

named insureds, including all mortgagees of Condominium Parcels who have requested such information pursuant to Article XVI hereof. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may obtain an appraisal from a hazard insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

**Section 8.6 PREMIUMS.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.

**Section 8.7 INSURANCE TRUSTEE: SHARE OF PROCEEDS.** All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses in excess of \$100,000.00 shall be paid to the insurance trustee which may be designated by the Board of Directors (the "Insurance Trustee") as provided in Section 8.11 below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

(a) **INSURED PROPERTY.** Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit.

**MORTGAGEES.** Except as provided herein, no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

**Section 8.8 DISTRIBUTION OF INSURANCE PROCEEDS.** Proceeds of insurance policies received by the Association shall be distributed for the benefit of the Unit Owners in the following manner and priority:

(a) **COST OF RECONSTRUCTION OR REPAIR.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall first be paid to defray the costs thereof as elsewhere provided in this Declaration. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their Mortgagees being payable jointly by them.

(b) **FAILURE TO RECONSTRUCT OR REPAIR.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds remaining after expenses shall be allocated among the beneficial owners thereof as provided in Section 8.7 above and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their Mortgagees, and the balance, if any, to the beneficial owners. This is a covenant for the benefit of mortgagees and may be enforced by them.

CERTIFICATE. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution. Upon request of the Association, each Unit Owner shall, within five (5) days of such request, provide the name and address of any mortgagee claiming an interest in a Unit.

**Section 8.9 ASSOCIATION AS AGENT**. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

**Section 8.10 UNIT OWNERS' PERSONAL COVERAGE**. The owner of any Vessel occupying a Dry Slip Unit shall acquire and maintain individual hull and liability insurance on the Vessel and any other property lying within the boundaries of their Unit and for their personal liability arising in the use of their Unit and other areas of the Common Elements for which they have exclusive use, or for which they have an obligation to repair or replace, in amounts specified by the Association from time to time, which policy or policies of insurance shall name the Association and the Developer as additional insured. The owners of Commercial Units shall be responsible for obtaining insurance coverage for all improvements, structures, electrical, plumbing, and fixtures within the Commercial Unit Boundaries as defined in this Declaration and **Exhibit "D"**. Owners of Commercial Units are also responsible for obtaining insurance coverage for personal liability arising by the use of the Commercial Unit and over areas of the Common Elements. Each Unit Owner on an Annual basis must provide proof insurance as required by this Section to the Association.

**Section 8.11 APPOINTMENT OF INSURANCE TRUSTEE**. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

**Section 8.12 PRESUMPTION AS TO DAMAGED PROPERTY**. In the event of a reasonable dispute or reasonable lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

**Section 8.13 DEVELOPER'S INSURANCE**. For financial and other reasons, the Board of Directors may, during the period in which Developer appoints a majority of the directors, elect to provide some or all of its insurance coverage provided for in this Article by way of Developer's own master or blanket policy or policies. In such event (i) the Board of Directors shall be deemed to have fulfilled its obligation to provide the insurance described above and (ii) all persons are advised that the Association's premiums for its own insurance may increase when such insurance is obtained.

(a) **DISCLAIMER**. The parties are aware of the possibility that some if not all of the insurance required by this Declaration may not be available at all or on any reasonable basis.

## **ARTICLE IX** **RECONSTRUCTION OR REPAIR AFTER CASUALTY**

**Section 9.1 DETERMINATION TO RECONSTRUCT OR REPAIR**. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured

Property and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If seventy-five percent (75%) or more of the Insured Property is substantially damaged or destroyed ("Very Substantial Damage") and if insurance proceeds and reserves available for reconstruction are insufficient to cover the cost of reconstruction and repair of the insured property and if insurance has been obtained by the Association with respect thereto and if Unit Owners owning at least two-thirds (2/3) of the Units duly and promptly resolve not to proceed with the repair or restoration thereof and a majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the insured property other than that portion of the insured property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to that portion of the insured property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such funds all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, they shall mean that all required permits and other governmental approvals are to be applied for and diligently pursued within ninety (90) days of the date the Insurance Trustee (if appointed) notifies the Board of Directors that it holds proceeds of insurance on account of such damage (less any deductibles) at least equal to the Board of Director's estimate of the cost of such work (subject to delays in obtaining plans and other documents or data required for the application) and the diligent pursuit of such work to completion within three hundred sixty-five (365) days of the issuance of all required permits and other governmental approvals (subject to force majeure). If the Insurance Trustee (if appointed) notifies the Board of Directors that the insurance proceeds are insufficient, the aforesaid time periods shall commence upon the Association levying a special assessment for the amount of the insufficiency.

**Section 9.2 PLANS AND SPECIFICATIONS.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the improvements existing immediately prior to the casualty and the approvals under which it was constructed; or if the current codes require modification, then in accordance with the plans and specifications approved by the Board of Directors of the Association.

**Section 9.3 DISBURSEMENT.** The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided in Section 9.3(b).

(b) If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Section 9.3(a) above, but then only upon the further

approval or certification of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to a Unit Owner which is not in excess of Assessments paid by such Unit Owner into the construction fund shall not be made payable jointly to any mortgagee.

Notwithstanding the provisions herein, the Insurance Trustee, (if appointed), shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments Paid by Unit Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President or Vice President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

**Section 9.4 ASSESSMENTS.** If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Special Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the insured property shall be in proportion to all of the Unit Owners' respective shares in the Common Elements.

**Section 9.5 BENEFIT OF MORTGAGEES.** Certain provisions in this Article IX, as stated, are for the benefit of mortgagees of Units and may be enforced by any of them.

## **ARTICLE X** **CONDEMNATION**

**Section 10.1 DEPOSIT OF AWARDS WITH INSURANCE TRUSTEE.** The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors a Charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to such Unit Owner.

**Section 10.2 DISBURSEMENT OF FUNDS.** If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. Specifically, the awards shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds

held for damage to the insured property other than that portion of the insured property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to that portion of the insured property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such funds all mortgages and liens on his Unit in the order of priority of such mortgages and liens. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for such purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or, as elsewhere in this Article X specifically provided.

**Section 10.3 UNIT REDUCED BUT USEABLE.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made usable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

(a) Restoration of Unit. The Unit shall be made usable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be a Capital Improvement Assessment charged to the Class for which the Unit is a part.

(b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.

Adjustment of Shares. If the square footage of the Dry Slip Unit is reduced by the taking, the percentage representing the share in the Common Elements, Dry Slip Limited Common Expenses and Common Surplus appurtenant to the Unit shall not change. If the square footage of a Commercial Unit is reduced by the taking, the percentage representing the share in the Common Elements and Common Surplus appurtenant to the Unit shall not change, however, the percentage representing the share in the Commercial Limited Common Expenses shall be adjusted on a square foot basis.

**Section 10.4 UNIT MADE UNUSEABLE.** If the taking is of the entire Unit or so reduces the size of a Unit that it reasonably cannot be made usable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

(a) Payment of Award. The award shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so usable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the amount of the award for such Unit. The balance, if any, shall be applied to repairing and replacing the Common Elements.

Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Units Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

Adjustment of Shares. The shares in the Common Elements, Common Expenses, Limited Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:

add the total of all remaining Units of continuing Owners prior to this adjustment;

and

divide the aggregate number of all remaining Units of continuing Owners prior to this adjustment, by one (1).

The result of such division for each Unit shall be the adjusted percentage for such Unit.

Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Special Assessments against all of the Unit Owners who will continue as Unit Owners after the changes in the Condominium effected by the taking. The Special Assessments shall be made in proportion to the applicable percentage shares of those Unit Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

**Section 10.5 TAKING OF COMMON ELEMENTS.** Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

**Section 10.6 AMENDMENT OF DECLARATION.** The changes in Units, in the Common Elements and in the share in the Common Expenses and ownership of the Common Elements and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

## **ARTICLE XI** **USE RESTRICTIONS**

The use of the Condominium Property by persons other than the Developer or its designees shall be in accordance with the Rules and Regulations and the following provisions:

**Section 11.1 LAWFUL USE.** All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair upon Condominium Property shall be the same as the responsibility for the repair and maintenance of the property as expressed earlier in this Declaration.

**Section 11.2 RULES AND REGULATIONS.** Reasonable Rules and Regulations concerning the use of the Common Elements and Limited Common Elements are attached hereto and may be amended from time to time by the Board of Directors. Copies of the Rules and Regulations and amendments thereto shall be

made available by the Association to all Unit Owners and renters of Units upon request. Copies of all promulgated rules and amendments or modifications thereto shall be furnished by the Board of Directors to unit owners not less than fifteen (15) days prior to the effective date thereof. Changes in the Rules and Regulations shall not be required to be recorded in the Public Records of Sarasota County.

**Section 11.3 USE AND OCCUPANCY OF THE DRY SLIP UNITS.** Except as may be provided elsewhere in this Declaration, each Dry Slip Unit shall be used only for the storage of a Vessel(s) in seaworthy condition and under their own power. Use of a Dry Slip Unit by more than one Vessel shall be governed by the Rules and Regulations promulgated by the Association from time to time. Whenever any Dry Slip Unit is owned by a non-natural person such as, but not limited to, a corporation, partnership or other entity (other than the Developer), the agent of such entity shall designate, at the time of the closing of the purchase of the Dry Slip Unit, a representative ("Representative") who shall be entitled to make decisions concerning the occupancy and use of the Dry Slip Unit. The Unit Owner, Representative, their Guests or other persons invited by the Unit Owner or Representative, who enter the Property, shall, by virtue of such entrance, be deemed to have entered into a covenant in favor of the Association agreeing to comply with the terms and provisions of this Declaration, the Articles of Incorporation, By-Laws and the Rules and Regulations. No persons, other than the Dry Slip Unit Owner (or the Representative), or their authorized lessee, shall be entitled to occupy a Dry Slip Unit.

**Section 11.4 COMMERCIAL ACTIVITIES WITHIN DRY SLIP UNITS.** Except as otherwise provided below, no activities associated with drilling, mining, manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever shall be conducted or carried on upon any Dry Slip Unit or any part thereof. The foregoing shall not apply to the sales or leasing activities of Developer, nor shall the foregoing prohibit or interfere with the right of Developer to utilize or lease Dry Slip Units owned by Developer for commercial purposes. Notwithstanding the foregoing, a Dry Slip Unit Owner may use his Dry Slip Unit for commercial purposes approved by the Developer or Association provided that (i) no Vessel, boat or watercraft sales office shall be permitted on or within a Dry Slip Unit and (ii) the Developer has agreed to the commercial use of a Vessel prior to or in connection with the sale of the Dry Slip Unit by Developer. This restriction shall not be construed to limit or prohibit rental of Dry Slip Units in accordance with the terms of this Declaration. Rentals are permitted without regard to whether rentals might otherwise constitute a commercial use or activity.

**Section 11.5 COMMERCIAL UNITS.** The Commercial Units shall be occupied only by businesses that are allowed by the government agencies with jurisdiction over the Condominium. Upon formation of the Condominium, the Owners of the Commercial Units shall form a committee amongst themselves, which shall be responsible for establishing use restrictions and types of businesses permissible within the Commercial Units, provided, the use restrictions do not interfere with the use of the Dry Slip Units.

**Section 11.6 PETS.** No pets or other animals shall be permitted in or about the Property except for the purpose of embarking and disembarking from Vessels. All pets brought into the Property shall be leashed (when not on a Vessel) and attended to at all times. Pet owners are responsible for cleaning up after their pets. The Board of Directors shall have the right to order the removal of any pet which is considered a nuisance, in the Board's sole and absolute discretion. In such event, the Board of Directors shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property.

**Section 11.7 VESSEL STORAGE.**

(a) The size and dimensions of a Dry Slip Unit do not necessarily mean that a Vessel of that size can be stored in the Dry Slip Unit due to the presence of Common Elements, depth requirements and projections (including all bowsprits, booms, pulpits, and other projections and overhangs). The Vessel(s) (including all platforms, box spirals and other protrusions) may not extend beyond the boundaries

of the Dry Slip Unit into other Dry Slip Units or Common Elements. Dry Slip Unit Owners shall comply with all Rules and Regulations relating to the storing of Vessels in the Dry Slip Units. The Association reserves the right to approve the size and weight of any boat which may be stored within the Condominium Property, so as to assure the safe use of all facilities. The size of each Dry Slip Unit is described in **Exhibit "D"** attached hereto. No vessel may be stored whose maximum width is more than twelve (12) inches (six (6) inches on either side) less than the total clear width of the Unit in question. No vessel may be stored whose maximum height from keel to top most projection is more than the total clear height of the Dry Slip Unit in question less eighteen (18) inches. No vessel may be stored whose overall length, including any equipment thereto attached, from the foremost part to its rearmost part (length overall; "LOA") is greater than six (6) inches less than the length of the Dry Slip Unit in question. No Vessel may be stored that cannot be safely lifted by the forklifts owned by the Association in the sole discretion of the Association. It shall be the responsibility of the Unit Owner to verify with the Association prior to taking title to the Dry Slip Unit that the Vessel to be stored by the Unit Owner in the Dry Slip Unit meets all the requirements of this Declaration; complies with all manufacturers limitations and requirements and complies with all governmental regulations relating to the Vessel.

(b) All Vessels stored in Dry Slip Units shall be removed from the water and stored using a fork-lift system. Notwithstanding the above, if applicable, all mono-hulled Vessels shall be removed from the water and stored pursuant to any specifications set forth by the manufacturer. Catamaran Vessels shall only be removed from the water and stored through the use of a fork-lift system, if the use of a fork lift system is approved or specified by the manufacturer.

**Section 11.8 HURRICANE AND HIGH WIND THREAT.** During hurricane and other high velocity wind threats, each Dry Slip Unit Owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency. If a Dry Slip Unit Owner's Vessel sinks as a result of a storm, or for any other reason, the Dry Slip Unit Owner must remove the sunken Vessel from the Property immediately after the occurrence of such event and, if not so removed within twenty-four (24) hours after the sinking, the Association may (but shall not be obligated to) remove the sunken Vessel and impose a Special Assessment against the Dry Slip Unit Owner for the cost of such removal. Each Dry Slip Unit Owner agrees to indemnify, defend, hold harmless and save the Developer, the Association, their agents, employees and designees for and from any and all loss or damage incurred in connection with a hurricane or high winds, and the exercise or non-exercise of the Developer's or Association's rights hereunder. Notwithstanding anything contained herein to the contrary, the Association may also levy fines in accordance with the Rules and Regulations if any Dry Slip Unit Owner fails to abide by the provisions of this section. Notwithstanding the right of the Association to enforce the foregoing requirements, the Association shall not be liable to any Dry Slip Unit Owner or other person or entity for any damage to persons or property caused by a Dry Slip Unit Owner's failure to comply with such requirements. Any damage caused to a Vessel or Condominium Unit by the effects of weather shall be the sole responsibility of the Vessel owner. The Association will not assume any responsibility for damage resulting from acts of God such as high winds, tides, lightning, etc.

**Section 11.9 EFFECTS OF WEATHER.** The Association is not responsible for any damage caused to a Vessel or Unit by the weather. This includes, but is not limited to hurricanes, tornadoes, freezes, rain, lighting, flooding or high winds.

**Section 11.10 OPEN FIRES.** No open fires shall be permitted on any Vessel or the Property, except in any areas, if any, which may be approved for such use by the Board, and no charcoal, starting fluids or similarly used substances shall be kept on any Vessel or portion of the Property.

**Section 11.11 CLEANING OF FISH.** Fish or other marine life of any kind shall not be cleaned, prepared or processed in any manner upon any Vessel traversing or mooring within the Property, and may only be

done in designated areas of the Condominium Property, and/or by dock hands employed by the Association, unless and to the extent otherwise stated in the Rules and Regulations.

**Section 11.12 PUBLIC AUTHORITIES.** Notwithstanding anything contained herein to the contrary, Developer and Association may permit police, U.S. Coast Guard, Sarasota County, the Florida Marine Patrol and similar watercraft of public authorities to tie up to and be kept on any portion of the Property.

**Section 11.13 SIGNS.** Except in connection with development, sales, leasing or resale of Dry Slip Units by Developer, no signs, advertisements or notices of any kind, shall be displayed to the public view on any Dry Slip Unit, any Vessel or on the Property, without the prior written approval of the Board; provided that the Board shall approve signs offering Vessels for sale or for permitted charter or other permitted commercial uses if same do not exceed twenty-four inches (24") by thirty-six inches (36") in size. This restriction shall not apply to Dry Slip Units (or Vessels stored in Dry Slip Units) owned by the Developer or used by a designee of Developer and shall not prohibit lettering, registration numbers, flags and other displays customarily found on recreational watercraft. The foregoing shall not prohibit Commercial Unit Owners from using the Commercial Limited Common Element signage affixed to the Commercial Buildings and Dry Rack Storage Buildings in accordance with the Rules and Regulations attached hereto, which may be amended from time to time.

**Section 11.14 NUISANCES PROHIBITED.** A Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will increase the rate of insurance on the Condominium Property or which will obstruct or interfere with the rights of other Unit Owners or annoy them by unreasonable noise or otherwise; nor shall the Unit Owner commit or permit any nuisances, immoral or illegal acts in or about the Condominium Property.

**Section 11.15 MARINA APPEARANCE.**

(a) The M.A.B. reserves the right to approve all Vessels which are stored within the Condominium Property. The minimum standards for such approval shall be the compliance of the Vessel with the requirements of this Declaration and with those adopted by the Board. The granting of approval for a Vessel shall not, however, be deemed to create any liability of Developer, the M.A.B. or the Association or of their officers, directors or members as to: (i) the unsafe or unseaworthy condition of any Vessel or any damage to persons or property arising therefrom; or (ii) permission for the Vessel to extend beyond the boundary of the Dry Slip Unit.

(b) The M.A.B. shall be a permanent committee of the Association and shall administer and perform the functions described below, provided that the Board may designate itself as the M.A.B. The M.A.B. shall consist of three (3) persons unless changed by the Board. Prior to the initial sale of all of the Dry Slip Units, all of the members of the M.A.B. shall be appointed by Developer, and may or may not be members of the Association. After the initial sale of all of the Units, the members of the M.A.B. shall be appointed by the Board of Directors and shall be members of the Association. Developer or the Board of Directors shall provide for the terms of the members of the M.A.B. and shall determine which member of the M.A.B. shall serve as its chairman. A majority of the M.A.B. shall constitute a quorum to transact business in any meeting, and the action of a majority present shall constitute the action of the M.A.B.

Neither Developer, the directors or officers of the Association, the member of the M.A.B., nor any person acting on behalf any of them, shall be liable for any costs or damages incurred by any Dry Slip Unit Owner or any other party due to any mistakes in judgment, negligence or any action of the M.A.B. in connection with approval or disapproval of any proposed Improvements or any Vessel. Each Dry Slip Unit Owner and occupant of the Dry Slip Unit, by acquiring title or an interest therein, or by assuming possession thereof, agrees that he shall not bring any action or suit against Developer, the directors or officers of the

Association, the members of the M.A.B. or their respective agents, in order to recover any damages caused by the actions of the M.A.B. The Association shall indemnify, defend and hold harmless the M.A.B. and each of its members from all costs, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the M.A.B. or its members while acting as M.A.B members except where the M.A.B. or its members are guilty of gross negligence or willful misconduct.

**Section 11.16 GARBAGE AND TRASH DISPOSAL.** No garbage, refuse, trash or rubbish shall be deposited except in trash receptacles as permitted by the Association. The requirements from time to time of the County or other applicable jurisdiction for disposal or collection of solid waste shall be followed. The equipment, trash bins or trash cans for the storage or disposal of such material shall be provided by the Association at various locations on the Condominium Property. The Association shall be responsible for keeping the equipment in a clean and sanitary condition and for disposing of all garbage, refuse, trash or rubbish in compliance with all applicable requirements.

**Section 11.17 SANITARY EQUIPMENT.** Each Vessel must have such sanitary equipment on board as is required by all applicable federal, state and local authorities. No Vessel shall be deemed to be in compliance with this paragraph if such equipment is not fully operational or if such equipment such as a holding tank or approved marine sanitary system is bypassed or altered contrary to such requirements. The Association shall have the right to board all Vessels upon reasonable notice to inspect same for compliance with this requirement. In no event whatsoever shall an Owner discharge sewage or any other substance (other than bilge water) into any waters of the Condominium or waters adjacent to the Condominium.

**Section 11.18 LAUNDRY.** No portion of the Property, and no Vessel, shall be used for the displaying or hanging of laundry.

**Section 11.19 SWIMMING.** No recreational swimming shall be permitted within any waters of the Condominium or waters adjacent to the Condominium. Diving shall be permitted for the purpose of maintenance and repair of Vessels or of the Condominium Property.

**Section 11.20 PERSONAL WATER CRAFT.** No tenders, jet skis, wet bikes or wave-runners may be kept and operated within the Marina, unless specifically approved in writing by the Association Board. The Association shall approve storage and operation of such personal watercraft if it determines, in its sole and absolute discretion, that such storage and operation will not pose a safety risk to other members of the Condominium.

**Section 11.21 VESSEL REQUIREMENTS.** All Vessels must: (i) be fully equipped and operable for operation on the sea in accordance with the standards imposed by the U.S. Coast Guard (except during a period of temporary repairs); and (ii) comply with all licensing and registration requirements. Each Vessel (including tenders, dinghies and personal watercraft) shall be registered with the Association on a fully completed form provided by the Association.

**Section 11.22 TEMPORARY REMOVAL OF VESSELS.** From time to time, Developer or the Association may require that all Vessels and Improvements to the Property be removed for the maintenance and repair of the Property at which time the Units may be entered for such period as may be necessary.

**Section 11.23 HAZARDOUS OR TOXIC WASTE.** The handling, storage, transportation and disposal of hazardous or toxic materials shall be prohibited within the Condominium Property; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum products used by an Owner in connection with the operation of his Vessel. In addition, this shall not prohibit the proper handling, storage, and transportation of such materials in connection with business operated within and with respect to any commercial units and/or fueling facilities, as long as such handling, storage and transportation is done in

accordance with applicable laws. The Association shall have the right to immediately remove, or cause the removal of, any non-permitted hazardous or toxic material within the Condominium Property. Each Unit Owner shall ensure that any bilge water pumped into the waters of or directly adjacent to the Condominium does not contain any petroleum or other hazardous or toxic materials. For purposes of this paragraph, hazardous or toxic materials shall be as defined by Federal, Florida and common law. Each Owner shall indemnify, defend and save Developer, the Association and any management agent harmless from and against any damages, claims and liability resulting from or arising out of the violation of any of the requirements of this paragraph by such Owner. All expenses incurred by Developer or the Association in connection with compliance with all environmental and related laws shall be a Common Expense, subject to the foregoing indemnification. The Unit Owner shall be considered in violation of this Section 11.22 if the malfeasance, misfeasance or non-feasance of the Unit Owner, Representative, Guests, invitees, agents, contractors or others claiming to be on the Condominium Property under authority of the Unit Owner or Representative create a situation in violation of any State or Federal hazardous, toxic or environmental laws or regulations.

**Section 11.24 GUEST RESTRICTIONS.** Each Dry Slip Unit Owner shall file with the Association information, as deemed necessary by the Board of Directors, on any Guests. A Dry Slip Unit Owner is responsible and liable for acts and omissions of Guests and shall cause Guests violating this Declaration or the Rules and Regulations of the Association to be removed from and prohibited from returning to the Condominium Property.

**Section 11.25 NUMBER OF VESSELS.** Except as specifically provided in Section 11.20 above, only one (1) primary Vessel may be kept in each Dry Slip Unit.

**Section 11.26 PROTRUSIONS.** No Vessel or any portion thereof or attachment thereto (e.g., bow platform, dinghy lift, or dive platform) shall protrude beyond the boundary of the Dry Slip Unit. The Board of Directors may grant a variance from this restriction as to a particular Vessel for good cause shown, taking into account, however, the clearance needed for the safe operation of the forklifts (particularly ingress and egress to and from other portions of the Property) and any criteria adopted by the M.A.B.

**Section 11.27 ADDITIONAL PROTECTIVE COVENANTS.** Developer may include in any contract or conveyance documents for any Unit, additional protective covenants and restrictions not inconsistent with those contained herein, provided that any such covenants or restrictions may be more restrictive than those contained herein.

**Section 11.28 LEASING.** Subject to the provisions hereof, a Unit Owner is permitted to lease his or her Unit, provided however, that such Unit Owner provides the Association with notice of same, together with a copy of the lease between the Unit Owner and the tenant prior to the tenant's taking possession. Each lease shall be in writing and shall specifically provide (or if it does not shall automatically be deemed to provide) that a material condition of the lease shall be tenant's full compliance with the covenants, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any and all rules and regulations adopted by the Association from time to time (before or after execution of the lease and or any modifications or extensions of same). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements or Limited Common Elements resulting from acts or omissions of tenants (as determined by the Association in their sole and absolute discretion) and to pay any claim for injury or damage to property caused by the negligence of the tenant. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. If so required by the Association, any tenant wishing to lease a Unit may be required to place in escrow with the Association, a reasonable sum, not to exceed the equivalent of one month's rental, which may be used by the Association to repair any damage to Common Elements or Limited Common Elements and/or Association Property resulting from acts or omissions of

tenants. Payments of interest, claims against the deposit, refunds or disputes regarding the disposition of the deposit shall be handled in the same fashion as set forth in Part II of Chapter 83, Florida Statutes. No lease of a unit shall be for a period of less than seven (7) months, and no Unit shall be leased more than two (2) times in any calendar year.

**Section 11.29 PARKING.** Except as otherwise provided in Section 2.8, all parking shall be available for common use of the Unit Owners and their guests and invitees. The Association may in the future enact additional rules and regulations restricting parking to parking pass holders to avoid use of parking by any party other than a Unit Owner and their guests and invitees.

**Section 11.30 EFFECT ON COMMERCIAL UNITS.** Notwithstanding anything contained herein to the contrary, the provisions of this Article XI shall not be amended, altered or modified in any manner which affects the Commercial Units without the consent of a majority of the total voting interests of the Commercial Unit Owners from time to time.

**Section 11.31 NEGLIGENCE AND NON-COMPLIANCE:** Neither the Association nor any agent of Association shall be responsible for loss or damage to Vessels in the Condominium, caused by the negligence or noncompliance of a Unit Owner, or its guests, tenants or invitees. Each owner of a Vessel shall be responsible for damage to other boats in the Condominium and for damage to any Common Elements or facilities (including, without limitation, docks, pilings, piers and bulkheads) of the Condominium as a result of any actions by his Vessel. Each Unit Owner agrees to indemnify, defend, and hold harmless the Developer, the Association, their agents, employees and designees for and from any and all loss or damage incurred in connection with its negligence or non-compliance.

## **ARTICLE XII** **COMPLIANCE AND DEFAULT**

Each Unit Owner, each lessee and other invitee shall be governed by, and shall comply with the provisions of, the Condominium Act as amended from time to time, the Condominium Documents and the Rules and Regulations as amended from time to time.

**Section 12.1 REMEDIES.** Failure to comply shall be grounds for relief, which relief may include, but shall not be limited to:

(a) Levy of a reasonable fine against a Unit provided, however, that no fine may exceed \$100.00 per violation. An additional fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000.00. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner, and if applicable, his lessee or invitee. The hearing must be held before a committee of other Unit Owners. If the committee does not agree with the fine, the fine may not be levied. No fine will become a lien against a Unit; or

(b) An action to recover damages or injunctive relief or both. Injunctive relief shall not require a bond.

**Section 12.2 COSTS AND FEES.** Any actions may be maintained by the Association or any Unit Owner. In any such proceeding, including appeals, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees.

**Section 12.3 NO WAIVER OF RIGHTS.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other instances.

**Section 12.4 LIEN RIGHTS.** The provisions of this Article 8 shall not limit or impair the right to impose, enforce and foreclose upon liens in connection with unpaid Assessments or otherwise, to the extent otherwise permitted under this Declaration or the Condominium Act.

**ARTICLE XIII**  
**AMENDMENTS**

Amendments to any of the Condominium Documents shall be in accordance with the following:

**Section 13.1 AMENDMENT BY UNIT OWNERS.**

(a) An amendment to this Declaration of Condominium may be proposed by the Board of Directors acting upon a vote of a majority of the Directors or by Unit Owners owning not less two-thirds (2/3) of the Voting Interests, whether by vote at a meeting of members or by an instrument in writing signed by them. A proposal to amend this Declaration of Condominium shall contain the full text of the provision to be amended. New words shall be inserted in the text and underlined or highlighted and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it shall not be necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation shall be inserted immediately preceding the proposed amendment in substantially the following language:

“Substantial re-wording of Declaration of  
Condominium. See Article \_\_\_\_\_ for present text.”

(b) The proposed amendment shall be transmitted to the President of the Association, or in such person's absence, to the Vice President of the Association, who shall thereupon call a special meeting of the Unit Owners for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by such officer of the proposed amendment. It shall be the duty of the Secretary or other appropriate officer of the Association to give to each Unit Owner written notice of the special meeting, together with a copy of the proposed amendment in the form above provided, which notice shall be delivered or mailed not less than fourteen (14) days nor more than thirty (30) days before the date set for the special meeting. If mailed, the notice shall be deemed properly given when deposited in the United States mail addressed to the Member at his, her or its post office address as it appears on the records of the Association. Any Unit Owner may, by written waiver of notice signed by such Unit Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Unit Owner. Notice of the meeting shall be posted in a conspicuous place on the Common Elements at least fourteen (14) days before the special meeting.

(c) At the special meeting called to consider a proposed amendment, such amendment must be approved by an affirmative vote of Unit Owners owning not less than two-thirds (2/3) of the Voting Interests. In the alternative, a proposed amendment may be adopted without the holding of a special meeting if within ninety (90) days from the mailing or delivery thereof to all Unit Owners the amendment is approved in writing by members of the Association owning not less than two-thirds (2/3) of the Voting Interests. If the amendment shall be adopted by either method, such amendment shall be transcribed and certified by the President and Secretary of the Association as having been so adopted, the certificate of amendment shall include the recording data identifying this Declaration of Condominium, shall be executed in the form required for execution of a deed and shall be recorded in the Public Records of Sarasota County, Florida

within ten (10) days from the date of adoption and shall become effective on the date of recording. A copy of the amendment in the form in which it has been placed of record shall be delivered to all Unit Owners, but delivery of such copies shall not be a condition precedent to the effectiveness of the amendment. At any meeting held to consider a proposed amendment, the written vote of any Unit Owners shall be recognized if the Unit Owners are not in attendance at the meeting or represented by limited proxy, provided such written vote is delivered to the Secretary of the Association prior to the meeting or at such meeting.

**Section 13.2 AMENDMENT BY THE DEVELOPER.** Except as set forth in Section 2 or Section 5 of this Article, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations of the Association may be amended by the Developer alone, without requiring the consent of any other party to effect any change whatsoever.

**Section 13.3 ADDITIONAL REQUIREMENTS FOR CERTAIN AMENDMENTS.**

Notwithstanding anything contained in this Declaration of Condominium to the contrary:

(a) Except as otherwise provided in Section 2.10 or Section 10.6, no alteration in the fractions of ownership in Common Elements appurtenant to each Unit, alteration of the basis for the sharing of Common Expenses and apportionment of Assessments, alteration of the basis of ownership of Common Surplus, or alteration or modification of the appurtenances to any Unit, shall be made without the joinder in the amendment of the Unit Owners of the affected Units and all record owners of liens on such affected Units and unless a majority of all Unit Owners approve the amendment; provided that amendments reflecting changes made per Section 2.10 or Section 3.3 shall not require such approval as long as the aggregate percentage shares appurtenant to the affected Units remains the same.

(b) Alterations, amendments or modifications under and to this Declaration of Condominium shall require the consent of some or all Institutional First Mortgagees, if, and only to the extent that, pursuant to F.S. 718.110(11), such alteration, amendment or modification would materially affect the rights or interest of a respective Institutional First Mortgagee and such consent is required by such law.

(c) Notwithstanding anything herein to the contrary, the provisions of this Declaration shall not be amended, altered or modified in any manner that materially or adversely affects the Commercial Units without the consent of a majority of the total voting interests of the Commercial Unit Owners.

No alteration, amendment or modification of the rights and privileges of the Developer under this Declaration of Condominium or any other Condominium Document, nor any amendment thereto shall be made which would adversely affect the sale of Units owned by the Developer. In any case, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer without the prior written consent of the Developer.

**Section 13.4 AMENDMENT IN NATURE OF CORRECTION.** Whenever it shall appear that there is a defect, error or omission in any of the Condominium Documents or in order to comply with applicable laws or requirements of government entities, the amendment may be adopted by the Board of Directors alone.

**Section 13.5 DEVELOPER AMENDMENTS.** Until Developer no longer owns any portion of the Condominium Property and except as otherwise provided by law in F.S. 718.110(2), the Developer specifically reserves the right, without the joinder of any person, to make such amendments to the Declaration and its exhibits or to the plan of development, as may be required by any lender, governmental

authority or as may be, in its judgment, necessary or desirable. This paragraph shall take precedence over any other provision of this Declaration or its exhibits.

The Declaration and all exhibits hereto, where applicable, may be amended unilaterally by the Developer for the purposes set forth and pursuant to Section 718.110(5), Florida Statutes, to correct scrivener's errors.

**Section 13.6 WRITTEN AGREEMENTS.** Any approval of Unit Owners on any matter called for by this Declaration, any of the other Condominium Documents, or any action to be taken at a meeting of Unit Owners is hereby expressly allowed to be taken instead by written agreement, without a meeting (which agreement may be in counterparts), subject to F.S. 718.112(2)(d)(4) and F.S. 617.0701.

#### **ARTICLE XIV** **TERMINATION**

The termination of the Condominium shall be carried out in accordance with the following:

**Section 14.1 BY AGREEMENT.** The Condominium may be caused to be terminated at any time by written agreement of all Unit Owners and of the Institutional First Mortgagees.

#### **Section 14.2 PROCESS OF TERMINATION.**

(a) The termination of the Condominium shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The Certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as the termination trustee, and shall be signed by the trustee (the "Termination Trustee") indicating willingness to serve in that capacity.

(b) The recording of a Certificate of Termination shall automatically divest the Association of title to all Association Property, and divest all Unit Owners of legal title to their respective Condominium Parcels, and shall vest legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the Condominium Property and Association Property, without need for further conveyance. Beneficial title to the former Condominium and Association Property shall be transferred to the former Unit Owners as tenants in common, in the same undivided shares as each Unit Owner previously owned in the Common Elements, without further conveyance. Each lien encumbering a Condominium Parcel shall be automatically transferred to the equitable interest in the former Condominium Property and Association Property attributable to the Unit encumbered by the lien, with the same priority.

**Section 14.3 WIND-UP OF ASSOCIATION AFFAIRS.** The termination of the Condominium shall not, by itself, terminate the Association. The former Unit Owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, the Articles of Incorporation, the By-Laws and the Condominium Act, to the extent necessary to, and for the sole purpose of, winding up the affairs of the Association in accordance with this Section.

**Section 14.4 TRUSTEE'S POWERS AND DUTIES.** The Termination Trustee shall hold legal title to the Condominium or Association Property or both for the benefit of the former Unit Owners and their successors assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former Unit Owners approve a sale of the Condominium or Association Property or both as provided in this Section, the

Termination Trustee shall have the power and authority to convey title to the purchaser(s), and to distribute the proceeds in accordance with the provisions of this Section. The Termination Trustee may charge a reasonable fee for acting in such capacity, and such fee, as well as all costs and expenses incurred by the Termination Trustee in the performance of its duties, shall be paid by the Association or taken from the proceeds of the sale of the former Condominium and Association Property, and shall constitute a lien on the Condominium or Association Property or both superior to any other lien. The Termination Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Trustee unless such liabilities are the result of gross negligence or willful misconduct.

**Section 14.5 RELIANCE.** The Termination Trustee may rely upon the written instructions and information provided to it by the officers, directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.

**Section 14.6 PARTITION: SALE.** Following termination, the former Condominium Property and Association Property may be partitioned and sold upon the application of any Unit Owner. If following a termination, at least two thirds (2/3rds) of the Voting Interests agree to accept an offer for the sale of the Condominium or Association Property or both, the Board of Directors shall notify the Termination Trustee, and the Termination Trustee shall complete the transaction. In such event, any action for partition of the Condominium or Association Property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the Unit Owners have not authorized a sale of the former Condominium and Association Property within one (1) year after the recording of the Certificate of Termination, the Trustee may proceed to sell the Condominium or Association Property without agreement by the Association or the former Unit Owners. The net proceeds of the sale of any of the Condominium or Association Property or assets of the Condominium or the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

**Section 14.7 NEW CONDOMINIUM.** The termination of the Condominium shall not bar creation of another Condominium including all or any portion of the Condominium or Association Property.

**Section 14.8 PROVISIONS SURVIVE TERMINATION.** The provisions of this Section 8 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the By-Laws and Articles of Incorporation, and shall have the power to levy Assessments to pay the costs and expenses of the Termination Trustee and of maintaining the Condominium or Association Property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former Condominium Property, are Common Expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former Unit Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

## **ARTICLE XV** **PROVISIONS PERTAINING TO THE DEVELOPER**

**Section 15.1 CONSTRUCTION, DEVELOPMENT, SALES.** In addition to all other rights granted or reserved to the Developer in this Declaration of Condominium, the Articles of Incorporation and the By-Laws of the Association, the Developer shall have the right to conduct on the Condominium Property, all operations necessary in its sole discretion to complete the construction, reconstruction and development of the Condominium and to market, sell and lease the Units and other marina facilities, within the Condominium. Irrespective of any restriction or regulation, the Developer or its agents may enter upon the Condominium Property and operate thereon such vehicles and equipment as shall be necessary in the sole

discretion of the Developer or its agents for such purposes. The Developer shall have the right to use any Developer owned Unit or other portion of the Condominium Property in connection with the Developer's program to sell or lease Units and shall have the right to place upon the Common Elements signs designating the Developer's sales office and advertising Units owned by the Developer for sale or lease. Such signs may be placed in such locations and shall be of such size and character as the Developer may determine.

**Section 15.2 REPRESENTATION ON BOARD OF DIRECTORS: VOTING BY DEVELOPER.** The Developer shall have the right to select and designate members of the Board of Directors of the Association, and to remove and replace any person or persons selected by the Developer as a member of the Board of Directors, as provided in the Articles of Incorporation and By-Laws. No representative of the Developer serving on the Board of Directors of the Association shall be required to disqualify herself or himself from voting on any contract or other matter between the Developer and the Association notwithstanding any pecuniary or other interest of the Developer. The Developer shall not be disqualified from voting on any matter which may come before the membership of the Association with respect to any contract or other matter between the Developer and the Association, notwithstanding any pecuniary or other interest of the Developer. Directors appointed by Developer shall not be required to be owners of Units in the Condominium. At least a majority of the Board of Directors who are elected by the members of the Association shall be owners of Units in the Condominium or shall be authorized representatives, officers or employees of a corporation or other organization which is the owner of a Unit.

**Section 15.3 DISSOLUTION OR MERGER OF DEVELOPER.** In the event of the dissolution of the Developer or its merger or consolidation into any other entity which survives the Developer, all rights of the Developer under this Declaration of Condominium or any other Condominium Document shall pass to and maybe exercised by its successor or survivor.

**Section 15.4 ASSIGNABILITY OF THE DEVELOPER'S STATUS.** The status, position and rights of the Developer under this Declaration of Condominium, the Articles of Incorporation and the By-Laws of the Association are freely assignable, in whole or in part, and any party to whom assigned shall be entitled to exercise all of the rights so assigned. The Developer shall have the right to appoint and designate a successor who shall succeed to the status, position and all of the rights and privileges, or a portion of such rights and privileges, of the Developer under this Declaration of Condominium by a written instrument identifying and designating such successor executed in recordable form and, upon the recording of such instrument in the Public Records of Sarasota County, Florida, the party named as successor shall succeed to all rights, privileges, exemptions and immunities of the Developer under this Declaration of Condominium so assigned and transferred.

**Section 15.5 ASSESSMENT FOR CAPITAL IMPROVEMENTS: ACTIONS DETRIMENTAL TO SALES.** Notwithstanding any other provision of this Declaration of Condominium or any other Condominium Document, so long as the Developer holds a Unit or Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

- (a) Assessment of the Developer as a Unit Owner for capital improvements or capital additions; and
- (b) any action by the Association which would be detrimental to the sales of Units by the Developer or the completion of construction of the Condominium by the Developer, including such use of unsold Units and Common Elements and Association Property as may facilitate completion, sale, maintenance of a sales office, showing of the Property and display of signs; provided, an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed detrimental to the sales of Units.

**Section 15.6 CHANGES IN UNITS.** The Developer shall have the right, without the vote or consent of the Association or other Unit Owners, to make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, including physically combining Units. However, in no event shall any such alteration, addition, improvement or combination interfere with the Common Elements or Limited Common Elements or the provision of utility service to any Unit, the Common Elements or Limited Common Elements.

## ARTICLE XVI RIGHTS OF MORTGAGEES

**Section 16.1 RIGHTS TO INFORMATION.** Upon receipt by the Association from any Institutional First Mortgagee, guarantor or insurer of a copy of the mortgage held by such mortgagee, guarantor or insurer on a Unit, together with a written request from such mortgagee, or a guarantor or insurer of such mortgagee specifying the address to which the following items are to be sent, the Association may send to such mortgagee, insurer or guarantor the following, and for which the Association may charge a reasonable fee:

(a) a copy of a financial statement of the Association for the immediately preceding fiscal year;

(b) written notice of the cancellation or termination by the Association of any policies of insurance covering the Condominium Property or the Association Property or any improvements thereon, or any fidelity bonds of the Association, except when the reason for the termination or cancellation of the insurance policy or bond is to change insurance companies or because the policy or bond is not needed or is not available;

(c) written notice of any damage or destruction to the Common Elements, Limited Common Elements or Condominium Property or the Association property which affects a material portion of the Common Elements, Limited Common Elements or Condominium Property or the Association Property or the Unit securing its mortgage;

(d) written notice of a condemnation or eminent domain proceeding affecting a material portion of the Condominium Property or the Unit securing its mortgage; and

written notice of failure by the Owner of a Unit encumbered by a first mortgage held by such institutional mortgagee, guarantor or insurer to pay any Assessments when such failure or delinquency has continued for a period of sixty (60) days or longer.

**Section 16.2 FAILURE TO NOTIFY.** The failure of the Association to send any such notice to any such mortgagee, guarantor or insurer shall have no effect on any meeting, action or thing which was to have been the subject of such notice nor affect the validity thereof and shall not be the basis for liability on the part of the Association.

## ARTICLE XVII ASSOCIATION AGREEMENTS

Subject to limitations contained in this Declaration and the Act, the Association may contract with any Person for the management of all or part of the Property for purposes of carrying out all or a portion of the maintenance, operational and leasing services provided for in the Declaration and is authorized to enter

into agreements to acquire leaseholds, memberships, and other possessory or use interest in lands or facilities. Such interests need not be contiguous to the Property if they are intended to provide enjoyment, recreation, or other use or benefit to the Unit Owners.

### **ARTICLE XVIII** **VOTING**

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 Bylaws.

### **ARTICLE XIX** **DISCLAIMER OF WARRANTIES**

Except as to those warranties given in writing by the Developer and as to those warranties that cannot be disclaimed, Developer has not made, makes no, and hereby disclaims, any and all express or implied warranties regarding the Units (including limited and common elements) including but not limited to those of design, construction, furnishing and equipment, and as to its material, workmanship or capacity, including implied warranties of merchantability and fitness for a particular purpose. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed. All Unit Owners, by virtue of acceptance of title to their respective Units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

### **ARTICLE XX** **INDEMNIFICATION OF OFFICERS AND DIRECTORS**

The Association shall indemnify its directors, officers and committee members and may indemnify its employees and agents, to the fullest extent permitted by law against any and all expenses or liabilities incurred in defending civil, criminal or administrative proceedings resulting from the performance or attempted performance in good faith of their offices on behalf of the Association or its members. Such indemnification shall include advancement of expenses prior to the final disposition of any such proceedings and amounts paid in settlement of such proceedings, and such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any document other than this Declaration of Condominium, by vote of the members or disinterested directors, or otherwise. This indemnification shall continue as to a person who has ceased to be a director, officer, committee member, employee or agent, and shall inure to the benefit of his or her heirs and personal representatives, and an adjudication of liability shall not affect the right to indemnification of those indemnified.

### **ARTICLE XXI** **SECURITY; LIMITED ACCESS TO CERTAIN UNITS**

The Association may maintain or support certain activities in the Condominium designed to make the Units and the occupants safer and more secure than they otherwise might be. However, the Developer and the Association shall have no obligation to undertake, maintain or support such activities nor shall they and their respective predecessors, successors, assigns, employees, officers, directors, affiliates, contractors or agents be considered insurers or guarantors (collectively, the "Companies") of security in the Condominium nor be held liable for any loss or damage by reason of failure to provide adequate security or the

ineffectiveness of any security measures undertaken. All Unit Owners and occupants of any Unit, and all guests and invitees of any Unit Owner or occupant, acknowledge that the Developer, the Association and the Companies do not represent or warrant that any fire protection system, burglar alarm system or other security system or device installed or employed may not be compromised or circumvented, that any such system will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, nor that any such system will in all cases provide the detection or protection for which the system is designed or intended. Unit Owners and occupants of any Unit and their guests and invitees are hereby put on notice of the provisions of this Section and acknowledge by taking title or occupancy that the Developer, the Association and the Companies are not insurers and that each Dry Slip Unit Owner and occupant and his, her or its tenants, guests and invitees assume all risks for loss or damage to persons, Units and the contents of Units and property brought on the Condominium. The Developer, the Association and the Companies make no representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, with respect to any fire or burglar alarm system or other security system installed or employed in the Condominium, and, without limitation, further disclaims any obligation to provide fire protection sprinklers for each Unit or in any other manner except as required by law.

Notwithstanding anything else set forth herein, the Developer and Association may reasonably limit access to the Units after normal business hours for security or other proper purposes. In addition, access to the Dry Slip Units will at all times be limited to times when the Dry Rack Storage Building is open for operations during normal business hours and as otherwise established by the Rules and Regulations. Except as otherwise established in the Rules and Regulations, Dry Slip Unit Owners are not entitled to enter the Dry Rack Storage Building to inspect their Unit or any Vessel stored therein or for any other reason at any time.

#### **ARTICLE XXII** **DRY SLIP UNIT DIMENSIONS**

The dimensions of the Dry Slip Units as set forth herein and on the Condominium Plot Plan are approximate and may be increased or decreased as a result of the construction or reconstruction of the racks, Dry Rack Storage Building and other facilities. The Developer shall not be liable to any Dry Slip Unit Owner for minor variations in the dimensions of any Dry Slip Unit.

#### **ARTICLE XXIII** **PERMITS AND MANATEE PROTECTION**

**Section 23.1 GENERAL.** The Association, Unit Owners and all others on the Condominium Property shall at all times comply with the requirements of all governmental permits and approvals, submerged land leases or any other governmental requirements respecting the Condominium and, in general, the operation of the marina facilities and property and waterways within and adjacent to the Condominium Property, including without limitation all requirements relating to the protection of the West Indian Manatee.

**Section 23.2 SIGNAGE.** If required by any applicable governmental authorities, the Association shall at all times maintain all signs, channel markers and the like, including, without limitation, "slow speed zone, manatee speed zone" and "idle speed zone" signs and all buoys and pilings to which they may be attached in good, readable condition, regardless of whether such signs are located within the Condominium Property.

**Section 23.3 COMPLIANCE WITH LAWS AND PERMITS.** The Association, all Unit Owners and other persons using the Condominium Property shall at all times comply with all laws, regulations, permits and ordinances relating to the Condominium Property. Likewise, Dry Slip Unit Owners and other persons using the Condominium Property and the adjacent waters shall at all times comply with all "slow speed

zone", "manatee speed zone" and "idle speed zone" signs described in Section 2 above. To the maximum extent lawful, any violation of the foregoing shall be deemed a violation of this Declaration of Condominium as to which the Association shall have all enforcement rights provided for herein and in the other Condominium Documents. Developer may transfer any applicable governmental permits to the Association, which transfer the Association shall be deemed to have automatically accepted, and upon such transfer the Association shall be fully responsible for compliance with the terms and conditions thereof.

**Section 23.4 COSTS AND ATTORNEYS' FEES.** The costs and expenses incurred by the Association in connection with the activities described in this Article shall be deemed Common Expenses collectable as Assessments in accordance with this Declaration of Condominium. In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, the Bylaws, the Articles of Incorporation, the Condominium Act or the Rules and Regulations adopted pursuant thereto, and said documents as they may be amended from time to time, or for a declaratory judgment relating to the rights of the Association or Unit Owners thereunder, the prevailing party shall be entitled to recover the cost of the proceeding and reasonable attorneys' fees to be awarded by the court.

**ARTICLE XXIV**  
**AD VALOREM TAXES**

The Unit Owners shall be responsible for the payment of ad valorem taxes to the Sarasota County Tax Collector, or such other future legally authorized governmental authority having jurisdiction over same. Nothing herein contained shall be construed, however, as giving to any Unit Owner the right of contribution or any right of adjustment against any other Unit Owner on account of any deviation by the taxing authorities for the valuations herein prescribed, and each Unit Owner shall pay such ad valorem taxes and special assessments as are separately assessed against its Condominium Unit. For purposes of ad valorem taxation, the interest of the Owner of a Condominium Unit in his Unit and in the Common Elements shall be considered as a Unit. The value of said Unit shall be the fractional portion of the value of the entire Condominium including land and improvements, as has been assigned to said Unit herein.

**ARTICLE XXV**  
**SEVERABILITY AND NON-WAIVER**

If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

<sup>11</sup>  
25<sup>th</sup> THIS DECLARATION OF CONDOMINIUM and exhibits hereto made and entered into this day of November, 2005.

WITNESSES:

Mary Maynard  
Print Name: Mary Maynard

Robin Stinson  
Print Name: Robin Stinson

**GULF HARBOR MARINA, LLC**, a Florida limited liability company

By: David M. Willner  
Name: DAVID M. WILLNER  
Title: DIRECTOR

STATE OF FLORIDA  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 2005, by David M. Willner, as Director of GULF HARBOR MARINA, LLC, a limited liability company, on behalf of said entity, who is personally known to me or who has produced N/A as identification.

Mary B. Maynard  
Notary Public - State of Florida  
My Commission expires:



# GULF HARBOR MARINA


## A CONDOMINIUM

### DESCRIPTION:

COMMENCE AT THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 35 SOUTH, RANGE 17 EAST; THENCE N00°01'16"W, ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 6, A DISTANCE OF 1402.64 FT.; THENCE N89°56'11"E, PERPENDICULAR WITH SAID EAST LINE, A DISTANCE OF 50.01 FT.; THENCE N00°04'53"W, A DISTANCE OF 85.37 FT. TO A POINT ON THE ARC OF A CURVE, WHOSE RADIUS POINT LIES N42°52'45"W, A DISTANCE OF 25.00 FT.; THENCE RUN SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 42°38'29", A DISTANCE OF 18.61 FT. TO THE P.C.C. OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 187.81 FT.; THENCE RUN NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 36°15'14", A DISTANCE OF 118.84 FT. TO THE P.R.C. OF A CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 285.00 FT.; THENCE RUN NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 32°42'30", A DISTANCE OF 162.70 FT.; THENCE N00°03'49"W, A DISTANCE OF 289.69 FT. TO THE INTERSECTION WITH THE CENTERLINE OF "PALMA SOLA CREEK"; THENCE RUN THE FOLLOWING COURSES ALONG SAID CENTERLINE: RUN N57°19'57"W, 50.07 FT.; THENCE N88°15'39"W, 78.99 FT.; THENCE N38°36'54"W, 161.14 FT.; THENCE N87°23'19"W, 139.88 FT.; THENCE S44°09'26"W, 357.82 FT.; THENCE S17°52'33"W, 74.53 FT.; THENCE S04°51'16"W, A DISTANCE OF 24.00 FT. FOR A POINT OF BEGINNING; THENCE S85°10'28"E, 61.51 FT.; THENCE N89°20'31"E, 70.50 FT.; THENCE S00°39'29"E, 96.08 FT.; THENCE S19°22'19"W, 189.44 FT.; THENCE S24°23'43"W, 94.05 FT.; THENCE S33°11'41"W, 79.48 FT.; THENCE S53°24'01"W, 32.12 FT.; THENCE N67°34'29"W, 111.89 FT.; THENCE N01°12'27"E, 371.85 FT.; THENCE N52°31'52"E, 71.37 FT.; THENCE S85°08'44"E, A DISTANCE OF 19.03 FT. TO THE POINT OF BEGINNING, BEING AND LYING IN SECTION 6, TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA.

CONTAINING 1.86 ACRES, MORE OR LESS.

# State of Florida



Department of State

I certify from the records of this office that GULF HARBOR MARINA CONDOMINIUM ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on October 28, 2005.

The document number of this corporation is N05000011083.

I further certify that said corporation has paid all fees due this office through December 31, 2005, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 405A00065454-103105-N05000011083-1/1, noted below.

Authentication Code: 405A00065454-103105-N05000011083-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Thirty-first day of October, 2005



*Glenda E. Hood*  
Glenda E. Hood  
Secretary of State

EXHIBIT "B"