

DECLARATION OF CONDOMINIUM
FOR
THE CARRABELLE BOAT CLUB ASSOCIATION, INC.
A COMMERCIAL CONDOMINIUM

MADE this 2th day of February, 2006, by THE CARRABELLE BOAT CLUB LLC, a Florida limited liability company, (hereinafter called the "Developer"), as the Owner of fee simple title to the real property described herein, for itself and its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. INTRODUCTION AND SUBMISSION.

(a) **The Land.** The Developer owns certain land located in Franklin County, Florida, and as more particularly described in Exhibit "A" annexed hereto ("Real Property") and the assignment of the leasehold interest in the adjoining sovereignty submerged land ("Submerged Land Lease"). The Real Property and the Submerged Land Lease shall be hereinafter referred to as the "Land".

(b) **Submission Statement.** The Developer hereby submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or fixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date of the recording of this Declaration; excluding therefrom, however, any public utility installations, cable television lines, and other similar equipment that are owned by the utility furnishing services to the Condominium. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Units. The acquisition of title to a Unit, or any other interest in the Condominium Property, or the lease, occupancy, or use of any portion of the Condominium Property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

(c) **Name.** The name by which the condominium is to be identified is The Carrabelle Boat Club Association, Inc., a Commercial Condominium (hereinafter called the "Condominium"), with an address of 1570 U.S. Highway 98 West, Carrabelle, Florida 32322.

(d) **Plan of Development.** The Condominium is located at 1570 U.S. Highway 98 West, Carrabelle, Florida 32322. The Condominium is to be constructed on the Land. The Developer currently owns the entire Land and Developer, or its successors or assigns, may continue to operate property for other uses which Developer deems compatible on some of the Land for as long as the Developer, in its sole discretion, shall

determine. Any such operation shall NOT be a part of this Condominium, and there is no intention to ever make it part of this Condominium.

The Condominium shall consist of up to a total of 287 Units (subject to adjustment pursuant to Paragraph 10). There shall be three (3) types of Units in the Condominium. The first type, consisting of 285 units intended for Boat storage, shall be designated as the Boat Storage Units. The second type, consisting of one (1) unit for office or retail use, shall be designated as the Office Unit. The third type, consisting of one (1) fuel facility unit, shall be designated as the Fuel Facility Unit. (The Boat Storage Units, the Office Unit and the Fuel Facility, shall be collectively known the "Units")

The Boat Storage Units will range in size from approximately 25' long x 8' high x 10' wide to 40' long x 16' high x 15' wide. The Boat Storage Units will all be contained in a single enclosed Building outfitted with "I" beam steel racks for boat storage. Exhibit B to this Declaration sets forth the boat storage building footprint and Exhibit C to this Declaration sets forth the size of each Boat Storage Unit contained in this Condominium.

The Office Unit shall be adjacent to the Boat Storage Units. Exhibit B to this Declaration sets forth the "clubhouse" building footprint that shall contain, in part, the Office Unit. The remainder of the "clubhouse" building shall be a common element.

The Fuel Facility Unit shall consist of the fuel facility to be constructed at the Condominium, including without limitation, the fuel tanks, dispensers, lines, meters, registers and all other equipment necessary for the operation and sale of fuel. The owner of the Fuel Facility Unit shall have a perpetual easement and license to use the boat yard and dockmaster building or other portion of the clubhouse building, as depicted on Exhibit B to this Declaration, for purposes of maintaining its sales equipment and staff (ie, cash register or equivalent, and sales individuals including clerk and pump attendant).

Time-share estates shall not be created with respect to a Unit on any part of the properties.

2. DEFINITIONS

The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.

2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.

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

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Dr. Marcia Johnson, PRAXIS III County B-888 P-354

2.4 "Association" or "Condominium Association" means The Carrabelle Boc Club Association, Inc., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.

2.5 "Board" or "Board of Directors" means the representative body that is responsible for conducting the business and operations of the Association.

2.6 "Boat Storage Units" means those certain units within the condominium intended for boat storage.

2.7 "Buildings" means the structures situated on the Land in which the Units are located.

2.8 "By-Laws" mean the By-Laws of the Association, as they exist from time to time.

2.9 "Common Elements" means and includes: The portions of the Condominium Property which are not included in the Units, including, without limitation, the following items:

- (a) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of Utility Services and/or heating, cooling, ventilation and other services to more than one (1) Unit or to the Common Elements, together with related property and installations.
- (b) An easement of support in every portion of a Unit which contributes to the support of the Building, other Units and/or any part of the Common Elements.
- (c) The property and installations required for the furnishing of utilities and other services to more than one (1) Unit or to the Common Elements.
- (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration, an exhibit attached hereto, or the Act.

2.10 "Common Expenses" mean all expenses incurred by the Association for the Condominium and charged, assessed or imposed against Units in the Condominium by the Association as set forth in this Declaration and the Act.

2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.

2.12 "Condominium Property" means the Land, Improvements and other real and personal property owned by the Association from time to time, subject to the limitations thereof and exclusions therefrom.

2.13 "County" means the County of Franklin, State of Florida.

2.14 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.

2.15 "Developer" means THE CARRABELLE BOAT CLUB LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned.

2.16 "Fuel Facility Unit" means that certain unit within the condominium consisting of the fuel facility to be constructed at the Condominium, including without limitation, the fueling station, fuel pumps, fuel equipment, fuel lines, underground fuel storage facilities, and sales equipment including cash register or equivalent. The Fuel Facility Unit includes a perpetual easement and license to use the boat yard and dockmaster building or other portion of the clubhouse building for purposes of locating sales equipment, staff and suppliers. Title to all of the installed Fuel Facilities shall remain with the owner of the Fuel Facility Unit.

2.17 "Improvements" means all structures, paved areas, and artificial changes to the natural environment located on the Land, including, but not limited to, the Buildings, boat launch to be constructed on the Land and the dock facility located in the Submerged Land Lease (the boat launch and dock facility hereinafter referred to as the "Launch and Docks").

2.18 "Institutional Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), any other lender generally recognized as an institutional lender, or the Developer, any of which hold a first mortgage on a Unit or Units and any and all investors or the successors and assigns of such investors which have loaned money to Developer to acquire the Land, or construct the Improvements upon the Land and who have a mortgage lien on the Land securing such a loan. A "Majority of Institutional Mortgagees" shall mean and refer to Institutional Mortgagees of Units by which greater than one-half (1/2) of the voting interests of Units subject to mortgages held by Institutional Mortgagees are encumbered.

2.19 "Limited Common Elements" means those Common Elements the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.20 "Office Unit" means that certain unit within the condominium, or any subdivided portion thereof, reserved for office and retail spaces. The office unit shall be located within a portion of the clubhouse building depicted on Exhibit "B".

2.21 "Primary Institutional Mortgagee" means the Institutional First Mortgage which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional Mortgagee.

2.22 "Unit" means a part of the Condominium Property that is subject to exclusive ownership, including the Boat Storage Units, Office Unit and Fuel Facility Unit.

2.23 "Unit Owner" or "Owner of a Unit" or "Owner" means the holder of legal title to a Unit.

2.24 "Utility Service" means and is intended to include, but not be limited to, television, internet lines, electric power, gas, telephone, hot and cold water, fire suppression heating and air conditioning ventilation systems, garbage, sewage and disposal, and drainage and water management.

3. DESCRIPTION OF CONDOMINIUM.

3.1.1. *Common Elements.* In addition to the Units described below, the Condominium contains as part of the common elements the following:

- (a) The exterior of the Building, subject to the Developer's right to erect signage, or otherwise attach storage facilities or other structures to it;
- (b) The interior of the Building, excluding all Units located therein;
- (c) The Launch and Dock depicted on Exhibit "B."
- (d) The clubhouse and dockmaster facility to be constructed within the clubhouse building depicted on Exhibit "B".

3.1.2 *Identification of Units.* A single building containing up to 287 Boat Storage Units and two (2) buildings containing one (1) Office Unit as well as the clubhouse and dockmaster facility, and one (1) Fuel Facility Unit will be constructed on the Land (subject to adjustment by the provisions of Paragraph 10 of this Declaration). Each Boat Storage Unit is identified by a separate Bay number designation followed by a separate number designation. The Office Unit shall be identified as Unit 100. The Fuel Facility Unit shall be identified as Unit 200. The designation of the Clubhouse Unit is set forth on Exhibit B attached hereto, the designation of each Boat Storage Unit is set forth on Exhibit C attached hereto, and the designation of the Fuel Facility Unit shall be further identified upon installation which shall occur in a manner that will not interfere with the overall operation of the marina facility. Exhibit B consists of a site plan describing the improvements located therein, including, but not limited to, the boat storage building in which the Units are located. Exhibits B and C, together with this Declaration, are sufficient in detail to identify the Common Elements, the Limited Common Elements, and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) the exclusive right to use such portion of the Limited Common Elements as may be provided in this Declaration (d) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time,

provided that an easement in airspace which is vacated shall be terminate automatically; (e) membership in the Association with the full voting rights appurtena thereto; and (f) other appurtenances as may be provided by this Declaration.

3.2 *Unit Boundaries.* Each Unit shall include that part of the Building containin the Unit that lies within the following boundaries (as graphically depicted in Exhibit "B and "C"):

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Un shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) Upper Boundary: The horizontal plane at the lowest point of the upper structural section comprising the Unit.

(ii) Lower Boundary: The horizontal plane at the highest point of the floor or lower structural section comprising the Unit.

(b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes at the innermost points of vertical sidewalls, the vertical structural supports comprising or bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries, or should neither exist, the description of such vertical plane as provided on the attached Exhibits "B" and "C". Notwithstanding anything to the contrary herein, the legal description of all Boat Storage Units shall extend three (3) feet beyond the planar intersection of the vertical structural supports of the Unit, where such vertical structural supports are adjacent to the common area used by the Association to load and unload Unit Owner's boats.

3.2.1 *Exclusions from Units.* Not included in the Units are:

(a) If a Boat Storage Unit, all pipes, ducts, vents, wires, conduits, and other facilities, equipment, or fixtures running through any interior wall, or horizontal or vertical portion of a Unit or structural section for the furnishing of utility services, heating, cooling, ventilation or fire suppression system to Units, Common Elements, or Limited Common Elements.

(b) All space and improvements lying outside the volume comprising and bounding the Unit, including that portion above the upper boundaries, below the lower boundaries, or beyond the perimetrical boundaries.

3.3 *Exceptions and Conflicts.* In the case of any conflict between the boundaries of the Unit as above described and the dimensions of the Unit shown on Exhibit B or Exhibit C, the above provisions describing the boundary of a Unit shall control, it being the intention of this Declaration that the actual as-built boundaries of the Unit to be prepared upon completion of the Building in a manner as above described shall control over erroneous dimensions contained in Exhibits B and C attached hereto, and in the event it shall appear that any dimension shown on Exhibits

B or C attached hereto is erroneous the Developer or the President of the Association shall have the right to unilaterally amend the Declaration to correct such survey, and any such amendment shall not require the joinder of any Unit Owner or Institutional Mortgagee so long as the purpose of the amendment is merely to correct an error and correctly describe the boundaries of a Unit. In the case of Unit boundaries not adequately described as provided above, the survey of the Units contained in Exhibit B shall control in determining the boundaries of a Unit. In the case of any conflict between the language of this Declaration describing the boundaries of any Unit, and in the language contained on Exhibits B and C describing the boundaries of a Unit, the language of this Declaration shall control.

3.4 *Easements.* The following easements are hereby created (in addition to any easements created under the Act):

(a) *Support.* Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all Units and the Common Elements.

(b) *Utility Services.* Easements are reserved under, through and over the Condominium Property as may be required from time to time for Utility Services. A Unit Owner shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of such Utility Services or the use of these easements. The Association shall have a right of access to each Unit during reasonable hours to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits, fixtures and other utility, cable television, communications and security systems, service and drainage facilities; and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except as necessary to prevent damage to the Common Elements or to another Unit or Units, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit.

(c) *Encroachments.* If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shirting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all of 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 of same so long as the Improvements shall stand.

(d) *Ingress and Egress.* A non-exclusive easement in favor of each Unit Owner, their guests and invitees, shall exist for pedestrian traffic over, through and across

sidewalks, streets, paths, walks and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes; and for vessel traffic over, through and across such portion of the Common Elements as from time to time may be open and intended for such purposes. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Units. Any such lien encumbering such easements (other than those on Units) shall automatically be subordinate to the rights of Unit Owners and the Association with respect to such easements. An easement shall also be granted for vehicular and pedestrian ingress and egress from Timber Island Road, across the Property's driveway aisles, for the benefit of the adjacent "Townhouse Site" as such is designated on the attached Exhibit "B".

(e) *Construction; Maintenance.* The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction hereof, or any part thereof, or any Improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so or where the Developer, in its sole discretion, determines that it is required to do so.

(f) *Sales Activity.* For as long as there are any unsold Units or Units leased to the Developer, the Developer, its designees, nominees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for sales and construction offices, to show Units and use Units, and to show and use the Common Elements to prospective purchasers and lessees of Units, and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease.

(g) *Air Space.* Each Unit Owner shall have an easement or right to the use of the air space on both ends of the Unit as defined by projecting the upper boundary, lower boundary, and vertical boundaries of the Unit outward to a distance set by the Association's rules and regulations for accommodating the protruding bow and stern of the boats and other personal property or fixtures while in storage, consistent with the contemplated use and limitations of the storage structure.

(h) *Rack Adjustment Easement.* Certain Boat Storage Units have been constructed with adjustable racks for holding each boat. With the prior written consent of all neighboring affected Boat Storage Unit Owners (i.e., only those Boat Storage Units immediately adjacent to the subject Boat Storage Unit, which adjacent Boat Storage Units must be adjusted together with the subject Boat Storage Unit), a Boat Storage Unit owner may request that the Association adjust the vertical location of the rack comprising a Boat Storage Unit in order to accommodate boats of varying size and design. Any neighboring Boat Storage Unit owner who so consents to such an adjustment shall be held to have granted

a revocable license to the neighboring Unit owner to use a portion of the affected Boat Storage Unit's air space. The provisions of this paragraph shall be subject to regulation and approval by the Association.

(i) *View Corridor Easement.* The Developer hereby grants a view corridor easement over those certain lands described on the attached Exhibit "B" ("VCE"). The VCE is given in favor of the Developer or successor owner, as the owner of those certain lands described on the attached Exhibit "B". The Developer, its successors and or assigns shall only be permitted to construct safety railings, or other structures required by government regulations or local building codes, within the VCE.

(j) *Additional Easements.* The Developer (as long as it owns any Units) and the Association, each on their own behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific easements for Utility Services 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 Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units.

4. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to such Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall be allowed, except as provided herein with respect to termination of the Condominium.

5. OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES; VOTING RIGHTS.

5.1 Fractional Ownership and Shares. The ownership of each Unit shall include an undivided fractional interest in the Land and other Common Elements and an undivided fractional interest in the Common Surplus, and the fractional share of the Common Expenses, appurtenant to each Unit, which, for each Unit shall be equal to

the Unit's number of voting interests divided by the total number of voting interests at any time.

5.2 *Voting Interests.* Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the respective By-Laws and Articles of Incorporation of the Association. Should a Unit be subdivided, the vote for a Unit Owner of a subdivided Unit shall be equal to the fractional share of the Unit owned by such Unit Owner. For example, if a Unit is divided in half and conveyed to two (2) separate owners, each owner shall be entitled to a half (1/2) vote. Each Unit Owner shall be a member of the Association.

6. **AMENDMENTS.** Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:

6.1 *By the Association.* Notice of the subject matter or a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered as provided in the By-Laws. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the Voting Interests in the Condominium. Directors and members not present in person or by proxy at the meeting considering the amendment may express their votes in writing, provided that such vote is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, approvals of an amendment must be by an affirmative vote of:

(a) Voting Interests in excess of 50% of the Voting Interests in the Association and by not less than 66 2/3% of the Board of Directors of the Association; or

(b) Voting Interests in excess of 66 2/3% of the Voting Interests in the Association.

6.2 *By the Developer.* The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error, or affect any other amendment, except that this procedure for amendment cannot be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing.

6.3 *Execution and Recording.* An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County.

6.4 *Proviso.* 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 or mortgagees of Units without the consent of said Developer and mortgagees in each instance; any mortgagee consent shall not be unreasonably withheld. No amendment shall make any change in the sections hereof entitled "Reconstruction or Repair after Casualty," or "Condemnation" which amendment materially affects the rights or interests of the Primary Institutional Mortgagee, pursuant to that certain Mortgage and Security Agreement dated April 9, 2004, as recorded in Official Records Book 704, Page 318, public records of Franklin County, Florida, or Freda White, second mortgagee, pursuant to that certain Mortgage and Security Agreement dated April 6, 2004, as recorded in Official Records Book 704, Page 333, public records of Franklin County, Florida (hereinafter "Second Mortgagee"), unless the Primary Institutional Mortgagee and Second Mortgagee shall join in the amendment. Such joinder shall not be unreasonably withheld. The provisions of this Section 6.4 may not be amended in any manner.

6.5 *Form*. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words inserted in the text shall be underlined; 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 is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision...for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

7. Maintenance, Repairs and Replacements.

7.1 *Units*. All maintenance, repairs and replacements of, in or to the Office Unit and the Fuel Facility Unit, or any subdivided portion thereof, whether structural or nonstructural, ordinary or extraordinary, shall be performed by the Owner of such Office Unit or Fuel Facility Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. All maintenance, repairs and replacements of, in or to any Boat Storage Unit, or any subdivided portion thereof, whether structural or nonstructural, ordinary or extraordinary, shall be performed by the Association. The sole cost and expense of such maintenance, repair, or replacement shall be a Common Expense, except as otherwise expressly provided to the contrary herein. Notwithstanding anything to the contrary herein, any repair or replacement to a Boat Storage Unit caused by a Unit Owner's negligence or intentional act shall be repaired or replaced by the Association, at such Unit Owner's expense.

7.2 *Common Elements*. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the Common Elements (other than Limited Common Elements as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common

Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owner(s), in which case such cost and expense shall be paid by such Unit Owner(s).

7.3 *Limited Common Elements.* The obligation to maintain and repair any equipment, fixtures or other items of property which service a particular Unit or Units and are Limited Common Elements thereof shall be the responsibility of the Association. The Association shall charge and collect such costs and charges incurred for said maintenance to the specific Unit or group of Units entitled to use the Limited Common Elements for which the maintenance and repairs were performed. If a Limited Common Element is for the benefit of multiple Unit Owners, each Unit Owner benefiting from the use of the Limited Common Element shall pay its proportionate share of such expenses calculated as follows: Total Expense divided by Number of Unit Owners benefiting from the use of the limited common element assessment.

8. **Additions, Alterations or Improvements by the Association.** Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) costing in excess of \$50,000.00 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 Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$50,000 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 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 made beyond that year.

9. **Additions, Alterations or Improvements by the Unit Owner.**

9.1 *Consent of the Board of Directors.* No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Unit or any Limited Common Element, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within thirty (30) days after such request and all additional information requested is received. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked. 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, and all other Unit Owners harmless from and to indemnify them for any expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.

The Board may appoint an Architectural Control Committee to assume the foregoing functions on behalf of the Board.

9.2 *Additions, Alterations or Improvements by Developer.* The foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal or walls, floors, ceilings and other structural portions of the Improvements).

10. **Changes in Developer-Owned Units.** Without limiting the generality of the provisions of paragraph 9.2 above and notwithstanding paragraph 1(d) above, 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, interior or exterior, ordinary or extraordinary, and (ii) change the layout or number of any Developer-owned Units. Developer shall comply with all laws, ordinances and regulations or 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 such Units, incorporate portions of the Common Elements, provided that such relocation and alteration does not materially adversely affect the market value (in the Developer's opinion) or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this paragraph 10 shall be effective by the Developer acting alone. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer. Specifically, the provisions of this paragraph shall permit the Developer, in its sole discretion, to split, reconfigure and resize unsold Units. Any such changes for Units already dedicated to this Condominium shall be evidenced by an Amendment and a revised surveyor's certificate indicating the new Unit plan.

11. **Operation of the Condominium by the Association; Powers and Duties.**

11.1 *Powers and Duties.* The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and the By-Laws of the Association (respectively, Exhibits D and E annexed hereto), as amended from time to time. In addition, the Association shall have the powers and duties set forth in the Act, 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 when necessary for the maintenance, repair or replacement of any Common Elements therein, or of any portion of a Unit maintained by the Association pursuant to this Declaration, and at any time as necessary for making emergency repair therein to prevent damage to the Common Elements or a Unit or Units.
- (b) The power to make and collect Assessments and other charges against Unit Owners and to regulate, administer, lease, maintain, repair and replace the Common Elements.
- (c) 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 all reasonable times upon prior request.
- (d) 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. 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 of behalf of the Association.
- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefore mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Voting Interests represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Voting Interests as may be specified herein or in the By-Laws with respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.
- (g) The power to charge a fee for the exclusive use of Common Elements and Limited Common Elements or Condominium Property to any Unit Owner being granted, by the Association, a right to such exclusive use.
- (h) The power, in the board's sole discretion to establish from time to time the maximum overall length, width, height and weight of the boat which may be stored in each Boat Storage Unit.
- (i) All of the powers which a corporation not-for-profit in the State of Florida may exercise.

