property, designated as the Concrete Slab and Marina Basin located adjacent to the gas tank, as depicted on Exhibit "D" attached hereto, ("Easement Area") for the purposes of installing and maintaining gas pipes, lines and similar facilities ("Facilities") or such other facilities as are permitted or required by the Association or other governmental agency, provided however, that the owner of such unit shall perform, and shall bear the cost and expense of, the maintenance, repair and replacement of the Facilities it has constructed or is using in the Easement Area, including any and all costs incurred in restoration of the Easement Area following installation of the Facilities. The owner of Units C-15 shall indemnify and hold harmless the Association from and against any and all claims resulting from or occasioned from its use of the easement rights or such use by their tenants, licensees, invitees, employees or guests. The Association, hereby reserves unto itself, and its successors and assigns, the right to use the Easement Area at any and all times for any and all purposes which do not interfere with the exercise and use of the easement and other rights granted herein.

(k) BENEFICIARIES. The easements reserved and granted in this Article II shall be covenants running with the land for the benefit and in favor of the Unit Owners, the Developer and the Association and their Guests, lessees, licensees, customers and invitees for all proper purposes, and providers of utility services, cable television, communications, security systems and other services, as may be required to serve the Units, Common Elements and Limited Common Elements subject to the provisions of this Declaration of Condominium and rules and regulations of the Condominium. However, nothing herein shall constitute any party a beneficiary of any easement in Limited Common Elements for any purpose reserved to the use of a particular Unit or Units, except for the Unit Owner or Unit Owners of that Unit or those Units and the invitees, Guests, licensees, customers, invitees and lessees of the Unit Owner or Unit Owners.

Section 2.9 RESTRICTION ON OWNER EASEMENTS. No Unit Owner shall grant any easement or use right (other than rights as a tenant) upon any portion of the Property (including, without limitation, a Unit or any property within the boundaries of a Unit) to any person or entity without the prior written consent of the Association, which consent may be withheld in the Association's sole and absolute discretion.

Section 2.10 UNIT BOUNDARIES.

(a) Each Dry Slip Unit shall include that part of the Building containing the Unit that lies within the following boundaries (as graphically depicted in Exhibit "D"):

UPPER AND LOWER BOUNDARIES. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

Upper Boundary. The horizontal plane at the lowest point of the upper structural section of the two "I" beams of the steel rack for the Unit.

Lower Boundary. The horizontal plane at the highest point of the floor or lower structural section of the two "I" beams of the steel rack for the Unit.

Boundaries Further Defined. There shall not be included within any Unit those spaces and improvements lying outside of the boundaries of any Unit, or between Units, or above or below Units, and further no Unit shall include spaces and improvements lying within the undecorated and unfinished inner surfaces of all interior bearing walls, partitions or structures, and further, the Unit boundaries shall exclude all pipes, ducts, wires, conduits and other utilities running through any interior wall, partition or structural member of the furnishing of utility services to other Units or the Common Elements.

PERIMETRICAL BOUNDARIES. The perimetrical boundaries shall be the widths and depths assigned to a Unit as set forth in the table of dimensions set forth in Exhibit "D" attached hereto.

PROVISO. The physical structures supporting the Dry Rack Storage Building and Dry Slip Units), shall not be deemed to be a part of an individual Dry Slip Unit. Such physical structures shall be and remain a part of the Common Elements.

(b) Commercial Unit Nos. C-1 through C-12, C-14, C-17, C-18, and C-19 shall include a part of a building or entire building that lies within the following boundaries (as graphically depicted in Exhibit "D"):

UPPER AND LOWER BOUNDARIES. The upper and lower boundaries of the Commercial Units shall be the following boundaries extended to an intersection with the perimetrical boundaries;

Upper boundary. The horizontal plane of the undecorated, finished ceiling.

Lower boundary. The horizontal plane of the undecorated finished floor.

PERIMETRICAL BOUNDARIES. The perimetrical boundaries of Commercial Units shall be the vertical plane of the undecorated and unfinished inner surfaces of the walls bounding the Unit, extended to intersections with each other and with the upper and lower boundaries.

(c) EXCEPTIONS. Commercial Unit Nos. C-13, C-15 and C-16 shall include that part of the land that lies within the boundaries graphically depicted in Exhibit "D" and approximately 20 ft. of air space located directly above said land. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "D" hereto shall control in determining the boundaries of a Unit, except that the provisions Section 2.10 shall control unless specifically depicted and labeled otherwise on the survey.

The Developer may, at its sole option, combine, alter and/or subdivide Units in accordance with this Declaration. It is recognized that the need for flexible Unit boundaries is essential and that the following provisions are intended to create a method allowing Developer flexibility to develop and sell Units of varying sizes to accommodate various types of Vessels and commercial uses. Units may be subdivided or combined, new Units created, or Unit boundaries altered, in accordance with the following provisions:

An amendment to this Declaration shall be recorded identifying the new boundaries to the Unit(s) and in the case of subdivision of a Unit, the new Unit shall be designated by it being assigned a

successive alphabetical or numerical combination (for example, if Unit 101 is subdivided into two new Units, the new Units would be designated 101 A and 101 B). This amendment to the Declaration of Condominium need only be signed, joined in and consented to by the Association and the Unit Owners whose Units are physically affected and their mortgagees of record (which consent of mortgagees shall not be unreasonably withheld) and no other Unit Owner, mortgagee or lienor shall be required to join in the amendment. Notwithstanding the foregoing, for so long as Developer holds any Units for sale, Developer may execute and record an amendment for such Units without the joinder of the Association, any Unit Owner, or mortgagee or lienor. The amendment shall be effective when recorded in the Public Records of Sarasota County, Florida. The amendment shall have attached to it a surveyor's, engineer's or architect's certified drawing and certificate showing the location of the new perimeter boundary for the Units affected and shall certify a new apportionment of share of Common Expenses, Common Elements and Common Surplus, with such new apportionment being one (1) divided by the aggregate of all Units.

Any proposed subdivision, combination or alteration must comply with all applicable governmental regulations.

All assessments for the affected Units must be paid current through the date of the amendment. From and after the recording of the amendment, the Assessments due for each Unit shall be based upon the method provided in Article VI hereof.

Each Unit's interest in the Common Elements and Common Surplus shall be revised and the new percentage interest appurtenant to such Unit shall be stated in the amendment.

The owners of the affected Units shall pay all costs and expenses in connection with the subdivision or combining of Units or the alteration of Unit boundaries including any legal, architectural, surveying, engineering, consultant or other professional fees incurred by the Association.

**Section 2.11 RECREATIONAL FACILITIES.** The Developer has not committed to construct any additional recreational or common facilities' as a part of the Condominium provided, however, that nothing contained herein shall prohibit Developer from constructing additional recreational facilities within the Condominium Property as shall be determined by the Developer. In the event the Developer elects to construct additional recreational facilities on the Condominium Property, such recreational facilities shall be Common Elements. All recreational or common facilities shall be deemed Common Elements and the costs of maintenance, repair, replacement, operation and all other costs associated with such recreational facilities shall be Common Expenses.

### **ARTICLE III** **MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS**

The responsibility for protection, maintenance, repair and replacement of the Condominium Property, and restrictions on its alteration and improvement shall be as follows:

**Section 3.1 ASSOCIATION MAINTENANCE.** The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements, Limited Common Elements and Association Property (except to the extent that any of the foregoing are required elsewhere in this Declaration to be maintained by the Unit Owner or class of Unit Owners). Such cost shall be a Common Expense. All incidental damage caused to a Unit or Common Elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost of such repair shall be a

Common Expense. Without limiting the generality of the foregoing, all docks, piers, mooring piles and similar facilities, Dry Rack Storage buildings all portions of a Unit contributing to the support of a condominium building or Dry Slip Unit structure, buildings that contain the Commercial Units, as well any seawall within or along the boundary of the Property shall be maintained, repaired and replaced as a Common Expense. The Association shall maintain, repair and replace at the Association's expense, all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portion of a Unit maintained by the Association and all such facilities contained within a Unit that services part or parts of the Condominium other than the Unit within which contained. All incidental damage caused to a Unit by maintenance and repair work by the Association shall be promptly repaired at its expense.

**Section 3.2 MODIFICATIONS AND ALTERATIONS.** No Unit Owner shall make any addition, alteration or improvement in or to the Unit Owner's Unit or any Common Element or Limited Common Element, without, in each instance, the prior written consent of the Board of Directors/and or the M.A.B., which may be withheld in the sole discretion of the Board of Directors, and shall, if approved, be subject to terms and conditions determined by the Board of Directors in its sole discretion. Unit Owners shall not paint or otherwise decorate or change the appearance of any portion of the Condominium Unit without the prior written approval of the Association. The Unit Owners shall keep and maintain his Unit, its equipment and appurtenances in good order, condition and repair, and to perform promptly all maintenance and repair work within the Unit which, if omitted would affect the Condominium in its entirety or in a part belonging to others; being expressly responsible for the damages and liabilities which his failure to do so may engender. Notwithstanding anything contained in this Declaration, the Unit Owner of each Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all windows and all exterior doors, including sliding glass doors and all air conditioning and heating equipment, stoves, refrigerators, fans and other appliances and equipment, including pipes, wiring, ducts, fixtures and the connections required to provide water, light, power, air conditioning and heating, telephone, sewage and sanitary service to his Unit which may now or later be situated in the Unit, together with any portion of a Dry Slip Unit which does not contribute to the support of, or is not an integral part of any other Dry Slip Unit. Plumbing and electrical repairs to fixtures and equipment located within a Unit and exclusively servicing a Unit shall be paid for and be a financial obligation of the Unit Owner. A Unit Owner agrees to promptly report to the Association any defect or need for repairs for which the Association is responsible. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof as may be required by the Board. The Board's right of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Unit Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Unit Owner, by acquiring title to same, agrees not to seek damages from the Developer and/or the Association arising out of the Board's review of any plans hereunder. Without limiting the generality of the foregoing, the Board shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Unit Owner (including the Unit Owner's successors and assigns) agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Board hereunder. All

additions, alterations and improvements proposed to be made by any Unit Owner shall be subject to, and restricted by, the terms and conditions of this Declaration.

**Section 3.3 IMPROVEMENTS, ADDITIONS OR ALTERATIONS BY DEVELOPER.** Except as provided herein, Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by Developer and Common Elements appurtenant thereto. Without limiting the generality of the provisions of this Section, except as provided herein, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to: (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, ordinary or extraordinary; (ii) change the size of Developer-owned Units by combining separate Developer-owned Units into a single Unit (although being kept as two separate legal Units), or otherwise; and (iii) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Notwithstanding the foregoing provisions of this Section to the contrary, Developer may not materially change the configuration or size of any Unit not owned by it, or change the proportion or percentage by which the Unit Owners share Common Expenses or Limited Common Expenses and own the Common Elements and Common Surplus, unless the Developer complies with the provisions of Section 718.110(4) of the Condominium Act. The Developer may, however, change the boundaries of Units owned by it to accommodate different Vessel sizes. In such case, Developer may amend this Declaration, without the consent of the Association or any Unit Owner, to reflect such change.

**Section 3.4 MAINTENANCE OF AND DAMAGES BY UNIT OWNER'S MODIFICATIONS.** After obtaining any requisite approvals, if a Unit Owner makes any modifications, installations or additions to his Unit or the Common Elements or neglects to maintain, repair, clean and replace the same, as may be required by the Association, the Unit Owner, and his successors in title, shall be financially responsible for:

(a) maintenance, repair, cleaning and replacement of the modifications installations and additions;

the costs of repairing any damage to the Common Elements, Limited Common Elements or other Units resulting from the existence of such modifications, installations or additions; and

the costs of removing, replacing and reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium Property for which the Association is responsible.

**Section 3.5 REPRESENTATIONS REGARDING CONTRACTORS.** All contractors retained by a Unit Owner to maintain, repair, replace, alter, or make improvements to any portion of a Unit or the Common Elements shall be licensed and fully insured. A Unit Owner shall be liable for any and all expenses incurred by damage to persons or property resulting from the acts or omissions, whether occasioned by negligence or otherwise, of a contractor retained by a Unit Owner.

**Section 3.6 SERVICE AND MAINTENANCE CONTRACTS.** If there shall become available to the Association certain contract services to be delivered within the Units for items otherwise the responsibility of the Unit Owner, then, the Board may enter in any such contracts which the Board determines are to the benefit of the Unit Owners generally. The expenses of such contractual undertakings to the Association shall be a Common Expense and allocated to the appropriate class of expenses as determined by the Board of Directors. Since such expenses shall constitute Common Expenses, an election by a Unit Owner not to take advantage of the services or maintenance provided by such contracts, shall not excuse the Unit Owner from paying his share of the cost.

**Section 3.7 UNIT OWNER ALTERATION OF COMMON ELEMENTS RESTRICTED.** No Unit Owner may make any alterations, add to, or remove any part of the portions of the Common Elements or improvements that are to be maintained by the Association without the prior written approval of the Board of Directors, which approval may be withheld, in the sole discretion of the Board of Directors. Any approvals which may be given by the Board may be conditioned or subject to the Unit Owner's compliance with conditions set by the Board of Directors, in its sole discretion. Such Board approved work, if any, is declared not to constitute material alterations or substantial additions to the Common Elements.

#### **ARTICLE IV** **COMMON ELEMENTS; ASSOCIATION PROPERTY**

**Section 4.1 PERCENTAGE OWNERSHIP AND SHARE OF THE COMMON ELEMENTS.** The Common Elements, as well as Common Surplus, will be owned by the Unit Owners in undivided shares as set forth in **Exhibit "F"** attached hereto.

**Section 4.2 PERCENTAGE SHARE OF COMMERCIAL LIMITED COMMON EXPENSES.** The undivided percentage share in the Commercial Limited Common Expenses, appurtenant to each Commercial Unit, is as set forth on **Exhibit "F-1"** attached hereto.

**Section 4.3 PERCENTAGE SHARE OF DRY SLIP LIMITED COMMON EXPENSES.** The undivided percentage share in the Dry Slip Limited Common Expenses, appurtenant to each Dry Slip Unit, is as set forth on **Exhibit "F-2"** attached hereto.

**Section 4.4 USE.** Each Unit Owner and the Association will be entitled to use the Common Elements in accordance with the purposes for which the elements are intended; however, no such use may hinder or encroach upon the lawful rights of other Unit Owners.

**Section 4.5 MATERIAL ALTERATIONS AND ADDITIONS.** Except for changes made by a Unit Owner, at his sole cost and expense, with Board approval as provided herein, whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of fifteen percent (15%) of the total amount of the Annual Budget in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate fifteen percent (15%) of the total amount of the Annual Budget or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section,

“aggregate in any calendar year” shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

From and after the conveyance of the Facilities to the Association, the Association shall operate same during hours as determined by the Board of Directors of the Association.

**ARTICLE V**  
**ADMINISTRATION, POWERS AND DUTIES AND FISCAL MANAGEMENT**

**Section 5.1 POWERS AND DUTIES.** The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles and By-Laws. In addition, the Association shall have all the powers and duties set forth in the Condominium Act and under applicable law, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to secure a Unit or Vessel occupying a Unit in the event of the issuance of a severe storm watch or storm warning, provided the same shall be without liability to the Association;

(b) the power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property;

the duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request;

the power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes as well as handling the lease by Dry Slip Unit Owners of their Dry Slip Unit to third parties. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium Documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association;

the power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, and pledges of the Association’s assessments and the liens for same, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the Unit Owners represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as maybe specified in the By-Laws with respect to certain borrowing;

the power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium and Association Property;

the power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to the limitations set forth in Section 5.3. Real property (including, without limitation, any of the Units) shall be acquired, conveyed, leased or encumbered by the Association upon a majority vote of the Board of Directors alone; provided that the requirements and subject to the limitations set forth in Article IV and Article VII, shall also apply to the acquisition of real property; provided, further, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same, and the Association, through the Board of Directors, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses;

the power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Unit Owner, by acceptance of the deed to such Unit Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President or Vice President of the Association, as such Unit Owner's agent and attorney-in-fact to execute any and all such documents or consents; and

all of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the By-Laws, Chapter 617, Florida Statutes and the Condominium Act, in all cases except as expressly limited or restricted in the Act. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, and the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and the Rules and Regulations; the Articles of Incorporation shall take precedence over the By-Laws and the Rules and Regulations; and the By-Laws shall take precedence over the Rules and Regulations, all as amended from time to time. Notwithstanding anything in this Declaration, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

**Section 5.2 LIMITATION UPON LIABILITY OF ASSOCIATION.** Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association. The Association also shall not be liable to any Unit Owner, lessee, employee, customers, licensees, agents, invitees or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

**Section 5.3 RESTRAINT UPON ASSIGNMENT OF SHARES IN ASSETS.** The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

**Section 5.4 APPROVAL OR DISAPPROVAL OF MATTERS.** Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or By-Law.

**Section 5.5 ACTS OF THE ASSOCIATION.** Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in the Condominium Act, other applicable law or the Condominium Documents, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Board deems appropriate or the Board may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

**ARTICLE VI**  
**DETERMINATION OF COMMON EXPENSES AND LIMITED COMMON EXPENSES AND**  
**FIXING OF ASSESSMENTS THEREFOR**

**Section 6.1 COMMON EXPENSES.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses, Commercial Limited Common Expenses and Dry Slip Limited Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration. The Board of Directors shall advise all Unit Owners in writing of the amount of the assessment payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such assessments are based to all Unit Owners and (if requested in writing) their respective mortgagees. The Common Expenses shall include the expenses and reserves for (if required by, and not waived in accordance with applicable law) the operation maintenance, repair and replacement of the Common Elements, (excluding Commercial Limited Common Elements and Dry Slip Limited Common Elements) and Association Property, costs of carrying out the powers and duties of the Association, and any other expenses designated as Common Expenses by the Condominium Act, this Declaration, the Articles and Bylaws of the Association, and applicable Rules and Regulations. The Commercial Limited Common Expenses shall include the expenses of and reserves for (if required by and not waived in accordance with applicable law) the operation, maintenance, repair and replacement of the Commercial Limited Common Elements. The Dry Slip Limited Common Expenses shall include the expenses of and reserves for (if required by and not waived in accordance with applicable law) the operation, maintenance, repair and replacement of the Dry Slip Limited Common Elements. Incidental income, including but not limited to fuel sales, ship store sales and service leases to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at anytime. Any such change shall be adopted consistent with the provisions of the Condominium Documents and the Act. Any such change shall be adopted consistent with the provisions of this Declaration and the Bylaws.

The Board of Directors shall determine the allocation of Association Common Expenses and Limited Common Expenses, and such allocation shall be binding absent manifest error.

**ARTICLE VII**  
**COLLECTION OF ASSESSMENTS**

**Section 7.1 LIABILITY FOR ASSESSMENTS.** A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Unit Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Unit Owner may have to recover from the previous Unit Owner the amounts paid by the grantee Unit Owner. Liability for Assessments may not be avoided by the waiver of the use or enjoyment of any Common Elements, or by the abandonment of the Unit for which the Assessments are made or otherwise.

**Section 7.2 SPECIAL AND CAPITAL IMPROVEMENT ASSESSMENTS.** In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, and those levied by the Association against the Commercial Units to meet the Commercial Limited Common Expenses and the Dry Slip Units to meet the Dry Slip Limited Common Expenses, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

(a) "Special Assessments" shall mean and refer to a charge against each Unit Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.

(b) "Capital Improvement Assessment" shall mean and refer to either: (i) a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements (excluding the Commercial and Dry Slip Limited Common Elements) or Association Property; or (ii) a charge against each Commercial Unit Owner and its Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs or maintenance) of any capital improvements located or to be located within the Commercial Limited Common Elements; or (iii) charge against each Dry Slip Unit Owner and its Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs or maintenance) of any capital improvements located or to be located within the Dry Slip Limited Common Elements.

Special Assessments and Capital Improvement Assessments may be levied by the Board (subject to Section 4.5, if applicable) and shall be payable in a lump sum or installments, in the discretion of the Board; provided that if such Special Assessments or Capital Improvement Assessment exceeds three percent (3%) of the then estimated operating budget of the Association, the Board must obtain approval of a majority of the Units represented at a meeting at while quorum is obtained.

**Section 7.3 DEFAULT IN PAYMENT OF ASSESSMENTS.** Assessments, Special Assessments and/or Capital Improvement Assessments and installments thereof not paid within ten (10) days from the date when they are due, subject to Section 7.2, shall bear interest at eighteen percent (18%) per annum or the highest interest rate allowed by law from the date due until paid and shall be subject to an administrative late fee in an amount equal to the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Unit to secure the payment of all assessments properly imposed by the Association. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public

Records of Sarasota County. To be valid, the claim of lien shall state the description of the Condominium Parcel, the name of the record Unit Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien shall be executed and acknowledged by an authorized officer of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Unit or by actions taken by the Unit Owner which would prevent the action to enforce the lien from being filed. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees of any kind incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees and costs incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments. Additionally, each Unit Owner by acceptance of a deed therefore or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the "Collateral Assignment of Rents") on each such Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Unit Owner hereunder. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments due for the remainder of the budget year in which the claim of lien was filed to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of such budget year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

**Section 7.4 NOTICE OF INTENTION TO FORECLOSE LIEN.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the Unit Owner's last known address, which shall be presumed to be the address contained in the Unit Owner's directory maintained by the Association and upon such mailing, the notice shall be deemed to have been given. If proper notice is given or after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address to which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection shall be deemed satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Condominium Act.

**Section 7.5 APPOINTMENT OF RECEIVER TO COLLECT RENTAL.** If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.

**Section 7.6 INSTITUTIONAL FIRST MORTGAGEE.** The liability of an Institutional First Mortgagee, or its successor or assignees, which acquires title to a Unit by foreclosure or by deed in lieu of foreclosure, for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's acquisition of title is limited to the lesser of: (i) the Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (ii) one percent (1%) of the original mortgage debt. As to a Unit acquired by foreclosure, the limitations set forth in clauses (i) and (ii) above shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee. A first mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

**Section 7.7 INSTALLMENTS.** Assessments shall be collected monthly or quarterly, in advance, at the option of the Board of Directors. Special Assessments and/or Capital Improvement Assessments shall be due in a lump sum or in installments, as determined by the Board.

**Section 7.8 APPLICATION OF PAYMENTS.** Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

**Section 7.9 ESTOPPEL CERTIFICATE.** Within fifteen (15) days after receiving a written request therefor from a purchaser, the Unit Owner or a mortgagee of a Unit, the Association shall provide a certificate, signed by an officer or agent of the Association, setting forth all Assessments and other monies owed to the Association by the Unit Owner with respect to the Unit Owner's Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of the certificate.

**Section 7.10 CHARGES FOR SERVICES.** The Association may impose a Charge on Unit Owners, separate and apart from Assessments hereunder, for services received by the Unit Owner which are not provided as part of the Association's duties under this Declaration or which pursuant to the other provisions of this Declaration are to be separately paid for by a Unit Owner. Specifically, but without limitation, each Owner of a Commercial Unit, to the extent applicable, shall pay to the Association, on a monthly basis, a Charge for the electricity or other utilities used by the Unit Owner as measured by the sub-meter, if any, for such Unit. Should any Unit(s) not be submetered, the charge shall be prorated by dividing each Unit by the total Units served by the meter. Charges shall not be secured by the lien for Assessments hereunder but the failure of a Unit Owner to pay any Charge shall entitle the Association to all other remedies at law and also to disconnect or cease any service to a Unit in the case of the failure to pay the Charge. Any Charge not paid within ten (10) days from the date same is due shall also bear interest at eighteen percent (18%) per annum or the highest rate of interest allowed by law.

**Section 7.11 DEVELOPER'S LIABILITY FOR ASSESSMENTS.** During the period from the date of recording of this Declaration until the earlier of one (1) year (subject to extensions of six (6) month periods, at Developer's sole option) or the date on which control of the Association is transferred to Unit Owners other than the Developer (the "Guarantee Expiration Date"), the Developer shall not be obligated to pay the share of the Common Expenses, Limited Common Expenses, and Assessments attributable to its Units,

provided that during such period (i) the Assessments for Common Expenses and Dry Slip Limited Common Expenses imposed on each Dry Slip Unit Owner other than the Developer shall not exceed \$85.00 per Dry Slip Unit per month, and (ii) the Assessments for Common Expenses and Commercial Limited Common Expenses imposed on each Commercial Unit Owner other than the Developer shall not exceed the amounts set forth on Exhibit "G" attached hereto, per Commercial Unit per month. Until the Guarantee Expiration Date the Developer shall be obligated to pay any amount of Common Expenses or Limited Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed level. For purposes of this Section, income to the Association other than Assessments (as defined herein and in the Condominium Act) shall not be taken into account when determining the deficits to be funded by the Developer. After the Guarantee Expiration Date, the Developer shall have the option of extending the guarantee for a stated period of time upon written agreement between Developer and a majority of non-Developer Unit Owners (or by a majority vote of same) on the same terms or paying the share of Common Expenses and Assessments attributable to Units it owns. No funds receivable from Unit purchasers or Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration, shall be used for the payment of Common Expenses prior to the Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, (if any) capital contributions or start-up funds collected from Unit purchasers at closing.

## ARTICLE VIII INSURANCE

In order to adequately protect the Unit Owners, the Association, and all parts of the Condominium Property and Association Property that are required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

**Section 8.1 DUTY AND AUTHORITY TO OBTAIN.** The Association shall use its reasonable efforts to obtain and maintain adequate insurance. All insurance purchased by the Association shall identify the name of the insured as the Association, singularly and as agent for the Unit Owners covered by the policy.

**Section 8.2 BASIC INSURANCE.** The Association will procure insurance covering the Condominium Property and improvements as well as all insurable Association Property, in an amount determined annually by the Board of Directors. Such insurance shall afford the following protection:

(a) **CASUALTY.** The Condominium Property, all improvements and all personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs. The Association shall also obtain Marina Operator Legal Liability Coverage in such amounts as determined by the Association Board. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude any Vessel, vehicle, trailer, equipment, inventory and any other personal property owned, supplied, located on the Property or installed by Unit Owners or tenants of Unit Owners. Insurance coverage for the personal property and the personal liability of an individual Unit Owner shall be obtained by the Owner of the Unit at the Owner's personal expense and such insurance shall not be the responsibility of the Association. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards, including windstorm coverage covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to marinas and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) FLOOD. The policy shall include replacement cost for the Property and insurable improvements, if applicable and available at reasonable cost, obtainable through the National Flood Protection Agency.

(c) LIABILITY. Comprehensive general public liability, automobile liability insurance, and protection and indemnity insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000.00 for each accident or occurrence, and \$2,000,000.00 in the aggregate per person, \$1,000,000.00 property damage, \$1,000,000.00 for protection and indemnity and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.

(d) WORKERS' COMPENSATION. If applicable, the Association shall maintain worker's compensation insurance to meet the requirements of law, including without limitation, to the extent applicable, the Longshoreman and Harbor Worker's Compensation Act.

(e) FIDELITY BONDING. The Association shall obtain and maintain blanket fidelity bonds for each person who is authorized to sign checks and the President, Vice President(s), Secretary and Treasurer of the Association in an amount not less than \$50,000.00 for each such person, but in no event less than the minimum required by the Condominium Act. The Association shall bear the cost of bonds.

(f) DIRECTORS AND OFFICERS LIABILITY INSURANCE. The Association shall obtain and maintain directors and officers liability insurance in such amounts as the Board shall deem adequate, utilizing the broad form of policy coverage for all directors and officers and, if reasonably available, committee members of the Association.

(g) MARINA OPERATOR INSURANCE. The Association may purchase and carry Marina Operator Legal Liability Insurance as the Board of Directors may determine from time to time to be in the best interests of the Association.

(h) OPTIONAL COVERAGE. The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interests of the Association and Unit Owners, including windstorm, if available and reasonable.

**Section 8.3 DESCRIPTION OF COVERAGE**. A detailed summary of the coverage included in the master policies shall be available for inspection by Unit Owners upon request.

**Section 8.4 WAIVER OF SUBROGATION**. When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group; (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

**Section 8.5 ADDITIONAL PROVISIONS**. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the