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AMENDED AND RESTATED
DECLARATION OF COVENANTS & RESTRICTIONS
OF
BAHIA MAR MASTER ASSOCIATION, INC.

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AMENDED AND RESTATED
DECLARATION OF COVENANTS & RESTRICTIONS
OF BAHIA MAR MASTER ASSOCIATION, INC.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS & RESTRICTIONS OF BAHIA MAR MASTER ASSOCIATION, INC. (“**Declaration**”) is made as of this _____ day of _____, 2021 by Rahn Bahia Mar, L.L.C., a Delaware limited liability company authorized to do business in Florida (“**Developer**”) and joined in by Bahia Mar Master Association, Inc., a Florida corporation not for profit (the “**Association**”), the City of Fort Lauderdale, Florida (“**City**”)—~~and~~, Rahn Marina LLC, a Florida limited liability company (“**Marina Sublessee**”), and, solely with respect to Section 21.3(b) of this Declaration that inures to the benefit of Marine Industries Association of South Florida, Inc. and Yachting Promotions, Inc. (collectively, the “**Boat Show Parties**”).

WHEREAS, a Declaration of Covenants & Restrictions of Bahia Mar Master Association, Inc. was recorded in Official Records Book _____, Page _____, Public Records, Broward County, Florida (“**Original Declaration**”);

WHEREAS, ~~The~~the Parties wish to modify and restate the Original Declaration in accordance with the terms of this Amended and Restated Declaration of Covenants & Restrictions of Bahia Mar Master Association, Inc. (“**Declaration**”);

WHEREAS, the Developer is the lessee under the Master Lease with respect to the Property;

WHEREAS, various portions of the Property are intended to be used for commercial, hotel, office, marina, residential, Special Functions, and other lawful uses;

WHEREAS, it is in the mutual best interest of the Owners of the Parcels to maintain and preserve the character, quality and aesthetic standards of the Property and the surrounding buildings, improvements, docks, roadways, sidewalks and common areas, with particular emphasis upon the exterior design and landscaping, and the entries, structural elements and public areas serving or located in the Buildings, the roof and exterior of the Buildings, and the efficient operation of the Property in which the Parcels are to be located;

WHEREAS, Developer desires to set forth certain rights, easements, appurtenances, interests and benefits of the Owners of the Parcels;

WHEREAS, Developer has determined that it is desirable for the efficient preservation of the values and amenities established with respect to the Property to create the Association a not-for-profit, Florida corporation under Chapter 617, Florida Statutes, which corporation has joined in this Declaration and to which there have been and will be delegated and assigned (i) certain powers and duties of ownership, operation, administration, maintenance and repair of portions of the Property; (ii) the enforcement of the covenants and restrictions contained herein; and (iii) the collection and disbursement of the “**Shared Expenses**” (as hereinafter defined);

WHEREAS, Developer previously executed and recorded the Original Declaration and desires to amend, restate and replace the Original Declaration with this Declaration and hereby affirms its commitment in the Original Declaration and does presently commit the leasehold interest in the Property which is legally described in **Exhibit G** hereto to the covenants, conditions, provisions and restrictions contained in this Declaration. To the extent of any inconsistencies between the terms of the Original Declaration and the terms of this Declaration, the terms of this Declaration shall control;

WHEREAS, this Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Property, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth, Developer hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied, subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth which shall run with title to all portions of the Property and be binding on all Parties having any right, title or interest in any portion of the Property, their successors and assigns.

ARTICLE 1 **DEFINITIONS**

Whenever used in this Declaration and the Exhibits hereto the following terms shall have the meanings specified below unless the context otherwise requires:

“**Act**” means Chapter 718, Florida Statutes, in effect on the date the applicable Regime Declaration is filed in the Public Records of the County. The Act does not apply to this Declaration since this Declaration does not create a Regime.

“**Approved Plans**” means the plans and specifications for the Building(s), as such plans and specifications may be amended from time to time to the extent such plans and specifications and all amendments thereto are approved by the Architectural Committee. Upon completion of the Building(s), the Owner of the Parcel containing the Building(s) shall provide “as-built” plans to the Association.

“**Approved Site Plan**” shall mean that certain site plan with respect to the Property approved by the City on December 7, 2017 as same may be amended and/or replaced from time to time. A sketch of the Approved Site Plan is attached hereto as **Exhibit M**.

“**Architect**” shall mean a particular architect or architectural firm, licensed to practice in the State of Florida, who shall perform the functions of Architect called for in this Declaration. The practitioner or firm who shall serve as the Architect in any instance shall be determined in accordance with the terms of this Declaration.

“**Architectural Committee**” means the persons or firms appointed pursuant to Section 9.2 hereof.

“**Assessment**” means any charges which may be assessed hereunder from time to time against an Owner.

“**Association**” means the Bahia Mar Master Association, Inc., a Florida not-for-profit corporation, which shall have as its initial members the Owners of the Marina Parcel, the Marina Village Parcel, and the Balance Parcel.

“**Balance Parcel**” shall mean the Property less the Marina Parcel, the Marina Village Parcel and, to the extent designated as a Parcel under a Supplemental Declaration, each Phased Parcel and any Subleased Parcel.

“**Board**” shall mean the Board of Directors of the Association.

“**Boat Show**” shall mean the Fort Lauderdale International Boat Show conducted annually each year within the “**Show Site**” during the “**Show Dates**” as described in and pursuant to the Boat Show Lease.

“**Boat Show Activities**” shall have the meaning set forth in Section 2.11 of this Declaration.

“**Boat Show Lease**” shall mean and refer to that certain Extended Boat Show Lease dated June 6, 2017 between the Developer and the Boat Show Parties, as may be [now or](#) further amended from time to time. The Boat Show Lease is referred to in this Declaration but the terms thereof are confidential and may only be disclosed if authorized in writing by Developer in its sole discretion. A redacted version of portions of such Boat Show Lease as of the date hereof is attached hereto as **Exhibit A**.

“**Boat Show Parties**” shall mean Marine Industries Association of South Florida Inc. and Yachting Promotions, Inc., and their permitted successors and/or permitted assigns.

“**Branded**” shall mean at a quality of finish and management consistent with comparable residential and hotel units managed by a luxury hotel chain.

“**Bridge**” shall mean the pedestrian bridge over State Road A-1-A which provides pedestrian access to/from Fort Lauderdale beach on the east side of State Road A-1-A over State Road A-1-A to the boundary of the Property on the west side of State Road A-1-A, which may be utilized by Developer for access for such persons as Developer designates from time to time and for such other lawful uses designated by Developer. The Developer hereby designates that the Owners may utilize the Bridge and the Bridge is a Shared Facility.

“**Buildings**” shall mean the improvements (including the existing buildings located on the Property) and those to be developed on the Property as contemplated by the Approved Site Plan.

“**Bulkheads**” shall mean the bulkhead separating the Marina Parcel and the Upland within the Property as generally shown on **Exhibit B** as same may be relocated by Developer from time to time pursuant to the terms of the Marina Sublease.

“**Capital Improvement Assessment**” means a charge against each Owner and its Parcel(s), representing a portion of the costs incurred by the Association for construction (other than the initial construction planned by Developer, the cost of which shall be borne by Developer), installation or replacement of any capital improvement to or for any portion of the Shared Facilities for which the Owners and their respective Parcels are responsible as provided in this Declaration, or any repair of such an improvement amounting to a capital expenditure under generally accepted accounting principles, which the Association may from time to time undertake pursuant to this Declaration.

“**Casualty Decision**” shall have the meaning set forth in Section 8.3(b).

“**City**” means the City of Fort Lauderdale, a Florida municipal corporation.

“**City Manager**” means the City Manager of the City of Fort Lauderdale.

“**Commercial Unit(s)**” shall mean commercial or retail units/spaces within the Property.

“**Common Assessment**” means the charge against each Owner and its respective Parcel representing a portion of the Shared Expenses.

“**County**” means Broward County, Florida.

“**Creditor Owner**” shall mean an Owner who has paid or advanced amounts due pursuant to this Declaration for the account of a Defaulting Owner or who has performed other obligations required to be performed by this Declaration on behalf of a Defaulting Owner, as permitted under this Declaration.

“**Declaration**” means this instrument as it may be amended or supplemented from time to time.

“**Default Rate**” shall mean the rate of interest per annum equal to the lesser of (i) the highest non usurious rate permitted under applicable law or (ii) such interest as the Board may determine from time to time.

“**Defaulting Owner**” shall mean any Owner who is delinquent on its obligation to pay Assessments or other amounts due and payable pursuant to the terms of this Declaration or who has failed to perform other obligations required to be performed by this Declaration. For purposes of this Declaration, a Defaulting Owner may be (a) the Regime Association in the event it fails to remit to the Association all amounts it is required to pay to the Association pursuant to this Declaration, and/or (b) the Owner of any Parcel which is not submitted to a Regime.

“**Developer**” or “**Declarant**” means RAHN BAHIA MAR, L.L.C. and any other party to whom it may assign its rights, in whole or in part, as Developer in writing pursuant to a written assignment recorded in the Public Records of Broward County, Florida, provided that no Owner, solely by reason of its acquisition of a Parcel or a Regime Unit Owner purchasing a Regime Unit therein, shall be considered a successor or assignee of such rights and obligations unless it is specifically designated as such in an instrument executed by Developer.

“**Development Rights**” shall mean the “**Development Rights**” as defined in the Marina Sublease.

“**Drives and Parking Areas**” shall mean only the paved driving surfaces, and designated parking areas existing from time to time throughout the Property, which areas as they presently exist are within the area generally shown on **Exhibit C** attached hereto and made a part hereof; recognizing that Developer shall have the sole and absolute right, at its expense, to modify and/or relocate (permanently or temporarily) from time to time the location of such paved driving surfaces and designated parking areas and the Drives and Parking Areas in accordance with the requirements of the Marina Covenant. For avoidance of doubt, except during Special Functions, the Drives and Parking Areas will always have driveway access to State Road A-1-A, also known as Seabreeze Boulevard, subject to any qualifications expressly set forth in the Marina Sublease.

“**Force Majeure Event**” shall mean any of the following occurring in or directly impacting Broward County, Florida: (a) hurricane, flood, tornado, excessive rain, wind, or other extreme unpredictable weather, natural disaster, meteorological events, seismic event, or other acts of God; (b) fire or other casualty; (c) earthquake; (d) explosion; (e) war (whether or not formally declared); (f) civil unrest, riot, civil commotion or insurrection, or rebellion; (g) area-wide or industry-wide strike, lockout, or other labor dispute; (h) condemnation; (i) act or threat of terrorism; (j) disruption of the delivery of materials, ability to receive services or utilities, or of shipping or transportation services; (k) shortage of any material or commodity, which is not due to such Person’s failure to appropriately contract for the same; (l) embargo, quarantine, disease and/or virus outbreak, pandemic, or epidemic; (m) national, regional or local emergency; or (n) any other acts outside the control of such Persons. Notwithstanding anything to the contrary herein, failure to secure or retain financing shall not be deemed a Force Majeure Event and no Force Majeure Event shall excuse or delay the payment of money.

“**Fueling Area**” shall mean the underground location of the fuel tanks, fuel lines, and fueling system in the area generally shown on **Exhibit D** as same may be relocated (temporarily or permanently) by Developer from time to time, pursuant to the terms of the Marina Sublease.

“**Governing Documents**” shall mean and refer to this Declaration, the Association’s Articles of Incorporation, the Association’s By-Laws, and any rules and regulations promulgated by the Association’s Board.

“**Hotel Unit(s)**” shall mean hotel rooms located within the Property.

“Improvements” shall mean the Buildings and other improvements, including, but not limited to, docks, driveways, parking areas, sidewalks, and other improvements to the Property existing on the Property from time to time.

“Incremental Increase” shall have the meaning set forth in the Marina Sublease.

“Institutional Mortgage” shall mean a mortgage held by an Institutional Mortgagee on any leasehold or subleasehold Parcel within the Property.

“Institutional Mortgagee” shall mean any lending institution owning a first mortgage encumbering any leasehold or subleasehold Parcel on any portion of the Property, which owner and holder of said mortgage shall either be the Developer, a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any “secondary mortgage market institution,” including the Federal National Mortgage Association (“**FNMA**”), Government National Mortgage Association (“**GNMA**”), Federal Home Loan Mortgage Corporation (“**FHLMC**”) and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Developer and which hold a mortgage on any portion of the Land securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in Florida as an Institutional Mortgagee; or Developer, its successors and assigns.

“Insurance Trustee” means the institution appointed pursuant to Section 12.1 hereof.

“Limited Shared Facilities” means those Shared Facilities which are available for use by only one or more, but not all, Owners as described in **Exhibit E** attached hereto or as otherwise designated by the Developer in a Supplemented Declaration.

“Maintenance” means, and shall include with regard to any particular component of the Improvements and/or the Property, the maintenance (including, but not limited to, painting and other decorating), operation, inspection (including, but not limited to, inspection for the purpose of meter reading), testing, repair, preservation, replacement and/or cleaning (including, but not limited to, dusting, washing, mopping and vacuuming) thereof, as well as any other action commonly or customarily regarded as maintenance.

“Majority Vote” shall mean the majority vote of the members of the Board provided that as long as Developer is a lessee of the Master Lease, the term Majority Vote shall mean a majority of the Board appointed by the Developer.

“Manager(s)” means any manager(s), now or hereafter retained by the Developer under a management agreement with the Association to assist the Association in fulfilling or carrying out certain duties, powers or functions of the Association to operate and maintain the Shared Facilities

and shall also mean and refer to any successor manager of the Shared Facilities pursuant to any future management agreement executed by the Association.

“**Marina Covenant**” shall have the meaning set forth in Section 2.1(b) of this Declaration.

“**Marina Easements**” shall, subject to the terms of the Marina Sublease, mean the areas encumbered by the Marina Exclusive Easements and certain non-exclusive easements over the following areas (i) the non-exclusive right to use the Drives and Parking Areas for ingress, egress and parking by Marina Sublessee and its tenants, guests, employees, contractors, vendors and invitees, (ii) the non-exclusive right to install, operate and maintain underground utility lines (to the extent that Developer fails to properly maintain or repair in accordance with the Marina Sublease) running through the Upland in their present locations as such utility lines may be relocated from time to time with the written approval of Developer, in order to provide utility service to the Marina Parcel and the Marina Easements, and (iii) the non-exclusive rights to use other Shared Facilities on the Upland as specifically defined in the Marina Sublease or this Declaration.

“**Marina Exclusive Easements**” shall mean the exclusive right to (i) use the Marina Office Building and (ii) use, operate, and maintain the below-grade fuel tanks and fueling system (including, but not limited to, tanks, fuel lines and fuel pumps) in the Fueling Area, as same may be relocated by Developer from time to time pursuant to the terms of the Marina Sublease.

“**Marina Office Building**” shall mean the building containing the Captain’s Quarters and certain office space, and the building housing the dockmaster’s office, which are presently located as generally shown on **Exhibit F** (as same may be modified, relocated and/or replaced in accordance with the Marina Sublease).

“**Marina Parcel**” shall mean the marina area situated within the Property in Broward County, Florida (from the water property line to the water side of all Bulkheads) and all improvements thereon, including, but not limited to, the docks and accessories in such area and piers, wharfs, pilings, and security gates/structures at the entrance of some of the docks demised under the Marina Sublease.

“**Marina Sublease**” shall mean the Sublease between Developer and Rahn Marina, LLC dated _____, as amended, as referred to in the memorandum of which was recorded in Official Records Book _____, Page _____ of the Public Records of Broward County, Florida, as amended.

“**Marina Sublessee**” shall mean the lessee under the Marina Sublease. The Marina Sublessee, as of the date of this Declaration, is Rahn Marina, LLC, its successors and assigns.

“**Marina Village Activities**” shall mean the food and beverage services, entertainment activities, and all other lawful activities conducted from the Marina Village Parcel.

“**Marina Village Parcel**” shall mean the leasehold interest demised under the Marina Village Sublease.

“Marina Village Sublease” shall mean the Marina Village Sublease between Developer and Marina Village Sublessee, its successors and assigns, dated _____, as amended, as referred to in the memorandum which was recorded in Official Records Book _____, Page _____ of the Public Records of Broward County, Florida.

“Marina Village Sublessee” shall mean the lessee under the Marina Village Sublease. The Marina Village Sublease as of the date of this Sublease is TRR Bahia Mar Marina Village, LLC.

“Master Lease” shall mean and refer to that certain Master Lease dated _____ by and between the City of Fort Lauderdale, Florida and RAHN BAHIA MAR, L.L.C., a Delaware limited liability company, and any amendments, renewals, extensions, or continuations thereof.

“Member(s)” shall mean each Owner, as may change from time to time.

“Mortgagee” means any holder of a first mortgage lien on a Parcel, or on a leasehold interest in an entire Parcel, or on a Regime Unit, which mortgage is security for a loan advanced in good faith to finance the purchase of rights in and/or construction of the Parcel or a Regime Unit, or to refinance a loan of such nature, provided that such holder shall give notice, as prescribed in Section 17.4, to the parties prescribed in Section 17.4, that it is the holder of such mortgage prior to being considered a Mortgagee for purposes hereof.

“Notice of Claim of Lien” means the notice to be provided to a Defaulting Owner before the Association and/or Creditor Owner is permitted to exercise their respective rights to foreclose an Assessment lien under this Declaration.

“Non-Performing Owner” shall have the meaning set forth in Section 8.1(c).

“Occupant” means any person or entity rightly in possession of all or part of a Parcel other than the Owner.

“Overhang Property” shall have the meaning set forth in any Phased Leases.

“Owner(s)” means the Developer, Marina Village Sublessee, Marina Sublessee and any party designated an Owner by Developer in a Supplemental Declaration and their respective successors and assigns of their Owner’s interest in such applicable Parcel, individually, as the context shall require. For purposes of this Declaration, once a Regime Declaration is recorded amongst the public records of the County, the Regime Association shall be deemed the Owner of that Regime Parcel, however, each Regime Unit Owner shall not be an Owner.

“Parcel(s)” means a (i) Balance Parcel, (ii) the Marina Parcel, (iii) the Marina Village Parcel, and (iv) any Phased Parcel and any Subleased Parcel which is submitted as a Parcel pursuant to a Supplemental Declaration, individually, as the context shall require.

“Parking Spaces” shall have the meaning set forth in Section 2.7.

“**Parties**” shall mean the Developer, Association, City, or Owner, as applicable.

“**Permitted Times**” shall mean the hours of 6:00 a.m. to 9:00 p.m. each day, except when designated for use for Special Functions. Such Permitted Times may be revised from time to time by Developer, the Association, or with the reasonable approval of the City Manager; recognizing it is the intent of the Parties that Developer [has or](#) will grant certain parties rights from time to time to operate Special Functions within the Shared Facilities.

“**Person(s)**” shall mean a person, firm or entity.

“**Phased Lease**” shall have the meaning set forth in the Master Lease.

“**Phased Parcel**” shall mean the leasehold parcel demised under a Phased Lease.

“**Promenade**” shall mean the area shown on the Approved Site Plan when constructed (which Promenade shall include landscaping and hard surfaces, which hard surfaces shall only be used for pedestrian (including bicycle) traffic and golf carts (to the extent permitted by applicable governmental authorities including the City in their regulatory capacity). Developer shall have the right to modify such location and/or imposed use restrictions on the Promenade from time to time (which modification may require prior written consent of Marina Sublessee to the extent specifically set forth in the Marina Sublease).

“**Property**” shall mean the leasehold interest of the Developer initially demised under the Master Lease which is legally described on **Exhibit G** as of the date of the execution of this Declaration. The Property is comprised of the Upland and the Marina Parcel.

“**Reconstruction Assessment**” means a charge against an Owner and its Parcel representing a portion of the cost incurred by the Association for reconstructing the portion of the Building in which that Owner’s Parcel is situated or for reconstructing the Shared Facilities for which such Owner is obligated to pay Shared Expenses as provided in this Declaration arising out of an event of maintenance, casualty, or condemnation.

“**Regime**” is a leasehold condominium formed pursuant to the Act on a Parcel pursuant to a Regime Declaration.

“**Regime Association**” means the not-for-profit corporation formed or to be formed to operate each Regime Parcel. For purposes of this Declaration only, the Regime Association shall be deemed the Owner of the applicable Regime Parcel upon the recording of the Regime Declaration; it being acknowledged, however, that the Regime Association will not have or hold actual title to each Regime Unit within such Regime Parcel. There may be multiple Regime Associations within the Property. [In no event shall a Regime Association be the lessor under the Boat Show Lease.](#)

“**Regime Declaration**” means a Declaration of Regime which may be recorded by Owner of an applicable Parcel submitting its Parcel to the provisions of the Act, together with all exhibits

to the Regime Declaration, as such Regime Declaration and exhibits thereto may be amended from time to time.

“**Regime Parcel**” shall mean a Parcel submitted to a Regime by a Regime Declaration.

“**Regime Unit(s)**” means the units created under the Regime initially or subsequently constructed upon a Regime Parcel(s) which may be comprised of Residential Units, Hotel Units, and/or Commercial Units. Regime Units are to be located in a Regime Parcel but are not deemed a Regime Parcel.

“**Release of Lien**” means the instrument to be provided by either the Association and/or Creditor Owner, whichever the case may be, to a Defaulting Owner after the Defaulting Owner has cured any and all defaults for which a Notice of Lien was filed by the Association and/or Creditor Owner.

“**Residential Unit(s)**” shall mean the residential apartments/residences within the Property.

“**Shared Expenses**” means the actual and estimated cost of Maintenance of the Shared Facilities (including unpaid Assessments not paid by the Owner responsible for payment); all costs of the Association incurred in the performance of its duties; the costs of management and administration of the Shared Facilities, including, but not limited to, costs incurred for the services of managers, accountants, attorneys and employees; costs of providing services, personnel or equipment for the Shared Facilities; costs of all cleaning and other services benefiting the Shared Facilities; costs of comprehensive general liability insurance for the Shared Facilities, workmen’s compensation insurance and other insurance covering or connected with the Shared Facilities; real and personal property taxes for the Shared Facilities, the Improvements and the Land, if any, which are not separately assessed against the Parcels; costs of funding any reserve funds established for replacement, deferred maintenance, repair and upgrading of the Shared Facilities and personal property thereon; and costs of all other items or services incurred by the Association for any reason whatsoever in connection with the Shared Facilities or for the benefit of the Owners or within the parameters stated in Section 4.2.

“**Shared Facilities**” means those portions, components, features or systems of the Property, which by purpose, nature, intent or function afford benefits to or serve more than one Parcel, rather than a single Parcel exclusively as designated by the Developer from time to time, including those which are declared to be Shared Facilities in this Declaration. Developer hereby declares the portions of the Property described in **Exhibit C** attached hereto to be Shared Facilities which includes but is not limited to the Drives and Parking Area, Promenade and Bridge. The Shared Facilities need not be legally described. Included in **Exhibit C** and/or **Exhibit M** is a site plan of the Property which depicts certain Shared Facilities that are available to all Owners and certain Shared Facilities that are available to only certain Owners, i.e., Limited Shared Facilities. Non-inclusion in **Exhibit C** of any particular portion, component, feature or system of the Improvements shall not prevent the same from being considered a Shared Facility if the definition of Shared Facility is otherwise satisfied by such item. Each Shared Facility shall be burdened with the easements set forth in Article II or elsewhere in this Declaration in favor of the Owner not

owning a Parcel in which such Shared Facility is located, but each Shared Facility and such easements therein as may be created in this Declaration shall be subject to the rights, powers and duties reserved for or granted or delegated in Article II or elsewhere in this Declaration to Developer or the Owner of the Parcel in which such Shared Facility is located or the Association. The Developer may designate that certain Shared Facilities are only available to certain Parcels.

“Show Dates” shall have the meaning set forth in the definition of Boat Show.

“Show Site” shall have the meaning set forth in the definition of Boat Show.

“Special Assessment” means an assessment levied by the Association for a non-recurring expense and which, was not included in the Association’s budget.

“Special Charge” means a charge against an Owner and its Parcel, directly attributable to such Owner, equal to the cost incurred in connection with the enforcement of this Declaration against such Owner for failure to duly perform its obligations hereunder, and such other charges as may be provided for in Section 4.3.

“Special Functions” shall mean (i) special events conducted on or around the Property, the Promenade or other portions of the Shared Facilities as authorized by Developer such as concerts, the Boat Show, weddings, and other special events; and (ii) for reasonable times for renovation, relocation, repair, and maintenance. It is the intent that the Promenade will generally be available for public use as contemplated in Section 2.5(b) of this Declaration, subject to Special Functions which would result in closure of (x) portions of the Promenade during time periods such as, but not limited to, concerts, road rally, [the](#) Boat Show, weddings, conference events, promotional events, civic or charitable events, or similar events which may or may not require a special event permit or other authorization from the City or with the reasonable approval of the City Manager, and (y) with respect to other portions of the Property, including the Shared Facilities, as authorized by Developer. Such Special Functions shall be such events reasonably conducted by Developer or its designees in connection with (i) the business conducted in connection with the ~~Hotel~~[hotel](#) operation upon the Property, including, but not limited to, weddings, parties, conference and other events, luncheon or dinners, etc. (“Hotel Operations”); (ii) for any other activities in addition to Hotel Operations for up to six (6) times each month (whereby no approval of City will be required); and (iii) if there are to be more than six (6) events desired as referred to in (ii), then for such greater number of times in a month, Developer shall need to obtain the approval of the City Manager for such additional events, which shall be granted in the City Manager’s discretion, acting reasonably, or if disapproved, by specifying in reasonable detail the basis of such disapproval, which decision will not be unreasonably denied, withheld, or delayed. In addition to the foregoing, portions of the Shared Facilities may be closed for such period of time as reasonably necessary to repair damage to and/or to perform maintenance.

“Specified Percentage” shall mean the percentage that such Parcel shall pay as to the Shared Expenses as set forth on [Exhibit H](#), as same may be modified from time to time pursuant thereto.

“Specified Requirements” shall have the meaning set forth as follows:

(i) Promenade running directly parallel to the seawall perimeter of the Marina directly servicing any of the Marina's facilities (including the docks) which shall maintain a width of approximately twenty feet (20') from the seawall perimeter, height clearance of at least fifteen feet (15') for vertical improvements which encroach the Promenade or air space above the Promenade.

(ii) No less than the existing number of access points from the Drives and Parking Areas to the Promenade as shown on the Approved Site Plan which access points shall be generally located as shown on the Approved Site Plan or such other areas providing substantially comparable function to the Marina.

(iii) On-street and off-street parking spaces in the Drives and Parking Areas ("**Marina Parking**") as currently shown on the Approved Site Plan on both the north side of the Upland and south side of the Upland which shall be located no more than forty feet (40') from the northern or southern seawall perimeter of the Marina Parcel and located within two hundred fifty feet (250') of the western seawall perimeter of the Marina Parcel. Marina Parking shall be kept reasonably available for properly licensed and mobile commercial vehicles serving the Marina Parcel which shall include, without limitation, fuel trucks providing in-dock fueling through fuel hoses connecting yachts to vehicles in the Marina Parking and other vehicles serving the Marina Parcel including, without limitation, trucks providing pump-out services and provisioning services to slip tenants.

The Marina Sublessee agrees that the Specified Requirements are subject to reasonable rules and regulations established by the Developer from time to time.

"**Sublease**" shall mean a sublease between Developer and a sub-lessee.

"**Subleased Parcel(s)**" shall mean the parcel demised under a Sublease.

"**Sub-Sublessee**" shall mean the Sub-Sublessee pursuant to the Sub-Sublease by and between Marina Sublessee, its successors and assigns (as sub-sublessor) and Developer, its successors and assigns (as sub-sublessee), as same has been or shall hereinafter be amended and/or extended from time to time.

"**Successor Owner**" shall have the meaning set forth in in Section 16.1.

"**Supplemental Declaration**" shall mean an instrument executed by Developer from time to time where the Developer may (i) designate a Phased Parcel and/or Subleased Parcel as a Parcel, (ii) imposing restrictions such as maximum square footage and/or maximum use (i.e., number of Residential Units or Hotel Units, etc.) of development, use restrictions or other restrictions as Developer may elect to be imposed on such Phased Parcel or Subleased Parcel, (iii) allocate the Specified Percentage for such Phased Parcel and/or Subleased Parcel, (iv) may modify **Exhibit H** to change the Specified Percentages by which the Owners are allocated Shared Expenses, provided the Specified Percentage of an existing Parcel shall not be increased without the written consent of the Owner of such Parcel, which consent shall not be unreasonably withheld, delayed or conditioned (v) sets forth the name and addresses of such new Owner of the Parcel created by such

Supplemental Declaration, (vi) designate Limited Shared Facilities, and (vii) such other matters as Developer may reasonably designate. The Association shall join in the execution of any Supplemental Declaration at the request of Developer but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

“**Units**” shall mean a Hotel Unit(s), Residential Unit(s), and/or Commercial Unit(s) located within a Parcel.

“**Upland**” shall mean the portion of the Property excluding the Marina Parcel.

“**Visible Area**” means any portion of a Building’s curtain wall, facade, roof, or other area of the Building visible from any Parcel, from the outside of the Building, or visible to persons utilizing the rights of ingress and egress through a given Parcel, including glass enclosed areas.

“**Voting Interests**” means those number of votes set forth on **Exhibit I** attached hereto and made a part hereof.

ARTICLE 2

GENERAL PLAN OF DEVELOPMENT; PARCELS AND EASEMENTS

Section 2.1 General Plan of Development. Developer is the owner of the leasehold interest in the Property pursuant to the Master Lease and presently plans that all or parts of the Property will be developed as a multi-staged, mixed-use project known as the Bahia Mar. The Property is intended to encompass hotels, marina, apartment units, residential dwelling units, offices, retail, restaurants, parking, amenities, Special Functions, and all other lawful uses, subject to the terms of this Declaration. Developer’s general plan of development is to provide for its existing uses as same may be modified from time to time by the Approved Site Plan. Developer’s general plan of development of the Property may also include whatever facilities and amenities Developer considers in its sole judgment to be appropriate to the Property.

Developer may unilaterally subject any portion of the Property submitted to this Declaration initially or by subsequent Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners, and obligating such Owners to pay the costs incurred by the Association through Assessments. Any such Supplemental Declaration may modify **Exhibit H** to change the allocation of Shared Expenses among the Owners and Parcels, provided the Specified Percentage of an existing Parcel shall not be increased without the written consent of the Owner of such Parcel, which consent shall not be unreasonably withheld, delayed or conditioned.

Developer expressly reserves the right to (i) commence construction and development of the Property if and when Developer desires; (ii) develop the Property upon such timetable as Developer, in its sole discretion, chooses; and (iii) modify the plan of development and Approved Site Plan of the Property in such manner as it, in its sole discretion, chooses, subject to complying with the Specified Requirements. Nothing contained herein shall be construed as

obligating Developer to develop the Property according to the present plan of development or in accordance with any Approved Site Plan existing from time to time.

As more fully set forth in its Articles of Incorporation, the Association was formed to serve its Members, and, except as otherwise specifically indicated, its activities shall be directed by its Board. The Association shall be governed by Chapter 617, Fla. Stat., as amended from time to time, shall have all of the rights, duties, and powers of a Florida corporation not for profit, and shall be authorized, in its discretion, to enforce the provisions of this Declaration.

Since the Property is comprised of retail, commercial, office, hotel, marina and residential use, it is intended that the Association will be governed by Chapter 617 Fla. Stat. and shall not be governed by Chapters 718, 719, and/or 720, Fla. Stat. Members may submit their interests in the Property to a Regime, provided the Regime Association and all others with respect to such Regime Parcel shall take subject to the terms of this Declaration. Each Member, by acquiring its Parcel, agrees that the Association will be governed by Chapter 617 Fla. Stat. and not by Chapters 718, 719 and/or 720 Fla. Stat. and each such Owner and those claiming by, through or under them are estopped from objecting to the foregoing.

Section 2.2 Creation of Separate Parcels. Developer, by executing and recording this Declaration, does hereby declare and establish that the Marina Parcel, Marina Village Parcel, and Balance Parcel are each a separate Parcel and each such Parcel and City join in this Declaration to consent to the terms of this Declaration. The Developer reserves the right to create additional Parcels, including any Phased Parcel and/or Subleased Parcel which is designated as a Parcel by Developer in a Supplemental Declaration. By making a Phased Parcel and/or Subleased Parcel a Parcel, the legal description of the Balance Parcel would automatically be deemed amended to less out of the Balance Parcel the legal description of the Phased Parcel and/or Subleased Parcel which is then so designated as a Parcel. The Marina Parcel, Marina Village Parcel, Balance Parcel, and each other Parcel created by Supplemental Declaration will each be a separate Parcel. No merger of estates or interests shall be deemed to occur in any instance in which a single person or entity has right, title or interest in or an encumbrance against or easement over one or more Parcels, or any combination thereof, except where legally valid and proper affirmative action is taken to create such merger. Developer may assign any and all of its rights and powers under this Declaration (“**Assigned Rights**”), in whole or in part, to any other person and/or entity (“**Assignee Developer**”), and unless the instrument assigning the Assigned Rights provides otherwise, the assignment of the Assigned Rights shall not work to divest Developer of the Assigned Rights, but rather, Developer and Assignee Developer shall have the right to exercise the Assigned Rights concurrently with one another. Notwithstanding the foregoing, as long as the Boat Show Parties are current and in good standing under the Boat Show Lease, in no event shall Developer assign the Assigned Rights with respect to the Boat Show, the Boat Show Activities, the Show Dates, and/or the Show Site in whole or in part, to a Regime Association or an Owner (other than Developer or its affiliates) of a Phased Parcel which has been submitted to a Regime.

Section 2.3 Easements. Subject to the provisions of Section 2.11, each Owner shall have the following non-exclusive easements through, across, and upon the Parcels, subject to the reasonable regulation of easements provided for in this Article 2.

(a) For use of the electric service vaults and the cables and conduits therein through which electric power is supplied by the public utility to the Parcels, as well as vaults, cables and conduits for cable television, telecommunications, internet, telephone and related services, all as substantially shown on the Approved Plans and/or the Approved Site Plan.

(b) For use of the domestic and fire protection water service lines, sanitary and storm sewer lines, soil lines, gas lines, grease traps, and sewage ejector lines, including all valves, traps and clean-out appurtenant to any such line serving the Parcels, all substantially as shown on the Approved Plans and/or the Approved Site Plan.

(c) For use of the Shared Facilities located within a Parcel to the extent necessary for the functioning of the Shared Facilities in accordance with the intended respective purpose of each particular Shared Facility.

(d) For the continued existence of encroachments in the event that, by reason of the construction of the Improvements or the subsequent settling or shifting of the Improvements as provided in the Approved Plans, any part of the Improvements on any Parcel encroaches or shall hereafter encroach upon any other Parcel. Such easement for the continued existence of such encroachments on a Parcel shall exist only so long as all or any part of the encroachment shall remain.

(e) For Maintenance of any Shared Facility, or for any facility located within a Parcel, for which another Owner has Maintenance responsibility, or for which the other Owner is otherwise permitted or required to perform the Maintenance.

(f) For entry upon, and for ingress and egress through a Parcel, with persons, materials and equipment, to the extent reasonably necessary in the performance of the Maintenance of any Improvements, whether or not located within the Owner's Parcel, for which the Owner has Maintenance responsibility, or for which the Owner is otherwise permitted or required to perform the Maintenance.

(g) For ingress and egress through a Parcel to the extent necessitated by an emergency involving danger to life, limb, or property.

(h) For pedestrian ingress and egress through a Parcel intended and designated for pedestrian use, and for pedestrian ingress and egress through the entrance, service entrance, paths, and walkways located on the Drives and Parking Areas in the Property or Bridge that are at any point in time intended and designated for pedestrian use, including, but not limited to, those portions of any Parcel required to afford reasonable access from each Parcel to the public right of ways adjoining the Parcel and for the use in common with the Owner of such Parcel, including its tenants, invitees, and agents of such facilities and areas of the Parcel for any other uses for which such facilities and/or areas are normally used in a first class, mixed-use, residential and commercial building, including, without limitation, the elevators located within the Parcel, all substantially as shown on the Approved Plans and/or the Approved Site Plan.

Section 2.4 Extent of Owners' Rights and Easements. Except as expressly provided herein to the contrary, any right and easement created by or under any provision of this Declaration shall be subject to Section 2.11 and the following:

(a) The right of the Developer to establish and enforce reasonable rules and regulations pertaining to the use of the Shared Facilities.

(b) The right of the Association to borrow money for the purpose of improving the Shared Facilities and, in furtherance thereof, to mortgage, pledge or hypothecate the Shared Facilities and Assessments therefor as security for money borrowed or debts incurred, provided that the rights of the mortgagee or secured party in any such case shall be subordinate to the rights and easements of the Owners and Regime Unit Owner(s) under this Declaration, including their rights in the Shared Facilities and the Owners' and Regime Unit Owner(s)' use of such rights.

(c) The right of Developer and any of Developer's affiliates or designees to the non-exclusive use of the Shared Facilities without charge, for purposes of sales, leasing, display, exhibit, access, construction, ingress and egress, and/or for Special Functions.

(d) The right or duty of the Association to reconstruct, replace or refinish any Improvements upon the Shared Facilities, subject to those conditions and limitations set forth elsewhere in this Declaration.

(e) The right or duty of the Association to plant, replace, and/or maintain the trees, shrubs, ground cover and other vegetation, and "hard-scape" upon any portion of the Shared Facilities designed for such use.

(f) The rights and easements provided elsewhere in this Declaration.

(g) All plats, restrictions, covenants, conditions, reservations, limitations, easements and other matters of record affecting the Shared Facilities or other portions of the Property.

(h) Any easement granted pursuant to paragraphs (a), (b), (d), (e) and (f) of Section 2.4 shall be subject to such reasonable rules and regulations as the Developer may impose.

(i) Notwithstanding Section 2.5(b), the right of any Owner, or any Regime Unit Owner, or any party purchasing any Parcel or any Regime Unit and becoming the leasehold owner thereof, shall have the right to mortgage, pledge or hypothecate its interest in its Parcel or Regime Unit in order to finance the purchase of or the making of improvements to the Parcel or Regime Unit in question, or to refinance any loan made for such purpose, without the consent of any other party, provided that the rights of any mortgagee or secured party in such case shall be subject to the rights of the Owners and Regime Unit Owner(s) under this Declaration, including, but not limited to, their respective rights in the Shared Facilities.

(j) The Parties recognize the Association shall not own any of the Property or Shared Facilities, but shall perform its obligations under this Declaration and be entitled to enforce its rights under this Declaration.

Section 2.5 Specific Easements.

(a) Marina Sublessee's Rights under the Marina Sublease. Subject to the provisions of Section 2.11, the Marina Sublessee, its employees, agents, guests, customers, and vendors, shall have an exclusive easement to use the Marina Exclusive Easements and a non-exclusive easement to use and access to all other Marina Easements as more specifically set forth in the Marina Sublease including, without limitation, the use of at least three hundred (300) parking spaces within the Drives and Parking Areas located on the Upland in areas designated from time to time in the sole and absolute discretion of the Developer, subject to the terms and conditions of the Marina Sublease, provided, however, that any parking located on the Upland shall not be available to the Marina Sublessee or its employees, agents, guests, customers or vendors, nor shall any Marina Easements be available for the benefit of the Marina Parcel during any of the Show Dates recognizing such Marina Easements are sublet by Marina Sublessee back to Marina Sublessor pursuant to the Sub-Sublease during the Show Dates.

(b) Promenade. Subject to the provisions of Section 2.11, from and after the completion of construction of the Promenade, there is hereby granted a non-exclusive easement appurtenant to each Parcel over the Promenade for access and use by each Owner and their respective customers, sub-tenants, guests and invitees during Permitted Times. The general members of the public shall be granted a non-exclusive right to use the Promenade; subject to the following continuing conditions and limitations as to such use:

(i) The non-exclusive use of the Promenade by general members of the public shall not create, and shall never be construed or interpreted to create, a dedication to the public; notwithstanding the foregoing however, members of the public shall have non-exclusive use of certain portions of the Promenade and ingress and egress over certain portions of the Promenade for pedestrian traffic, subject to the provisions of this Section 2.6(b) and the other terms of this Declaration;

(ii) Developer shall, subject to the criteria which may be adopted by Developer from time to time (subject to the approval of such criteria by the City Manager (which approval shall not be unreasonably withheld, delayed or conditioned), be exclusively able to restrict, limit, or prevent access to the Promenade (or any portion thereof) to any specific member(s) of the public as Developer may deem appropriate to avoid loitering, creating a nuisance, restricting access during Special Functions and/or otherwise violating the rules and regulations adopted with respect to the Promenade, such that Developer retains at all times the right and ability to seek to enforce the foregoing and laws related to trespass;

(iii) The Promenade shall not be, nor shall it ever be by reason of provisions of this Declaration, a public forum, limited public forum, or any other type of public forum as may exist now or in the future for purposes of the exercise of rights pursuant to the First Amendment to the United States Constitution and any companion provision under the Florida

Constitution. The Promenade shall also be subject to the easement rights granted under this Declaration;

(iv) The Promenade and its use shall be and remain subject to rules, regulations, and restrictions as Developer may impose from time to time;

(v) The use of the Promenade by the public shall be limited to Permitted Times, and may be closed to the public partially or entirely during Special Functions;

(vi) Developer shall have the right (but not the obligation) to place cameras and record activities, conduct surveillance, and provide security functions and other security related activities as Developer deems appropriate from time to time;

(vii) Use of the Promenade shall be subject to temporary disruptions (x) as Developer may reasonably designate in connection with activities Developer conducts, such as construction, maintenance, repairs, ~~the Boat Show~~, and other activities conducted on portions of the Property as shall be determined from time to time by Developer, (y) subject to the terms of the Boat Show Lease, in connection with the Boat Show Activities during the Show Dates, and (z) due to acts of a Force Majeure Event;

(viii) Use of the Promenade shall be in its then “AS IS” condition and any Person using the Promenade does so at their own risk; and

(ix) Developer shall be able to enforce the covenants and restrictions described in this Declaration; and additionally, neither the City nor any third party may enforce the rights of any member of the general public to the non-exclusive use of certain portions of the Promenade as contemplated in this Declaration.

(c) A perpetual (for the term of the Master Lease and/or Phased Lease, as applicable) non-exclusive easement in favor of and reserved for Developer, the Association, and any and all utility companies as designated by Developer or the Association (i) to install conduits, lines, cable, wires and the like (“**Equipment**”), (ii) to maintain, repair, or service such Equipment, and (iii) for ingress and egress purposes in order to afford reasonable access to and for Developer, the Association, and those utility companies designated by Developer or the Association in order to install, maintain, repair, service, or replace such Equipment, all in such areas located within the Property as designated by Developer or the Association; provided however, that the easements granted in this subparagraph shall not adversely and materially impact upon the use and enjoyment of the Parcels by the Owner thereof. The easements granted and reserved in this subparagraph to and for Developer and the Association may be assigned by Developer or the Association to any other person and/or entity in whole or in part.

(d) The Developer and the Association shall have an easement for ingress and egress over each Parcel to enforce the terms of this Declaration.

(e) Each Phased Parcel is hereby granted a perpetual (for the term of the Phased Lease, as applicable) air rights easement for the Overhang Property, if any, applicable to the Building constructed on such Phased Parcel.

(f) The Developer reserves an easement over the Property located outside the Building(s) to be able to permit the operation of the Boat Show during the Show Dates and to conduct Special Functions.

Section 2.6 Delegation of Use. Any Owner or Regime Unit Owner may delegate its right of use and enjoyment of and to the Shared Facilities as follows: (a) in the case of a Regime Unit Owner, to those members of his/her family and to those Occupants, employees, licensees, lessees, invitees, and guests to whom the Regime Declaration permits such Regime Unit Owner to delegate, license or lease the use of such Regime Unit; and (b) in the case of an Regime Unit Owner which is not a resident of a Regime Unit, to those Occupants, employees, licensees, lessees, invitees, and guests to whom the Regime Declaration permits such Regime Unit Owner to delegate, license or lease the use of such Regime Unit; provided however, said delegation of use and enjoyment of and to the Shared Facilities shall be subject in all cases to reasonable regulation by the Association.

Section 2.7 Parking Spaces. The Owner(s) shall have the right, subject to Section 2.11 and the provisions of the second paragraph of this Section 2.7, at any time and from time to time, to: (a) utilize the parking spaces existing from time to time as a Shared Facility allocated to parking ("**Parking Spaces**"), and (b) subject to the right of Developer to control, operate, license, grant and assign Parking Spaces on the Drives and Parking Areas as it determines. The Developer is hereby authorized and empowered to establish rules and regulations for the Parking Spaces, and may make provision for the involuntary removal of any vehicle which is in violation of such rules and regulations. Unless otherwise agreed to in writing by Developer, the Developer may charge for Parking Spaces and all fees collected by Developer for use of any Parking Spaces in whatever form (other than the Shared Expenses with respect thereto), including charging for use of electric charging stations, shall belong solely to Developer. The Developer shall have the exclusive right to conduct valet services upon the Shared Facilities. The Developer shall have the exclusive right to set the rates to be charged for use of the Parking Spaces.

Notwithstanding any language to the contrary contained in the immediately preceding paragraph, the control, operation, licensing, granting and assigning of Parking Spaces may be in such areas as designated by the Developer from time to time. The initial restricted parking areas are set forth on the sketch included as part of **Exhibit C**.

The foregoing allocation of Parking Spaces shall not prohibit Developer from modifying same from time to time.

Section 2.8 Waiver of Use. No Owner may (i) exempt itself from personal liability for Assessments, (ii) release the Parcel owned by it from the Assessments, (iii) exempt itself from liens and charges provided for herein, either by waiver of the use and enjoyment of the Shared Facilities or by abandonment of its Parcel.

Section 2.9 No Affirmative Obligations. The provisions of this Article 2 shall not be deemed to imply, or to impose, upon the grantor of any easement provided in this Article 2, or of any other easement provided for in this Declaration, any affirmative obligation relating to said easements. The only affirmative obligations relating to said easements imposed upon any such grantor are those affirmative obligations which are specifically set forth in this Declaration.

Section 2.10 Amendment and Restatement. This Declaration amends and restates the Original Declaration in its entirety. In the event of any conflicts between this Declaration and the terms of the Original Declaration, the terms of this Declaration shall control.

Section 2.11 Boat Show Lease. All rights in the Property, all maintenance obligations, and all easements, established by this Declaration or otherwise provided for herein are subject to Section 2.11 and specifically and deliberately made inferior to and subject to (i) the terms and provisions of the Master Lease and ~~(ii) Phased Lease, if applicable, (ii) subject to the terms of the Boat Show Lease,~~ the rights of the Boat Show Parties ~~pursuant to Boat Show Lease,~~ including but not limited to, conducting the Boat Show and Boat Show Activities, and (iii) the right of an Owner to conduct Special Functions and other events within the Property as approved by the Developer (which events other than the Boat Show shall require the written approval of the Owner of the Marina Parcel if conducted on any portion of the Marina Parcel or the Marina Exclusive Easements other than the Captain's Quarters as provided in the Marina Sublease). Each Member and each Regime Unit Owner (whether an owner, lessee, or sublessee of any of the Property now or hereafter existing and their guests, invitees or Occupants, subject to this Declaration by acceptance of a lease, or other conveyance thereof) hereby agrees and are put on notice that (subject to the terms of the Boat Show Lease) the Boat Show Parties have the right of access to and use the Show Site during the Show Dates during each year during the term of the Boat Show Lease to operate the Boat Show ~~(subject to the terms of the Boat Show Lease)~~, which shall include, without limitation, the staging, mobilization, restoration, repair and cleaning activities of the Boat Show during the Show Dates (and thereafter for restoration or repairs, if necessary), including providing access to the Show Site during the Show Dates to their invitees, contractors, agents, employees, etc. (collectively, the "Boat Show Activities"). By the acceptance of a license, lease, deed or other conveyance or mortgage, leasehold, license or other interest, and by using any portion of the Property, each such grantee, occupant and user automatically acknowledges, stipulates and agrees that the Boat Show and the Boat Show Activities ~~and the Developer's right to conduct,~~ Special Functions, and other events and activities (including providing access to the Property to its invitees, contractors, agents, employees, etc.) as permitted hereby or by applicable law (and not otherwise restricted by restrictive agreements applicable to such portion of the Property) (x) will restrict the right to use portions of the Shared Facilities during Special Functions (including, but not limited to, the Boat Show) ~~as determined by the Developer (or its assigns)~~, (y) shall not be deemed nuisances, noxious or offensive activities under any applicable covenants or at law generally, and (z) the Members, each Regime Unit Owner, and their guests, invitees, and occupants are estopped from objecting to and/or restricting any such activity.

Section 2.12 Marina Village. Each Member and each Regime Unit Owner (whether an owner, lessee or sublessee of any of the Property now or hereafter existing and their guests, invitees or Occupants hereby agree and are put on notice that the Marina will conduct the

Marina Village Activity and accept and are hereby estopped from objecting to such Marina Village Activity and to any hours of operation, noise, congregation of people or other impact resulting from such Marina Village Activities, subject to the terms of the Marina Sublease and this Declaration.

Section 2.13 Acknowledgement and Waiver. As the Association is located within a resort community, including a marina, Owners and each Regime Unit Owner understand and agree that Owners, each Regime Unit Owner, their heirs, or assigns relinquish any right to complain, object, or seek any legal remedies to enjoin (i) the Marina Sublessee or its invitees or assigns from using the Marina Property or the Marina Easements in accordance with the Marina Sublease, (ii) the Developer from conducting any other events and activities (including providing access to the Property to invitees, contractors, agents, employees, etc.) as permitted under the Marina Sublease (to the extent applicable), by applicable law, and not otherwise restricted by restrictive covenants applicable to such portion of the Property, (iii) the Marina Village Activities on the Marina Village, and/or (iv) Boat Show Activities on the Property. Owners, tenants, residents, guests, and invitees on the Property and users of Parking Spaces on the Upland shall each be deemed to acknowledge that the Boat Show and the use of the Property as a commercial mega-yacht marina may burden and/or interfere with their use of the Upland, and such owners, tenants, residents, guests, and invitees on the Upland specifically waive and relinquish any right to complain, object, or seek any legal remedies to enjoin the Boat Show on the Show Site during the Show Dates (unless there is a violation of the Boat Show Lease) and/or marina activities on the Marina Property and the use of the Marina Easements.

Section 2.14 Notice to Future Occupants. Each Owner and Occupant within the Property owned, assigned, or leased by such Owner takes subject to the understanding that (i) nothing contained in this Declaration shall in any way restrict the right of the Developer to own, operate, develop, redevelop, repair or otherwise deal with the Property as permitted under the Master Lease and/or Phased Lease, as applicable other than based upon separate written agreement(s) between Developer and third parties (“**Specified Parties**”) such as the Marina Sublease and the Marina Village Sublease (“**Third Party Agreements**”), but no one other than the applicable Specified Party is a third party beneficiary of such Third Party Agreements, (ii) the Marina Parcel is for the sole and exclusive use of the Owner of the Marina Parcel except as expressly set forth in the Marina Sublease, the Boat Show Lease and the Master Lease, (iii) the Owner’s, the Occupant’s and their invitees’ rights in the Upland are inferior to and subject to all rights and easements of the Owner of the Marina Parcel and use of the Marina Easements as set forth in the Marina Sublease except that (pursuant to the terms of the Boat Show Lease) the Boat Show Parties and the Sub-Sublessee have the right of access to and use of the Show Site during the Show Dates ~~set forth in the Boat Show Lease(s)~~ to conduct Boat Show Activities, and (iv) the Marina Village Parcel is for the sole and exclusive use of the Owner of the Marina Village Parcel (and its designees), except as expressly set forth in this Declaration, in the Marina Village Sublease, the Marina Sublease, the Boat Show Lease, and the Master Lease. By the acceptance of a license, lease, deed or other conveyance or mortgage, leasehold, license or other interest, and by using any portion of the Property, each such lessee, grantee, Occupant and user automatically acknowledges, stipulates and agrees that none of the Boat Show Activities in accordance with the Boat Show Lease or the marina activities permitted under the Marina Sublease shall be deemed

nuisances, noxious or offensive activities under any applicable covenants or at law generally. This Declaration shall constitute notice that the Marina Parcel will be operated with the Marina Activities in accordance with the Marina Sublease, the Marina Village will be operated with the Marina Village Activities in accordance with the Marina Village Sublease and the ~~Marina Village Show Site~~ will be operated with ~~the Marina Village~~ Boat Show Activities during the Show Dates in accordance with the Boat Show Lease. Each Owner, Occupant, invitees and their respective successors and assigns acknowledges, understands and agrees that, as a result, (i) there may be increased noise levels associated with (x) the Marina Activities and Marina Village Activities throughout the day and night in accordance with the Marina Sublease and Marina Village Sublease (as applicable), and (y) the Boat Show Activities throughout the day and night during the Show Dates in accordance with the Boat Show Lease, (ii) the operation of a marina ~~is an~~ and of a Boat Show are inherently dangerous ~~activity~~ activities, and (iii) the operation of (x) the Marina Village with the Marina Village Activities (y) the Boat Show with Boat Show Activities pursuant to the Boat Show Lease and (z) the Marina Activities (including a first class, mega-yacht marina) on the Marina Parcel; each will not be deemed a nuisance under this Declaration provided same is conducted in accordance with the terms of the Marina Sublease, Marina Village Sublease and/or the Boat Show Lease (as applicable).

Section 2.15 Construction on Upland. The Developer and/or any future developer on each portion of the Upland, the Marina Sublessee, the Marina Village Sublessee, and any one claiming by, through or under such party shall cause its work to be performed in strict compliance with the requirements of the Master Lease, Marina Sublease, Marina Village Sublease, Phased Lease, the Boat Show Lease(s) (as applicable), and this Declaration with the following provisions:

(a) Hours of Operation. ~~No outside~~ Outside work; (except for emergencies) may only be performed between 8:00 a.m. until 8:00 p.m., local time and not on any weekend ~~or~~ any national holiday, ~~or during any time~~ during the Boat Show, without the prior written consent of the Board, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained herein to the contrary, the Boat Show and Boat Show Activities may be performed in accordance with the terms of the Boat Show Lease and complying with all applicable laws, ordinances, and/or regulations of governmental authority.

(b) Access. The Developer (or its written designee) shall, during the course of the work by such Developer (or its written designee), cause the Marina Sublessee and their respective employees, managers, guests, and invitees to have reasonable vehicular and pedestrian access to the Marina Parcel from State Road AIA (subject to temporary disruption due to casualty, condemnation or construction activities, or any Special Functions). The applicable party performing such work shall use reasonable efforts to minimize the duration and extent of any temporary blockages of driveways and/or vehicular parking areas, and to the extent feasible, shall notify the affected Member of any planned closures or blockages of access routes.

(c) Interference. The Developer or other Owner (or their written designee) when performing such work, will not occupy any portion of the Marina Parcel in violation of the Marina Sublease without the prior written consent of the Owner of the Marina Parcel which

consent will not be unreasonably withheld, conditioned or delayed. The applicable Owner of the Marina Parcel and its invitees, licensees, or any other party claiming by or through Marina Sublessee will not occupy any portion of the Parcel within the Upland (other than its permitted use of the Marina Easements) without the written consent of the applicable Owner of such Parcel.

The Developer or other Owner (or their written designee) when performing such work, will not occupy any portion of the Marina Village Parcel in violation of the Marina Village Sublease without the prior written consent of the Owner of the Marina Village Parcel which consent will not be unreasonably withheld, conditioned or delayed.

(d) Staging and Storage Plan. Prior to the commencement of any major construction, the Person performing such work (and the Owner who hired such Person) shall endeavor to provide any adversely affected Owner upon whose Parcel such work is being done with a logistics, staging, and storage plan. The plan shall propose mitigation measures to minimize construction impacts to adjacent residential and businesses areas.

(e) Dust Mitigation. The Person performing such work (and the Owner who hired such Person) shall comply with all applicable city and county requirements pertaining to mitigation of fugitive dust as a result of the work.

(f) Cleanup. During the course of the work, the Person performing such work (and the Owner who hired such Person) shall use its commercially reasonable efforts in good faith to maintain the work area free and clear of materials, rubbish, dirt, and debris and will cause its contractors to do likewise so that each applicable Owner can reasonably operate its respective Parcel.

(g) Repair of Damage. To the extent any improvements or personal property (including vessels) located on the Property are damaged by any Person performing work on the Property, the Person performing such work (and the Owner who hired such Person) shall reconstruct or repair any such damage to substantially the same or better condition than the condition of such improvements or personal property (including vessels) prior to such damage.

(h) Project Communications. Each Owner (or its written designee) shall keep the Board regularly informed about the status of all major work performed by the Owner on its Parcel. Prior to the commencement of such work, the Owner (or its written designee) shall provide the Board with phone number(s) and email address(es) at which the Board can reach the Owner (or its written designee) in the event of an emergency or other event which reasonably requires the immediate attention of the Owner (or its written designee).

Section 2.16 Development Plan and Modifications.

(a) Development. The development and redevelopment of the Property shall be in substantial conformity with the Approved Site Plan and in conformity with applicable law, the Master Lease, Phased Lease, Marina Village Sublease, ~~and/or~~ the Marina Sublease, and/or the Boat Show Lease (all as applicable). The Developer (or its assigns) retains and shall have full control over the Development Rights. Each Residential Unit (which is submitted to a Regime)

and Hotel Unit within the Property shall be Branded. Commercial Unit(s) (whether or not submitted to a Regime), and Residential Unit(s) (if not submitted to a Regime) do not need to be Branded.

(b) Marina Covenant. During the term of the Marina Sublease, in the event the Developer shall amend the Approved Site Plan (where such amendment is not brought forth by any applicable governmental authority) which amendment adversely affects the Marina Property in any material respect (“**Specified Modification**”) then the provisions of the Specified Requirements shall be a covenant (“**Marina Covenant**”) that runs with the Marina Sublessee’s leasehold interest in the land constituting the Property subject to modification and reasonable rules and regulations, but only as permitted in the Marina Sublease: In such circumstances, the Marina Sublessee shall have the right to approve such Specified Modification which approval shall not be unreasonably withheld, conditioned or delayed. The Developer and Marina Sublessee shall cooperate in good faith to find a reasonable and economically viable solution to provide substantially similar functions to the Marina Property with respect to adversely affected Specified Requirements. In the event Marina Sublessee does not (i) approve, or (ii) disapprove with specified reasonable detail the basis for the disapproval of the Specified Modification within fifteen (15) business days of submission of such Specified Modification by Developer to the Marina Sublessee, such approval by Marina Sublessee shall be deemed given.

Section 2.17 Acquisition of Property. The Association shall have the power and authority to acquire, convey, transfer, lease, encumber, and abandon such interests in real and personal property as it may deem beneficial to its Members and/or to owners of any interests in any portion of the Property but subject to the terms and conditions of the Master Lease, Marina Sublease, Marina Village Sublease, any Phased Lease, and the Boat Show Lease, to the extent applicable.

ARTICLE 3

POWERS AND DUTIES OF ASSOCIATION

Section 3.1 Powers and Duties. The Association shall have the exclusive power and duty to:

(a) Perform Maintenance with respect to, repair and otherwise manage the Shared Facilities in accordance with the provisions of this Declaration.

(b) Clean or cause the Shared Facilities to be cleaned on a regular basis in accordance with the standards of a first class residential, office and commercial property, and to perform or cause to be performed other standard janitorial services as to the same.

(c) Oversee obtaining for the benefit of the Owners for distribution through the Shared Facilities, all water, sanitary sewage and other utility services, as necessary, to service the Shared Facilities.

(d) Take whatever other actions the Association deems advisable with respect to the Shared Facilities as may be permitted hereunder or by law.

- (e) Employ or contract with a Manager (which may be an affiliate of the Developer) to perform all or any part of the duties and responsibilities of the Association.
- (f) Delegate its powers to committees, officers and employees.
- (g) Permit events (e.g., ~~Boat Show~~, concerts, weddings, art shows, farmers markets, etc.) to be conducted upon the Shared Facilities. The revenue of such events shall be payable to the Owner of the Parcel in which such event occurs, other than the Boat Show, which revenue shall be exclusively paid as provided in agreement(s) between the Developer and Marina Lessee.

The Association shall use its good faith efforts to provide the services described above at reasonable levels comparable with practices in other similar properties, subject to the Association's reasonable discretion, and subject to interruption due to the need to make repairs, alterations or improvements, or due to a Force Majeure Event, proceedings or regulations of any governmental authority, rationing, interruption of transportation facilities, and any cause beyond the reasonable control of the Association. The obligation of the Owners to pay Assessments hereunder shall not abate in the event of any interruption of service. The Association shall use its best efforts to and shall pursue with diligence all actions required to enable restoration of service in the event of such interruption. All costs and expenses incurred by the Association in performance of this Article 3 with respect to the Shared Facilities and as more particularly set forth on **Exhibit L** hereto shall be Shared Expenses which shall be included in the Common Assessments and subject to the payment obligation of the Owners as set forth in this Declaration.

Notwithstanding anything contained in the Declaration to the contrary, the Association and Board acknowledge and agree that this Declaration is subject to and subordinate to the Boat Show Lease and neither the Association and/or the Board shall have, to the extent of the rights of the Boat Show Parties under the Boat Show Lease (i) any power or duty over the Show Site during the Show Dates, and (ii) any right to control or direct, or in any way object to, the Boat Show Activities. The revenues under the Boat Show Lease shall be exclusively paid pursuant to the terms of the Boat Show Lease.

Section 3.2 **Membership**. Each Owner shall be a member of the Association ("Members"). At such time as a Parcel is declared to be a Regime, the Regime Association established to operate such Parcel shall be the member of the Association in place of the former Owner of such Parcel. The Regime Unit Owner(s) within such Regime shall not be Members of the Association. Each Owner and Regime Unit Owner, by acceptance of a deed or other instrument evidencing his, her or its ownership interest in a Building or any portion thereof, and whether or not stated therein, acknowledges the rights, powers and authority of the Association as stated and provided for in this Declaration, as the same may be amended from time to time, and agrees to abide by and be bound by the provisions of this Declaration. In addition, the family, relatives, Occupants, guests, invitees, lessees, contractors, employees licensees and agents of each Owner and each Regime Unit Owner shall, while in or on any part of the Land or Improvements, abide and be bound by the provisions of this Declaration. Attached hereto as **Exhibits J and K**,

respectively, are the Articles of Incorporation (“**Articles**”) and Bylaws (“**Bylaws**”) of the Association, the terms of which are incorporated herein and made a part hereof by this reference.

(a) The Association shall be governed by its Board (“**Board**”) which shall be appointed, designated or elected as set forth in the Articles and Bylaws.

(b) The Association shall carry out the functions and services as specified in this Declaration to the extent such functions and services can be provided with the proceeds first obtained from Common Assessments, and then, if necessary, from Special Assessments. The functions and services referred to in this Declaration to be carried out or offered by the Association at any particular time shall be determined by the Board, taking into consideration the proceeds of Assessments, the needs of the Members, the needs of the Improvements, and/or the needs of the Shared Facilities. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced at any time upon affirmative vote of a majority of the Board.

(c) The Association is not intended to own the Shared Facilities and the Owner of the leasehold interest in which such Shared Facility is located shall continue to own such interest in the Shared Facility, subject to the provisions of this Declaration, but shall not alter such Shared Facility without the written consent of the Association.

Section 3.3 Miscellaneous. In addition to the powers and duties of the Association set forth elsewhere in this Declaration, the Association shall have the exclusive power and duty to approve in writing the type and quality of fixtures, tables, chairs, other types of furniture and equipment, and all other items proposed to be used and located in a Visible Area within a Parcel prior to the use and placement of the same within the Property, which approval shall be given in the sole and absolute discretion of the Association.

ARTICLE 4

COVENANT FOR ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Parcel is hereby deemed to have covenanted, to pay the Association: (a) Common Assessments, (b) Special Assessments, (c) Capital Improvement Assessments, (d) Special Charges, and (e) Reconstruction Assessments. All of the aforementioned, which collectively are herein referred to as “**Assessments**” shall be imposed and collected as hereinafter provided.

Assessments, together with interest, late charges, costs and reasonable attorneys’ fees for the collection thereof, shall be a charge and continuing lien upon the Parcel against which the Assessment is made. Each such Assessment, together with interest, late charges, costs and reasonable attorneys’ fees, shall also be the personal obligation of the person(s) or entity(ies) who was or were the Owner of the Parcel at the time when the Assessment against it came and fell due. Subject to the provisions hereof protecting Mortgagees, any personal obligation for delinquent Assessments shall pass to the successors-in-title to the Owner of the Parcel against which the Assessments were made and in cases in which a Parcel is owned by more than one individual or entity, shall be the joint and several obligation of each and all of those individuals or entities. At such time as a Parcel is declared to be a Regime and while the Parcel remains a Regime, the lien

for Assessments shall be created and imposed on the entire Parcel. The Association shall deposit all monies collected as Assessments in one or more accounts as it may elect in its discretion. The Association shall have the right to collect Assessments directly from Regime Unit Owner(s) or may require the Regime Association, if applicable, to collect and remit same to the Association.

Except as set forth in the preceding paragraph, liens on a Parcel which exist or may be imposed under this Declaration are liens on such entire Parcel and all portions thereof.

Section 4.2 Common Assessments. Common Assessments shall be levied by the Association to pay for the Shared Expenses, to fund performance by the Association of its duties under Article 3 of this Declaration, its duties under other provisions of this Declaration which are performed for the benefit of all Owners and to improve, repair, replace, and maintain the Shared Facilities as provided herein. Disbursements from income received as Common Assessments shall be made by the Association for such purposes as it deems necessary for the discharge of its responsibilities herein and to reimburse Developer for prepaid expenses which it advanced from time to time which may be classified as Shared Expenses.

Section 4.3 Special Charges. Special Charges shall be levied against an Owner for the cost of any Maintenance of the Shared Facilities made necessary by the willful or negligent act of such Owner or a person for whom such Owner is responsible, to the extent insurance proceeds are insufficient to cover the damage. For the purpose of this section, the applicable Regime Association shall be considered to be responsible for its Regime Unit Owner(s), and its and their respective employees, agents, occupants, lessees, licensees and invitees. A Special Charge may also be levied against an Owner, or a Regime Unit Owner, if applicable, for the costs of enforcement of this Declaration against such Owner, or Regime Unit Owner, if such Owner, or Regime Unit Owner is in default of a covenant or provision of this Declaration, and may also be levied in any other instance authorized elsewhere in this Declaration.

Section 4.4 Reconstruction Assessments, Capital Improvement Assessments and Special Assessments. In addition to the Common Assessments and Special Charges authorized above, Reconstruction Assessments, Capital Improvement Assessments and Special Assessments may or shall be levied as hereafter provided. Reconstruction Assessments shall be levied in such circumstances, for such purposes and amounts, and in such proportions as are authorized in and determined pursuant to Sections 8.3(a) and 10.4 hereof or generally in Articles 8 and 10 of this Declaration. Capital Improvement Assessments may be levied from time to time by the Association for the purpose of funding, in whole or in part, any capital improvement to the Shared Facilities or for a new improvement which satisfies the definition of a Shared Facility. Special Assessments may be levied from time to time by the Association for the purpose of funding, in whole or in part, any repair, replacement, maintenance, or improvement to Improvements and/or Shared Facilities for which the Association has such obligations and responsibilities under this Declaration. No action authorized in this Section 4.4 shall be taken without the prior written consent of Developer as long as Developer or any affiliate of Developer owns any Parcel or portion thereof.

Section 4.5 Rate and Payment of Assessments. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article 4 shall be allocated and assessed among the Parcels and the Owners thereof as follows:

(a) The above Assessments shall be allocated among the Parcels and the Owners thereof as set forth in Article 23 hereof and Exhibit H attached hereto and made a part hereof. As additional Parcels are created by Supplemental Declarations, Developer may modify the allocation of Assessments by amending Exhibit H as provided in such Supplemental Declaration, but such Specified Percentage shall not increase as to a Parcel without the written consent of the Owner of such Parcel, which consent shall not be unreasonably withheld, delayed or conditioned.

(b) The Regime Association shall allocate an Assessment levied upon the Regime among its Regime Unit Owner(s) by using the formula set forth in the Regime Declaration for sharing common expenses.

(c) In the event any Parcel is declared to be a Regime, the Regime Association established to operate such Parcel shall, at the request of the Association, collect the Shared Expenses applicable to each Regime Unit situated within such Parcel and shall remit such funds to the Association. Further, the Association, as well as the Regime Association, shall have a lien right against each Regime Unit within the such Regime Parcel to secure payment of each Regime Unit's applicable portion of the Shared Expenses.

Common Assessments shall be estimated annually, in accordance with Section 4.6, and payable in monthly or quarterly installments as the Association may determine, one full month or quarter, as applicable, in advance, on the dates determined by the Association of which dates the Association shall inform the Owners reasonably in advance. Adjustments to the Common Assessments made necessary by changes in the Shared Expenses shall be made during a particular fiscal year or at the beginning of the next fiscal year, as the Association determines, but until notified of how adjustments are to be handled, Owners shall continue to pay installments at the same intervals and in the same amounts as the most recent previously due installments. Special Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be due within thirty (30) days after notice of such Assessment is duly given by the Association, or in such monthly or quarterly installments as the Association may specify. Special Charges shall be due within thirty (30) days after notice of such Special Charge is duly given, except as may be otherwise specifically provided in this Declaration.

If any installment of any Assessment is not paid when due, all scheduled or pending installments of such Assessment for the following twelve months may be accelerated and shall be due in one lump sum, to the extent allowed by law at the time of recording this Declaration. If a certain type of Assessment or installment thereof is defaulted upon, in addition to acceleration of all installments of such Assessment, all other types of Assessments, or installments may be accelerated and deemed due in one lump sum. The determination whether to accelerate Assessments or installments thereof shall be made by the Association in the course of enforcement of defaulted obligations pursuant to Section 5.4.

Section 4.6 Working Fund Contribution. Upon request of the Association, each Member shall be required to advance to the Association a Working Fund Contribution equal to two (2) months of the then current Assessment due from the applicable Parcel. The amount of the Working Fund Contribution is subject to prospective change in the Board's sole discretion. The purpose of the Working Fund Contribution is to ensure that the Association will have cash available to meet unforeseen expenditures, pay its obligations, and to acquire additional equipment and services deemed necessary or desirable by the Board. Working Fund Contributions are not advance payments of Assessments and shall have no effect on future Assessments, nor are they required to be held in reserve. To further ensure that the Association will have sufficient cash available to pay for such expenses, Shared Expenses and other expenses, Developer may from time to time advance monies to the Association. In the event Developer advances monies to the Association, upon request of the Developer, the Association must repay to the Developer any such advances.

Section 4.7 Accounting and Budgeting Matters. The Association shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures for the Shared Facilities for which the Parcels are obligated to pay Shared Expenses as herein provided, for each fiscal year, and shall cause to be distributed a copy of each such statement to each Owner and to each Mortgagee who has filed a written request for copies of the same with the Association. At least thirty (30) days prior to the beginning of each fiscal year, the Association shall prepare and distribute to the Owners a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration and for which the Parcels are obligated to contribute. The first annual Common Assessment (including any Working Fund Contribution) for any Parcel shall be adjusted according to the number of months remaining in that fiscal year after the Owner of the Parcel becomes a Member of the Association. The estimate may (but need not) include reasonable reserves for repairing and replacing improvements (computed by means of a formula based upon the estimated life and estimated repair and replacement costs for each improvement) and may (but need not) include reserves for contingencies (neither such reserve shall be considered a Capital Improvement Assessment or Reconstruction Assessment). Common Assessments shall be based on such budget. The Association may at any time, amend such budget and the Common Assessments shall be amended accordingly to the extent such budget and Common Assessments were inadequate and additional sums are needed. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner at least thirty (30) days prior to the effective date of the change. At the end of any fiscal year all excess funds over and above the amounts used for Shared Expenses shall be retained by the Association and used to reduce the following year's Common Assessments.

Section 4.8 Financial Reporting. Within ninety (90) days after the end of the fiscal year, or annually on a date provided in the Bylaws, the Association shall prepare and complete, or cause to be prepared and completed by a third party, a financial statement for the preceding fiscal year. Within twenty-one (21) days after the financial statement is completed or received by the Association from a third party, the Association shall mail to each Owner at the address last furnished to the Association by each respective Owner, or hand deliver to each Owner, a copy of the final financial statement or a notice that a copy of the financial statement will be

mailed or hand delivered to each of the respective Owners, without charge, upon receipt of a written request from each respective Owner. Promptly after its receipt of the financial statement, each Owner shall deliver a copy of the financial statement to each Regime Association within its Regime Parcel. The requirements of this Section 4.8 may be waived by the Board upon the unanimous vote of all members of the Board.

Section 4.9 Developer's Deficit Funding. Anything to the contrary herein notwithstanding, neither Developer nor any affiliate of Developer shall be liable for any Assessments imposed upon any Parcel of which it or they are the Owners as long as Developer and/or affiliates of Developer pay all deficits in operation of the Shared Facilities above the Assessments collectible from other Owners of Parcels. In calculating any such deficit, only actual current expenses (other than management fees, capital expenses and reserves) shall be counted. No Assessments shall be due from Developer or any affiliate of Developer for any Parcel until a certificate of occupancy or temporary certificate of occupancy has been issued therefor.

ARTICLE 5
EFFECT OF NON-PAYMENT OF ASSESSMENTS;
REMEDIES OF THE ASSOCIATION AND CREDITOR OWNER

Section 5.1 Imposition of Lien. A lien is hereby imposed on each Parcel and Regime Unit (a) for enforcement by and for the benefit of the Association, to secure payment of all Assessments now or hereafter imposed in accordance with this Declaration, and (b) for enforcement by and for the benefit of any Creditor Owner, to secure repayment to such Creditor Owner of amounts advanced by such Creditor Owner, in the manner provided in Section 5.2, for the account of a Defaulting Owner. Such lien shall also secure payment to the Association or repayment to the Creditor Owner of all late charges and interest assessed on delinquent Assessments pursuant to Section 4.5, reimbursement for or payment of all reasonable attorneys, fees and other reasonable costs incurred by the Association or Creditor Owner in connection with the collection of claims relating to unpaid Assessments or other amounts due and/or the enforcement of the lien and payment of all amounts for all other Assessments, if any, the maturity of which may have been accelerated pursuant to Section 5.4 as a result of the event of a default in one payment of Assessments. If all or any portion of any installment of a Common Assessment, Special Assessment, Capital Improvement Assessment, Special Charge or Reconstruction Assessment is not paid within ten (10) days after its due date, the Owner responsible therefor may be required to pay a late charge equal to ten (10%) percent of the amount unpaid. If all or any portion of any installment of an Assessment or any other amount due hereunder is not paid within thirty (30) days after it is due, the Owner responsible therefor shall owe interest on the unpaid amount from its due date at the highest lawful rate then applicable to loans of that amount until such outstanding amount is paid in full.

Any claim of lien recorded by or at the direction of the Association shall relate back to the date of recording this Declaration.

Section 5.2 Creditor Owner Advances on Behalf of Defaulting Owner. If any Owner shall fail to pay Assessments or such other amounts as may be due and payable pursuant to

the terms of this Declaration (including, without limitation, late charges and interest on past due Assessments), then any other Owner may pay the same, and the Defaulting Owner shall then be indebted to the Creditor Owner for such amounts, on which interest shall accrue at the rate and in the manner specified in Section 5.1, and the Creditor Owner shall also have the lien on the Defaulting Owner's Parcel provided for in Section 5.1 to secure payment of such indebtedness.

Section 5.3 Notice of Claim of Lien. No action shall be brought to foreclose any Assessment lien herein unless at least thirty (30) days has expired following the date a Notice of Claim of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the address of the Defaulting Owner of the Parcel, and a copy thereof has been recorded by the Association or the Creditor Owner, whichever is applicable, in the Public Records of the County. Any such Notice of Claim of Lien must recite a sufficient legal description of the Parcel liened, the record Owner or reputed Owner thereof, the amount claimed (which may include interest and late charges on the unpaid Assessment at the rates and amounts described in Section 5.1, reasonable attorneys' fees, late charges and expenses of collection in connection with the debt secured by the lien, and late charges), and the name and address of the claimant. Any such Notice of Claim of Lien shall be signed and acknowledged by an officer or agent of the Association or the Creditor Owner, whichever is applicable.

Section 5.4 Collection of Unpaid Assessments. If any Assessment or installment thereof is not paid within thirty (30) days after its due date, the Association or the Creditor Owner (whichever is applicable) shall mail a default notice to the Defaulting Owner and simultaneously to each Mortgagee of the Defaulting Owner's Parcel and/or to each Mortgagee of the Regime Unit(s) within such Regime Parcel who has requested a copy of any such default notice, and in the event that an action for lien foreclosure is contemplated, a Notice of Claim of Lien pursuant to the preceding section shall also be sent to the Defaulting Owner and Mortgagees, if any, who have requested a copy of such notice. A single notice meeting the requirements of both the default notice and the Notice of Claim of Lien may in the alternative be issued, in accordance with the same schedule and to the same persons as stated in the preceding sentence. The default notice shall specify (a) the fact that one or more Assessments or installments thereof or other amounts due hereunder are delinquent, (b) the action required to cure the default, (c) a date, not less than thirty (30) days from the date that the default notice is mailed to the Defaulting Owner, by which date such defaults must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessments or installments thereof becoming due in the following twelve months, and in the acceleration of all other Assessments which shall have been levied but not yet become due and payable, and may also result in the foreclosure of the lien securing unpaid amounts.

Section 5.5 Creditor Owner's Remedies for Non-Payment.

(a) Enforcement of Lien. The Creditor Owner may bring an action in its name to foreclose any lien on a Parcel in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid Assessments or other amounts due with interest thereon (plus the costs and expenses mentioned in Section 5.1 hereof) without waiving any claim of lien, provided that in either case the Creditor Owner must

give the Defaulting Owner at least thirty (30) days written notice of its intentions and, in the case of a foreclosure, must file a Notice of Claim of Lien in the Public Records of the County as described in Section 5.3. For the purposes of clarification, the thirty (30) day time period set forth in this Section 5.5(a) runs from the later of: (i) the date the notice is sent; or (ii) the date the notice of lien is recorded. Upon the curing of any default (including, but not limited to, the payment of fees and costs secured by the Creditor Owner's lien) for which a Notice of Claim of Lien was filed, the Defaulting Owner is entitled to have a satisfaction of lien recorded upon payment to the Creditor Owner.

(b) Attorney's Fees and Other Costs of Enforcement. Reasonable attorneys' fees incurred by the Association or Creditor Owner, whichever is applicable, incident to the collection of unpaid Assessments or other amounts due or the enforcement of any lien provided for by Section 5.1 (including, but not limited to, attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or Creditor Owner, whichever is applicable, for taxes and payments on account of superior liens or encumbrances that may be required to be advanced by the Association or Creditor Owner, whichever is applicable, in order to preserve and protect its lien, shall be payable by the Defaulting Owner and secured by the lien of the Association or Creditor Owner, whichever is applicable.

Section 5.6 Curing of Default. Upon the curing of any default for which a Notice of Claim of Lien was filed by the Association or Creditor Owner, whichever is applicable, an officer thereof shall record an appropriate Release of Lien upon payment by the Defaulting Owner of a fee, to be determined by the Association, to cover the cost of preparing and recording the Release of Lien. A certificate executed and acknowledged by any authorized officer or agent of the Association or Creditor Owner, whichever is applicable, stating the amount of the indebtedness secured by the lien upon any Parcel created hereunder shall be conclusive as to the amount of such indebtedness as of the date of the certificate with respect to all persons, other than the Owner of the subject Parcel, who rely on it in good faith. Such a certificate shall be furnished to any Owner upon request and payment of a reasonable fee as established by the Association.

Section 5.7 Cumulative Remedies. The liens and the rights of foreclosure and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association or Creditor Owner and their respective successors and assigns may have hereunder and under law, including a suit to recover a money judgment.

Section 5.8 Institutional Mortgages. Notwithstanding the foregoing provisions of this Article V, the liability of an Institutional Mortgagee or its successor or assignees who acquire title to a Parcel by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the Institutional Mortgagee's acquisition of title is limited to the lesser of:

(a) The Parcel's unpaid Common Assessments and/or Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or

(b) One percent (1%) of the original mortgage debt.

The provisions of this Section 5.8 shall not apply unless the Institutional Mortgagee joins the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the Institutional Mortgagee.

The Institutional Mortgagee or its successor or assignees acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a Claim of Lien against the Parcel and proceed in the same manner as provided in this Article 5 for the collection of unpaid Assessments. An Institutional Mortgagee acquiring title to a Parcel as a result of foreclosure or deed in lieu thereof shall not, during the period of its ownership of such Parcel, whether or not such Parcel is occupied, be excused from the payment of Assessments coming due during the period of such ownership.

Section 5.9 Each Claim Separate. Each claim arising under this Declaration shall be separate and distinct, and no defense, set-off or counterclaim arising against the enforcement of any lien or other claim shall thereby be or become a defense, setoff or counterclaim against the enforcement of any other lien or claim.

Section 5.10 Lien on Parcel Submitted to Regime. Any lien on a Regime Parcel submitted to a Regime shall be released by the Association as to any Regime Unit in such Regime Parcel upon payment by such Regime Unit Owner of its percentage (i.e., undivided interest in the Regime common elements) of the assessment of the Association.

ARTICLE 6

OPERATION AND MAINTENANCE

Section 6.1 Compliance with Laws and Insurance Requirements. Each Owner shall comply with all laws, rules, orders, ordinances, regulations and requirements (hereafter in this Section 6.1 collectively referred to as “laws” and each of which is individually referred to as a “law”) now or hereafter enacted or promulgated, by the United States, the State of Florida, the County, the City, and of any other governmental or quasi-governmental authority or agency thereof now or hereafter having jurisdiction, and of any other lawful authority having jurisdiction, relating to the ownership, Maintenance, or use of the Parcel owned by such Owner, if noncompliance with such law would subject any other Owner to liability or criminal prosecution, or would jeopardize the full force or effect of the certificates of occupancy for the Improvements, or portions thereof, or would result in the imposition of a lien against the Parcel of any other Owner or would cause termination of or would increase the rate of premiums on any casualty or public liability insurance policy maintained by the Association or the Owner of a Parcel, as the case may be. The provisions of this section shall not be deemed to relieve any Owner of the obligation to perform any Maintenance for which such Owner has the responsibility.

Section 6.2 Construction and Other Liens. An Owner (“**Creating Owner**”) shall, within sixty (60) days after the filing of any construction, materialman’s or other lien, bond off or otherwise remove of record any construction, materialman’s or other lien affecting the Parcel of any other Owner, arising by reason of any work or materials provided to or ordered by such Creating Owner or by reason of any act taken or suffered or omitted by such Creating Owner. Removal of record of such lien may be accomplished by any means provided in the Florida Construction Lien Law or a successor statute thereto.

Section 6.3 Disturbances. No Owner or Regime Unit Owner shall permit any noxious odor, noise or vibration which under the circumstances is unreasonable to emanate from the Parcel or any Regime Unit owned by such Owner or Regime Unit Owner which will damage or disturb the occupancy of any other Parcel, Regime Unit or the enjoyment of any Shared Facility.

The Owner who is to bear the Maintenance responsibility for any Shared Facility located within another Parcel, shall utilize its best efforts to not permit and to correct any noxious odor, noise or vibration which under the circumstances is unreasonable to emanate from such Shared Facility which will damage or disturb the occupancy of the Parcel of any other Owner, a Regime Unit or the use and enjoyment of any Shared Facility serving any other Owner. Notwithstanding the foregoing, all Owners recognize and acknowledge that certain activities within a mixed use residential and commercial building will by their very nature result in noise and odors which are unavoidable. By taking title to their respective Parcels and Regime Unit(s), each Owner and Regime Unit Owner agrees to these anticipated and unavoidable conditions.

All activities by or on behalf of any Owner in the use and occupancy of such Owner’s Parcel, including, without limitation, Maintenance, shall be performed, insofar as possible, in a manner which minimizes interference with the use and enjoyment of any other Parcel.

Section 6.4 Maintenance of Parcels. Subject to Section 6.5, each Owner shall be responsible for the Maintenance of all portions of its Parcel as well as the fixtures and equipment in its Parcel that serve only its Parcel, including, but not limited, to heating, ventilating and air conditioning equipment, plumbing fixtures and connections thereto, and electric panels, outlets and wiring. Each Owner shall also be responsible for the Maintenance of all facilities exclusively serving its Parcel which are located within the Parcel of another Owner.

Section 6.5 Maintenance of Shared Facilities. The Association shall be responsible for the Maintenance of all portions of the Shared Facilities. Notwithstanding that a condominium may be created upon a Parcel which may result in the Shared Facilities located within such Parcel being common element of such condominium, the Association shall retain the right to maintain such Shared Facilities or the Association may require the condominium association to maintain same.

Section 6.6 Requirements. All Maintenance in the Shared Facilities shall be performed in a good and workmanlike manner, by employees or agents of the Association or Manager, or (in the case of Maintenance which is not the responsibility of the Association, and the performance of which has not been left, delegated or assumed to or by the Association or the

Manager) by licensed bonded contractors approved by the Association in advance of the performance of such Maintenance (unless a state of emergency requires otherwise) which contractors shall carry public liability insurance and employer liability insurance in amounts satisfactory to the Association and such worker's compensation insurance as required by law.

Section 6.7 Obligations of Owners. Obligations of an Owner hereunder shall be the several obligations of all persons, corporations, partnerships, trusts or entities who own leasehold interests in the Parcel of such Owner, but only to the extent of each Regime Unit's pro rata share of the obligation which shall be in the same percentage as the undivided interest in the Regime Parcel common elements appurtenant to each such Regime Unit. Acts of the board of directors or of the president of the Regime Association provided for in an Regime Declaration shall be deemed to be the act of the Owner, and the board of directors of the Regime Association or the president of the Regime Association shall act as the Owner, in any instance where such board of directors or president is authorized to act for its Regime Unit Owner(s) on the matter in question by law or by this Declaration, the Regime Declaration or the Articles of Incorporation or Bylaws of the Regime Association.

ARTICLE 7 **INSURANCE**

Section 7.1 Casualty Insurance. **[DISCUSS if the Association or each Owner shall maintain]** Each Owner shall keep the Improvements and Shared Facilities on its Parcel in each case insured against loss or damage by casualties and hazards as may from time to time be carried by prudent owners of similar property in the County, with all risk, extended coverage, fire, vandalism and malicious mischief endorsements in an amount equal to the full replacement value thereof excluding the cost of excavation and of foundations. The Board, in its sole discretion may review such coverage to determine if such insurance is acceptable to the Association including that such insurance is for full replacement value (with a reasonable deductible not to exceed five percent (5%) unless approved in writing by the Association). Each Owner shall provide the insurance reasonably requested in writing by the Association including any deficiency in coverage as determined by the Association.

The insurance policies shall provide that all monies for losses payable thereunder shall be paid to the Insurance Trustee provided for in Section 12.1. Such policies shall name as parties insured as their interest may appear, (i) each Owner (and as to any Parcel submitted to Regime, the applicable Regime Association shall be deemed the Owner of such Parcel), (ii) at the request of any Owner, the leasehold or sub-leasehold mortgagee of all or any portion of the Parcel owned by such Owner, (iii) at the request of the board of directors of any Regime Association established with respect to any Parcel, the Regime Association as well as its officers and directors, and (iv) the Association. At the request of any Owner, such policies shall contain standard mortgagee clauses in favor of any mortgagee of all or any portion of the Parcel owned by such Owner and/or any holder of a mortgage on a leasehold interest in all or any portion of such Parcel, as their interests may appear, provided that the cost of adding any standard mortgagee clause shall be borne by the Owner requesting such addition. Nevertheless, all monies payable under such policies shall be payable in accordance with the provisions of this Declaration. Each such policy

shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy. Each such policy shall contain waivers of subrogation for the benefit of all Owners and waivers of any defense based on co-insurance or other insurance, and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the named insureds and mortgagees.

Section 7.2 Liability Insurance. The Association shall maintain (a) comprehensive general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Shared Facilities, and on, in or about the streets, sidewalks and passage-ways adjoining the Property for which the Association (or an Owner) has the Maintenance responsibility, (b) directors and officers liability insurance for the Association, and (c) worker's compensation and employers' liability insurance to the extent required by law. Said insurance shall be in at least such amounts as from time to time are carried by prudent owners of residential or commercial buildings in the County. The expense of such general liability insurance and other coverages required by Section 7.1 and 7.2 shall be a Shared Expense. In no event, however, shall the comprehensive general liability insurance required by clause (a) above afford protection for a combined single limit of less than \$1,000,000.00 in respect to any occurrence and of less than \$2,000,000.00 in respect to property damage, nor shall the amount of workmen's compensation and employers' liability insurance required under clause (b) above be less than the amount required by applicable laws or regulations. The policies effecting such comprehensive general liability insurance shall name as insured parties, as their interests may appear, (i) the Manager, (ii) each of the Owners, (iii) at the request of any Owner, any lessee of all or any portion of the Parcel owned by such Owner, (iv) any mortgagee in possession of any portion of a Parcel, (v) any leasehold mortgagee in possession of any portion of a Parcel demised to a lessee who is named as a party insured or additional insured, (vi) at the request of any Owner, the managing agent of the Parcel owned by such Owner, (vii) at the request of any Owner, the partners, directors, officers and/or employees of such Owner; and (viii) at the request of the board of directors of any Regime Association established with respect to a Regime Parcel, the Regime Association as well as the directors and officers of such Regime Association. Each such policy, to the extent obtainable, shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy and each such policy shall contain waivers of subrogation (except in the case of workmen's compensation and employer's liability policies) for the benefit of all Owners, and waivers of any defense based on coinsurance or other insurance, and shall provide that such policies may not be cancelled or modified without at least thirty (30) days, prior written notice to all of the insureds and mortgagees. The Association may from time to time increase the minimum amount of liability coverage referenced above at its discretion.

Section 7.3 Other Insurance. The Association may from time to time obtain such other insurance as the Association shall determine from time to time.

Section 7.4 Insurance Policies. Approximately thirty (30) days prior to the expiration of any policy of insurance from time to time maintained pursuant to Section 7.1, 7.2 and 7.3, the Association shall effect the renewal or replacement of such policy.

Section 7.5 Insurance for Regime Unit Owner(s). If a Regime Declaration is recorded for any Parcel, then the Regime Unit Owner(s) within such Regime Association shall be permitted to carry liability insurance for their own benefit at their own expense, provided, that all policies for such insurance shall contain waivers of subrogation for the benefit of all Owners (including Regime Unit Owner(s)), and, further, provided, that the liability of the carriers issuing the insurance obtained pursuant to Section 7.2, shall not be affected or diminished by reason of any such insurance carried by the Regime Unit Owner(s).

ARTICLE 8

DAMAGE TO THE IMPROVEMENTS

Section 8.1 Repair and Restoration.

(a) Mandatory Repair and Restoration by an Owner in Occurrences Involving No Damage Affecting any other Parcel and/or any Shared Facilities. If any portion of a Parcel is damaged by fire or other casualty and there is no damage to any other Parcel or any Shared Facility serving and/or contained in any other Parcel and there is no damage to any improvements located in any other Parcel or any Shared Facilities, then the portion of the Parcel so damaged (except for furniture, furnishings, equipment, any and all other personal property and fixtures in the Unit(s) contained in the Parcel) shall be repaired and restored as promptly as is reasonable by the Owner of such Parcel in accordance with the then existing Approved Plans (with such changes as are permitted by Section 9.1).

(b) Mandatory Repair and Restoration of Damage Affecting More than One Parcel and/or Shared Facilities. If any portion of another Parcel and/or or any Shared Facilities are damaged, and if the provisions of the preceding paragraph of this Section 8.1 are not applicable, then the repair and restoration of such damage to another Parcel and/or any Shared Facility located on such damaged Parcel(s) shall be repaired by the Owner of such Parcel unless the Association (in its sole discretion) elects in writing to have the damage of such Shared Facility performed by the Association on behalf of all the Owners with such changes to the Improvements or replacement Improvements as the Association may authorize. The Association shall, in accordance with the provisions of this Article 8 be entitled to withdraw any insurance proceeds derived from either the Association's or any Owners' policies of insurance (provided that the insurance proceeds derived from the Owners' policies of insurance are directly attributable to that portion or those portions of the Parcels to be repaired and restored by the Association) and which are held by the Insurance Trustee by reason of such damage for application to the cost and expense of such repair and restoration performed by the Association.

(c) Self-Help. If at any time any Owner (hereinafter referred to in this paragraph as the "**Non-Performing Owner**") shall not be proceeding diligently with any work of repair and restoration required of it hereby, then any other Owner who would be benefited by such repair and restoration shall give written notice simultaneously to both the Non-Performing Owner and the Association specifying the manner in which such repair and restoration is not proceeding diligently. If, upon expiration of thirty (30) days after the giving of notice, the work of repair and restoration is not proceeding diligently, then, subject to the Non-Performing Owner's right to

dispute as set forth below, the Association may perform such repair and restoration in accordance with the then existing Approved Plans (thereby releasing the Non-Performing Owner from any liability for the quality of such repair or restoration performed by the Association) and may take all appropriate steps to carry out the same, including, without limitation, entry onto the Parcel of any Owner to the extent necessary to perform such repair and restoration. The Association, in order to perform such repair and restoration shall, in accordance with Article 8, be entitled to withdraw any insurance proceeds derived from said Non-Performing Owner's policies of insurance and which are held by the Insurance Trustee by reason of such damage, for application to the cost and expense of such repair and restoration. If at any time an Owner disagrees as to whether the work of repair and restoration is proceeding diligently, then such dispute shall be settled by arbitration in accordance with Article 14, and the Association shall not perform such repair and restoration until the dispute shall have been settled. Any Owner who is diligently negotiating in good faith the settlement of any insurance claim under a policy held by it pursuant to Article 7, which is required to fund repair of a casualty insured by the policy in question, shall not be regarded as failing to proceed diligently with any repair or restoration required of it.

Section 8.2 Repair and Restoration Procedures. If the Association requires an Architect to prepare any plans relating to any repair or restoration, the plans and specifications for any repair or restoration to be performed under Section 8.1 shall be prepared by the Architect designated in accordance with Section 12.1. Unless the Owners shall otherwise agree in writing, plans and specifications for any repair or restoration shall be developed consistent with the then existing Approved Plans. The Architect, if any, shall assist the Owner responsible for performing the repair or restoration in question in obtaining bids therefor from responsible contractors. Such contractor shall be chosen in the manner provided in Article 11 hereof. The contractor shall work under the administration of the Architect, if any, and the Owner responsible under Section 8.1 for causing such repair and restoration to be performed. The Architect, if any, for a given repair or restoration is hereby authorized and directed to deliver such certifications and instructions as may be required by Article 12 to the Insurance Trustee, from time to time as such repair and restoration progress, to obtain disbursement for application to the cost and expense of such repair and restoration of (a) the insurance proceeds and (b) any other monies for such repair or restoration, which may have been deposited with the Insurance Trustee pursuant to Section 8.3. All instructions to the Insurance Trustee shall be made available by the Architect, if any, at reasonable times for inspection by any Owner who will benefit from the repair or restoration being made.

Section 8.3 Application of Insurance Proceeds and other Funds to Repair and Restoration.

(a) Insufficient Insurance Proceeds. All insurance proceeds paid in connection with a casualty shall be used to their full extent to fund restoration and repair hereunder. If the cost and expense of performing any repair and restoration provided for in Section 8.1 shall exceed the amount of insurance proceeds paid under policies maintained by the Owners by reason of the damage being repaired and restored, then such excess cost and expense shall be borne (subject to Section 8.3(b)) by the Owners in proportion to the cost and expense of repairing and restoring the improvements, which proportion shall be determined by the Board. For the purpose of determining such proportions, the cost and expense of repairing and restoring any Shared Facility shall be

allocated by the Association to the Owners in the proportion which shall be determined pursuant to Article 23 and **Exhibit H**. In any such instance of repair or restoration which is to be performed pursuant to Section 8.1, if the Association's estimate of the cost and expense of performing such repair or restoration (or, if a fixed cost construction contract shall have been executed providing for the performance of such repair and restoration, then the fixed costs so provided for, plus all other expenses estimated by the Association) exceeds the amount of insurance proceeds paid by reason of the damage which shall have necessitated such repair and restoration, then the Association shall impose a Reconstruction Assessment upon each Owner for its proportionate share of the amount of such excess cost and expense which shall be borne as provided above in this Section 8.3 (a), whereupon, each Owner shall so deposit with the Insurance Trustee the amount of such Owner's Reconstruction Assessment. If any Owner shall fail to pay, or, as the case may be, deposit, the Reconstruction Assessment in accordance with this paragraph, then said Owner's obligation to pay or deposit the Reconstruction Assessment may be enforced, and the lien on said Owner's Parcel securing payment of the Reconstruction Assessment may be foreclosed, in accordance with Article 5 hereof.

(b) Limitations on Repair or Restoration of the Parcels. In the event a Building is totally destroyed or incurs Substantial Damage, as hereinafter defined in Section 8.3(d), or condemnation as contemplated in Article 10, and an Owner (as to a Parcel not a Regime) and as to a Regime Parcel that a Regime Declaration is recorded, and if following such recording, a casualty occurs, seventy-five percent (75%) of the voting interests of such Regime Association elect, in each case, to duly and promptly resolve not to proceed with repair or restoration of the Improvements on such Regime Parcel ("**Casualty Decision**"), then the Improvements and Parcels, or any portion or portions thereof, shall not be repaired or restored and the Owner of such Parcel shall remove all of the damaged Improvements and debris from the Parcel, sod and irrigate such area of the Parcel and such Parcel shall remain obligated to continue to be bound by this Declaration and to pay Assessments. If however, the Owner fails to make a Casualty Decision, then the Improvements on such Parcel shall be repaired and restored as provided in Section 8.1.

(c) Excess Repair and Restoration Funds. Upon completion of the repair and restoration in accordance with this Article of any damage to the Improvements and/or Shared Facilities, any insurance proceeds and any Reconstruction Assessments paid to the Insurance Trustee by reason of such damage in excess of the cost and expense of performing such repair and restoration shall be refunded to the Owners in the respective proportions by which each Owner contributed funds to the funds held by the Insurance Trustee, attributing to each Owner as its contribution of the proceeds paid into the Insurance Trustee fund by the insurer under any insurance policy maintained by such Owner, plus any Reconstruction Assessment paid by such Owner for such repair and restoration, or, in the absence of any Reconstruction Assessment or Owner insurance proceeds, in accordance with each Owner's portion of Shared Expenses.

(d) Substantial Damage. For the purpose of Section 8.3 and generally in this Declaration, Substantial Damage to the Improvements shall be defined as follows: (i) an amount greater than or equal to 50% of the replacement value of the Improvements destroyed by such a casualty or loss occurring during the period commencing with the initial recordation of this Declaration and terminating thirty (30) years thereafter ("**Initial Period**"); (ii) an amount greater

than or equal to 35% of the replacement value of the Improvements destroyed by a casualty or loss occurring at any time during the period commencing with the end of the Initial Period and terminating _____ (___) years thereafter (“**Second Period**”); and (iii) an amount greater than or equal to 25% of the replacement value of the Improvements destroyed by a casualty or loss occurring at any time during the period commencing with the end of the Second Period.

Section 8.4 Limitations on Repair or Restoration by the Association. In the event that any casualty or loss results in the total destruction or Substantial Damage to the Improvements (other than any Shared Facilities) and the Owner of the Parcel(s) affected properly make their Casualty Decision, then no repair or restoration shall take place, notwithstanding any obligation the Association might otherwise have to make such repairs under Section 8.1(b). The Owners shall make their Casualty Decision on or before the one hundred eightieth (180th) day following the date such casualty or loss occurred, and shall deliver written notice of the Casualty Decision to the other Owners, the Association and the Insurance Trustee. In the event an Owner does not make its Casualty Decision within said one hundred eighty (180) day time period, then the Owner shall be deemed to have exercised the option to proceed with the repair or restoration. If an Owner makes a Casualty Decision for its Improvements in accordance with this Declaration, then any insurance funds available for such Improvements shall be paid to the Insurance Trustee for the benefit of the Owners and their respective mortgagees, as their interest may appear. Notwithstanding anything herein to the contrary, only the Association can make the decision not to repair or restore any Shared Facilities.

Section 8.5 Legal Variances. If, to perform any repair or restoration provided for in Section 8.1, it shall be necessary to obtain a variance, special permit or exception to or change in zoning or other laws (“**variance**”) in order to repair or restore the Improvements to its condition as described in the Approved Plans immediately prior to such damage, and if an Owner believes it is possible to obtain the variance, and so notifies the other Owners in writing, then the other Owners shall cooperate to obtain the variance. If architectural and/or legal services shall be necessary to obtain the variance, then the Owner responsible for requiring such variance shall retain an Architect and/or attorney to perform such services. The legal and architectural fees and all other costs and expenses of applying for and obtaining the variance, shall be considered as a part of the cost and expense of carrying out the repair and restoration. There shall be no obligation to commence any repair or restoration while an Owner is diligently attempting to obtain a variance under this Section.

If any repair or restoration to be performed pursuant to Section 8.1 hereof cannot be carried out in compliance with the law, and if the variance is not obtained pursuant to the immediately preceding paragraph within six (6) months of the date of the casualty, then necessary adjustments shall be made in the plans and specifications for such repair and restoration so that the Improvements, as repaired and restored, shall comply with law. However, no substantial reduction in the floor area contained within any Parcel or serving the Parcel shall be made without the consent of the Owner who shall be affected by such reduction. If said Owner shall be unwilling to so consent, and if it shall not be feasible to make such adjustments without substantially reducing said floor areas, then such repair and restoration shall not be performed pursuant to Section 8.1. Subject to the provisions of the following paragraph, any insurance proceeds, less costs and

expenses paid or incurred in applying for the variance, shall be paid out by the Insurance Trustee to the Owners in proportion to the amount such proceeds shall have been paid by the insurers and/or the Owners for damage to Improvements within the respective Parcels of each of the Owners.

If, pursuant to the immediately preceding paragraph, repair and restoration is not to be performed pursuant to Section 8.1, then the Improvements within each Parcel shall be demolished (and the demolished area sodded) or secured, as the Owner of each Parcel shall elect, to such extent, if any, as may be necessary to comply with all laws, rules, orders, ordinances, regulations and requirements of any government or municipality or any agency thereof having jurisdiction. Such demolition or securing of the Improvements, shall be mandatory and shall be performed by the Owner responsible for the damaged Parcel, who shall be entitled to withdraw any insurance proceeds attributable to policies of insurance held by the Insurance Trustee by reason of such damage. The cost and expense of such demolition and/or securing of Improvements shall be allocated among the Owners in proportion to their responsibility of the cost and expense of demolishing and securing the Improvements within each of their respective Parcels, except that for the purpose of determining such proportions, the cost and expense of demolishing or securing any Shared Facility located within one Parcel alone, shall be allocated to the Owners in the proportions of their responsibility which shall be determined pursuant to Article 23.

Section 8.6 Disputes. If any dispute shall arise pursuant to the provisions of this Article 8 then the dispute shall be settled by arbitration in accordance with Article 14 hereof, but the arbitrators shall have no power or authority to vary the provisions of this Article 8 without the consent of each Owner.

ARTICLE 9

ALTERATIONS; ARCHITECTURAL CONTROL

Section 9.1 Alterations. Subject to the provisions of **Exhibit H** with respect to cost-sharing of Shared Facilities, to the provisions of Article 23, and to the limitations contained in this Article, any Owner may at any time at such Owner's sole cost and expense make alterations to the Improvements within such Owner's Parcel, subject to the terms of this Declaration. In connection with such alterations the Owner may relocate any easement within such Parcel granted to any other Owner pursuant to Article 2 to an area approved in writing by the Association, provided, however, that such alterations shall not, without such other Owner's consent, unreasonably diminish the benefits afforded to such other Owner by such easement or materially interrupt such other Owner's use of such (or substantially comparable) easement. No Owner shall alter any Shared Facility in its Parcel without the written consent of the Association.

If at any time any Owner proposes to make alterations to its Parcel, and if such alterations will change the location of, reduce the area of, or otherwise affect, any easement granted to another Owner pursuant to Article 2, affects in any material respect any Shared Facilities, or such alteration is of the type for which the consent of the other Owners is required under the preceding paragraph, then, before commencing such alterations, the Owner who proposes to make such alterations shall give to the other applicable Owners a copy of the plans and specifications

("Plans") showing the proposed alterations. If the other Owners fail to give the Owner who proposes to make such alterations ("Proposing Owner") a written notice ("Objection Notice") objecting to the proposed alterations (which such notice shall set forth the specific objections to the Plans) within thirty (30) days after receipt of the Plans ("Objection Period"), then, subject to the other restrictions set forth in this Article, the proposed alterations may be made by the Proposing Owner, provided that alterations actually made are shown in accordance with the Plans furnished to such other Owners. If the other Owners ("Objecting Owners") shall provide the Proposing Owner with the Objection Notice within the Objection Period and otherwise in accordance with this paragraph, and if the Proposing Owner and the Objecting Owners do not resolve their differences within fifteen (15) days after the Proposing Owner's receipt of the Objection Notice, then the Proposing Owner shall not commence construction of the Alterations until the dispute has been settled by arbitration in accordance with Article 14.

Any Owner making any alterations shall comply with all laws, rules, orders, ordinances, regulations and requirements of any government or municipality or any agency thereof having jurisdiction and shall, within thirty (30) days after demand by any other Owner, discharge, by the filing of a bond or otherwise, any construction, materialman's or other lien asserted against the Parcel of such other Owner by reason of the making of such alterations. Any Owner making an alteration shall provide to the Association a complete set of as-built plans with respect to the work performed within thirty (30) days of substantial completion of said work. An Owner shall, to the extent reasonably practicable, make alterations in such a manner as to minimize any noise or vibration or odor which would disturb an Occupant or Occupants of a Parcel owned by any other Owner.

Any such alterations shall be made at the cost of the Owner performing the same; provided, however, if the same are performed by the Association to a Shared Facility, then such alterations shall be paid for through Common Assessments, Special Assessments or a Capital Improvement Assessment, as may be applicable.

Upon completion of any alteration pursuant to this Section 9.1, the Approved Plans shall be amended to reflect such alteration "as-built."

Section 9.2 Composition. An Architectural Committee to act on behalf of the Association shall initially consist of three (3) members, who initially shall be persons designated by the Association. Each of those persons shall hold office until the Association removes him or her and replaces him or her with a new appointee before that time. Each member shall hold office until such time as he or she resigns or is removed, as provided herein.

Section 9.3 Review of Proposed Construction. Subject to Section 9.10 and such rights of approval granted in Section 9.1 or elsewhere in this Declaration, no improvement or alteration as provided for in this Article, or reconstruction, repair, demolition or the like as provided for in Articles 8 and 10, (including landscaping, drainage and utility lines in the Shared Facilities) shall be performed, erected or installed on or in a Improvements by any Owner, nor any subdivision, platting or replatting of a Parcel shall be made by an Owner, unless and until, in any such case, the plans and specifications showing the nature, kind, shape, aesthetics, height, materials

and location of the same have been submitted to, and approved in writing, by the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it determines that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Architectural Committee may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted to it for its review and approval. Decisions of the Architectural Committee shall require the approval of a majority of its members. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for review and approval. The Architectural Committee may require such detail in plans and specifications submitted for its review as it considers proper, including, without limitation, floor plans, surveys, elevation drawings and descriptions or samples of materials and colors. Until receipt by it of required plans and specifications and other requested information as necessary, the Architectural Committee may postpone review of any proposal submitted for approval. The Architectural Committee shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and a proposal that is not rejected within such thirty (30) day period shall be deemed approved. Notwithstanding any provisions in this Article 9 to the contrary, the approval of the Architectural Committee shall not be required for any non-structural additions, changes or alterations if the non-structural additions, changes or alterations are not in a Visible Area within the Parcel or are replacements of like kind materials and color.

Section 9.4 Meetings of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution adopted in writing by a majority of its members designate a representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to Section 9.9. In the absence of such a designation, the vote of a majority of its members of the Architectural Committee, after at least seven days prior written notice of the upcoming occurrence of a vote of the Architectural Committee, shall constitute an act of the Architectural Committee. The Association shall receive notices of requests for alterations and shall give notice to the members of the Architectural Committee. The Architectural Committee will schedule meetings and votes pursuant to the terms of this Declaration.

Section 9.5 No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 9.6 Compensation of Members or the Architectural Committee. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for third party expenses incurred by them on behalf of the Architectural

Committee in the performance of their duties hereunder. The Architectural Committee may retain an Architect or engineer to advise it in its deliberations, to review plans and specifications submitted by an Owner (“**Applicant Owner**”) and to inspect work for which approval is required. The Architectural Committee may impose a fee upon an Applicant Owner to defray the costs and fees of the Architect or engineer in reviewing the Applicant Owner’s plans and specifications and inspecting the work.

Section 9.7 Inspection of Work. The inspection of work and correction of defects therein, if any, shall proceed as follows:

(a) Notice of Completion. Upon the completion of any work for which approved plans are required under this Article, the Applicant Owner for such approval shall give the Architectural Committee written notice of the completion.

(b) Inspection. Within thirty (30) days thereafter, the Architectural Committee or its authorized representative may inspect the work. If the Architectural Committee finds that the work was not done in substantial compliance with the approved plans, it shall notify the Applicant Owner in writing of the noncompliance within thirty (30) days thereafter, specifying the particulars of noncompliance.

(c) Non-Compliance. Any Applicant Owner who receives notice of a non-compliance as provided in Section 9.7(b) of this Article shall remedy the noncompliance within thirty (30) days of being notified or request approval of the constructed work, and, if such Owner fails to remedy the noncompliance or obtain approval of constructed work, the Architectural Committee shall simultaneously notify the Association and other Owners in writing of the failure, its nature and the estimated cost of correcting or removing it. If the Applicant Owner does not comply with the notice of noncompliance or obtain approval of the as constructed work within said thirty (30) days, then the Association, at its option, may either remove the non-complying improvement or remedy the non-compliance, and in either case the Applicant Owner shall reimburse the Association, upon demand, for all expenses incurred in connection with the Association’s action. If the Applicant Owner fails to promptly reimburse the Association its expenses, the Association shall levy a Special Charge against the Applicant Owner and its Parcel for reimbursement.

(d) Effect of Committee’s Failure to Notify Applicant. If for any reason the Architectural Committee fails to notify the Applicant/Owner of any non-compliance within thirty (30) days after its receipt of a written notice of completion from the Applicant/Owner, the improvements shall be deemed to be in accordance with the plans approved by the Architectural Committee.

Section 9.8 Non-Liability of Architectural Committee Members. Neither the Architectural Committee, any of its members, nor its authorized representative, shall be liable to any Regime Association, any Owner, any Regime Unit Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee’s duties hereunder, unless the loss, damage or injury is due to the willful misconduct or bad faith of one of its members (in which case only the culpable member shall have

any liability). The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition on the basis of aesthetic considerations and the overall benefit or detriment which would result to the Property. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, landscaping, color schemes, finishes and materials and similar features. It shall not, however, be responsible for reviewing any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 9.9 Variances. The Architectural Committee may authorize a variance from compliance with any of the architectural provisions of this Declaration when circumstances such as natural obstructions, hardship, or aesthetic or environmental considerations dictate a variance. Any such variance must be evidenced in a writing signed by at least two members of the Architectural Committee. No violation of this Declaration shall be deemed to have occurred with respect to a matter for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the restrictions in this Declaration for any purpose except as to the particular Parcel and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Parcel covered by the variance, including, but not limited to, zoning ordinances and set-back lines or requirements imposed by any governmental, quasi-governmental or municipal agent or authority, nor the Owner's obligation to seek approval by another Owner as set forth in Section 9.1.

Section 9.10 Developer's Exemption. The provisions of this Article 9 shall not apply to Developer and to any and all construction, alterations, additions or other work planned or performed by Developer or any affiliate of Developer.

Section 9.11 Insurance. The Association may require builder's risk, worker's compensation, and other insurance as determined by the Association from time to time.

ARTICLE 10 **CONDEMNATION**

Section 10.1 Payment to Insurance Trustee. Any awards for damage, direct and consequential, resulting from the taking, other than a temporary taking, by the exercise of the power of eminent domain, by any sovereign, municipality or other public or private authority, of all or any part of the Improvements or the easements or other appurtenances thereto shall be paid to the Insurance Trustee provided for in Section 12.1.

Section 10.2 Allocation of Awards. The awards received by the Insurance Trustee pursuant to Section 10.1 shall be allocated by the Architect among the Owners in that proportion which the damage to each Owner's Parcel and to all easements and other appurtenances thereto shall bear to the damage to all of the Parcels and the easements and other appurtenances thereto, taking into account the allocation provided for in Article 23 and **Exhibit H**, and the award shall be distributed by the Insurance Trustee to the respective Owners (or to any lessee or mortgagee to whom any Owner's rights to such award are assigned pursuant to Section 17.4) in accordance with such allocation, subject, however, to the provisions of Sections 10.4 and 10.5. If

the damages to each Owner's Parcel and the easements and other appurtenances thereto shall have been determined by a court of law or equity in connection with the taking proceeding, then, subject to any right of appeal, such determination shall be conclusive as to the proportions of the total award to be allocated to each of the Owners pursuant to this Section 10.2, in lieu of application of the preceding sentence. Notwithstanding the foregoing, all condemnation proceeds allocated to any Owner shall first be paid to the Insurance Trustee, for utilization pursuant to Section 10.4 in funding repair and restoration, and Sections 10.3 and 10.4 shall control the timing and amount of any subsequent distribution to the Owners.

Section 10.3 Repair and Restoration Following Condemnation. If the taking authority shall take a portion of the improvements within only one Parcel and if such taking does not include any Shared Facilities within such Parcel which serve or benefit the Owner of another Parcel, then, subject to the provisions of Section 10.5, the repair and restoration of such improvements shall be performed by the Owner of such improvements, and such Owner shall be entitled to withdraw, for application to the cost of said repair and restoration, in accordance with the provisions of Article 8, that portion (which may be 100%) of any condemnation award or awards paid to the Insurance Trustee by reason of such taking which shall have been allocated to the Owner of such improvements pursuant to Section 10.2.

In the event of a taking, if the provisions of the preceding paragraph shall not be applicable, then, subject to the provisions of Section 10.5, the repair and restoration of any damage to the Improvements occasioned by such taking shall be performed by the Owner and, if the Association elects, the Association may elect to have such Owner restore such Shared Facilities on its Parcel or the Association may elect to restore such Shared Facility on behalf of all of the Owners. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for such changes in the Improvements as shall be required by reason of such taking. After completing the preparation of such plans and specifications, the Architect shall furnish to each applicable Owner a set of such plans and specifications, and shall assist the Owner and/or the Association (as applicable) in obtaining bids for such repair and restoration from responsible contractors. On the basis of such bids the Architect shall furnish each applicable Owner with an estimate of the portions of the cost and expense of such repair and restoration which are to be borne by each of the Owners, respectively, in accordance with the allocation provided for in Section 10.4. Such contractor shall be selected in the manner provided in Article 11 hereof. The contractor shall work under the administration of the Architect and the Association unless the work does not include or affect in any manner any Shared Facilities, in which case the contractor shall work with only the Architect and each applicable Owner. The Association is hereby authorized, empowered and directed to instruct the Insurance Trustee from time to time as such repair and restoration progress, to disburse in accordance with the Architect's certificate issued pursuant to Section 12.2 the condemnation award or awards paid to the Insurance Trustee pursuant to Section 10.1 by reason of the taking and any other moneys deposited with the Insurance Trustee pursuant to Section 10.4, for application to the cost and expense of such repair and restoration. Each such instruction given by the Association to the Insurance Trustee to disburse funds for such cost and expense shall be accompanied by a statement of the Architect setting forth the portion of such cost and expense which is to be borne by each of the respective Owners pursuant to the allocation provided for in Section 10.4. The

Insurance Trustee shall charge each Owner's portion of such cost and expense against the portion of the condemnation award or awards allocated to such Owner pursuant to Section 10.2.

Section 10.4 Allocation of Costs of Repair and Restoration. All condemnation awards paid to the Insurance Trustee shall first be used to fund all repair and restoration to be performed under Section 10.3. To the extent the condemnation awards paid into the Insurance Trustee are insufficient to fully fund any repair and restoration to be performed under Section 10.3, or if there are no such awards, the cost and expense of performing the repair and restoration provided for in Section 10.3 shall be borne by the respective Owners in that proportion which the cost and expense of repairing and restoring the improvements within the Parcel of each Owner, respectively, shall bear to the entire cost and expense of such repair and restoration, except that the cost and expense of repairing and restoring any Shared Facility located within the Parcel shall be allocated to the Owners pursuant to Article 23 and **Exhibit H.**

If the condemnation awards paid to the Insurance Trustee exceed 120% of the estimate of the cost of the repair and restoration determined by the Architect pursuant to Section 10.3, then the Insurance Trustee shall distribute to the applicable Owners, in advance of performance of restoration and repair, and surplus awards in excess of 120% of the estimated cost of repair and restoration, such surplus to be distributed to the applicable Owners in the respective proportions determined under Section 10.2 to be their respective shares of the condemnation awards. The sum retained by the Insurance Trustee shall be held and disbursed in accordance herewith to fund restoration and repair. If the cost of repair and restoration as determined by the Architect exceeds the amount of the condemnation awards paid to the Insurance Trustee, then a Reconstruction Assessment shall be payable by all of the Owners for the difference, which amount shall be deposited with the Insurance Trustee, the proportionate responsibility of each Owner for such amount being determined as provided in the second sentence of the first paragraph of this Section 10.4. If any Owner shall fail to pay the Reconstruction Assessment in accordance with this paragraph, then said Owner's obligation to pay the Reconstruction Assessment may be enforced, and the lien on said Owner's Parcel securing payment of the Reconstruction Assessment may be foreclosed, in accordance with Article 5 hereof.

Upon completion of any repair and restoration of the damages in accordance with this Article, any condemnation awards and Reconstruction Assessments paid to the Insurance Trustee which remain after payment of the cost and expense of performing such repair and restoration shall be refunded to the Owners in the respective proportions by which each Owner contributed funds to the funds held by the Insurance Trustee, attributing to each Owner as its contribution any condemnation award amount paid into the Insurance Trustee fund and allocated to such Owner under Section 10.2, plus any Reconstruction Assessment paid by such Owner for such repair and restoration.

Section 10.5 Limitations on Repair or Restoration of any Parcel which has been declared to be a Regime. In the event that a Regime Declaration with respect to a Parcel is recorded, and if following such recording, a condemnation occurs, and there is a total condemnation or Substantial Taking, as hereinafter defined in Section 10.6 (d), of the Improvements, and there is a timely Casualty Decision for such Parcel not to proceed with repair

or restoration of the Improvements (not including any Shared Facilities within such Parcel which must be repaired and restored unless released in writing of such obligation by the Association in the Association's sole discretion), then the Improvements and Parcels, or any portion or portions thereof, shall not be repaired or restored and such Improvements demolished (or altered as approved by the Association), all debris removed and such Parcels shall remain obligated for all obligations under this Declaration. If however, a Casualty Decision is not timely made, then the Improvements shall be repaired and restored as provided in this Article 10. Notwithstanding the above, the Owner of such Parcel must repair and restore any Shared Facility within such Parcel, unless released in writing of such obligation by the Association in the Association's sole discretion.

Section 10.6 Substantial Taking. For the purpose of Section 10.5 and generally in this Declaration, Substantial Taking of the Improvements shall be defined as follows: (i) an amount greater than or equal to 50% of the replacement value of the Improvements destroyed by such a condemnation occurring during the period commencing with the initial recordation of this Declaration and terminating thirty (30) years thereafter ("**Initial Period**"); (ii) an amount greater than or equal to 35% of the replacement value of the Improvements destroyed by a condemnation occurring at any time during the period commencing with the end of the Initial Period and terminating ____ years thereafter ("**Second Period**"); and (iii) an amount greater than or equal to 25% of the replacement value of the Improvements destroyed by a condemnation occurring at any time during the period commencing with the end of the Second Period.

Section 10.7 Temporary Taking. In the event of a taking of the temporary use of any space (other than Shared Facilities), the respective Owners shall be entitled to receive directly from the taking authority any award for such taking of space within their respective Parcels or within any easement or appurtenance, according to the law then applicable. Any award for such temporary taking of Shared Facilities space shall be paid to the Association.

Section 10.8 Disputes. If any dispute shall arise pursuant to this Article 10, such dispute shall be settled by arbitration in accordance with Article 14, but the arbitrators shall have no power or authority to vary the provisions of this Article 10 without the consent of each applicable Owner.

ARTICLE 11

SELECTION OF CONTRACTORS OR THE ARCHITECT

Section 11.1 Selection of Contractors. When any repair, restoration, reconstruction, demolition, removal of debris or filling required to be performed pursuant to Article 8 and/or Article 10 is to be funded with funds attributable to the insurance policies, condemnation awards, and/or Reconstruction Assessments of a single Owner, such Owner may choose the contractor who shall perform such work, provided that the Architectural Committee shall have the right to approve any such contractor chosen by the Owner, which approval shall not be unreasonably withheld, conditioned or delayed. In each event wherein a contractor is needed to perform any repair, restoration, demolition, removal of debris or filling required to be performed pursuant to Article 8 and/or Article 10, and such work is to be funded under the terms of this Declaration with funds attributable to the insurance policies, condemnation awards, and/or

Reconstruction Assessment of more than one Owner, then the Association shall invite all of the contractors nominated by itself to submit bids for the work to be performed. The terms of bidding shall require that all bids be for a fixed cost and submitted at a particular place or places by a specified time and date. The Association shall allow the contractors a reasonable time, following the announcement of the invitation to bid, to review any plans and specifications and to prepare estimates. The conditions of bidding shall require, unless such requirement is waived by the Association, that the successful contractor post a performance bond and a labor and material payment bond, issued by a company authorized to engage in the business of issuing such bonds in the State of Florida (and which is acceptable to the Association), in an amount equal to the amount of such contract. The bond shall name the Association and all applicable Owners, and the holder or holders of the first mortgage upon each applicable Parcel or upon the leasehold interest of such lessee, as joint and individual obligees, shall provide that all amounts which may be payable to the obligees thereunder shall be paid to the Insurance Trustee, and shall be conditioned on the completion of and payment for the work to be performed. Unless the Owners on whose behalf such work is to be performed otherwise instructs the Association in writing, the Association shall select the lowest bidding responsive and responsible contractor, and shall, in the name of and for the account of the Owners to be benefited by the work to be performed, enter into a construction contract with such contractor providing for the completion of and payment for such work.

Section 11.2 Selection of the Architect. The Architect shall be as selected by the applicable Owner as to its Building and other Improvements on its Parcel (other than the Shared Facilities),. The Association shall have the power to appoint an Architect for purposes of any repair, restoration, reconstruction, and the like, under this Declaration concerning only the Shared Facilities. Each Owner, respectively, shall have the power to appoint an Architect for purposes of any repair, restoration, reconstruction, and the like, under this Declaration concerning only its Parcel and provided that no Shared Facility shall be a part of any such repair, restoration or reconstruction. In all other cases of repair or restoration, the Association shall have the right to select an Architect, and shall give written notice of such choice to the applicable Owners.

ARTICLE 12 **DISBURSEMENT OF FUNDS BY INSURANCE TRUSTEE**

Section 12.1 Insurance Trustee. The Insurance Trustee shall be a bank or trust company authorized to do business in the State of Florida. The bank or trust company named by the Association in a written notice given to the applicable Owners, shall act as Insurance Trustee. The Insurance Trustee may retain free of trust, from the monies held by it, the Insurance Trustee's reasonable fees and expenses for acting as Insurance Trustee.

The Insurance Trustee shall have no obligation to pay interest on any monies held by it unless the Insurance Trustee shall have given an express written undertaking to the Association to do so. However, if the monies on deposit are not held in an interest bearing account pursuant to agreement among the Insurance Trustee and the Association, then the Insurance Trustee, within thirty (30) days after request from any Owner given to the Insurance Trustee, the Association and to the other Owners, shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and of the most practicable maturities, not

in excess of one year, except insofar as it would, in the good faith judgment of the Insurance Trustee, be impracticable to invest in such securities by reason of any disbursement of such monies which the Insurance Trustee expects to make shortly thereafter, and the Insurance Trustee shall hold such securities in trust hereunder. Any interest paid or received by the Insurance Trustee on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Insurance Trustee. Unless the Insurance Trustee shall have undertaken to pay interest thereon, monies received by the Insurance Trustee pursuant to any of the provisions of this Declaration shall not be mingled with the Insurance Trustee's own funds and shall be held by the Insurance Trustee in trust for the use and purposes herein provided.

The Insurance Trustee shall have the authority and duty to disburse funds held by it pursuant to this Declaration in the manner, to the persons, and at the times provided in this Declaration. The Insurance Trustee shall not be liable or accountable for any action taken or suffered by the Insurance Trustee, or for any disbursement of monies by the Insurance Trustee, in good faith in reliance on advice of legal counsel. The Insurance Trustee shall have no affirmative obligation to make a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award, unless the Insurance Trustee shall have given an express written undertaking to do so, which shall otherwise be the obligation of the Owners.

The Insurance Trustee may rely conclusively on any Architect's certificate furnished to the Insurance Trustee in accordance with the provisions of Section 12.2 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate.

Section 12.2 Architect's Certificate. In any instance when, pursuant to any provision of this Declaration, the Insurance Trustee shall be required to disburse insurance proceeds, condemnation awards or other funds for application to the cost of repair, restoration and/or demolition, the Insurance Trustee shall not be required to make disbursements more often than at thirty (30) day intervals, and each request for disbursement shall be made in writing at least five (5) days in advance. Each request for disbursement shall be accompanied by a certificate of the Architect, dated not more than ten (10) days prior to the request for disbursement, setting forth the following:

(a) That the sum then requested to be disbursed either has been paid by or on behalf of an Owner or Owners (in which case the certificate shall name such Owner or Owners) or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished, or agreed to render or furnish, certain services, equipment, and materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each person in respect thereof and stating the progress of the work up to the date of the certificate;

(b) That the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the work actually accomplished up to the date of such

certificate plus the cost of materials supplied and actually stored on-site (which materials shall be adequately insured against fire, theft and other casualties for the benefit of all applicable Owners);

(c) That no part of the cost of the services and materials described in the foregoing paragraph (i) which is being counted as a basis for the then pending application has been the basis of the withdrawal of any funds in any previous application; and

(d) That following the making of the requested advance, the funds remaining with the Insurance Trustee shall be sufficient to complete the repair and restoration based upon the Architect's estimate of such cost to complete.

Upon compliance with the foregoing provisions of this Section 12.2, the Insurance Trustee shall, out of the monies held by the Insurance Trustee, pay or cause to be paid to the applicable Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate the respective amounts stated in the certificate to be due them.

Section 12.3 No Reliance by Contractors. No contractor, subcontractor, mechanic, materialman, laborer or any other person whatsoever, other than the Owners and any mortgagee or lessee to whom an Owner's rights shall have been assigned as permitted in Section 17.4, shall have any interest in or rights to or lien upon any funds held by the Insurance Trustee. The Owners and, pursuant to such assignment, any such mortgagees and lessees by agreement among themselves, may at any time provide for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, mechanic, materialman, laborer or any other person whatsoever. If at any time the Owners, and such mortgagees and lessees, if any, shall jointly instruct the Insurance Trustee with regard to the disbursement of any funds held by the Insurance Trustee, then the Insurance Trustee shall disburse said funds in accordance with said instructions. The Insurance Trustee shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

ARTICLE 13 **FORCE MAJEURE**

Section 13.1 Force Majeure Event. A Non-Performing Owner shall not be deemed to be in default in the performance of any non-monetary obligation of such Non-Performing Owner under this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-monetary performance of such obligation shall be directly caused by a Force Majeure Event. Within fifteen (15) days after the giving of any written notice by the Association to the Non-Performing Owner describing the non-performance by such Non-Performing Owner of any such obligation, the Non-Performing Owner shall notify the Association in writing of the existence and nature of any such cause for non-performance which is beyond the control of the Non-Performing Owner, and the steps, if any, which the Non-Performing Owner shall have taken to eliminate the cause for non-performance. Thereafter, the Non-Performing Owner shall from time to time on written request of the Association keep the Association fully informed in writing of all further developments concerning such cause for nonperformance and

the efforts, if any, being made by the Non-Performing Owner to end the cause for non-performance.

ARTICLE 14 **ARBITRATION**

Section 14.1 Notice to Arbitrate. If a dispute shall arise between or among any of the Owners, and if, pursuant to any provision of this Declaration, the dispute is to be settled by arbitration, then any Owner may serve upon the other Owner or Owners involved in the dispute a written notice demanding that the dispute be arbitrated pursuant to this Article 14.

Section 14.2 Appointment of Arbitrators and Procedure. The arbitrators shall be appointed pursuant to the then applicable rules of the American Arbitration Association, or any organization successor thereto, and the proceeding shall follow said rules and shall take place in the County. Judgment upon the determination rendered by the arbitrators may be entered in any court having jurisdiction thereof. The fees and expenses of the arbitrators shall be divided equally between or among such Owners. If any Owner shall fail to pay its share of any fees or expenses of the arbitrators it shall be deemed to be a Defaulting Owner, and any other Owner or Owners may pay the same and become a Creditor Owner. The Defaulting Owner shall upon demand reimburse the Creditor Owner for such payment, which the failure of the Defaulting Owner to do so, shall permit the Creditor Owner all of the right and remedies afforded to Creditor Owners in Article 5 of this Declaration. If in connection with any arbitration it shall be necessary to determine the value of any Parcel or portion thereof, the arbitrators who shall be selected shall be disinterested persons of recognized competence in the field of real estate appraisal.

ARTICLE 15 **ESTOPPEL CERTIFICATES**

Section 15.1 Estoppel Certificates. Each Owner and the Association agrees, within thirty (30) days after written request by any Owner (“**Requesting Owner**”), to execute and deliver to the Requesting Owner or to any existing or prospective purchaser, mortgagee or lessee designated by such Requesting Owner, a certificate in recordable form stating to the best of its knowledge: (a) whether or not there is any existing default hereunder by the Requesting Owner or any other Owner in the payment of any sum of money owing to an Owner; (b) whether or not there is any existing default hereunder by any Owner with respect to which a notice of default has been given by the Association and, if there is any such default, specifying the nature and extent thereof; (c) whether or not there are any sums (other than those arising within the previous forty-five (45) days out of the normal course of operation of the Association) which the Requesting Owner or the Association is entitled to receive or demand from any other Owner hereunder and, if there is any such sum, specifying the nature and extent thereof; (d) whether or not the Association has performed or caused to be performed, or is then performing or causing to be performed, any Maintenance or other work not in the normal course of operation of the Association or the Shared Facilities, the cost of which the Association is or may be entitled to charge in whole or in part to any Owner but has not yet charged to such other Owner, and if there be any such Maintenance or other work, specifying the nature and extent thereof; (e) whether or not there are any set-offs,

defenses or counterclaims then being asserted or otherwise known against enforcement of any obligations hereunder which are to be performed by the Requesting Owner, and, if so, the nature and extent thereof; (f) whether or not any Owner has given any notice to the Requesting Owner making a demand or claim hereunder which has not yet been discharged or otherwise resolved, or given any notice of a dispute to be settled or resolved by arbitration in accordance with the provisions of Article 14, and if so, a copy of any such notice shall be delivered with the certificate; (g) whether or not there is any pending dispute involving the Requesting Owner which has been submitted for arbitration hereunder, and if so, specifying the nature of the dispute; (h) whether or not the arbitrators have made any ruling or decision involving the Requesting Owner within the ninety (90) days preceding the date of such certificate, and if so, identifying such ruling or decision; (i) confirming the Boat Show Parties' right to operate the Boat Show during Show Dates pursuant to the Boat Show Lease, and (j) whether or not the Requesting Owner has made any then outstanding assignment of rights, privileges, easements or rights of entry pursuant to Section 17.4 or otherwise, and if so, identifying such assignment. In the event of the recording of a Regime Declaration, any such certificates which are required of the Owner with respect to the Parcel which has been declared a Regime shall be given by the president or vice president of the Regime Association governing said Regime, and such certificate shall be regarded as that of the Owner of such Parcel.

In addition to the estoppel certificates delivered pursuant to the foregoing paragraph, each Owner shall deliver to the Association, within thirty (30) days after written request therefor (but not more often than twice in each calendar year), a certificate setting forth the names of the owners of record (as shown by the Public Records of the County), of all Regime Unit Owners in the Regime Parcel at the time of the giving of such certificate, as well as the names of the directors and the officers of the respective Regime Association.

ARTICLE 16 **NOTICES**

Section 16.1 Giving of Notice. Any notice, demand, election or other communication (hereafter in this Article 16 collectively referred to as “**Notices**”, and singly referred to as a “**Notice**”) which any Owner or other party hereto shall desire or be required to give pursuant to the provisions of this Declaration shall be sent by: (i) a nationally recognized overnight mail delivery service or carrier (such as Federal Express) with delivery charges prepaid, (ii) registered or certified mail with postage, including registration or certification charges, prepaid, enclosed in a sealed envelope, or (iii) electronic mail with a verification of delivery. The Notice shall be addressed to the person intended to be given such notice at the address herein provided. The giving of such notice shall be deemed complete at the time the same is (i) deposited with the nationally recognized overnight mail delivery service or carrier, (ii) deposited in the Regime United States mail, or (iii) sent by electronic mail with verification of delivery, whichever the case may be. Notices to any Owner shall be sent to such Owner addressed as follows or to such other address as may be designated by such Owner from time to time in a notice given pursuant to this Section 16.1:

If to Developer: Rahn Bahia Mar, L.L.C.
1175 N.E. 125th Street, Suite 102
North Miami, Florida 33161
Attn: J. Kenneth Tate, Vice President
Email: kenny@tatecapital.comkenny@tatecapital.com

If to Marina Sublessee: Rahn Marina, LLC
17330 Preston Road, Suite 220A
Dallas, TX 75252
Attn: Brian Redmond, Founding
Principal and President
Email:
bryan@suntexventures.combryan@suntexventures.com

If to Marina Village
Sublessee: TRR Bahia Mar Marina Village, LLC
1175 N.E. 125th Street, Suite 102
North Miami, Florida 33161
Attn: J. Kenneth Tate, Vice President
Email: kenny@tatecapital.com

[If to Boat Show Parties: Marina Industries Association of
South Florida, Inc.
2312 S. Andrews Avenue
Fort Lauderdale, FL 33316
Attn: Executive Director](#)

[And](#)

[Yachting Promotions, Inc.
c/o Informa Group PLC
711 Third Avenue, 8th Floor
New York, NY 10017
Attn: Thomas Etter
Senior Vice President and General Counsel – Americas
Email: tom.etter@informa.com](#)

The initial address of each subsequent Owner created by Supplemental Declarant shall be as set forth in such Supplemental Declaration.

Any Owner may from time to time by written notice to the other Owners in accordance with this Article 16 designate a different address which shall be substituted as specified above.

Copies of notices to any lessee or holder of a mortgage entitled to receive such copies pursuant to Section 17.4 shall be addressed to such lessee or holder of a mortgage at the address or addresses designated by such lessee or holder of a mortgage in the manner set forth above or to such other address or addresses as such lessee or holder of a mortgage may thereafter from time to time designate by written notice given pursuant to the provisions of this Article 16.

If at any time and from time to time any person, corporation, or other entity shall succeed in whole or in part to the interest or estate of any Owner (“**Successor Owner**”), then such Successor Owner shall not be entitled to receive any notice hereunder, and any notice given (or deemed to have been given) to the prior Owner of such interest or estate shall be deemed to have been given to such Successor Owner, unless and until the Successor Owner shall have given written notice of the change of ownership together with a copy of the instrument indicating the change in ownership. Nothing herein contained shall be construed to preclude personal service of any notice, demand, request or other communication in the same manner that personal service of a summons or other legal process may be made.

Section 16.2 Multiple Ownership. If at any time the interest or estate of any Owner hereto shall be owned by more than one person, corporation or other entity (hereafter in this paragraph collectively referred to as “**Said Owners**”), then Said Owners shall give to such other Owner a written notice, executed and acknowledged by all of Said Owners, in form proper for recording, which shall (a) designate one person, corporation or other entity having an address in the State of Florida to whom shall be given, as agent for all of Said Owners, all notices thereafter given to Said Owners hereunder and (b) designate such person, corporation or other entity as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder. Thereafter, until such designation is revoked by written notice given by all of Said Owners or their successors in interest, any notice and any summons, complaint or other legal process, or any notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this Section 16.2 collectively referred to as “**legal process**”) given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of Said Owners at the same time that such notice or legal process is given to, or served upon, such agent. If Said Owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom any legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of Said Owners as agent for all of Said Owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of Said Owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of Said Owners shall be deemed to have appointed each of the other Said Owners as agent for the receipt of notices and the service of legal process as aforesaid.

Notwithstanding the foregoing provisions of this Section 16.2, to the extent permitted by law, in the event of the recording of a Regime Declaration in connection with any one or more of the Parcels, notices to the Owner of said Regime Association of such Regime Parcel and all of its constituent Regime Unit Owner(s) shall be served upon the president of the Regime

Association for such Regime Parcel, and such president shall be the agent for service of process of the Owner and its constituent Regime Unit Owner(s). Legal process served upon such agent shall be effective service upon the Owner and its respective constituent Regime Unit Owner(s) as though served individually on each and all such persons. Said president of the Regime Association may be empowered to give notice and/or serve process on behalf of the Owner and any or all of its constituent Regime Unit Owner(s) for any purposes under this Declaration, which notice shall be binding upon the Regime Association as Owner and/or its constituent Regime Unit Owner(s) on whose behalf it shall have been given.

ARTICLE 17

HEIRS, SUCCESSORS AND ASSIGNS

Section 17.1 Provisions Run with the Land; Priority. This Declaration is intended to and shall run with the real property benefited and burdened hereby, and shall bind and inure to the benefit of the parties hereto and their successors in title. This Declaration shall be superior to and have priority over any Regime Declaration recorded with respect to a Parcel.

Section 17.2 Release on Conveyance. In the event that any person or entity (“**Seller**”) who owns all or any portion of its interest in any Parcel conveys to a Successor Owner all of the right, title and interest of such Seller in such Parcel or portion thereof, then the Seller shall from the time of such conveyance and notice of same to the Association and the other Owners pursuant to Section 16.1 be entirely relieved from the obligation to observe and perform all covenants and obligations which the Seller would otherwise be liable hereunder to observe and perform by virtue of ownership of the interest conveyed. In the event of any such conveyance by a Seller of all of its interest in a Parcel or portion thereof, the Successor Owner shall from the time of such conveyance be deemed to have assumed the liability to observe and perform all the covenants and obligations imposed by this Declaration on the person owning the interest conveyed. No Seller shall be released by virtue of this Section 17.2 from liability incurred under any covenant or obligation in this Declaration prior to the time of its conveyance of all of its interest and the delivery of the notice pursuant to Section 16.1. In any case in which a transfer or conveyance of title occurs by reason of eminent domain, and such taking is only for a temporary period, or for only a portion of a Parcel, the Seller in such instance shall be relieved from performance of its covenants and obligations hereunder only to the extent prescribed elsewhere in this Declaration, and to the extent not so prescribed herein, as may be prescribed by such legal or equitable principles then applicable in the State of Florida.

Section 17.3 Easements Benefit Tenants, etc. Subject to the provisions of this Declaration, any easement or right of entry herein granted to any Owner shall be for the benefit not only of such Owner but also for the benefit of any tenants, licensees, employees, Occupants, guests, invitees, agents and contractors of such Owner whom such Owner shall have the right to permit to use such easement or right of entry.

Section 17.4 Assignment of Rights to Lessees, Mortgagees. Any Owner may, without the necessity of conveying the interest of such Owner’s Parcel, assign or otherwise transfer to any lessee of the entire Parcel, or to the holder of a first mortgage covering all or any of such

Parcel, all or any of the rights, privileges, easements and rights of entry herein given to such Owner (including, without limitation, any right to make any election, to exercise any option or discretion, to give any notice, to perform any work of demolition, restoration, repair, replacement or rebuilding, to receive moneys from the Insurance Trustee other than the moneys required for restoration, repair or reconstruction of the Shared Facilities and to receive any and all other moneys payable to such Owner). Any such lessee may in turn assign or otherwise transfer all or any of such rights, privileges, easements and rights of entry to the holder of a first mortgage covering the leasehold estate of such lessee, and any such lessee or holder of a first mortgage may exercise any such right, privilege, easement or right of entry so assigned or otherwise transferred to it to the same extent as if in each instance this Declaration specifically granted such right, privilege, easement or right of entry to such lessee or holder of a first mortgage. No other Owner (or the Insurance Trustee or any other person having any rights hereunder) shall be bound to recognize any assignment, lease, mortgage or other transfer referred to in this Section 17.4, or the exercise or accrual of any rights pursuant to such assignment, lease, mortgage or other transfer, or to recognize any holder of a first mortgage as a Mortgagee hereunder, until such other Owner, the Insurance Trustee and the Association are given written notice, in the manner provided in Article 16 for the giving of Notice, of such assignment, lease, mortgage or other transfer, which Notice shall then be imputed to any other person having rights hereunder. Said Notice shall be accompanied by a certified copy of the instrument effecting such assignment or other transfer. Any Owner, the Insurance Trustee, the Association, mortgagee or lessee who is given written Notice as aforesaid of such assignment or other transfer, and any successor, personal representative, heir or assign of such Owner, Insurance Trustee and Association or such other person, shall thereafter, simultaneously with the giving of any Notice under this Declaration to such assignor or transferor, give to such lessee or holder of a first mortgage a copy of such Notice pursuant to said Article 18. No such Notice shall be effective against such lessee or holder unless a copy thereof is given to such lessee or holder as aforesaid.

Any such lessee or holder of a first mortgage to whom rights, privileges, easements or rights of entry are assigned or otherwise transferred pursuant to this Section 17.4 shall, within ten (10) days after written request made by any Owner (but not more than twice during each calendar year), execute, acknowledge and deliver to such Owner, or to any existing or prospective purchaser, mortgagee or lessee designated by such Owner, an executed estoppel certificate in recordable form containing the statements called for in Section 15.1. Subject to any applicable Regime Declaration, any Regime Unit Owner, as applicable, may assign or otherwise transfer its rights in the manner described in this Section 17.4 with respect to its Regime Unit. To be considered a Mortgagee of a Parcel for purposes of this Declaration, the holder of such a first mortgage shall give Notice as prescribed in Section 16.1. In addition to giving Notice as prescribed in this Section 16.1, the holder of a first mortgage lien as to any Parcel shall also satisfy the definition of Mortgagee included in Article 1 in order to be considered a Mortgagee under this Declaration.

Section 17.5 Certain Imputations and Stipulations Concerning Notice under Article 17. If pursuant to Section 17.4, notice of the identity of a particular lessee of an entire Parcel or holder of a first mortgage on a Parcel or a Regime Unit is given to the Owners of the other Parcels, the Insurance Trustee, and/or the Association, as those parties are then identified

and constituted, knowledge of such notice and its contents shall be imputed without further action to the successors and assigns of such Owners, Insurance Trustee, and Association. Knowledge of such notice shall likewise continue to be imputed to the persons to whom knowledge of notices to the other Owners, Insurance Trustee, and Association is imputed under Section 17.4, regardless of any succession or assignment among the other Owners, Insurance Trustee, Association, and/or among such person to whom knowledge or notice is imputed under Section 17.4. Binding notice is hereby given, in satisfaction of all requirements of Section 17.4, that the Mortgagee(s) of the Parcel(s), until further notice shall be given in accordance herewith, to _____ at the following address: _____. [Fill in at time with applicable mortgagees]

ARTICLE 18
CERTAIN RESTRICTIONS AND OBLIGATIONS WITH
RESPECT TO THE PARCELS

Section 18.1 Regime Declaration and Amendments Thereto. The Regime Declaration, if any, for any Parcel, shall be initially in the form approved by Developer and the City and no material amendment thereto affecting the Association shall be made without the prior written consent of the Association and no material amendment thereto after affecting the City shall be made without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, delayed, or conditions. Each Owner agrees that the Regime Association may exercise the rights of the board of directors of the Regime Association, if any, and its aggrieved Regime Unit Owner(s) under Section 718.303 of the Act in the case of the failure of any Regime Unit Owner of such Regime to comply with the Regime Declaration, the articles of incorporation, bylaws, rules and regulations of the Regime Association or this Declaration.

Section 18.2 Covenant Not To Sue. Developer hereby discloses that due to certain conditions imposed upon Developer by certain governmental and/or quasi-governmental agencies and/or divisions (collectively, “**Government Authority**”) regarding the construction of the Improvements, certain areas or portions of the Improvements may be subject to flooding (“**Flooding**”). Specifically, Developer hereby discloses that the Parcels may be situated on or below grade (below the adjacent street) and therefore, during periods of heavy rain, the Parcels may flood. The Association, the Owners, each Regime Association, and each Regime Unit Owner hereby warrant, represent and covenant not to commence or institute any litigation, lawsuit, cause of action, claim or the like, in either law, equity or otherwise, against Developer or any party developing such Parcel, for any damage or injury to either property or person (including death) that arises from, is in connection with, or results from the Flooding. In this regard, the Owners shall indemnify and defend, and the Association, each Owner, each Regime Association and each Regime Unit Owner, jointly and severally, shall not hold Developer liable, for any and all cost and expense (including, but not limited to, attorney fees and costs through all trial and appellate levels and proceedings), damage, liability, litigation, lawsuit, cause of action or claim, in either law, equity or otherwise, incurred by and/or commenced against Developer arising from, in connection with or resulting from the Flooding.

ARTICLE 19
SEVERABILITY

Section 19.1 Severability. If any provision of this Declaration is prohibited by or is unenforceable under any applicable law, such provision shall be severed without invalidating the remaining provisions of this Declaration. To the full extent permitted by law the remaining provisions of this Declaration shall be deemed to be a valid and binding agreement in accordance with its terms.

ARTICLE 20
REMEDIES

Section 20.1 Remedies. The remedies provided in this Declaration shall not be exclusive and, in the event of a breach of any of the terms, covenants and conditions hereof, the Owners shall be entitled to pursue any remedies available at law or in equity, including specific performance, in addition to and not in lieu of any of the remedies provided herein.

ARTICLE 21
MISCELLANEOUS

Section 21.1 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 21.2 Gender. The use of any gender in this Declaration shall be deemed to include all other genders and the use of the singular shall be deemed to include the plural, and vice versa, unless the context otherwise requires.

Section 21.3 Amendments.

(a) This Declaration and the provisions herein may be amended, changed, terminated or modified by Developer without the consent of any Owner for as long as Developer owns any Parcel or any portion of a Parcel. While Developer owns any Parcel in the Property, there shall be no amendments to this Declaration or actions of the Association affecting the Developer without the written consent of Developer. Thereafter, this Declaration may be amended by the vote of two-thirds (2/3) of the Voting Interests of the Owners. Any material amendment to this Declaration affecting the City shall require the written consent of the City Manager, which consent shall not be unreasonably withheld, delayed, or conditioned.

(b) Notwithstanding anything contained in this Declaration to the contrary, as long as the Boat Show Parties are current and in good standing under the Boat Show Lease, in no event shall any of the provisions of Section 2.11 of this Declaration which inure to the benefit of the Boat Show Parties be amended, changed, terminated, or modified in any material manner by Developer, the Association, the Board, and/or the Owners without the written consent of the Boat Show Parties in its reasonable discretion.

Section 21.4 Governing Law. This Declaration shall be governed, construed, applied and enforced in accordance with the laws of Florida including matters affecting title to all real property described herein.

Section 21.5 Further Assurances. From time to time after the date hereof each party hereto shall furnish, execute and acknowledge, without charge, such other instruments, documents, materials and information as the other parties hereto may reasonably request in order to confirm to such parties the benefits contemplated hereby.

Section 21.6 Exculpation. Notwithstanding anything herein to the contrary, the representations, covenants, undertakings and agreements made in this Declaration by Developer are not made or intended as personal representations, covenants, undertakings or agreements by Developer or for the purpose or with the intention of binding Developer personally, but are made and intended for the purpose of binding the property of Developer. No personal liability is assumed by nor shall at any time be asserted or enforceable against Developer on account of any representation, covenant, undertaking or agreement of Developer contained in this Declaration either expressed or implied. All such personal liability, if any, is expressly waived and released by the Association and the Owners and by all persons claiming by, through or under the Owners.

Section 21.7 Limitation on Powers. Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty of the Association as the same pertains to any Regime located within the Parcels which would cause the Association to be subject to Chapter 718, Florida Statutes, shall at the option of the Association be null, void and of no effect to the extent, but only to the extent, that such existence or exercise is finally determined to subject the Association to the provisions of said Chapter 718. It is the intent of this provision that the Association not be deemed to be a condominium association, and that the fee interest of an Owner which is not within a declared condominium (or any other portion of the Parcels not expressly declared to be a part of a condominium) not be deemed to be common elements of any such Regime, within the meaning of applicable laws or administrative rules for any purpose.

ARTICLE 22 **MEANING OF OWNER**

In the event of the recording of a Regime Declaration, wherever in this Declaration the consent or approval of the Owner is required or provided for, and no other means by which such consent or approval shall be given is specified, the same shall be deemed to have been given if the president of the Regime Association for the Parcel created by the Regime Declaration, shall have given such consent or approval.

ARTICLE 23 **STANDARD OF ALLOCATION**

Whenever, pursuant to this Declaration, it shall be necessary to determine the proportion of any Assessment hereunder which is to be borne by each Owner, the following shall apply:

(a) The proportion to be borne by the Owner of any Parcel shall be determined in the manner provided in **Exhibit H**, as may be modified as provided in this Declaration.

(b) In the event that any new facilities, not presently called for or shown in the Approved Plans, shall hereafter be constructed pursuant to this Declaration and such new facility meets the definition of a Shared Facility, Assessments pertaining to such facility, shall be allocated as determined by Developer in the Supplemental Declaration (until the Developer turns over control of the Association), after which time as determined by the Association and amended by Supplemental Declaration signed by the Association.

ARTICLE 24
TERMINATION

As long as Developer owns any Parcel, this Declaration may not be terminated without the approval of the Developer. After Developer no longer owns any Parcel, this Declaration may be terminated upon the approval of a plan of termination by not less than 80% of the Voting Interests of all Owners.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Declaration has been duly executed and delivered by Developer on the day and year first above written.

Signed, sealed and delivered
in the presence of:

RAHN BAHIA MAR, L.L.C., a Delaware
limited liability company

Print Name:_____

By:_____
Print Name:_____
Title:_____

Print Name:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as _____ of **RAHN BAHIA MAR, L.L.C.**, a Delaware limited liability company, freely and voluntarily under authority duly vested in him/her by said entity. He/She is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ____.

My Commission Expires:

Notary Public
Print Name:_____

JOINDER

BAHIA MAR MASTER ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, BAHIA MAR ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this _____ day of _____, _____.

Signed, sealed and delivered
in the presence of:

**BAHIA MAR MASTER ASSOCIATION,
INC.**, a Florida corporation not-for-profit

Print Name: _____

By: _____
Print Name: _____
Title: _____

Print Name: _____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as _____ of BAHIA MAR MASTER ASSOCIATION, INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, _____.

My Commission Expires:

Notary Public
Print Name: _____

JOINDER

RAHN MARINA, LLC, a Delaware limited liability company, the leasehold owner of the Marina Parcel and sublessee under the Marina Sublease hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto and commits it Parcel to the Declaration.

IN WITNESS WHEREOF, RAHN MARINA, LLC has caused these presents to be signed in its name by its proper manager this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

RAHN MARINA, LLC, a Delaware
limited liability company

Print Name: _____

By: _____
Print Name: _____
Title: _____

Print Name: _____

STATE OF _____)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as _____ of **RAHN MARINA, LLC**, a Delaware limited liability company, a Delaware limited liability company, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ____.

My Commission Expires:

Notary Public
Print Name: _____

JOINDER

TRR BAHIA MAR MARINA VILLAGE, LLC, a Florida limited liability company, the leasehold owner of the Marina Village Parcel and the sublessee of the Marina Village Sublease hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto and commits it Parcel to the Declaration.

IN WITNESS WHEREOF, TRR BAHIA MAR MARINA VILLAGE, LLC has caused these presents to be signed in its name by its proper manager this _____ day of _____, _____.

Signed, sealed and delivered
in the presence of:

**TRR BAHIA MAR MARINA VILLAGE,
LLC**, a Florida limited liability company

Print Name:_____

By:_____
Print Name:_____
Title:_____

Print Name:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as _____ of **TRR BAHIA MAR MARINA VILLAGE, LLC**, a Florida limited liability company, a Delaware limited liability company, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ____.

My Commission Expires:

Notary Public
Print Name:_____

JOINDER

The undersigned, on behalf of the Boat Show Parties, hereby consents to the Declaration and the provisions of this Declaration and all Exhibits attached hereto.

Signed, sealed and delivered
in the presence of:

MARINE INDUSTRY ASSOCIATION
OF SOUTH FLORIDA, INC.

Print Name: _____ By: _____

Print Name: _____

Title: _____

Print Name: _____

YACHTING PROMOTIONS, INC.

Print Name: _____ By: _____

Print Name: _____

Title: _____

Print Name: _____

STATE OF _____)
_____) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as _____ of _____, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____.

My Commission Expires: _____ Notary Public

Print Name: _____

STATE OF _____)
_____) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as _____ of _____, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____.

Notary Public
My Commission Expires: _____ Print Name: _____

JOINDER

_____, a _____, the holder of that certain Mortgage recorded in Official Records Book _____ of the Public Records of Broward County, Florida and all related loan documents hereby consents to the Declaration and the provisions of this Declaration and all Exhibits attached hereto.

IN WITNESS WHEREOF, _____ has caused these presents to be signed in its name by its proper manager this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

_____, a _____

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, ____.

My Commission Expires:

Notary Public
Print Name: _____

JOINDER

CITY OF FORT LAUDERDALE, Florida, the owner of the fee title to the Property hereby agrees to and consents to the Declaration and the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, CITY OF FORT LAUDERDALE has caused these presents to be signed in its name by its proper manager this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

CITY OF FORT LAUDERDALE

Print Name: _____

By: _____
Name: _____
Title: Mayor

Print Name: _____

By: _____
Name: _____
Title: City Manager

ATTEST:

_____, City Clerk

Approved as to form:

_____, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____, 20__, by _____, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida and _____ as City Clerk they are personally known to me or produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ____.

(SEAL)

Notary Public
Print Name: _____

My Commission Expires:

SCHEDULE OF EXHIBITS

Exhibit A	Redacted Portions of the Boat Show Lease
Exhibit B	Bulkhead
Exhibit C	Description of the Shared Facilities (including Drives and Parking Areas, Promenade, and Bridge)
Exhibit D	Fueling Area
Exhibit E	Limited Shared Facilities
Exhibit F	Marina Office Building
Exhibit G	Legal Description of the Property
Exhibit H	Specified Percentage
Exhibit I	Schedule of Voting Interest
Exhibit J	Articles of the Association
Exhibit K	Bylaws of the Association
Exhibit L	Shared Expenses; Shared Expenses Budget
Exhibit M	Sketch of Approved Site Plan

EXHIBIT A
Redacted Portions of the Boat Show Lease

EXHIBIT B
Bulkhead

EXHIBIT C
Description of the Shared Facilities (including Drives and Parking Areas, Promenade, and
Bridge)
[TO BE COMPLETED]

EXHIBIT D
Fueling Area

EXHIBIT E
Limited Shared Facilities

EXHIBIT F
Marina Office Building

EXHIBIT G
Legal Description of the Property

EXHIBIT H
Specified Percentage

EXHIBIT I
Schedule of Voting Interests

Until Developer turns over Control of the Association – 100% to the Developer
After Developer turns over Control, each Owner shall have one (1) vote

EXHIBIT J
Articles of the Association

EXHIBIT K
Bylaws of the Association

EXHIBIT L
Shared Expenses; Shared Expenses Budget

EXHIBIT M
Sketch of Approved Site Plan

MORTGAGEE'S JOINDER, CONSENT AND SUBORDINATION

_____, the owner and holder of that certain Amended and Restated Mortgage, Security Agreement, Fixture Filing, Assignment of Leases and Rents and Notice of Future Advance recorded in Official Records Book _____, at Page _____, of the Public Records of Broward County, Florida ("**Mortgage**"), which encumbers the "**Upland Parcel**", as defined in the foregoing Amended and Restated Declaration of Covenants, and Restrictions of Bahia Mar Master Association, Inc., to be recorded in the Public Records of Broward County, Florida ("**Declaration**"), does hereby join in and consent to the recording of and subordinates its interest under the aforesaid Mortgage to the Declaration.

Signed, sealed and delivered
in the presence of: _____

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

Address: _____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____, the _____ of _____, and voluntarily under authority duly vested in him/her by said entity. He/She is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ____.

My Commission Expires:

Notary Public
Print Name: _____

Document comparison by Workshare Compare on Tuesday, January 18, 2022
10:22:10 AM

Input:	
Document 1 ID	iManage://GMLAW-DMS.IMANAGE.WORK/Active/48246822/7
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Document 2 ID	iManage://GMLAW-DMS.IMANAGE.WORK/Active/48246822/10
Description	#48246822v10<Active> - Bahia Mar Declaration
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	231
Deletions	156
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	389