

**DECLARATION OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM**

Steeve Squared, LLC, (the "Developer"), a Florida limited liability company, for itself and on behalf of its respective successors, grantees, and assigns, hereby makes this Declaration of Condominium.

**ARTICLE I
INTRODUCTION AND SUBMISSION TO CONDOMINIUM**

Section 1. **INTRODUCTION.** The Developer owns the fee title to certain land and buildings located in Lee County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Property").

Section 2. **SUBMISSION TO CONDOMINIUM.** The Developer hereby submits that portion of the Land legally described on Exhibit "A" attached hereto, together with all improvements from time to time erected or to be installed thereon, to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date of this Declaration, subject to the reservations, easements and restrictions contained herein.

Section 3. **PROPERTY SUBJECT TO CERTAIN RESTRICTIONS AND EASEMENTS.** The Condominium Property (as defined hereinafter) is subject to the covenants, conditions, restrictions and reserved rights of the Developer contained in this Declaration and such other easements, covenants, conditions and restrictions as shown on the Condominium Plot Plan, as contained in any future amendments to this Declaration, as declared by the Developer pursuant to reserved rights contained herein, or as otherwise shown in the Public Records of Lee County, Florida.

Section 4. **PLAN OF DEVELOPMENT.** The Developer intends to construct or otherwise provide a building or buildings containing approximately 384 Dry Slip Units as well as approximately 7 Commercial Space Units, approximately five (5) Wet Slip Units located outside of such buildings, and approximately 16 Storage Units and improvements associated with the foregoing designated as "Sanibel Harbour Yacht Club, a Condominium."

Section 5. **NAME OF ASSOCIATION.** The name of the condominium association responsible for the operation of the Condominium is "Sanibel Harbour Yacht Club Condominium Association, Inc.," a not-for-profit Florida corporation.

Section 6. **DEFINITIONS.** The terms used herein will have the meanings stated in the "Condominium Act" (subsequently defined) unless otherwise defined below, or unless the context otherwise requires.

(a) “Articles of Incorporation” shall mean and refer to the Articles of Incorporation for the Association, as amended from time to time. A copy of the Articles of Incorporation is attached to this Declaration as Exhibit “B”.

(b) “Assessment” shall mean and refer to the share of the funds required for the payment of Common Expenses which from time to time is assessed against a Unit Owner.

(c) “Association” or “Marina Association” shall mean and refer to Sanibel Harbour Yacht Club Condominium Association, Inc., a not-for-profit Florida corporation responsible for the operation of the Condominium, and its successor(s).

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

(e) “Board of Directors” or “Board” shall mean and refer to the Board of Directors responsible for the administration of the Association, referred to in the Condominium Act as the board of administration.

(f) “Boathouse Building” means and refers to the building located in the Property and as shown on the Condominium Plot Plan attached as Exhibit “D”; which contains the Dry Slip Units.

(g) “By-Laws” shall mean and refer to the By-Laws of the Association, as amended from time to time. A copy of the By-Laws is attached to this Declaration as Exhibit “C”.

(h) “Capital Improvement Assessment” shall have the meaning ascribed to such term in Article 7, Section 2(b).

(i) “Charge” or “Special Charge” shall mean and refer to the obligation of a Unit Owner to pay or reimburse money to the Association that cannot be secured as an Assessment pursuant to F.S. 718.116, but which will, if the charge is not paid, give rise to a cause of action against the Unit Owner pursuant to this Declaration.

(j) “Collateral Assignment of Rents” shall have the meaning ascribed to such term in Article 7, Section 3.

(k) “Commercial Space Unit” shall mean and refer to the seven (7) Units (and any additional Units, if any original Commercial Space Unit is subdivided as hereinafter provided) within the Condominium and designed as commercial space, as more particularly described herein and designated as “CS Unit 1” through “CS Unit 7”, inclusive on the Condominium Plot Plan attached hereto as Exhibit “D”.

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

(m) “Common Element” or “Common Elements” shall mean and include all portions of the Property which are intended for the common use and enjoyment of the Unit Owners whether or not conveyed to the Marina Association, including any improvements thereto. The Common Elements shall include, without limitation, piers and pilings within or abutting Wet Slips, which are intended for the use and enjoyment of the Owners; easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements; an easement of support in every portion of a Unit which contributes and is necessary to the support of the building, property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; the Surface Water Management System, roadways, wetland and buffer areas; and any other parts of the Condominium Property designated as Common Elements in this Declaration or the Condominium Act, or as otherwise established by Developer or Marina Association, the maintenance of which shall be part of the Common Expenses. Common Elements also include “Limited Common Elements” as subsequently defined.

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

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

(p) “Condominium” shall mean and refer to Sanibel Harbour Yacht Club, a Condominium, the condominium created by this document.

(q) “Condominium Act” or “Act” shall mean and refer to Chapter 718, Florida Statutes, as it exists as of the date of this Declaration. All references to Chapter 718, Florida Statutes, or any section or subsection thereof shall be deemed to refer to such Chapter, section or subsection as it exists as of the date of this Declaration.

(r) “Condominium Documents” shall mean and refer to this Declaration and the attached exhibits. In the event of any conflict among the Condominium Documents, the order of priority of the documents will be as follows: (i) the Declaration; (ii) the Articles of Incorporation; (iii) the By-Laws; and (iv) the Rules and Regulations.

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

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

(u) “Condominium Property” shall mean and refer to the real and personal property (including, the Property), both tangible and intangible, subject to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

(v) “Declaration” or “Declaration of Condominium” shall mean and refer to this Declaration of Condominium, and any and all amendments to this Declaration of Condominium.

(w) “Developer” shall mean and refer to Steeve Squared, L.L.C., a Florida limited liability company, and its successors and assigns.

(x) “Dry Slip” or “Dry Slip Unit” shall mean and refer to the Units within the Condominium which are Slips within the Building and designed for the storage of Vessels on boat storage racks, as more particularly described herein and in the Condominium Plot Plan.

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

Exhibit “A”	Legal Description of the Property
Exhibit “B”	Articles of Incorporation of the Association
Exhibit “C”	By-Laws of the Association
Exhibit “D”	Survey, Condominium Plot Plan and Graphic Description of Improvements
Exhibit “E”	SFWMD Permit
Exhibit “F”	Urban Stormwater Management Program Guide
Exhibit “G”	Stormwater Pollution Prevention Plan (SWF3)

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

(aa) “Guest” shall mean and refer to any person who is physically present in or occupies a Vessel moored or stored in a Unit or otherwise traveling within the Condominium

Property on a temporary basis at the invitation of a Unit Owner or other legally permitted occupant, without the payment of consideration.

(bb) “Insurance Trustee” shall have the meaning ascribed to such term in Article 8, Section 11.

(cc) “Insured Property” shall have the meaning ascribed to such term in Article 8, Section 2(a).

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

(ee) “Lease” shall mean and refer to the grant by a Slip Owner of a temporary right of use of a Slip or the grant by a Commercial Space Owner of a temporary right of use of a Commercial Space Unit.

(ff) “Limited Common Elements” shall mean and refer to those portions of the Common Elements that are reserved for the use of a certain Unit or Units to the exclusion of the other Units, including, without limitation, finger piers, pilings, cleats and dock storage boxes, which property is reserved for the exclusive benefit and use of a specific Unit Owner or Unit Owners, as set forth herein, as shown on the Condominium Plot Plan, or as otherwise established by Developer or the Association. Reference in this Declaration to Common Elements shall also include all Limited Common Elements unless the context would otherwise require. Except as set forth in Exhibit “D”, in the event of any reasonable doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made; provided, however, this provision shall not affect Common Elements identified as such in Exhibit “D” to this Declaration.

(gg) “M.A.B.” shall mean and refer to the Marina Appearance Board, a permanent committee of the Association, as further described in Article 11, Section 13 herein, created for the purpose of establishing and enforcing criteria for regulating the appearance of the Condominium Property and the vessels moored or kept within the Condominium.

(hh) “Member” shall mean and refer to a Unit Owner entitled to membership in the Association, as provided herein and in the By-Laws.

(ii) “Occupy” shall, as to the Slips, mean and refer to the act of docking or placing a Vessel in a Slip, and as to a Commercial Space Unit shall mean and refer to the act of physically occupying a Commercial Space Unit. All such occupancies shall be subject to this Declaration

and the Rules and Regulations and subject to all applicable governmental regulations, permits, laws and approvals applicable to the Property.

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

(kk) “Person” shall mean and refer to an individual, corporation, partnership, trust, or other legal entity capable of holding title to real property.

(ll) “Plat” shall mean and refer to any plat or plats, if any, recorded in the Public Records of Lee County, Florida, affecting any or all of the Property.

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

(nn) “Rules and Regulations” shall mean and refer to the Rules and Regulations of the Association, as amended from time to time. A copy of the Rules and Regulations is attached to this Declaration as Exhibit “E”.

(oo) “Slip” or “Slip Unit” or “Marina Slip” shall mean and refer to a portion of the Property subject to exclusive fee ownership and constituting a Unit, identified as a Slip by number designation on the Condominium Plot Plan attached hereto as Exhibit “D”, and excluding therefrom any improvements or portions of improvements contained in such Slip which are Common Elements. Slips shall consist of Wet Slips and Dry Slips and shall have the boundaries identified elsewhere in this Declaration. Each Slip shall be utilized for the sole purpose of mooring or storing a Vessel, which shall be subject to the approval of the Association.

(pp) “Slip Owner” or “Slip Unit Owner” shall mean and refer to the record owner of legal title to a Slip.

(qq) “Special Assessment” shall have the meaning ascribed to such term in Article 7, Section 2(a).

(rr) “Surface Water Management System” means and includes the surface water management system serving the Condominium Property, including without limitation any Conservation Areas, berms, drainage easements, other easements, wetland and other preserve areas and all water management, drainage and related facilities located on, over, under and across the same or otherwise comprising a portion of the surface water management system serving the Condominium Property, as permitted pursuant to Environmental Reserve Permit and Consumptive Use Permit issued by South Florida Water Management District (collectively, the SFWMD Permit). SFWMD Permit No. _____ is attached hereto as Exhibit “E”, and copies of the SFWMD Permit and any Future SFWMD permit actions shall be maintained by the Association or the Association’s agent for the Association’s benefit.

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

(tt) “Termination Trustee” shall have the meaning ascribed to such term in Article 15, Section 2(a).

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

(vv) “Very Substantial Damage” shall have the meaning ascribed to such term in Article 9, Section I herein.

(ww) “Unit” shall mean and refer to that part of the Condominium Property that is subject to exclusive ownership as described in this Declaration.

(xx) “Unit Owner” shall mean and refer to the owner of record legal title to a Condominium Parcel.

(yy) “Voting Interest” shall mean and refer to the voting rights distributed to the Association members. Each Unit shall have appurtenant thereto a Voting Interest equivalent to the Unit’s percentage interest in the Common Elements and Common Surplus provided to the Members pursuant to the Condominium Act and the Condominium Documents.

(zz) “Wet Slip” or “Wet Slip Unit” shall mean and refer to the Units which are Slips located outside of the Boathouse Building and on waterways within the Condominium Property, as more particularly described herein and on the Condominium Plot Plan.

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

ARTICLE 2

DESCRIPTION OF CONDOMINIUM PARCELS, BOUNDARIES, AND APPURTENANCES

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

Condominium Property, subject only to the provisions of the Condominium Documents and applicable laws.

Section 1. **CONDOMINIUM PLOT PLAN.** Attached to this Declaration as Exhibit "D" is a Survey of the Property, a graphic description of the improvements and the Condominium Plot Plan (here collectively referred to as the Condominium Plot Plan). Exhibit "D" identifies the Units in the Condominium, the Common Elements and Limited Common Elements and their relative locations and approximate dimensions.

Section 2. **UNIT IDENTIFICATION.** Each Unit is separately identified by a number as shown on Exhibit "D" and no Unit bears the same designation as any other Unit. Wet Slip Units are identified in the Condominium Plot Plan as WS 1 through 5. Dry Slip Units are identified on the Condominium Plot Plan as Unit 101 through 176, Unit 201 through 282, Unit 301 through 382, Unit 401 through 494, and Unit 501 through 550. The Commercial Space Units are identified on the Condominium Plot Plan as CS 1 through 7, and Storage Units are identified on the Condominium Plot Plan as ST 1 through 16.

Section 3. **NO SUBDIVISION OF UNIT.** Except as expressly stated in Article 2, Section 11 of this Declaration, no Unit may be divided or subdivided, nor in any manner made into a smaller Unit than that Unit as shown on Exhibit "D".

Section 4. **NO SEPARATION OF COMMON ELEMENTS OR LIMITED COMMON ELEMENTS.** Neither the use of any Limited Common Elements, nor any undivided interest in the Common Elements declared to be an appurtenance to a Unit, may be transferred, conveyed, devised or encumbered separately from the Unit to which such elements are appurtenant, except as to the Commercial Space Units as provided in Article 2, Section 11 hereof.

Section 5. **CONVEYANCE OR OTHER DISPOSITION OF UNIT.** The transfer, conveyance, devise or encumbrance of a Unit shall be deemed to include in the transfer, conveyance, devise or encumbrance: (i) an undivided interest in Common Elements and Common Surplus appurtenant to the Unit; (ii) the use rights in any Limited Common Elements appurtenant to the Unit, even though such undivided interest in Common Elements or rights in any parcel of Limited Common Elements are not expressly described in the instrument conveying, devising or encumbering the Unit; (iii) membership in the Association with the full voting rights appurtenant thereto; and (iv) other appurtenances as may be provided by this Declaration. Except as otherwise expressly provided herein, any instrument purporting to transfer, convey or encumber any Unit or its appurtenant interest in Common Elements or appurtenant rights in any Limited Common Elements separately or otherwise than as a unitary Condominium Parcel shall be null and void insofar as it purports to affect any interest in the Unit and its appurtenant undivided interest in Common Elements and any appurtenant Limited Common Element. Any instrument transferring, conveying, devising, encumbering or otherwise dealing with any Unit which describes said Unit by its designation assigned in Exhibit "D" without limitation or exception, shall affect the entire Unit and its appurtenant undivided interest in Common Elements and appurtenant rights in any Limited Common Elements. Nothing contained in the Condominium Documents shall be construed as prohibiting ownership of any

Unit and its appurtenant undivided interest in Common Elements and any appurtenant Limited Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entireties.

Section 6. **EXCLUSIVE USE.** Each Unit Owner will have the exclusive use of such Unit Owner's Unit, except to the extent otherwise expressly stated herein.

Section 7. **OWNERSHIP.** The ownership of each Unit will carry with it, as appropriate, and whether or not separately described, all of the rights, title, and interest of a Unit Owner in the Condominium Property which will include, but not be limited to:

(a) **COMMON ELEMENTS AND COMMON SURPLUS.** An undivided share of ownership of the Common Elements and Common Surplus and share in the Common Expenses equal to a fraction, the numerator of which is one (1), and the denominator of which is the total number of all Units in the Condominium.

(b) **LIMITED COMMON ELEMENTS.** Either the exclusive use or use in common with one or more other designated Unit of the Limited Common Elements that may exist.

(c) **ASSOCIATION MEMBERSHIP.** Membership in the Association and all voting rights associated therewith.

Section 8. **EASEMENTS.** Each of the following easements is a covenant running with the land as to the Condominium.

(a) **UTILITIES.** Easements are reserved under, through and over the Property for utility services, fire safety sprinklers and sprinkler lines, cable television, communications, security systems and other services as may be required to serve the Units, Common Elements and Limited Common Elements. However, such easements through Units shall exist only to the extent necessary or helpful to provide service to other Units, the Common Elements and Limited Common Elements. The Association shall have a right of access during reasonable hours to each Unit to maintain, repair or replace any elements providing such services and to remove any improvements interfering with such facilities; provided that, except in the case of emergencies, entry shall not be made without reasonable notice (one (1) day's notice or attempted notice shall be deemed reasonable, except that notice shall not be required if the Unit Owner is absent when the giving of notice is attempted). A Unit Owner shall do nothing within or outside the Unit Owner's Unit that interferes or impairs, or may interfere or impair, with the provision of such utility, fire safety and sprinkler, cable television, communications and security systems and other services and drainage facilities or the use of these easements.

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

Such easements for traffic shall be deemed to include, non-exclusive easements in favor of the public for pedestrian and vehicular traffic over sidewalks, parking areas, and such other portions of the Common Elements as may be necessary for public access in connection with the business operations of Commercial Space Unit Owners.

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

(d) UNINTENTIONAL AND/OR NON-NEGLIGENT ENCROACHMENTS. If: (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto) or any other property in the Property; (b) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; (c) any encroachment shall hereafter occur as a result of (i) construction of improvements and other Common Elements, (ii) settling or shifting of the any improvements or other Common Elements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer, as appropriate, or (iv) any repair or restoration of the improvements to the Property (or any portion thereof) after damage by fire, windstorm, or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance, repair and replacement of same. If the Vessel of any Owner shall encroach upon an adjoining Slip or other portion of the Property as the result of (i) a wake caused by the movement of other Vessels, (ii) tidal movement, or (iii) storms or other acts of God, then in any such event, a valid easement shall exist for such encroachment. The foregoing shall not, however, authorize the protrusion of any Vessel or anything attached thereto into the Common Elements except as specifically provided in this Declaration.

Notwithstanding any of the foregoing, however, a Unit Owner shall be liable for all damages to the Unit, Slip or Vessel of another Slip Owner or to the Property where the cause of such damage is the failure of such Unit Owner to properly secure, operate and maneuver (or, if required by the Marina Association, remove) his Vessel to (or from) its mooring pilings or dolphins. Each Unit Owner and his family, guests, employees, invitees, lessees and licensees shall have the right to proceed over, across and through the waters of the Property, if any, for the purpose of ingress and egress of his Vessel to and from the Unit Owner's Unit and the adjacent waters. This easement shall include the right to proceed over, across and through the waters within another Unit Owner's Slip in order to facilitate docking and navigation within the Property; provided, however, that no Unit Owner shall be required to remove or move his Vessel from his Slip in order to facilitate the use of this easement by another Unit Owner.

(e) CONSTRUCTION MAINTENANCE. The Developer and its designees shall have the right, in its sole discretion from time to time, to enter the Property and take all other action necessary or convenient for the purpose of completing any construction or reconstruction thereof on the Property or adjoining property, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance or warranty

purposes where the Association fails to do so or where the Developer, in its sole discretion, determines that it is required or desires to do so.

(f) SALES AND LEASING ACTIVITY. For as long as there are any Units owned by the Developer and/or the Developer (or an affiliate) is marketing Units for sale or lease, the Developer and its designees, shall have the right to use any such Unit (or Units leased by the Developer or its designee) and parts of the Common Elements or the Property; and to erect on the Property signs and other promotional material or any part thereof, or any improvements (including within buildings) or Unit located or to be located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so or where the Developer in its reasonable discretion, determines that it is required or desires to do so.

Developer hereby further reserves to itself and its agents, contractors, vendors, employees, lessees and invitees, until such time as the Developer turns over control of the Association to the Unit Owners, a non-exclusive easement for (i) pedestrian and vehicular access to, (ii) parking for, and (iii) marine navigation over the Common Elements for the use, occupancy and enjoyment of the ship's store/dockmaster's office, fuel dock and other facilities (collectively referred to as the "Ship's Store") related to the operation of the Ship's Store and docks and other land and improvements within the Condominium. Neither the Association nor any Unit Owner shall in any manner obstruct or interfere with the use of such easement or, more generally, with Developer's operation of the ship's store, dockmaster's office, fuel dock or Developer's or its designees' or lessees' use of boat slips.

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

(h) ADDITIONAL EASEMENTS. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas, other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the improvements, or any portion thereof, for the general health and welfare of the Unit Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for permitted purposes.

(i) EASEMENT FOR ADJACENT OR CONTIGUOUS SLIPS. The Slip Owners of adjacent and contiguous Slips, which are not separated by Common Elements (such as finger piers, docks and walkways) shall have the right of reasonable joint use of dolphins and pilings, if any, on or immediately proximate to the common boundary between such Slips for the purpose

of attaching a mooring line(s) in connection with mooring a Vessel. Each Slip Owner will use reasonable care and good seamanship in connection with this use right and will exercise his or her rights hereunder in a reasonable manner to minimize interference with or inconvenience to the adjacent Slip Owners. No Slip Owner will be responsible for ordinary wear and tear to dolphins or pilings from the use described herein, but each Slip Owner will be liable for any damage or destruction caused by negligence or willful misconduct in the exercise of the use rights granted hereby.

(j) **BENEFICIARIES.** The easements reserved and granted in this Article 2 shall be covenants running with the land for the benefit and in favor of the Unit Owners, the Developer and the Association and their Guests, lessees, licensees, customers and invitees for all proper purposes, and providers of utility services, cable television, communications, security systems and other services, as may be required to serve the Units, Common Elements and Limited Common Elements subject to the provisions of this Declaration of Condominium and rules and regulations of the Condominium. However, nothing herein shall constitute any party a beneficiary of any easement in Limited Common Elements for any purpose reserved to the use of a particular Unit or Units, except for the Unit Owner or Unit Owners of that Unit or those Units and the invitees, Guests, licensees, customers, invitees and lessees of the Unit Owner or Unit Owners.

Section 9. **RESTRICTION ON OWNER EASEMENTS.** No Unit Owner shall grant any easement or use right (other than rights as a tenant) upon any portion of the Property (including, without limitation, a Unit or any property within the boundaries of a Unit) to any person or entity without the prior written consent of the Association, which consent may be withheld in the Association's sole and absolute discretion.

Section 10. **LIMITED COMMON ELEMENTS.** The Limited Common Elements and the Units to which they are appurtenant shall include, but not be limited to:

- (a) Each dock box shall be a Limited Common Element of its adjacent Wet Slip.
- (b) Each mooring pile and dock located on or about the boundary line between two (2) Slips, or an extension of such line into the adjacent Common Elements, shall be a Limited Common Element of such Slips.
- (c) Each mooring pile within, on the boundary line of or otherwise adjacent only to one (1) Slip shall be a Limited Common Element of that Slip.
- (d) Any area labeled as a Limited Common Element on the Condominium Plot Plan or identified as being appurtenant to a Unit, such as, but not limited to, the balcony which exclusively serves CS Unit #1.

Section 11. **UNIT BOUNDARIES.**

- (a) The Units will have the following boundaries.

(i) **Commercial Space Unit Boundaries.** Each Commercial Space Unit will have the following boundaries:

(1) **Commercial Space Unit #1**

a. **UPPER UNIT BOUNDARY:** The horizontal plane of the unfinished lower surface of the structural ceiling of the unit, extended to meet the perimeter boundaries.

b. **LOWER UNIT BOUNDARY:** The horizontal plane of the upper surface of the concrete floor of the unit, extended to meet the perimeter boundaries.

c. **PERIMETER UNIT BOUNDARY:** The perimeter boundaries will be both the unfinished interior surfaces of the perimeter walls of the unit extended to meet with each other and the upper and lower boundary of the unit, and the planes of the interior surfaces of the unit's windows, doors and other openings that abut the exterior of the building or common elements.

(2) **Commercial Space Units #2 Through #7**

a. **LOWER UNIT BOUNDARY:** The horizontal plane of the upper surface of the base floor slab extended to the planer intersection with the lateral, forward and aft unit boundaries.

b. **UPPER UNIT BOUNDARY:** The horizontal plane of the lower surface of the structural horizontal I beam supporting the steel rack for the unit above the subject unit, extended to the planer intersection with the lateral, forward and aft unit boundaries.

c. **FORWARD UNIT BOUNDARY:** The vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper, lower and lateral unit boundaries.

d. **AFT UNIT BOUNDARY:** A vertical plane parallel with and 30.0 feet north of the forward unit boundary extended to the planer intersection with the upper, lower and lateral unit boundaries.

e. **LATERAL UNIT BOUNDARY:** The vertical plane of the inner surface of the vertical structural supports, extended to the planer intersection with the forward, aft, upper and lower unit boundaries.

Any utility lines which are located within a Commercial Space Unit and which may provide service to more than one Unit in the Condominium shall be considered to be Common Elements, notwithstanding their physical location being within the Unit's boundaries. If a wall or roof surface overhangs or part of a Commercial Space Unit encroaches onto the Common

Elements, the overhanging or encroaching specific portion of such Unit shall be a part of the Unit.

(ii) **Wet Slip Unit Boundaries.** Each Wet Slip Unit shall consist of the ownership interest in the surface of the water and air space immediately above the submerged land, the vertical planes coincident to the perimeter boundaries of the Wet Slip Unit as shown on Exhibit "D", extended to the planar intersections with each other and with the lower boundary, including the surface of the water located within the boundaries of the West Slip Unit at any given time.

(iii) **Dry Slip Unit Boundaries.** Each Dry Slip Unit shall include that part of the Building containing the Unit that lies within the following boundaries (as graphically depicted in Exhibit "D"). Further, all references made below to "levels," "sections" and "aisles" are made with reference to those "levels," "sections" and "aisles" which are designated on Exhibit "D"):

(1) LOWER UNIT BOUNDARIES:

a. Level one. The horizontal plane of the upper surface of the base floor slab extended to the planer intersection with the lateral, forward and aft unit boundaries.

b. Levels two through five. The horizontal plane of the upper surface of the structural horizontal I beam supporting the steel rack for the subject unit, extended to the planer intersection with the lateral, forward and aft unit boundaries.

(2) UPPER UNIT BOUNDARIES:

a. Levels one through four of sections A & C, and levels one through three of section B. The horizontal plane of the lower surface of the structural horizontal I beam supporting the steel rack for the unit above the subject unit, extended to the planer intersection with the lateral, forward and aft unit boundaries.

b. Level five of sections A, C & D, and level four of section B. The horizontal plane of the upper surface of the structural roof support beam, extended to the planer intersection with the lateral, forward and aft unit boundaries.

(3) FORWARD UNIT BOUNDARIES:

a. Typical unit, north aisle, north side units and south aisle, south side units. The vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper, lower and lateral unit boundaries.

b. Typical unit, north aisle, south side units and south aisle, north side units. The vertical plane of the finished, decorated surface of the 12" CMU partition

wall (as designated on Exhibit "D"), extended to the planer intersection with the upper, lower and lateral unit boundaries.

c. Units 101, 102, 201 and 202. A vertical plane parallel with and 10.5 feet south of the vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper, lower and lateral unit boundaries.

d. Units 118 and 119. A vertical plane parallel with and 10.0 feet south of the vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper, lower and lateral unit boundaries.

e. Units 120, 121, 137 and 138. A vertical plane parallel with and 15.0 feet north of the vertical plane of the finished, decorated surface of the 12" CMU partition wall (as designated on Exhibit "D"), extended to the planer intersection with the upper, lower and lateral unit boundaries.

f. Units 139, 140, 156 and 157. A vertical plane parallel with and 15.0 feet south of the vertical plane of the finished, decorated surface of the 12" CMU partition wall (as designated on Exhibit "D"), extended to the planer intersection with the upper, lower and lateral unit boundaries.

g. Units 158 through 163 and units 173 through 176. A vertical plane parallel with and 10.0 feet north of the vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper, lower and lateral unit boundaries.

(4) AFT UNIT BOUNDARIES.

a. Typical unit, north aisle, north side units and units 118 and 119. A vertical plane parallel with and 40.0 feet south of the vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper, lower and lateral unit boundaries.

b. Units 101, 102, 201 and 202. A vertical plane parallel with and 40.5 feet south of the vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper and lower unit boundaries.

c. All north aisle, south side units. A vertical plane parallel with and 45.0 feet north of the vertical plane of the finished, decorated surface of the 12" CMU partition wall (as designated on Exhibit "D"), extended to the planer intersection with the upper, lower and lateral unit boundaries.

d. All south aisle, north side units. A vertical plane parallel with and 45.0 feet south of the vertical plane of the finished, decorated surface of the 12" CMU partition wall (as designated on Exhibit "D"), extended to the planer intersection with the upper, lower and lateral unit boundaries.

e. All south aisle, south side units. A vertical plane parallel with and 40.0 feet north of the vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the upper, lower and lateral unit boundaries.

(5) LATERAL UNIT BOUNDARIES:

a. Typical unit. The vertical plane of the inner surface of the vertical structural supports extended to the planer intersection with the forward, aft, upper and lower unit boundaries.

(6) COMMON LATERAL UNIT BOUNDARIES:

a. Two adjacent units not separated by vertical structural supports. A vertical plane extending from the forward to the aft unit boundaries situated midway between the lateral unit boundaries formed by the nearest adjacent vertical structural supports and extended to the planer intersection with the upper, lower, forward and aft unit boundaries.

b. Three adjacent units not separated by vertical structural supports. Two vertical planes extending from the forward to the aft unit boundaries spaced equidistant between the lateral unit boundaries formed by the nearest adjacent vertical structural supports and extended to the planer intersection with the upper, lower, forward and aft unit boundaries. All boat storage cradle assemblies, which consist of a wood bunk, steel beam and brackets and which are graphically depicted on Exhibit "D", shall be considered Common Elements notwithstanding their physical location being within the Unit's boundaries

(iv) **Storage Unit Boundaries.** Each Storage Unit shall have the following boundaries (as graphically depicted on Exhibit "D").

(1) LOWER UNIT BOUNDARY: The horizontal plane of the upper surface of the base floor slab extended to the planer intersection with the lateral, forward and rear unit boundaries.

(2) UPPER UNIT BOUNDARY: The horizontal plane of the lower surface of the chain link fence enclosure extended to the planer intersection with the lateral, forward and rear unit boundaries.

(3) FORWARD UNIT BOUNDARY: The vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the lateral, upper and lower unit boundaries.

(4) REAR UNIT BOUNDARY: The vertical plane of the inside surface the of the chain link fence enclosure extended to the planer intersection with the lateral, upper and lower unit boundaries.

(5) LATERAL UNIT BOUNDARY:

a. Typical unit. The vertical plane of the inner surface of the chain link fence enclosure extended to the planer intersection with the forward, rear, upper and lower unit boundaries.

b. Units ST#5, ST#14 and ST#15 (outside lateral unit boundary). The vertical plane of the outside surface of the perimeter, vertical structural supports, extended to the planer intersection with the forward, rear, upper and lower unit boundaries.

(b) The Developer may, at its sole option, combine, alter and/or subdivide Units in accordance with this Declaration. It is recognized that the need for flexible Unit boundaries is essential and that the following provisions are intended to create a method allowing Developer flexibility to develop and sell Wet Slip Units and Dry Slip Units of varying sizes to accommodate various types of Vessels and to allow Developer to sell as much (or as little) of the Commercial Space Unit as a prospective purchaser may require or as Developer may desire to sell. Units may be subdivided or combined, new Units created, or Unit boundaries altered, in accordance with the following provisions.

(i) An amendment to this Declaration shall be recorded identifying the new boundaries to the Unit(s) and in the case of subdivision of a Unit, the new Unit shall be designated by it being assigned a successive alphabetical or numerical combination (for example, if Wet Slip 1 is subdivided into two new Units, the new Units would be designated WS#1A and WS#1B). This amendment to the Declaration of Condominium need only be signed, joined in and consented to by the Association and the Unit Owners whose Units are physically affected and their mortgagees of record (which consent of mortgagees shall be unreasonably withheld) and no other Unit Owner, mortgagee or lienor shall be required to join in the amendment. Notwithstanding the foregoing, for so long as Developer holds any Units for sale, Developer may execute and record an amendment for such Units without the joinder of the Association, any Unit Owner, or mortgagee or lienor. The amendment shall be effective when recorded in the Public Records of Lee County, Florida. The amendment shall have attached to it a surveyor's, engineer's or architect's certified drawing and certificate showing the location of the new perimeter boundary for the Units affected and shall certify a new apportionment of Common Elements, Common Surplus and Voting Interest based upon the method described in Article 2, Section 7 (a) hereof.

(ii) Any proposed subdivision, combination or alteration must comply with all applicable governmental regulations. Demising walls between the Units must be constructed in accordance with all applicable governmental regulations and must include any fire walls as may be required by applicable building codes.

(iii) All assessments for the affected Units must be paid current through the date of the amendment. From and after the recording of the amendment, the Assessments due for each Unit shall be based upon the method provided in Article 6 hereof.

(iv) Each Unit's voting interest and interest in the Common Elements and Common Surplus shall be revised according to the method above, and such new interest appurtenant to such Unit shall be stated in the amendment.

(v) As to Commercial Space Units, the owner of the affected Unit(s) shall install, at their expense, any and all new entrance doors, air conditioning compressors, air handlers, HVAC equipment, meters, utility lines and other facilities as may be necessary for each Commercial Space Unit to function as a separate Unit.

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

(vii) The Developer shall allocate any Limited Common Elements appurtenant to any further modified Units created upon a subdivision thereof pursuant to the amendment.

(c). The dimensions of the Slips as set forth herein and on the Condominium Plot Plan are approximate and may be increased or decreased as a result of the construction or normal movement of docks, pilings, racks and other facilities. The Developer shall not be liable to any Unit Owner for minor variations in the dimensions of any Unit.

Section 12. **RECREATIONAL FACILITIES.**

(1) The Developer has not committed to construct any recreational or common facilities as a part of the Condominium except for the ship's store / dockmaster's office and appurtenant fuel facilities (collectively referred to as the "Ship's Store"), the Owner's lounge, shower and restroom facilities, and beach area as set forth on Exhibit "D" of this Declaration; provided, however, that nothing contained herein shall prohibit Developer from constructing additional recreational facilities within the Condominium Property as shall be determined by the Developer. In the event the Developer elects to construct additional recreational facilities on the Condominium Property, such recreational facilities shall be Common Elements. All recreational or common facilities shall be deemed Common Elements and the costs of maintenance, repair, replacement, operation and all other costs associated with such recreational facilities shall be Common Expenses.

(2) The Condominium Property is located adjacent to a development known as Punta Rassa Condominium, Phase IV, which is administered by Punta Rassa Condominium Association, Inc., a Florida non profit corporation ("Punta Rassa Association"). All members of Punta Rassa Association, shall be offered a "social membership" that will grant them the use of certain recreational facilities located on the Condominium Property consisting solely of the owner's lounge, delicatessen and coffee shop, pursuant to the terms and conditions of a membership agreement to be executed prior to having access to and use of such recreational

facilities. The terms of the membership agreement may be set by the Board of Directors from time to time, but shall at all times provide, and if not, shall be deemed to provide, that such “social members” shall be subject to the restrictions, rules and regulations governing use of the Condominium Property as contained in this Declaration and the Rules and Regulations of the Association, at all times that such “social members” are on the Condominium Property. Upon execution of such membership agreement, an individual member of the Punta Rassa Association shall be given a “social membership” card, thereby entitling that member, its guests and invitees (so long as said guests and invitees are accompanied by the “social member”), the above described recreational facilities use rights. Notwithstanding any of the foregoing, no tenant of any Punta Rassa Association member shall be entitled to any of the use rights described in this Section 12(2). The Developer shall have the right to grant additional “social memberships” to non Unit Owners and non Punta Rassa Association members in its sole discretion.

(3) Developer is contemplating the development of additional yacht club and marina style condominium projects, which shall be similar in form to the Condominium, including, but not limited to Sarasota Harbour Harbour Yacht Club and New Smyrna Harbour Yacht Club (the “Sister Projects”). All members of any additional Sister Projects shall have reciprocal rights for use of certain recreational facilities and Member benefits within the Condominium, and Members of the Association shall likewise have reciprocal rights for use of certain recreational facilities and Member benefits within the Sister Projects, along with a necessary access easement necessary for such use rights. Said recreational facilities and member benefits will consist of the following: (i) Fuel at “member cost”; (ii) showers and restrooms (if available); (iii) Ship’s Store purchases at “member cost”; (iv) overnight mooring of vessels upon prior reservation and confirmation from the harbour master at the desired location; (v) discounted services and repair; and (vi) such other amenities and/or benefits as Developer may designate from time to time. For purposes of this Section 12(3), the term “member cost” shall mean the then present rate or price for such applicable products and services which members of the situs condominium association or Sister Project are charged.

Notwithstanding the foregoing, Developer is under no obligation to construct or develop any Sister Project or offer any reciprocal benefits as set forth above. Upon such time as any Sister Project’s association is formed, the sister association shall enter into a use agreement with the Association, and, if applicable, any other existing Sister Project, thereby specifically designating such project as a “Sister Project”, setting forth the rights, terms and obligations of the reciprocal memberships described in this subsection (3). No such use agreement shall be entered into by and between the Association and/or any Sister Projects without the Developer’s consent.

ARTICLE 3 MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS

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

Section 1. ASSOCIATION MAINTENANCE.

(a) The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association Property (other than those Limited Common Elements, if any, that are required elsewhere in this Declaration to be maintained by the Unit Owner), including without limitation the Surface Water Management System. Such costs of maintenance shall be a Common Expense. All incidental damage caused to a Unit or Common Elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost of such repair shall be a Common Expense. Without limiting the generality of the foregoing, such Common Elements to be maintained, repaired and replaced as a Common Expense shall include but not be limited to:

(i) docks, piers, mooring piles and similar facilities;

(ii) the seawall along the boundary of the Property;

(iii) all parts of the Boathouse Building and all other buildings and structures within the Condominium that are Common Elements and not part of the Units and are not Limited Common Elements designated as the maintenance responsibilities of a Unit Owner;

(iv) all landscaping, lawn and grass areas and irrigation systems within the Condominium Property;

(v) any and all gates and fencing located on the Condominium Property;

(vi) all roadways, parking areas and trash receptacle areas;

(vii) all recreational facilities;

(viii) notwithstanding their location within the unit boundaries of the Dry Slip Units, all boat storage cradle assemblies consisting of a wood bunk, steel beam and brackets. Further, no Unit Owner shall adjust or alter any portion of such boat storage cradle assemblies without the prior consent of the Association; and

(ix) all chain link fences which border the Storage Units.

(b) The Association shall also be responsible to maintain, as a Common Expense, the landscaping and the entry feature, as well as any drainage installations constructed by the Association, located within the easement area of that certain Entrance Modification and Landscaping Easement recorded at Instrument Number 2006000062064, Public Records of Lee County, Florida, pursuant to and in accordance with the terms of said Entrance Modification and Landscaping.

Section 2. **MODIFICATIONS AND ALTERATIONS.** No Unit Owner shall make any addition, alteration or improvement in or to the Unit Owner's Unit or any Common Element or Limited Common Element, without, in each instance, the prior written consent of the Board of Directors, which may be withheld in the sole discretion of the Board of Directors, and shall, if

approved, be subject to terms and conditions determined by the Board of Directors in its sole discretion; provided however, that the foregoing shall not apply to the interior of any Commercial Space Unit, to the exterior doors and signage for any Commercial Space Unit, and the Limited Common Elements appurtenant to any Commercial Space Unit. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof as may be required by the Board. The Board's right of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Unit Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Unit Owner, by acquiring title to same, agrees not to seek damages from the Developer and/or the Association arising out of the Board's review of any plans hereunder. Without limiting the generality of the foregoing, the Board shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Unit Owner (including the Unit Owner's successors and assigns) agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Board hereunder. All additions, alterations and improvements proposed to be made by any Unit Owner shall be subject to, and restricted by, the terms and conditions of this Declaration.

Section 3. **IMPROVEMENTS, ADDITIONS OR ALTERATIONS BY DEVELOPER.** Except as provided herein, Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by Developer and Common Elements appurtenant thereto. Without limiting the generality of the provisions of this Section, except as provided herein, but in a manner consistent with Article 2, Section 11 hereof, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to: (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, ordinary or extraordinary; (ii) change the size of Developer-owned Units by combining separate Developer-owned Units into a single Unit (although being kept as two separate legal Units), or otherwise; and (iii) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that such interest in the Common Elements and share of the Common Surplus and

Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Slips and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Except as provided herein, any amendments to this Declaration required by changes of the Developer made pursuant to this Section, shall be effected by the Developer alone pursuant to Article 2, Section 11 and Article 14, Section 2(a), without the vote or consent of the Association or Unit Owners (or their mortgagees) being required. Notwithstanding the foregoing provisions of this Section to the contrary, Developer may not materially change the configuration or size of any Slip not owned by it, or change the proportion or percentage by which the Unit Owners share Common Expenses and own the Common Surplus, unless the Developer complies with the provisions of Section 718.110(4) of the Condominium Act. The Developer may, however, change the boundaries of Units owned by it to accommodate different Vessel sizes, including relocating, removing and/or adding pilings or dolphins. In such case, Developer may amend this Declaration, without the consent of the Association or any Unit Owner, to reflect such change.

Section 4. **MAINTENANCE OF AND DAMAGES BY SLIP OWNER'S MODIFICATIONS.** After obtaining any requisite approvals, if a Unit Owner makes any modifications, installations or additions to his Unit or the Common Elements or neglects to maintain, repair, clean and replace the same, as may be required by the Association, the Unit Owner, and his successors in title, shall be financially responsible for:

- (i) maintenance, repair, cleaning and replacement of the modifications installations and additions;
- (ii) the costs of repairing any damage to the Common Elements, Limited Common Elements or other Units or vessels located therein resulting from the existence of such modifications, installations or additions; and
- (iii) the costs of removing, replacing and reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium Property for which the Association is responsible.

Section 5. **REPRESENTATIONS REGARDING CONTRACTORS.** Whenever a Unit Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit or Common Elements, whether with or without Association approval, such Unit Owner shall be deemed to have warranted to the Association and its members that such Unit Owner's contractor(s) are properly licensed and fully insured, and that such Unit Owner will be financially responsible for any resulting damage to persons or property.

Section 6. **SERVICE AND MAINTENANCE CONTRACTS.** If there shall become available to the Association certain contract services to be delivered within the Units for items otherwise the responsibility of the Unit Owner, then, the Board may enter in any such contracts which the Board determines are to the benefit of the Unit Owners generally. The expenses of such contractual undertakings to the Association shall be a Common Expense and allocated to the appropriate class of expenses as determined by the Board of Directors. Since such expenses shall constitute Common Expenses, an election by a Unit Owner not to take advantage of the services or maintenance provided by such contracts, shall not excuse the Unit Owner from paying his share of the cost.

Section 7. **UNIT OWNER ALTERATION OF COMMON ELEMENTS RESTRICTED.** No Unit Owner may make any alterations, add to, or remove any part of the portions of the Common Elements or improvements that are to be maintained by the Association without the prior written approval of the Board of Directors, which approval may be withheld, in the sole discretion of the Board of Directors. Any approvals which may be given by the Board may be conditioned or subject to the Unit Owner's compliance with conditions set by the Board of Directors, in its sole discretion. Such Board approved work, if any, is declared not to constitute material alterations or substantial additions to the Common Elements.

Section 8. **SURFACE WATER MANAGEMENT SYSTEM.** The Association shall be responsible for maintenance of all surface water management systems, ditches, canals, lakes, water retention ponds and other portions of the Surface Water Management System in the Properties.

(a) The Association shall have an easement for access, maintenance and drainage over all portions of the Common Areas for purposes of making whatever alterations, improvements or repairs deemed necessary to provide, maintain or restore proper surface water management. Any such easements specifically depicted on the Condominium Plot Plan as drainage easements or maintenance easements are hereby dedicated to the Association for the above stated purposes, and such easements may not be removed from their intended use by subsequent owners or others.

(b) The Association shall be responsible for the maintenance and regulatory compliance of any wetland areas within the Condominium Property which are described or designated as conservation areas on the Condominium Plot Plan or in the SFWMD Permit ("Conservation Areas"), which are under the Association's jurisdiction, regardless of where located, in accordance with rules, regulations and permitting requirements set forth by Lee County, Florida, and other permitting agencies, including the South Florida Water Management District ("SFWMD"). No person shall undertake or perform any activity in any Conservation Areas which is prohibited in the SFWMD Permit, or remove native vegetation that becomes established within any Conservation Areas. Prohibited activities within any Conservation Areas include the removal of native vegetation, excavation, placement or dumping of soil, trash or land clearing debris, and construction or maintenance of any building or other structure. "Removal of native vegetation" includes dredging, application of herbicides, pulling and cutting.

(c) SFWMD has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the Surface Water Management System or in any mitigation or conservation areas under the responsibility or control of the Association.

ARTICLE 4

COMMON ELEMENTS; ASSOCIATION PROPERTY

Section 1. **SHARE OF THE COMMON ELEMENTS.** Each Unit in the Condominium shall have an undivided share in the Common Elements and the Common Surplus, including the undivided share of the Common Expenses to be paid with respect to each Unit, equal to a fraction, the numerator of which is one (1), and the denominator of which is the total number of all Units submitted to the Condominium.

Section 2. **USE.** Each Unit Owner and the Association will be entitled to use the Common Elements in accordance with the purposes for which the elements are intended; however, no such use may hinder or encroach upon the lawful rights of other Unit Owners.

Section 3. **MATERIAL ALTERATIONS AND ADDITIONS.** Except for changes made by a Unit Owner, at his sole cost and expense, with Board approval as provided herein, whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of fifteen percent (15%) of the total amount of the Annual Budget in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate fifteen percent (15%) of the total amount of the Annual Budget or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

From and after the turnover of the Association and the Condominium facilities to Unit Owners other than the Developer, the Association shall operate same during hours which are comparable to those for facilities serving marinas of a size and quality similar to that of the Condominium Property.

ARTICLE 5

ADMINISTRATION, POWERS AND DUTIES AND FISCAL MANAGEMENT

Section 1. **POWERS AND DUTIES.** The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles and By-Laws. In addition, the Association shall have all the powers and duties set forth in the Condominium Act and under applicable law, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

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

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

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

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

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

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

(g) the power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to the limitations set forth in Article 4, Section 3. Real property (including, without limitation, any of the Units) shall be acquired, conveyed, leased or encumbered by the Association upon a majority vote of the Board of Directors alone; provided that the requirements and subject to the limitations set forth in Article 4 and Article 7, shall also apply to the acquisition of real property; provided, further, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same, and the Association, through the Board of Directors, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses;

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

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

(j) the Association exists in perpetuity; however, if the Association is dissolved, notwithstanding anything else herein to the contrary, the property consisting of the Surface Water Management System will be conveyed to an appropriate agency of local government. If the local government declines the acceptance, then the Surface Water Management System will be dedicated to a similar non-profit corporation.

Section 2. **LIMITATION UPON LIABILITY OF ASSOCIATION.** Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in

design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

Section 3. **RESTRAINT UPON ASSIGNMENT OF SHARES IN ASSETS.** The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

Section 4. **APPROVAL OR DISAPPROVAL OF MATTERS.** Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or By-Law.

Section 5. **ACTS OF THE ASSOCIATION.** Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in the Condominium Act, other applicable law or the Condominium Documents, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Board deems appropriate or the Board may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

ARTICLE 6 DETERMINATION OF COMMON EXPENSES AND FIXING OF ASSESSMENTS THEREFOR

The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in equal shares which are equal to a fraction, the numerator of which is one (1) and the denominator of which is the total number of all Units in the Condominium, in accordance with the following provisions, the provisions of the By-Laws and the provisions of the Condominium Documents.

The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such Assessments are based, to all Unit Owners

and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles, By-Laws, or Rules and Regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at anytime. Any such change shall be adopted consistent with the provisions of the Condominium Documents.

ARTICLE 7 COLLECTION OF ASSESSMENTS

Section 1. **LIABILITY FOR ASSESSMENTS.** A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Unit Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Unit Owner may have to recover from the previous Unit Owner the amounts paid by the grantee Unit Owner. Liability for Assessments may not be avoided by the waiver of the use or enjoyment of any Common Elements, or by the abandonment of the Unit for which the Assessments are made or otherwise.

Section 2. **SPECIAL AND CAPITAL IMPROVEMENT ASSESSMENTS.** In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

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

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

(c) Special Assessments and Capital Improvement Assessments may be levied by the Board (subject to Article 4, Section 3, if applicable) and shall be payable in a lump sum or installments, in the discretion of the Board.

Section 3. **DEFAULT IN PAYMENT OF ASSESSMENTS.** Assessments, Special Assessments and/or Capital Improvement Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of all assessments properly imposed by the Association. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public Records of Lee County. To be valid, the claim of lien shall state the description of the Condominium Parcel, the name of the record Unit Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien shall be executed and acknowledged by an officer or authorized officer of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Unit. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees of any kind incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees and costs incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments. Additionally, each Unit Owner by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the "Collateral Assignment of Rents") on each such Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Unit Owner hereunder. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments due for the remainder of the budget year in which the claim of lien was filed to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of such budget year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

Section 4. **NOTICE OF INTENTION TO FORECLOSE LIEN.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice

to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the Unit Owner's last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address to which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection shall be deemed satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Condominium Act.

Section 5. **APPOINTMENT OF RECEIVER TO COLLECT RENTAL.** If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Slip is rented or leased during the pendency of the foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.

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

Section 7. **INSTALLMENTS.** Assessments shall be collected monthly or quarterly, in advance, at the option of the Board of Directors. Special Assessments and/or Capital Improvement Assessments shall be due in a lump sum or in installments, as determined by the Board.

Section 8. **APPLICATION OF PAYMENTS.** Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated

Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

Section 9. **ESTOPPEL CERTIFICATE.** Within fifteen (15) days after receiving a written request therefor from a purchaser, the Unit Owner or a mortgagee of a Unit, the Association shall provide a certificate, signed by an officer or agent of the Association, setting forth all Assessments and other monies owed to the Association by the Unit Owner with respect to the Unit Owner's Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

Section 10. **CHARGES FOR SERVICES.** The Association may impose a Charge on Unit Owners, separate and apart from Assessments hereunder, for services received by the Unit Owner which are not provided as part of the Association's duties under this Declaration or which pursuant to the other provisions of this Declaration are to be separately paid for by a Unit owner. Specifically, but without limitation, each Owner, to the extent applicable, shall pay to the Association, on a monthly basis, a Charge for the electricity or other utilities used by the Unit Owner as measured by the sub-meter for such Unit Owner's Unit, or otherwise determined by the Association to be such Unit's applicable charge based on usage by said Unit. For example, but without limitation, Commercial Space Owners may be separately metered and charged for electricity supplied to their respective Commercial Space Units, and Wet Slip Owners may be separately metered and charged for the electricity supplied to their respective Wet Slips, and Commercial Space Owners and Wet Slip Owners shall likewise be responsible for registering and activating such electric service with the appropriate utility provider. Charges shall not be secured by the lien for Assessments hereunder but the failure of a Unit Owner to pay any Charge shall entitle the Association to all other remedies at law and also to disconnect or cease any service to a Unit in the case of the failure to pay the Charge. Any Charge not paid within ten (10) days from the date same is due shall also bear interest at eighteen percent (18%) per annum.

Section 11. **DEVELOPER'S LIABILITY FOR ASSESSMENTS.** During the period from the date of recording of this Declaration until the earlier of December 31, 2008 (subject to extension, at Developer's sole option) or the date on which control of the Association is transferred to Unit Owners other than the Developer (the "Guarantee Expiration Date"), the Developer shall not be obligated to pay the share of the Common Expenses and Assessments attributable to its Units, provided that the regular Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period over \$250.00 per Unit per month (subject to increase each year by no more than 15%) and provided further that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed level. For purposes of this Section, income to the Association other than Assessments (as defined herein and in the Act) and Charges shall not be taken into account when determining the deficits to be funded by the Developer. After the Guarantee Expiration Date, the Developer shall have the option of extending the guarantee for a definite period of time by written agreement with a majority of non-Developer Unit Owners (or by a majority vote of same) on the same terms or paying the share of Common Expenses and Assessments attributable to Units it owns. No funds receivable from Unit purchasers or Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as

provided in this Declaration, shall be used for the payment of Common Expenses prior to the Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, (if any) capital contributions or start-up funds collected from Unit purchasers at closing.

ARTICLE 8 INSURANCE

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

Section 1. **DUTY AND AUTHORITY TO OBTAIN**. The Association shall use its best efforts to obtain and maintain adequate insurance. All insurance purchased by the Association shall identify the name of the insured as the Association, singularly and as agent for the Unit Owners covered by the policy.

Section 2. **BASIC INSURANCE**. The Association will procure insurance covering the Condominium Property and improvements as well as all insurable Association Property, in an amount determined annually by the Board of Directors. Such insurance shall afford the following protection:

(a) **CASUALTY**. The Condominium Property, all improvements and all personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude any Vessel and any personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to marinas and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) **FLOOD**. The policy shall include replacement cost for the Property and insurable improvements, if applicable and available at reasonable cost.

(c) **LIABILITY**. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage,

and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Slip Owner, and vice versa.

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

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

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

(g) LIQUOR LIABILITY. The Association shall obtain and maintain liquor liability insurance in such amounts as the Board shall deem adequate, for so long as the Association is engaged in serving alcohol on the Condominium Property as authorized by the Association's liquor license.

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

Section 3. DESCRIPTION OF COVERAGE. A detailed summary of the coverage included in the master policies shall be available for inspection by Unit Owners upon request.

Section 4. WAIVER OF SUBROGATION. When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group; (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Section 5. ADDITIONAL PROVISIONS. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Condominium Parcels who have requested such information pursuant to Article 17 hereof. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may obtain an

appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

Section 6. **PREMIUMS.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.

Section 7. **INSURANCE TRUSTEE: SHARE OF PROCEEDS.** All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the insurance trustee which may be designated by the Board of Directors (the "Insurance Trustee") as provided in Section 11 below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

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

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

Section 8. **DISTRIBUTION OF INSURANCE PROCEEDS.** Proceeds of insurance policies received by the Association shall be distributed for the benefit of the Unit Owners in the following manner and priority:

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

(b) **FAILURE TO RECONSTRUCT OR REPAIR.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or

repaired, the proceeds remaining after expenses shall be allocated among the beneficial owners thereof as provided in Section 7 above and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their Mortgages, and the balance, if any, to the beneficial owners. This is a covenant for the benefit of mortgagees and may be enforced by them.

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

Section 9. **ASSOCIATION AS AGENT.** The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

Section 10. **SLIP OWNERS' PERSONAL COVERAGE.** The owner of any Vessel occupying a Unit shall acquire and maintain individual hull and liability insurance on the Vessel and any other property lying within the boundaries of their Unit and for their personal liability arising in the use of their Unit and other areas of the Common Elements for which they have exclusive use, or for which they have an obligation to repair or replace, in amounts specified by the Association from time to time, which policy or policies of insurance shall name the Association and the Developer as additional insured. Proof of such insurance shall be provided to the Association.

Section 11. **APPOINTMENT OF INSURANCE TRUSTEE.** The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

Section 12. **PRESUMPTION AS TO DAMAGED PROPERTY.** In the event of a reasonable dispute or reasonable lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

Section 13. **DEVELOPER'S INSURANCE.** For financial and other reasons, the Board of Directors may, during the period in which Developer appoints a majority of the directors, elect to provide some or all of its insurance coverage provided for in this Article by way of Developer's own master or blanket policy or policies. In such event (i) the Board of Directors shall be deemed to have fulfilled its obligation to provide the insurance described above and (ii) all persons are advised that the Association's premiums for its own insurance may increase when such insurance is obtained.

ARTICLE 9
RECONSTRUCTION OR REPAIR AFTER CASUALTY

Section 1. **DETERMINATION TO RECONSTRUCT OR REPAIR.** Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

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

Whenever in this Section the words "promptly repair" are used, they shall mean that all required permits and other governmental approvals are to be applied for within ninety (90) days of the date the Insurance Trustee (if appointed) notifies the Board of Directors that it holds proceeds of insurance on account of such damage (less any deductibles) at least equal to the Board of Director's estimate of the cost of such work (subject to delays in obtaining plans and other documents or data required for the application) and the diligent pursuit of such work to completion within one hundred eighty (180) days (as to Wet Slips) and three hundred sixty-five (365) days (as to the Boathouse Building, Dry Slips, and Commercial Space Units of the issuance of all required permits and other governmental approvals (subject to force majeure). If the Insurance Trustee (if appointed) notifies the Board of Directors that the insurance proceeds are insufficient, the aforesaid time periods shall commence upon the Association levying a special assessment for the amount of the insufficiency.

Section 2. **PLANS AND SPECIFICATIONS.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the improvements existing immediately prior to the casualty and then applicable building and other codes; or if not, as modified to comply with then current codes, then in accordance with the plans and specifications

approved by the Board of Directors of the Association and then applicable building and other codes.

Section 3. **DISBURSEMENT.** The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided in Section 3(b).

(b) If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Section 3(a) above, but then only upon the further approval or certification of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

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

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

Section 4. **ASSESSMENTS.** If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Special

Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the insured property shall be in proportion to all of the Unit Owners' respective shares in the Common Elements.

Section 5. **BENEFIT OF MORTGAGEES.** Certain provisions in this Article 9, as stated, are for the benefit of mortgagees of Units and may be enforced by any of them.

ARTICLE 10 CONDEMNATION

Section 1. **DEPOSIT OF AWARDS WITH INSURANCE TRUSTEE.** The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors a Charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to such Unit Owner.

Section 2. **DISBURSEMENT OF FUNDS.** If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for such purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or, as elsewhere in this Article 10 specifically provided.

Section 3. **UNIT REDUCED BUT USEABLE.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made usable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

(a) **Restoration of Unit.** The Unit shall be made usable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the Owner of the Unit.

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

(c) **Adjustment of Shares.** If the square footage of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall not change

Section 4. **UNIT MADE UNUSEABLE.** If the taking is of the entire Unit or so reduces the size of a Unit that it reasonably cannot be made usable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

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

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

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

- (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 4(c) hereof (the "Percentage Balance"); and
- (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, by the Percentage Balance.

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

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

The Special Assessments shall be made in proportion to the applicable percentage shares of those Unit Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

(e) **Arbitration.** If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

Section 5. **TAKING OF COMMON ELEMENTS.** Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

Section 6. **AMENDMENT OF DECLARATION.** The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

ARTICLE 11 USE RESTRICTIONS

The use of the Condominium Property by persons other than the Developer or its designees shall be in accordance with the Rules and Regulations enacted, established or amended by the Board from time to time, and the following provisions:

Section 1. **LAWFUL USE.** All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair upon Condominium Property shall be the same as the responsibility for the repair and maintenance of the property as expressed earlier in this Declaration.

Section 2. **RULES AND REGULATIONS.** The Rules and Regulations may be amended from time to time by the Board of Directors. Copies of the Rules and Regulations and amendments shall be made available by the Association to all Unit Owners. No new or amended regulation may be enforced prior to distribution to the Unit Owners. Changes in the Rules and Regulations shall not be required to be recorded in the Public Records of Lee County.

Section 3. **USE AND OCCUPANCY OF THE SLIPS.** Except as may be provided elsewhere in this Declaration, each Slip shall be used only for the mooring or storage of a Vessel(s) in seaworthy condition and under their own power. Use of a Slip by more than one Vessel shall be governed by the Rules and Regulations promulgated by the Association from time to time. Whenever any Slip is owned by a non-natural person such as, but not limited to, a corporation, partnership or other entity (other than the Developer), the agent of such entity shall designate, at the time of the closing of the purchase of the Slip, a particular family or individual who shall be entitled to occupy the Slip. The adult members of the family designated by the non-natural entity to occupy the Marina Slip shall, by virtue of such occupancy, be deemed to have entered into a covenant in favor of the Association agreeing to comply with the terms and provisions of this Declaration, the Articles of Incorporation, By-Laws and the Rules and Regulations. No persons, other than the Slip Owner (or the designated family or individual of an entity Owner), or their authorized lessee, shall be entitled to occupy a Slip.

Section 4. **COMMERCIAL ACTIVITIES WITHIN SLIPS.** Except as otherwise provided below, no drilling, mining, manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever shall be conducted or carried on upon any Slip or any part thereof, other than the leasing of Slips in accordance with the terms hereof. The foregoing shall not apply to the sales or leasing activities of Developer nor any lawful dredging operation, nor shall the foregoing prohibit or interfere with the right of Developer to utilize or lease Slips owned by Developer for commercial purposes. Notwithstanding the foregoing, a Slip Owner may use his Slip for the purpose of a charter of a Vessel approved in writing by the Developer to be moored in the Slip in the same manner as all other Vessels, as well as for any other commercial purposes approved by the Developer provided that (i) no Vessel, boat or watercraft sales office shall be permitted on or within a Slip; (ii) the Developer has agreed to the charter or other commercial use of a Vessel prior to or in connection with the sale of the Slip by Developer and, in connection with such sale, recorded an instrument in the Public Records of Lee County, Florida, that in detail describes the permitted charter or other commercial use of the Slip; and (iii) such Slip Owner has provided the Developer with proof of insurance as required by Article 8, Section 10 hereof, as well as additional liability insurance relating to the Slip Owner's commercial operation as is satisfactory to the Developer, naming the Association and the Developer as an additional insured. Charter or other commercial use of a Slip shall be limited to the charter or other commercial use described in such recorded instrument.

Section 5. **PETS.** No pets or other animals shall be permitted in or about the Property except for the purpose of embarking and disembarking from Vessels. All pets brought into the Property shall be leashed (when not on a Vessel) and attended at all times. Pet owners are responsible for cleaning up after their pets. The Board of Directors shall have the right to order the removal of any pet which is considered a nuisance, in the Board's sole and absolute

discretion. In such event, the Board of Directors shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property.

Section 6. **MOORING AND STORAGE.**

(a) Each Wet Slip Owner is solely responsible for the proper mooring of his Vessel(s) and is required to maintain mooring lines in good condition and sufficiently strong to secure the Vessel(s) at all times. Any special mooring rules or procedures issued by the Association shall be complied with at all times. The size and dimensions of a Marina Slip do not represent that a Vessel of that size can be moored or stored in the Slip due to the presence of Common Elements, depth requirements and projections (including all bowsprints, booms, pulpits, and other projections and overhangs). The Vessel(s) (including all bowsprints, booms, pulpits and other projections and overhangs) must be moored close to the main dock (as to Wet Slips) consistent with good boating practice. The Vessel(s) (including all platforms, box spirals and other protrusions) may not extend beyond the boundaries of the Marina Slip into the waters of the Property or into other Dry Slips or Common Elements. Slip Owners shall comply with all Rules and Regulations relating to the mooring and storing of Vessels in the Slips.

(b) All Vessels stored in Dry Slip Units shall be removed from the water and stored using a fork-lift system. Notwithstanding the above, if applicable, all mono-hulled Vessels shall be removed from the water and stored pursuant to any specifications set forth by the manufacturer. Notwithstanding this Section 6(b), catamaran Vessels shall only be removed from the water and stored through the use of a fork-lift system, if the use of a fork lift system is approved or specified by the manufacturer. If the manufacturer's specifications for a Unit Owner's catamaran or Vessel requires that its catamaran or Vessel be removed from the water and stored using a cradle system, or any other system other than the fork-lift system used on the Condominium Property, said Unit Owner shall be solely responsible for the costs of purchase, construction, maintenance and/or operation of said system.

Section 7. **HURRICANE AND HIGH WIND THREAT.** During hurricane and other high velocity wind threats, each Slip Owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency. If a Slip Owner's Vessel sinks as a result of a storm, or for any other reason, the Slip Owner must remove the sunken Vessel from the Property immediately after the occurrence of such event and, if not so removed within twenty-four (24) hours after the sinking, the Association may (but shall not be obligated to) remove the sunken Vessel and impose a Special Assessment against the Slip Owner for the cost of such removal. Each Slip Owner agrees to indemnify, defend, hold harmless and save the Association, its agents, employees and designees for and from any and all loss or damage incurred in connection with the exercise or non-exercise of the Association's rights hereunder. If a Wet Slip Owner plans to be absent during the hurricane season, such Wet Slip Owner must prepare his Slip and secure or remove, as appropriate, his Vessel prior to his departure in accordance with the standards established by the Board of Directors (or in the absence thereof, with all due care), designate a responsible firm or individual to care for his Slip and Vessel should there be a hurricane or other storm, and furnish the Association with the name, address and telephone number of such firm or individual. Such firm or individual shall be subject

to the approval of the Association. The Wet Slip Owner shall be liable for all damages caused to the Property and to the Marina Slips, Vessels or other property of other Slip Owners for such Slip Owner's improper preparation or failure to remove, as the case may be, of his Marina Slip and Vessel for hurricanes and other storms. Notwithstanding anything contained herein to the contrary, the Association may also levy fines in accordance with the Rules and Regulations if any Slip Owner fails to abide by the provisions of this section. Notwithstanding the right of the Association to enforce the foregoing requirements, the Association shall not be liable to any Slip Owner or other person or entity for any damage to persons or property caused by a Slip Owner's failure to comply with such requirements.

Section 8. **OPEN FIRES; HAZARDOUS SUBSTANCES.** No open fires shall be permitted on any Vessel, Slip or the Property, except in any areas, if any, which may be approved for such use by the Board, and no charcoal, starting fluids or similarly used substances shall be kept on any portion of the Property. Further, no hazardous materials (being any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances or which require special handling or treatment, under any applicable federal, state or local law, rule, regulation or order) shall be stored or kept in any Slip or Storage Unit, nor shall any gasoline or similar flammable materials be kept or stored in any storage unit.

Section 9. **CLEANING OF FISH.** Fish or other marine life of any kind shall not be cleaned, prepared or processed in any manner upon any Vessel traversing or mooring within the Property, and may only be done in designated areas of the Condominium Property, and/or by dock hands employed by Association, unless and to the extent otherwise stated in the Rules and Regulations.

Section 10. **PUBLIC AUTHORITIES.** Notwithstanding anything contained herein to the contrary, Developer and Association may permit police, U.S. Coast Guard Lee County, the Florida Marine Patrol and similar watercraft of public authorities to tie up to and be kept on any portion of the Property.

Section 11. **SIGNS.** Except in connection with development, sales, leasing or resale of Marina Slips by Developer and except with respect to the Commercial Space Unit(s) as stated in Section 26 below, no signs, advertisements or notices of any kind, shall be displayed to the public view on any Slip, any Vessel or on the Property, without the prior written approval of the Board; provided that the Board shall approve signs offering Vessels for sale or for permitted charter or other permitted commercial uses if same do not exceed twelve inches (12") by eighteen inches (18") in size. The foregoing shall not apply to Slips (or Vessels moored in Slips) owned by the Developer or used by a designee of Developer and shall not prohibit lettering, registration numbers, flags and other displays customarily found on recreational watercraft.

Section 12. **NUISANCES PROHIBITED.** No person shall engage in any practice, exhibit any behavior, nor permit any condition to exist that constitutes a nuisance or will become an unreasonable source of annoyance or disturbance to any occupant of the Condominium.

Section 13. **MARINA APPEARANCE.**

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

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

(c) Neither Developer, the directors or officers of the Association, the member of the M.A.B., nor any person acting on behalf any of them, shall be liable for any costs or damages incurred by any Slip Owner or any other party due to any mistakes in judgment, negligence or any action of the M.A.B. in connection with approval or disapproval of any proposed Improvements or any Vessel. Each Slip Owner and occupant of the Slip, by acquiring title or an interest therein, or by assuming possession thereof, agrees that he shall not bring any action or suit against Developer, the directors or officers of the Association, the members of the M.A.B. or their respective agents, in order to recover any damages caused by the actions of the M.A.B. The Association shall indemnify, defend and hold harmless the M.A.B. and each of its members from all costs, expenses and liabilities, including attorneys fees, of all nature resulting by virtue of the acts of the M.A.B. or its members while acting as M.A.B. members except where the M.A.B. or its members are guilty of gross negligence or willful misconduct.

Section 14. **GARBAGE AND TRASH DISPOSAL.** No garbage, refuse, trash or rubbish shall be deposited except in trash receptacles as permitted by the Marina Association. The requirements from time to time of the County or other applicable jurisdiction for disposal or collection of solid waste shall be followed. The equipment, trash bins or trash cans for the storage or disposal of such material shall be provided by the Marina Association at various locations on the Condominium Property. The Marina Association shall be responsible for keeping the equipment in a clean and sanitary condition and for disposing of all garbage, refuse, trash or rubbish in compliance with all applicable requirements.

Section 15. **SANITARY EQUIPMENT.** Each Vessel must have such sanitary equipment on board as is required by all applicable federal, state and local authorities. No Vessel shall be deemed to be in compliance with this paragraph if such equipment is not fully operational or if such equipment such as a holding tank or approved marine sanitary system is bypassed or altered contrary to such requirements. The Marina Association shall have the right to

board all Vessels upon reasonable notice to inspect same for compliance with this requirement. In no event whatsoever shall an Owner discharge sewage or any other substance (other than bilge water) into the waters of the Condominium.

Section 16. **LAUNDRY**. No portion of the Marina Property, and no Vessel, shall be used for the displaying or hanging of laundry.

Section 17. **SWIMMING**. No recreational swimming shall be permitted within the waters of the Condominium. Diving shall be permitted for the purpose of maintenance and repair of Vessels or of the Condominium Property.

Section 18. **PERSONAL WATER CRAFT**. Subject to the Rules and Regulations promulgated by the Association from time to time and this Declaration, tenders, jet skis, wet bikes or wave-runners may be kept and operated within the Marina.

Section 19. **LIVEABOARDS**. Wet Slip Owners, tenants of Wet Slips and the families and/or crews of each may only stay aboard their Vessels for successive periods of four (4) days, with such successive periods being interrupted by periods of no less than three (3) days. Without limiting any of the rights of the Association as contained in this Declaration, in the event the Association levies a fine against a Wet Slip Owner for violation of this Section 19, said fine shall be in the amount of ten dollars (\$10.00) per day; provided, however, should the violation continue for more than ten (10) days, said fine may be increased to the maximum amount permitted by this Declaration. Vessels shall never be used or declared to be a permanent residence.

Section 20. **VESSEL REQUIREMENTS**. All Vessels must: (i) be fully equipped and operable for operation on the sea in accordance with the standards imposed by the U.S. Coast Guard (except during a period of temporary repairs); and (ii) comply with all licensing and registration requirements. Each Vessel (including tenders, dinghies and personal watercraft) shall be registered with the Association on a fully completed form provided by the Association.

Section 21. **TEMPORARY REMOVAL OF VESSELS**. From time to time, Developer or the Marina Association may require that all Vessels and Improvements to the Marina Property be removed for the maintenance, repair on and dredging of the Property at which time the Marina Slips may be entered for such period as may be necessary. To the extent that submerged land may be removed from the Marina Slip, it will be treated as the property of Developer or the Marina Association, and need not be replaced.

Section 22. **HAZARDOUS OR TOXIC WASTE**. The handling, storage, transportation and disposal of hazardous or toxic materials shall be prohibited within the Condominium Property; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum products used by an Owner in connection with the operation of his Vessel. In addition, this shall not prohibit the proper handling, storage, and transportation of such materials in connection with business operated within and with respect to the Commercial Space Unit(s) or the ship's store and fueling facilities, as long as such handling, storage and transportation is done in accordance with applicable laws. The Marina Association

shall have the right to immediately remove, or cause the removal of, any non-permitted hazardous or toxic material within the Condominium Property. Each Slip Unit Owner shall ensure that any bilge water pumped into the waters of the Condominium does not contain any petroleum or other hazardous or toxic materials. For purposes of this paragraph, hazardous or toxic materials shall be as defined by Federal, Florida and common law. Each Slip Unit Owner shall indemnify, defend and save Developer, the Marina Association and any management agent harmless from and against any damages, claims and liability resulting from or arising out of the violation of any of the requirements of this paragraph by such Slip Owner. All expenses incurred by Developer or the Marina Association in connection with compliance with all environmental and related laws shall be a Common Expense, subject to the foregoing indemnification.

Section 23. **CREW RESTRICTIONS.** Each Slip Owner shall file with the Association information, as deemed necessary by the Board of Directors, on any crew members attending to the Vessels. A Slip Owner is responsible and liable for acts and omissions of crew members and shall cause crew members violating this Declaration or the Rules and Regulations of the Association to be removed from and prohibited from returning to the Condominium Property.

Section 24. **NUMBER OF VESSELS.** Except as provided below, only one (1) primary Vessel may be kept in each Slip but the Owner or other permitted occupant of a Slip may also keep a Tender, dinghy or personal watercraft in the Slip as long as none of same violate Section 25 below.

Section 25. **PROTRUSIONS.** No Vessel or any portion thereof or attachment thereto (e.g., bow platform, dinghy lift, or dive platform) shall protrude beyond the boundary of the Slip as shown on Exhibit "D". The Board of Directors may grant a variance from this restriction as to a particular Vessel for good cause shown, taking into account, however, the navigability of the adjacent waters (particularly ingress and egress to and from adjacent or nearby Slips and other portions of the Property) and any criteria adopted by the M.A.B.

Section 26. **COMMERCIAL SPACE UNITS.** The Commercial Space Unit(s) may be used for any retail, commercial, marine or other lawful use offering commercial goods & services to Unit Owners, their tenants, or members of the general public, including without limitation ship's store, marine repair, boat and watercraft sales, and other similar uses, and notwithstanding anything in this Declaration to the contrary, the Commercial Space Unit Owner(s), or their tenants, shall not be denied any access to or use of the Common Elements (including the forklift(s)) in connection with such commercial operations. If any Commercial Space Unit is subdivided, such facilities and the expenses associated therewith shall be allocated as designated by the Developer. The Developer, in its sole discretion but subject to legal requirements, shall have the right to permit one or more signs advertising the business(es) operated within the Commercial Space Unit(s), which signs shall be maintained, repaired and replaced by the applicable Commercial Space Unit Owner or its tenants.

Section 27. **ADDITIONAL PROTECTIVE COVENANTS.** Developer may include in any contract or conveyance documents for any Unit, additional protective covenants and

restrictions not inconsistent with those contained herein, provided that any such covenants or restrictions may be more restrictive than those contained herein.

Section 28. **PARKING.** All parking shall be available for common use of the Unit Owners and their guests and invitees.

ARTICLE 12 LEASING

All, but not less than all, of a Unit may be leased. The Association shall have the right to require that a substantially uniform lease be used by Unit Owners intending to rent or lease, and to provide such form as a Common Expense of the Condominium. Notwithstanding the foregoing, all Leases must provide, and if they do not, shall be deemed to provide the agreement of the lessee(s) to abide by all of the Condominium Documents, and any and all rules and regulations of the Association promulgated and amended from time-to-time. A violation of any of the terms of any of the foregoing documents shall constitute a material breach of the Lease and shall constitute grounds for damages, termination and eviction. The lessee and the Unit Owner agree that the Association may proceed directly against such lessee(s) and that the lessee(s) and the Unit Owner shall be jointly and severally responsible for all of the Association's costs and expenses (including, without limitation, attorneys' fees and costs of any kind, whether at trial or appellate levels or otherwise). If such costs and fees are not immediately paid by the lessee(s), the Unit Owner shall pay them and such funds shall be secured as a Charge. Each Unit Owner irrevocably appoints the Association as the Unit Owner's agent authorized to bring actions in such Unit Owner's name and at such Unit Owner's expense including injunction, damages, termination and eviction. The Rules and Regulations must be provided to the lessee(s) by or on the behalf of the Unit Owner at or before the commencement of the Lease term; provided, however, that the lessee(s)' obligations under this Section shall not be affected by the failure to provide such notice. Except for Units owned by the Developer, the minimum leasing period is sixty (60) days.

ARTICLE 13 COMPLIANCE AND DEFAULT

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

Section 1. **REMEDIES.** Failure to comply shall be grounds for relief, which relief may include, but shall not be limited to:

(a) levy of a reasonable fine against a Unit for the failure of the Unit Owner, his lessee or invitee; provided, however, that no fine may exceed \$100.00 per violation. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000.00. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner, and

if applicable, his lessee or invitee. The hearing must be held before a committee of other Unit Owners. If the committee does not agree with the fine, the fine may not be levied. No fine will become a lien against a Unit; or

(b) An action to recover damages or injunctive relief or both.

Section 2. **COSTS AND FEES.** Any actions may be maintained by the Association or any Unit Owner. In any such proceeding, including appeals, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees.

Section 3. **NO WAIVER OF RIGHTS.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other instances.

Section 4. **LIEN RIGHTS.** The provisions of this Article 13 shall not limit or impair the right to impose, enforce and foreclose upon liens in connection with unpaid Assessments or otherwise, to the extent otherwise permitted under this Declaration or the Condominium Act.

ARTICLE 14 AMENDMENTS

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

Section 1. AMENDMENT BY UNIT OWNERS.

(a) An amendment to this Declaration of Condominium may be proposed by the Board of Directors acting upon a vote of a majority of the Directors or by Unit Owners owning not less four-fifths (4/5) of the Voting Interests, whether by vote at a meeting of members or by an instrument in writing signed by them. A proposal to amend this Declaration of Condominium shall contain the full text of the provision to be amended. New words shall be inserted in the text and underlined or highlighted and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it shall not be necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation shall be inserted immediately preceding the proposed amendment in substantially the following language:

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

(b) The proposed amendment shall be transmitted to the President of the Association, or in such person's absence, to the Vice President of the Association, who shall thereupon call a special meeting of the Unit Owners for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by such officer of the proposed amendment. It shall be the duty of the Secretary or other appropriate officer of the Association to give to each Unit Owner written

notice of the special meeting, together with a copy of the proposed amendment in the form above provided, which notice shall be delivered or mailed not less than fourteen (14) days nor more than thirty (30) days before the date set for the special meeting. If mailed, the notice shall be deemed properly given when deposited in the United States mail addressed to the Member at his, her or its post office address as it appears on the records of the Association. Any Unit Owner may, by written waiver of notice signed by such Unit Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Unit Owner. Notice of the meeting shall be posted in a conspicuous place on the Common Elements at least fourteen (14) days before the special meeting.

(c) At the special meeting called to consider a proposed amendment, such amendment must be approved by an affirmative vote of Unit Owners owning not less than four-fifths (4/5) of the Voting Interests. In the alternative, a proposed amendment may be adopted without the holding of a special meeting if within ninety (90) days from the mailing or delivery thereof to all Unit Owners the amendment is approved in writing by members of the Association owning not less than four-fifths (4/5) of the Voting Interests. If the amendment shall be adopted by either method, such amendment shall be transcribed and certified by the President and Secretary of the Association as having been so adopted. The certificate of amendment shall include the recording data identifying this Declaration of Condominium, shall be executed in the form required for execution of a deed and shall be recorded in the Public Records of Lee County, Florida within ten (10) days from the date of adoption and shall become effective on the date of recording. A copy of the amendment in the form in which it has been placed of record shall be delivered to all Unit Owners, but delivery of such copies shall not be a condition precedent to the effectiveness of the amendment. At any meeting held to consider a proposed amendment, the written vote of any Unit Owners shall be recognized if the Unit Owners are not in attendance at the meeting or represented by limited proxy, provided such written vote is delivered to the Secretary of the Association prior to the meeting or at such meeting.

Section 2. **AMENDMENT BY THE DEVELOPER.**

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

Section 3. **ADDITIONAL REQUIREMENTS FOR CERTAIN AMENDMENTS.**

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

(a) Except as otherwise provided in Article 2, Section 11, or Article 10, Section 6, no alteration in the fractions of ownership in Common Elements appurtenant to each Unit, alteration of the basis for the sharing of Common Expenses and apportionment of Assessments, alteration of the basis of ownership of Common Surplus, or alteration or modification of the appurtenances

to any Unit, shall be made without the joinder in the amendment of the Unit Owners of the affected Units and all record owners of liens on such affected Units and unless a majority of all Unit Owners approve the amendment; provided that amendments reflecting changes made per Article 2, Section 11 or Article 3, Section 3 shall not require such approval as long as the aggregate percentage shares appurtenant to the affected Units remains the same.

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

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

(d) No amendment to this Declaration which affects the Surface Water Management System, including without limitation any water management facilities on or portions of the Common Areas, dedicated tracts, or conservation areas maintenance or drainage easements and corresponding infrastructure, must have the prior approval of SFWMD. SFWMD may make a determination of whether said amendment necessitates a modification of the SFWMD Permit. If a modification is necessary, SFWMD will so advise the permittee.

Section 4. **AMENDMENT IN NATURE OF CORRECTION.** Whenever it shall appear that there is a defect, error or omission in any of the Condominium Documents or in order to comply with applicable laws or requirements of government entities, the amendment may be adopted by the Board of Directors alone.

Section 5. **DEVELOPER AMENDMENTS.**

(a) Until Developer no longer owns any portion of the Condominium Property and except as otherwise provided by law in F.S. 718.110(2), the Developer specifically reserves the right, without the joinder of any person, to make such amendments to the Declaration and its exhibits or to the plan of development, as may be required by any lender, governmental authority or as may be, in its judgment, necessary or desirable. This paragraph shall take precedence over any other provision of this Declaration or its exhibits.

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

Section 6. **WRITTEN AGREEMENTS.** Any approval of Unit Owners on any matter called for by this Declaration, any of the other Condominium Documents, or any action to be taken at a meeting of Unit Owners is hereby expressly allowed to be taken instead by written agreement, without a meeting (which agreement may be in counterparts), subject to F.S. 718.112(2)(d)(4) and F.S. 617.0701(1999).

ARTICLE 15 TERMINATION

If the Condominium is terminated pursuant to the provisions of this Declaration, the termination of the Condominium shall be carried out in accordance with the following:

Section 1. PROCESS OF TERMINATION.

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

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

Section 2. **WIND-UP OF ASSOCIATION AFFAIRS.** The termination of the Condominium shall not, by itself, terminate the Association. The former Unit Owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, the Articles of Incorporation, the By-Laws and the Condominium Act, to the extent necessary to, and for the sole purpose of, winding up the affairs of the Association in accordance with this Section.

Section 3. **TRUSTEE'S POWERS AND DUTIES.** The Termination Trustee shall hold legal title to the Condominium or Association Property or both for the benefit of the former Unit Owners and their successors assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former Unit Owners approve a sale of the Condominium or

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

Section 4. **RELIANCE.** The Termination Trustee may rely upon the written instructions and information provided to it by the officers, directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.

Section 5. **PARTITION: SALE.** Following termination, the former Condominium Property and Association Property may be partitioned and sold upon the application of any Unit Owner. If following a termination, at least two thirds (2/3rds) of the Voting Interests agree to accept an offer for the sale of the Condominium or Association Property or both, the Board of Directors shall notify the Termination Trustee, and the Termination Trustee shall complete the transaction. In such event, any action for partition of the Condominium or Association Property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the Unit Owners have not authorized a sale of the former Condominium and Association Property within one (1) year after the recording of the Certificate of Termination, the Trustee may proceed to sell the Condominium or Association Property without agreement by the Association or the former Unit Owners. The net proceeds of the sale of any of the Condominium or Association Property or assets of the Condominium or the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

Section 6. **NEW CONDOMINIUM.** The termination of the Condominium shall not bar creation of another Condominium including all or any portion of the Condominium or Association Property.

Section 7. **PROVISIONS SURVIVE TERMINATION.** The provisions of this Section 8 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the By-Laws and Articles of Incorporation, and shall have the power to levy Assessments to pay the costs and expenses of the Termination Trustee and of maintaining the Condominium or Association Property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former Condominium Property, are Common Expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former Unit Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens. The provisions of this Article 15 shall be subject to any applicable provisions of this Declaration regarding the Storm Water Management System.

ARTICLE 16
PROVISIONS PERTAINING TO THE DEVELOPER

Section 1. **CONSTRUCTION, DEVELOPMENT, SALES.** In addition to all Other rights granted or reserved to the Developer in this Declaration of Condominium, the Articles of Incorporation and the By-Laws of the Association, the Developer shall have the right to conduct on the Condominium Property, all operations necessary in its sole discretion to complete the construction, reconstruction and development of the Condominium and to market, sell and lease the Units and other marina facilities, within the Condominium. Irrespective of any restriction or regulation, the Developer or its agents may enter upon the Condominium Property and operate thereon such vehicles and equipment as shall be necessary in the sole discretion of the Developer or its agents for such purposes. The Developer shall have the right to use any Developer owned Unit or other portion of the Condominium Property in connection with the Developer's program to sell or lease Units and shall have the right to place upon the Common Elements signs designating the Developer's sales office and advertising Units owned by the Developer for sale or lease. Such signs may be placed in such locations and shall be of such size and character as the Developer may determine.

Section 2. **REPRESENTATION ON BOARD OF DIRECTORS: VOTING BY DEVELOPER.** The Developer shall have the right to select and designate members of the Board of Directors of the Association, and to remove and replace any person or persons selected by the Developer as a member of the Board of Directors, as provided in the Articles of Incorporation and By-Laws. No representative of the Developer serving on the Board of Directors of the Association shall be required to disqualify herself or himself from voting on any contract or other matter between the Developer and the Association notwithstanding any pecuniary or other interest of the Developer. The Developer shall not be disqualified from voting on any matter which may come before the membership of the Association with respect to any contract or other matter between the Developer and the Association, notwithstanding any pecuniary or other interest of the Developer. Directors appointed by Developer shall not be required to be owners of Units in the Condominium. At least a majority of the Board of Directors who are elected by the members of the Association shall be owners of Units in the Condominium or shall be authorized representatives, officers or employees of a corporation or other organization which is the owner of a Unit.

Section 3. **DISSOLUTION OR MERGER OF DEVELOPER.** In the event of the dissolution of the Developer or its merger or consolidation into any other entity which survives the Developer, all rights of the Developer under this Declaration of Condominium or any other Condominium Document shall pass to and may be exercised by its successor or survivor.

Section 4. **ASSIGNABILITY OF THE DEVELOPER'S STATUS.** The status, position and rights of the Developer under this Declaration of Condominium, the Articles of Incorporation and the By-Laws of the Association are freely assignable, in whole or in part, and any party to whom assigned shall be entitled to exercise all of the rights so assigned. The Developer shall have the right to appoint and designate a successor who shall succeed to the status, position and all of the rights and privileges, or a portion of such rights and privileges, of

the Developer under this Declaration of Condominium by a written instrument identifying and designating such successor executed in recordable form and, upon the recording of such instrument in the Public Records of Lee County, Florida, the party named as successor shall succeed to all rights, privileges, exemptions and immunities of the Developer under this Declaration of Condominium so assigned and transferred.

Section 5. **ASSESSMENT FOR CAPITAL IMPROVEMENTS: ACTIONS DETRIMENTAL TO SALES.** Notwithstanding any other provision of this Declaration of Condominium or any other Condominium Document, so long as the Developer holds a Unit or Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

(a) Assessment of the Developer as a Unit Owner for capital improvements or capital additions; and

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

Section 6. **CHANGES IN UNITS.** The Developer shall have the right, without the vote or consent of the Association or other Unit Owners, to make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, including physically combining Units. However, in no event shall any such alteration, addition, improvement or combination interfere with the Common Elements or Limited Common Elements or the provision of utility service to any Unit, the Common Elements or Limited Common Elements.

ARTICLE 17 RIGHTS OF MORTGAGEES

Section 1. **RIGHTS TO INFORMATION.** Upon receipt by the Association from any Institutional First Mortgagee, guarantor or insurer of a copy of the mortgage held by such mortgagee, guarantor or insurer on a Unit, together with a written request from such mortgagee, or a guarantor or insurer of such mortgagee specifying the address to which the following items are to be sent, the Association may send to such mortgagee, insurer or guarantor the following, and for which the Association may charge a reasonable fee:

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

(b) written notice of the cancellation or termination by the Association of any policies of insurance covering the Condominium Property or the Association Property or any

improvements thereon, or any fidelity bonds of the Association, except when the reason for the termination or cancellation of the insurance policy or bond is to change insurance companies or because the policy or bond is not needed or is not available;

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

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

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

Section 2. **FAILURE TO NOTIFY.** The failure of the Association to send any such notice to any such mortgagee, guarantor or insurer shall have no effect on any meeting, action or thing which was to have been the subject of such notice nor affect the validity thereof and shall not be the basis for liability on the part of the Association.

ARTICLE 18 ASSOCIATION AGREEMENTS

Subject to limitations contained in this Declaration and the Act, the Association may contract with any Person for the management of all or part of the Property for purposes of carrying out all or a portion of the maintenance, operational and leasing services provided for in the Declaration and is authorized to enter into agreements to acquire leaseholds, memberships, and other possessory or use interest in lands or facilities. Such interests need not be contiguous to the Property if they are intended to provide enjoyment, recreation, or other use or benefit to the Unit Owners.

ARTICLE 19 VOTING

Each Unit shall have the Voting Interest to vote in all matters where a vote of Members is permitted or required.

ARTICLE 20 DISCLAIMER OF WARRANTIES

The Developer hereby disclaims any and all express or implied warranties as to design, construction, sound transmission, furnishing and equipping of the Condominium Property, except only those set forth in Section 718.203 of the Act to the extent applicable, and to the extent that same have not expired by their terms. As to such warranties which cannot be

disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed. All Unit Owners, by virtue of acceptance of title to their respective Units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

ARTICLE 21 INDEMNIFICATION OF OFFICERS AND DIRECTORS

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

ARTICLE 22 SECURITY; LIMITED ACCESS TO CERTAIN UNITS

The Association may maintain or support certain activities in the Condominium designed to make the Units and the occupants safer and more secure than they otherwise might be. However, the Developer and the Association shall have no obligation to undertake, maintain or support such activities nor shall they and their respective predecessors, successors, employees, officers, directors, affiliates, contractors or agents be considered insurers or guarantors (collectively, the "Companies") of security in the Condominium nor be held liable for any loss or damage by reason of failure to provide adequate security or the ineffectiveness of any security measures undertaken. All Unit Owners and occupants of any Unit, and all guests and invitees of any Unit Owner or occupant, acknowledge that the Developer, the Association and the Companies do not represent or warrant that any fire protection system, burglar alarm system or other security system or device installed or employed may not be compromised or circumvented, that any such system will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, nor that any such system will in all cases provide the detection or protection for which the system is designed or intended. Unit Owners and occupants of any Unit and their guests and invitees are hereby put on notice of the provisions of this Section and acknowledge by taking title or occupancy that the Developer, the Association and the Companies are not insurers and that each Unit Owner and occupant and his, her or its tenants, guests and invitees assume all risks for loss or damage to persons, Units and the contents of Units and property brought on the Condominium. The Developer, the Association and the Companies make no representation or

warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, with respect to any fire or burglar alarm system or other security system installed or employed in the Condominium, and, without limitation, further disclaims any obligation to provide fire protection sprinklers for each Dry Slip or in any other manner except as required by law.

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

ARTICLE 23 DURATION OF CONTENTS

The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association the Developer and any Owner, and their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the twenty-fifth (25th) anniversary of the date of recordation of this Declaration. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive twenty-five (25) year periods, during which the Association shall be bound to perform its obligations hereunder. The number of twenty-five (25) year renewal periods hereunder shall be unlimited, with this Declaration being renewed and extended upon the expiration of each twenty-five (25) year renewal period for an additional twenty-five (25) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent twenty-five (25) year renewal period, two-thirds (2/3) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Members vote to terminate this Declaration, the termination shall follow the procedures set forth in Article 15 of this Declaration.

ARTICLE 24 PERMITS AND MANATEE PROTECTION

Section 1. **GENERAL**. The Association, Unit Owners and all others on the Condominium Property shall at all times comply with the requirements of all governmental permits and approvals, submerged land leases and other governmental requirements respecting the Condominium and, in general, the operation of the marina facilities and property and waterways within and adjacent to the Condominium Property, including without limitation all requirements relating to the protection of the West Indian Manatee.

Section 2. **SIGNAGE.** If required by any applicable governmental authorities, the Association shall at all times maintain all signs, channel markers and the like, including, without limitation, "slow speed zone, manatee speed zone" and "idle speed zone" signs and all buoys and pilings to which they may be attached in good, readable condition, regardless of whether such signs are located within the Condominium Property.

Section 3. **COMPLIANCE WITH LAWS AND PERMITS.** The Association, all Unit Owners and other persons using the Condominium Property shall at all times comply with all laws, regulations, permits and ordinances relating to the Condominium Property. Likewise, Unit Owners and other persons using the Condominium Property and the adjacent waters shall at all times comply with all "slow speed zone", "manatee speed zone" and "idle speed zone" signs described in Section 2 above. To the maximum extent lawful, any violation of the foregoing shall be deemed a violation of this Declaration of Condominium as to which the Association shall have all enforcement rights provided for herein and in the other Condominium Documents. Developer may transfer any applicable governmental permits to the Association, which transfer the Association shall be deemed to have automatically accepted, and upon such transfer the Association shall be fully responsible for compliance with the terms and conditions thereof.

Section 4. **COSTS.** The costs and expenses incurred by the Association in connection with the activities described in this Article shall be deemed Common Expenses collectable as Assessments in accordance with this Declaration of Condominium.

ARTICLE 25 SEVERABILITY AND NON-WAIVER

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

THIS DECLARATION OF CONDOMINIUM and exhibits hereto made and entered into this 5 day of April, 2006.

WITNESSES:

Print Name: Joni Johnson

Print Name: MATT SHULL

STEEVE SQUARED, LLC, a Florida
limited liability company

By: Steeve Knight

Print Name: STEEVE KNIGHT

Its: Managing Member

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 5 day of April, 2006, by Steven Knight, as Managing Member of STEEVE SQUARED, L.L.C., a Florida limited liability company, who ☒ is personally known to me or who ☐ has produced _____ as identification.

My Commission Expires:



April Marie Gregory
Notary Public - State of Florida
April Gregory
Printed Name of Notary Public

Serial No. _____

MORTGAGEE CONSENT

WACHOVIA BANK, NATIONAL ASSOCIATION (the "Mortgagee"), is the owner and holder of that certain Mortgage, Security Agreement and Financing Statement (the "Mortgage") dated June 2, 2004, as recorded at O.R. Book 4323, Pages 630-639, as modified by that certain Receipt of Future Advance and Modification of Mortgage dated September 29, 2005, as recorded at Instrument No. 2005000048793, and as further modified by that certain Receipt of Future Advance and Modification of Mortgage dated October 3, 2005, as recorded at Instrument No. 2005000051934, all in the Public Records of Lee County, Florida. The undersigned Mortgagee hereby consents to the above Declaration of Condominium for Sanibel Harbour Yacht Club, a Condominium, and subordinates the Mortgage to the provisions of the Declaration.

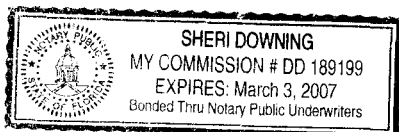
**WACHOVIA BANK, NATIONAL
ASSOCIATION**

By: [Signature]
Print Name: DAVID L. BARBUR
Print Title: Vice President

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 5 day of April, 2006, by David Barbur, as Vice President of **WACHOVIA BANK, NATIONAL ASSOCIATION** who ☒ is personally known to me or who ☐ has produced _____ as identification.

NOTARY RUBBER STAMP SEAL
OR EMBOSSED SEAL



[Signature]
Notary Public
Sheri Downing
Printed Name
DD18199 3/3/07
Commission No. Expiration Date

MORTGAGEE CONSENT

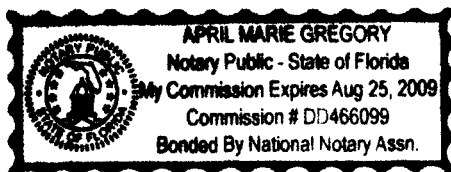
MARINA ACQUISITIONS, LLC, a Florida limited liability company, (the "Mortgagee"), is the owner and holder of that certain Mortgage (the "Mortgage") dated March 17, 2006, as recorded on April 4, 2006, at Instrument No. 2006000138372, Public Records of Lee County, Florida. The undersigned Mortgagee hereby consents to the above Declaration of Condominium for Sanibel Harbour Yacht Club, a Condominium, and subordinates the Mortgage to the provisions of the Declaration.

MARINA ACQUISITIONS, LLC, a Florida
limited liability company

By: [Signature]
Print Name: STEEVEN C. KNIGHT
Print Title: Manager Member

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was acknowledged before me this 6th day of April, 2006, by Steeven C. Knight, as Manager Member of MARINA ACQUISITIONS, LLC, a Florida limited liability company, who ☒ is personally known to me or who ☐ has produced United States Passport as identification.



**NOTARY RUBBER STAMP SEAL
OR EMBOSSED SEAL**

[Signature]
Notary Public
April Gregory
Printed Name
DD466099 8/25/09
Commission No. Expiration Date

EXHIBIT "A"

A tract or parcel of and situated in the State of Florida, County of Lee, lying in Government Lot 3 of Section 9, Township 46 South, Range 23 East, and further bounded and described as follows:

Starting at the Northeast corner of said Government Lot 3, thence Westerly along the North line of said Government Lot 3 for 1145.00 feet; thence S00°15'18"W for 387.33 feet to the Point of Beginning of the herein described parcel; thence S89°44'42"E for 159.23 feet; thence S00°15'18"W for 637.18 feet; thence N89°44'42"W for 159.23 feet; thence N00°15'18"E for 287.18 feet; thence N89°46'50"W for 172.00 feet; thence N89°02'03"W for 96.78 feet; thence N06°40'27"W for 106.16 feet; thence N44°58'39"W for 21.49 feet to the Southeast corner of Punta Rassa Condominium, Phase IV; thence N04°59'55"E along the Easterly line of said Punta Rassa Condominium, Phase IV, for 24.00 feet; thence N87°49'24"W along said Punta Rassa Condominium, Phase IV, for 14.99 feet; thence N01°03'11"E along said Punta Rassa Condominium, Phase IV for 66.69 feet; thence N83°16'57"W along said Punta Rassa Condominium, Phase IV, for 101.03 feet; thence N01°20'16"E along said Punta Rassa Condominium, Phase IV for 38.76 feet; thence N42°52'39"W along said Punta Rassa Condominium, Phase IV, for 19.19 feet; thence N20°32'15"E for 7.8 feet to the Seaward corner of a concrete seawall and to the waters of San Carlos Bay and the Caloosahatchee River; thence Northeasterly along said waters for 100 feet, more or less, to an intersection with a line bearing N89°44'42"W from the Point of Beginning; thence S89°44'42"E along said line for 358 feet, more or less, to the Point of Beginning.

Together with a non-exclusive easement for ingress and egress over and across land described in Official Record Book 2977, Page 1725, Official Record Book 3043, Page 1083, Official Record Book 3043, Page 1094 and Official Record Book 3043, Page 1100, Public Records of Lee County, Florida.

Also together with a non-exclusive easement for Pedestrian Use and Support Easement recorded in Official Record Book 1908, Page 2404 and a Non-Exclusive Easement for Joint Use of Waterfront Area recorded in Official Record Book 1908, Page 2398 as modified in Official Record Book 3043, Page 1061, Public Records of Lee County, Florida.



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

April 22, 2004

SANIBEL HARBOUR YACHT CLUB CONDOMINIUM ASSOCIATION, INC
24280 S TAMiami TRAIL
BONITA SPRINGS, FL 34134

The Articles of Incorporation for SANIBEL HARBOUR YACHT CLUB CONDOMINIUM ASSOCIATION, INC. were filed on April 21, 2004, and assigned document number N04000003974. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H04000084984.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Tammy Hampton
Document Examiner
New Filings Section
Division of Corporations

Letter Number: 304A00026601

Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314

EXHIBIT B

State of Florida



Department of State

I certify from the records of this office that SANIBEL HARBOUR YACHT CLUB CONDOMINIUM ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on April 21, 2004.

The document number of this corporation is N04000003974.

I further certify that said corporation has paid all fees due this office through December 31, 2004, and its status is active.

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

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 304A00026601-042204-N04000003974-1/1, noted below.

Authentication Code: 304A00026601-042204-N04000003974-1/1



Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Twenty-second day of April, 2004

Glenda E. Hood

Glenda E. Hood
Secretary of State

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of SANIBEL HARBOUR YACHT CLUB CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on April 21, 2004, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H04000084984. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N04000003974.

Authentication Code: 304A00026601-042204-N04000003974-1/1



Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Twenty-second day of April, 2004

Glenda E. Hood
Glenda E. Hood
Secretary of State

ARTICLES OF INCORPORATION

OF

SANIBEL HARBOUR YACHT CLUB CONDOMINIUM ASSOCIATION, INC.

Pursuant to Section 617, Florida Statutes, Steven W. Hubbard as Incorporator creates these Articles of Incorporation for the purposes set forth below.

ARTICLE I

NAME: The name of the corporation, herein called the "Association", is Sanibel Harbour Yacht Club Condominium Association, Inc., and its initial principal office and mailing address is 24280 South Tamiami Trail, Bonita Springs, Florida 34134.

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation Sanibel Harbour Yacht Club, a Condominium, located in Lee County, Florida.

The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida, and no portion of any earning of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit under the laws of the State of Florida and of a condominium association under the Florida Condominium Act, except as expressly limited or modified by these Articles, the Declaration of Condominium, and the Bylaws; and it shall have all of the powers and duties reasonable necessary to operate the Condominium pursuant to the condominium documents as they may hereafter be amended, including but not limited to the following:

- (A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property and association property.
- (C) To purchase insurance for the protection of the Association and its members.
- (D) To repair and reconstruct improvements after casualty, and to make further improvements of the condominium property.

- (E) To make, amend and enforce reasonable rules and regulations in the manner set forth in the Bylaws and subject to any limitations in the Declaration of Condominium.
- (F) To approve or disapprove the transfer, leasing and occupancy of units, as provided in the Declaration of Condominium.
- (G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (H) To contract for the management and maintenance of the condominium and the condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by law or by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (J) To borrow money as necessary to perform its other functions hereunder.
- (K) To grant, modify or move any easement in the manner provided in the Declaration of Condominium
- (L) To own and convey property.
- (M) To assess Unit Owners and enforce assessments.
- (N) To sue and be sued.
- (O) To contract for services necessary to operate and maintain the Condominium Property and any easements dedicated to or for the benefit of the Condominium Property including any infrastructure.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of the Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE III

MEMBERSHIP:

- (A) The members of the Association shall be all record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to a number of votes in Association matters as set forth in the Declaration of Condominium. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE IV

TERM: The term of the Association shall be perpetual. In the event that the Association is dissolved, the storm water or Surface Water Management System will be dedicated to a similar nonprofit organization or entity to assure continued maintenance and operation.

ARTICLE V

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VI

DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.
- (B) Except for Directors appointed by the Developer(as defined in the Declaration of Condominium) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

INITIAL DIRECTORS: The initial Directors of the Association shall be:

Steven Knight
Stephen Page
Richard McCanna

ARTICLE VIII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by a written petition to the Board, signed by at least one-fourth (1/4th) of the voting interests of the Association.
- (B) Vote Required. Prior to the turnover of control of the Association by the Developer to unit owners other than the Developer, these Articles may be amended by the Board at a duly noticed Board meeting. Subsequent to turnover, a proposed amendment shall be adopted if it is approved by at least fifty-one percent (51%) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. As long as Developer owns a unit, no amendment to these Articles shall be deemed effective which in any way modifies the rights, benefits or privileges granted or reserved to Developer, without Developer's prior written consent, which consent may be denied in Developer's absolute discretion.
- (C) Certificate; Recording. An amendment shall become effective upon filing with the Secretary of State and recording a Certificate of Amendment in the Public Records of Collier County, Florida, with the formalities required by the Condominium Act.

ARTICLE IX

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorney fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgement or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgement in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

ARTICLE X

INITIAL REGISTERED AGENT

The initial registered office of the Association shall be at:

2320 First Street
Suite 1000
Fort Myers, Florida 33901

The principal office and mailing address of the Association is:

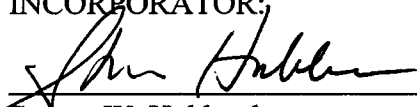
24280 S. Tamiami Trail
Bonita Springs, Florida 34134

The initial registered agent at said address shall be:

Steven W. Hubbard


WHEREFORE, the Incorporator has caused these presents to be executed this 21st day of April, 2004.

INCORPORATOR:


Steven W. Hubbard

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged this 21st day of April, 2004, by Steven W. Hubbard, who ☒ is personally known to me or who ☐ has produced _____
_____ (type of ID) as identification.


Notary Public (SEAL)
My Commission Expires: Mary C. Jennings
Commission #DD157236
Expires: Nov 14, 2006
Bonded Thru
Atlantic Bonding Co., Inc.

ACCEPTANCE OF REGISTERED AGENT

Having been named to accept service of process for Sanibel Harbour Yacht Club Condominium Association, Inc., at the place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.


Steven W. Hubbard

EXHIBIT C

SANIBEL HARBOUR YACHT CLUB CONDOMINIUM ASSOCIATION, INC. BY-LAWS

ARTICLE I IDENTITY

Section 1. Name. The name of this corporation is Sanibel Harbour Yacht Club Condominium Association, Inc., hereinafter referred to as the "Association".

Section 2. Office. The initial principal office of the Association is 15051 Punta Rassa Road, Fort Myers, Florida 33908.

Section 3. Bulletin Board. The official bulletin board of the Association shall be located in a conspicuous place on the Condominium Property.

Section 4. Seal. The seal of the shall bear the name of the Association, the word "Florida", the words "Corporation Not-for-Profit", and the year of incorporation.

Section 5. Logo. The logo of the Association shall be of a style and design approved by the Board of Directors.

Section 6. Adoption. These By-Laws have been adopted as the By-Laws of the Association in accordance with the Declaration of Sanibel Harbour Yacht Club, a Condominium (the "Declaration").

Section 7. Defined Terms. All terms used in these By-Laws shall have the same meaning as are ascribed to them in the Declaration, except as otherwise provided herein.

Section 8. Condominium Act. To the extent required by the Condominium Act, or if the same would provide the Association greater rights, privileges and powers, provisions of the Declaration are hereby incorporated by reference in these By-laws.

ARTICLE II PURPOSES

The purpose for which the Association is organized is to engage as a non-profit organization in protecting the value of the property of the Slip Owners and Association, to exercise all the powers and privileges and to perform all of the duties and obligations of the Association as defined and set forth in the Declaration and the Condominium Act, including, but not limited to, acquisition of interests in the Condominium, the establishment and enforcement of payment of charges and assessments and to engage in such other lawful activities as may be to the mutual benefit of the Slip Owners and their property.

ARTICLE III
DIRECTORS AND OFFICERS

Section 1. Directors

A. The affairs of the Association shall be managed by a Board of Directors which shall initially consist of three (3) directors.

B. The initial Board shall consist of the individuals named in the Articles of Incorporation, who shall serve until their successors are appointed by Steve Squared, LLC, a Florida limited liability company ("Developer").

C. Within ninety (90) days of the earlier to occur of the following conditions, the Board of Directors shall call and give not less than sixty (60) days notice of a meeting of the Slip Owners, at which not less than a majority of the directors appointed by Developer shall resign and the Slip Owners, other than Developer, shall elect no fewer than a majority of the members of the Board of Directors until the next annual meeting of the Slip Owners:

1. Three (3) years after fifty percent (50%) of the Slips have, been conveyed by Developer, (other than to a successor developer);
2. Three (3) months after ninety percent (90%) of the Slips have been conveyed by Developer, (other than to a successor developer);
3. When all the Slips that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business;
4. When some of the Slips have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business.
5. Seven (7) years after the date of recordation of the Declaration submitting the initial phase of the Condominium.

Developer is entitled to appoint one (1) person to the Board of Directors as long as it holds five percent (5%) or more of the Slips in the Condominium for sale.

E. All elected directors, except directors elected to serve until the next annual meeting of the Slip Owners and directors appointed by Developer, shall serve for a term of one year.

F. Notwithstanding anything to the contrary in these By-laws or the Declaration, directors appointed by Developer shall, if required to be elected pursuant to the

Condominium Act, (e.g. if the transfer of control of the Association has occurred but Developer is entitled to vote for less than a majority of the Board of Directors) be elected solely by Developer at the annual meeting of the Slip Owners.

G. No director shall receive or be entitled to any compensation for his services as Director, but shall be entitled to reimbursement for all expenses incurred by such person as a Director, if incurred upon the authorization of the Board of Directors.

H. No director appointed or elected solely by Developer need be a Member. No director appointed or elected by Developer may be removed except by Developer.

Section 2. Officers. The executive officers of the Association shall be: President, Vice President, Secretary and Treasurer, and such other officers as the Board of Directors may appoint. The officers shall be elected by the Board of Directors at their annual meeting. Officers shall hold office until the next annual meeting of the Board of Directors, or until their successors shall have been appointed and shall qualify.

Section 3. Resignation. Vacancy. Removal.

A. Resignation: Any director or officer of the Association may resign at any time, by instrument in writing. Resignations shall take effect at the time specified therein, and if no time is specified, resignation shall take effect at the time of receipt by the President or Secretary of the Association. The acceptance of a resignation shall not be necessary to make it effective.

B. Director Recall: A director, other than one appointed or elected by the Developer, may be removed from office, with or without cause, by vote or agreement in writing by a majority of all voting interests entitled to elect such director. Any such recall shall comply with the provisions of the Condominium Act.

C. Director Vacancy: When a vacancy occurs on the Board of Directors, the vacancy shall be filled by the Developer, if the vacancy occurs by resignation or removal of any director appointed by the Developer, or by the member(s) of the Board of Directors, if the vacancy occurs by resignation or removal of any directors elected by the Slip Owners. Any person elected to fill a vacancy on the Board of Directors by the Slip Owners of the Board of Directors elected by the Slip Owners shall serve until the next annual meeting of Slip Owners.

D. Officer Vacancy: When a vacancy occurs in an office for any reason before an officer's term has expired, the office shall be filled by the Board of Directors at its next meeting by electing a person to serve for the unexpired term or until a successor has been elected by the Board of Directors and shall qualify.

ARTICLE IV
POWERS AND DUTIES OF THE ASSOCIATION
AND THE EXERCISE THEREOF

The Association shall have all powers granted to it by common law, Florida Statutes, the Declaration, the Articles of Incorporation, and these By-Laws, all of which shall be exercised by its Board of Directors unless the exercise thereof is otherwise restricted in the Declaration, these By-Laws or by law.

ARTICLE V
DUTIES OF OFFICERS

Section 1. President. The President shall be the chief executive officer of the Association and shall:

- A. Act as presiding officer, or appoint another person (who need not be an officer, director or Member), at all meetings of Slip Owners and of the Board of Directors.
- B. Call special meetings of the Board of Directors.
- C. Sign, with the Secretary or Treasurer if the Board of Directors so requires, all checks, contracts, promissory notes, and other instruments on behalf of the Association, except those which the Board of Directors specified may be signed by other persons.
- D. Perform all acts and duties usually required of a chief executive to insure that all orders and resolutions of the Board of Directors are carried out.
- E. Act as ex-officio member of all committees, and render an annual report at the annual meeting of Slip Owners.

Section 2. Vice President. The Vice President, in the absence or disability of the President, shall exercise the powers and perform the duties of the President. The Vice President also shall assist the President generally, and exercise other powers and perform other duties as shall be prescribed by the Board of Directors.

Section 3. Secretary. The Secretary shall have the following duties and responsibilities:

- A. Attend all regular and special meetings of the Slip Owners and of the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done.
- B. Have custody of the corporate seal and affix the same when necessary or required.

C. Attend to all correspondence on behalf of the Board of Directors, prepare and serve notice of meetings, keep membership books, and receive all applications for Slip Ownership.

D. Perform other duties as the Board of Directors may determine and on all occasions in the execution of his duties, act under the superintendence, control and direction of the Board of Directors.

E. Have custody of the minute book of the meetings of the Board of Directors and Slip Owners, and act as transfer agent of the corporate books.

Section 4. Treasurer. The Treasurer shall:

A. Attend all meetings of the Slip Owners and of the Board of Directors.

B. Receive monies as shall be paid into his hands for the account of the Association and disburse funds as may be ordered by the Board of Directors, taking proper vouchers for disbursements, and be custodian of all contracts, leases and other important documents of the Association which he shall keep safely deposited.

C. Supervise the keeping of accounts of all financial transactions of the Association in books belonging to the Association, and deliver the books to his successor. He shall prepare and distribute to all of the Slip Owners of the Board of Directors prior to each annual meeting, and whenever else required, a summary of the financial transactions and condition of the Association from the preceding year. He shall make a full and accurate report on matters and business pertaining to his office to the Slip Owners at the annual meeting, and make all reports required by law. He shall prepare budgets of the Association, and present it to the Board of Directors for its consideration.

D. The Treasurer may have the assistance of an accountant, bookkeeper or auditor, who shall be employed by the Association. In the event the Association enters into a management agreement, it shall be proper to delegate any or all of the Treasurer's functions to the management agent as is deemed appropriate by the Board of Directors.

Section 5. Management Company. The various duties of the officers of the Association may be discharged by a management company or manager, provided the applicable officer shall oversee such functions and be ultimately responsible for same.

ARTICLE VI **MEMBERSHIP AND VOTING**

Section 1. Qualification for Membership. A person or entity who acquires fee simple interest in a Marina Slip in accordance with the Declaration shall automatically become a Member of the Association upon acquisition of the Marina Slip. Membership shall continue until such time as the Member transfers or conveys such Marina Slip in accordance with the

Declaration, at which time membership, with respect to the Marina Slip conveyed, shall automatically be conferred upon the transferee. No person or entity holding an interest of any type or nature whatsoever in a Marina Slip only as security for the performance of an obligation shall be a Member of the Association.

Section 2. Voting. The Association shall have one (1) class of voting membership. Each Member shall be entitled to one (1) vote for each Marina Slip owned by such Member. Votes may be exercised or cast by a Member in person or by limited proxy. Proxies may be filed with the Secretary of the Association prior to any Membership meeting. A proxy shall be valid only for the meeting given and adjournment thereof, provided in no event shall the proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Proxies shall be revoked upon written revocation of such proxy executed by the grantor of the proxy delivered to the Secretary, or the death or legal incompetence of the grantor, or the appearance of a grantor at the meeting for which the proxy is given. Notwithstanding anything to the contrary herein, election of directors shall be secret written ballot.

ARTICLE VII **MEETINGS**

Section 1. Meetings of Slip Owners.

A. Place of Meetings: All meetings of the Association shall be held at the date, time and place, as designated by the Board of Directors.

B. Annual Meetings: Annual Slip Owners' meetings shall be upon a date designated by the Board of Directors, which shall fall between the first day of January and the 30th day of April, in each calendar year. No meeting shall be held on a legal holiday. The meeting shall be held at the time designated by the Board of Directors. The purpose of the annual meeting shall be the election of directors and the transaction of other business authorized to be transacted by Slip Owners. The order of business shall be as determined by the Board of Directors, consistent with the Act.

C. Special Meetings: Special Meetings shall be held whenever called by the President or by a majority of the Board of Directors and must be called by the Secretary, upon receipt of a written request from Slip Owners holding a majority of the total voting interests in the Association. Business transacted at all special meetings shall be confined to the objects and action to be taken as stated in the notice of the meeting.

D. Quorum: A quorum for the transaction of business at the annual meeting or any special meeting shall consist of one-third of the total votes of the Slip Owners, being present either in person or by proxy, but the Slip Owners present at any meeting although less than a quorum, may adjourn the meeting to a future date.

E. Voting Required to Make Decisions: When a quorum is present at any meeting, the vote of a majority of the Slip Owners' votes present in person or by proxy shall

decide any question brought before the meeting, unless the Declaration, the Articles of Incorporation, these By-Laws or any applicable statute provides otherwise. Notwithstanding the foregoing, directors shall be elected by plurality vote.

Section 2. Directors' Meetings.

A. Annual Meeting: The annual organization meeting of the Board of Directors shall be held within fourteen (14) days following the adjournment of the annual meeting of Slip Owners. The Board of Directors may establish a schedule of regular meetings to be held at the places, dates and times as the directors may designate or may meet only as the Board deems necessary.

B. Special Meetings: Special meetings of the Board of Directors may be called by the President, upon notice to each director to be delivered by telephone, mail or in person. Special meetings must also be called on written request of two (2) directors. All notices of special meetings shall state the purpose, time and place of the meeting.

C. Notice: Notice of Board of Director meetings shall be provided a minimum of forty eight (48) hours prior to the date of the meeting. Notice shall also be posted on the Bulletin Board of the Association at least forty-eight (48) hours prior to the meeting. Notwithstanding the foregoing, written notice of any Board of Director meetings at which Assessments, or any amendment to the Declaration or By-laws will be considered shall be mailed or delivered to the Slip Owners and posted on the Bulletin Board of the Marina Association a minimum of fourteen (14) days prior to the meeting. Such notice shall state the assessments or other matters to be considered at such meeting. The person providing notice shall file in, the Association's official records an affidavit of notice complying with the Condominium Act.

D. Budget Meeting: The Board of Directors shall mail a meeting notice and copies of the proposed annual budget of Common Expenses and Assessments to the Slip Owners not less than thirty (30) days prior to the meeting at which the budget will be considered. The budget may be adopted by the Board of Directors. If an adopted budget requires assessments against Slip Owners in any fiscal year exceeding one hundred fifteen percent (115%) of the assessments for the preceding year, the Board of Directors upon written application of ten (10%) percent of the Slip Owners shall call a special meeting of the Slip Owners within thirty (30) days, upon not less than fourteen (14) days written notice to each Member. At the special meeting, Slip Owners shall consider and enact a budget. If the Developer appoints a majority of the Board of Directors, such application by ten percent (10%) of the Slip Owners shall not be required, but, rather, the meeting shall be called without same. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments for the prior year, any authorized provisions for reasonable reserves for repair or replacement of Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, and assessments for betterments to the Property shall be excluded from the computation.

E. Quorum: At all meetings of the Board of Directors, a majority of the votes

eligible to be cast by the directors shall constitute a quorum for the transaction of business, and the acts of a majority of the votes cast by the directors present at the meeting at which a quorum is present shall be the acts of the Board of Directors except where approval by a greater number is required by the Declaration, the Articles of Incorporation these By-Laws, or applicable law. At any meeting at which a quorum is not present, the presiding officer may adjourn the meeting from time to time, and at any adjourned meeting, any business which might have been transacted at the meeting as originally called, may be transacted without further notice.

F. Presiding Officer: In the absence of the presiding officer, the directors present shall designate another to preside.

G. Telephone Meeting: Any regular or special meeting of the Board of Directors may be held by telephone conference, at which each participating member can hear and be heard by all other directors and any Slip Owners attending the meeting.

H. Order of Business: The order of business at director's meetings shall be as determined by the Board of Directors.

I. Emergency Actions: Any matter voted on by the Board of Directors at any meeting which is not identified in the notice of the meeting shall be ratified at the next meeting of the Board of Directors.

J. Written Action: The Board of Directors may take written actions in lieu of a meeting as provided by law.

ARTICLE VIII

NOTICE OF MEMBERS' MEETINGS

Section 1. Annual Meeting. Written notice of the annual meeting of Members shall be served upon or mailed to each Member entitled to notice as provided below. Such notice shall be hand delivered or mailed to each Member at his address as it appears on the books of the Association. Proof of mailing may be given by the affidavit of the person giving the notice.

Section 2. Special Meeting. Written notice of a special meeting of Slip Owners stating the time, place and object of the meeting shall be served upon or mailed to each Member at least fourteen (14) days, and no more than seventy-five (75) days, prior to such meeting.

Section 3. Election Notice and Procedure. At any meeting at which Slip Owners will elect directors, the first notice of such meeting shall be mailed to the Slip Owners a minimum of sixty (60) days prior to the date of the meeting. Any Member desiring to be considered a candidate for the Board of Directors must notify the Association in writing forty (40) days prior to a scheduled election. Together with the written notice and agenda, the Board of Directors shall mail a second notice of the election to all Slip Owners. Such notice shall contain a written ballot which lists all candidates, together with any candidate information sheets submitted by the candidates. A candidate information sheet must be on paper no longer than 8 1/2 by 11 inches and

must be provided to the Association a minimum of thirty-five (35) days prior to the date of the election. There shall be no quorum requirement at any election meeting with respect to the meeting itself, provided a minimum of twenty (20%) percent of the eligible Slip Owners must cast a written ballot to have a valid election. The ballot procedure shall comply with the provisions of the Condominium Act.

Section 4. Waiver. Nothing herein is to be construed to prevent Slip Owners from waiving notice of meetings or acting by written agreement without meetings.

Section 5. Posted Notice. Notice of any meeting of the Slip Owners shall be posted on the Bulletin Board not less than fourteen (14) days prior to the date of the meeting.

ARTICLE IX
MEETING PROCEDURE

Section 1. Rules of Conduct. Robert’s Rules of Order (latest edition) shall govern the conduct of the Board and Association when not in conflict with the Articles of Incorporation and these By-Laws or with the Statutes of the State of Florida; provided that any failure to strictly comply with such Rules shall not invalidate any otherwise valid act.

Section 2. Member Participation. Slip Owners shall have the right to participate in meetings of Slip Owners and to speak (but not vote) at any meetings of Board of Directors on all agenda items. The Board of Directors may, however, adopt reasonable rules governing frequency, duration and manner of Member participation.

Section 3. Audio or Video Tape. Any Member may audio tape or video tape any meeting of Slip Owners or any meeting of the Board of Directors. Any such recordation shall be done in a manner designed to minimize interference with the conduct of the meeting and in accordance with any applicable Rules adopted by the Board.

ARTICLE X
ASSESSMENTS AND MANNER OF COLLECTION

The Board of Directors shall have the power to levy and enforce Assessments and Charges against Slip Owners, as set forth in the Declaration.

ARTICLE XI
FISCAL MANAGEMENT

Section 1. Fiscal Year. The fiscal year of the Association shall be from January 1 to December 31.

Section 2. Depositories. The funds of the Association shall be deposited in such accounts in Lee County, Florida, as may be selected by the Board of Directors, including checking and savings accounts in one (1) or more banks and/or savings and loan associations,

Certificates of Deposit, U.S. Treasury Bills and money market accounts with an investment firm or firms, all in accordance with resolutions approved by the Board of Directors. Association funds shall be withdrawn only over the signature of the President or such other persons as the Board of Directors may authorize. The Board of Directors may require more than one (1) signature on checks and bank drafts. The funds shall be used only for Association purposes.

Section 3. Reserve Accounts. Unless waived as provided in the Act, the Association shall establish and maintain a reserve account for capital replacement and deferred maintenance of Improvements to the Property, unless waived as provided by the Act, which shall be funded in amounts determined by the Board of Directors.

Section 4. Fidelity Bonds. The Association shall purchase blanket fidelity bonds for all officers and employees of the Association and for any management agent, who controls or disburses funds of the Association and any contractor handling or responsible for Association funds. The following provisions shall govern the Association's purchase of the bonds.

(a) Each fidelity bond purchased by the Association shall name the Association as an obligee of the bond.

(b) The premiums for bonds shall be paid by the Association.

(c) The fidelity bonds shall, at a minimum, be in the amount required by the Condominium Act.

(d) Each bond shall include a provision requiring ten (10) days written notice to the Association before the bond can be cancelled or substantially modified for any reason.

Section 5. Records. The Association shall maintain official records of the Association, including (to the extent an item exists):

(a) The plans, permits, warranties, and other items provided by Developer pursuant to the provisions of the Condominium Act;

(b) A certified copy of the original Declaration, Articles of Incorporation, these By-laws, all amendments and exhibits to any of the foregoing.

(c) A copy of the current rules of the Association.

(d) A book or books containing the minutes of all meetings of the Board of Directors, and the Slip Owners, which minutes shall be retained for a period of not less than seven (7) years.

(e) A current roster of all Slip Owners and their mailing addresses,

Marina Slip identifications, voting certifications, and, if known, telephone numbers.

(f) All current insurance policies of the Association.

(g) A current copy of any management agreement, lease or other contract to which the Association is a party or under which the Association or the Slip Owners have an obligation or responsibility.

(h) Bills of sale or transfer documents for all property owned by the Association.

(i) Accounting records for the Association and separate accounting records for each Member, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years. The accounting records shall include, but not limited to:

(i) accurate, itemized, and detailed records of all receipts and expenditures.

(ii) a current account and a monthly or quarterly statement of the account for each Member, designating the due date and amount of each assessment amount paid upon the account, and the balance due.

(iii) all audits (if any), reviews, accounting statements, and financial reports of the Association.

(iv) all contracts for work to be performed, bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.

(j) Ballots, sign-in sheets, proxies, and all other papers relating to voting by Slip Owners, which shall be maintained for a period of one (1) year after the date of the election, note, or meeting to which the document relates.

(k) All rental records where the Association is acting as agent for the rental of Marina Slips.

(1) (i) all other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

The official records of the Association shall be maintained within Lee County, Florida. The records of the Association shall be made available to a Member within five (5) working days after receipt of written request delivered to the Board of Directors. The official records of the Association shall be open to inspection by any Member or the authorized representative of such Member at all reasonable times. The right to inspect the records includes the right to make or

obtain copies, at the reasonable expense, if any, of the Member. The Association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

Section 6. Financial Records. The Board of Directors shall, within sixty (60) days after the end of the fiscal year present to the Slip Owners a full and clear statement of the actual receipts and expenditures of the Association. In addition to this statement, the Association shall comply with (a) any rules relating to financial reports or statements adopted pursuant to the Condominium Act, and (b) any requirement under the Agreement.

Section 7. Insurance. The Association shall procure, maintain and keep in full force and effect, insurance as may be required by the Declaration or the Board of Directors.

Section 8. Expenses. The receipts and expenditures of the Association may be credited and charged to accounts as the Board of Directors may determine.

Section 9. Budget. The Board of Directors shall adopt a detailed budget for each fiscal year that shall include the estimated funds required to defray the expenses of the Association for the fiscal year, and to provide and maintain funds for the accounts established by the Board of Directors, in accordance with the Act.

ARTICLE XII

CONTRACTS FOR PRODUCTS AND SERVICES

All contracts as further described herein or any contract that is not to be fully performed within one (1) year after the making thereof, for the purchase, lease, renting of material or equipment to be used by the Association and all contracts for the provision of services, shall be in writing. The Association shall obtain competitive bids for the materials, equipment, or services as required by the Act. Nothing contained herein shall be construed to require the Association to accept the lowest bid.

Notwithstanding the foregoing, contracts with employees of the Association, and contracts for any attorney, accountant, architect, engineering, manager or landscape architect services shall not be subject to the provisions of this Section.

This Section does not limit the ability of the Association to obtain needed products and services in an emergency.

This Section does not apply if the business entity with which the Association desires to enter into a contract is the only source of supply within the county serving the Association

ARTICLE XIII
ADMINISTRATIVE RULES AND REGULATIONS

The Board of Directors may, from time to time, adopt rules and regulations governing the details of the operation and use of the Condominium Property, provided that the rules and regulations shall be uniform in application and effect to all similarly situated Slip Owners.

ARTICLE XIV
VIOLATIONS AND DEFAULTS

In the event of a violation of any of the provisions of the Declaration, these By-Laws, the rules and regulations adopted by the Association or the Articles of Incorporation, the Association, except to the extent limited by the Declaration or by the Act, shall have all rights and remedies provided by law, including without limitation (and such remedies shall be cumulative) the right to sue for damages, the right to impose fines for non-compliance (in the manner provided for in the Act), the right to injunctive relief, and, in the event of a failure to pay any Assessment or fine, the right to foreclose its lien as provided in the Declaration; and in every proceeding, the Member at fault shall be liable for interest, costs and the Association's attorneys' fees.

ARTICLE XV
DISCIPLINE

Any Member, guest or lessee whose conduct shall be deemed by the Board of Directors to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Association or of its Slip Owners, may be suspended from use of the marina, (such suspension not to exceed a period of one (1) year for each violation) reprimanded or fined by action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony or good reputation of the Association or its Slip Owners. No fine may exceed \$100.00 per violation, however, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000.00. Any such Member shall be notified of the proposed action and shall be given an opportunity to be heard by a committee of a minimum of three (3) Slip Owners (other than the Board of Directors, officers or family Slip Owners of the foregoing) appointed by the Board of Directors to show cause why he or she should not be disciplined in accordance with this Article. If the Member desires to be heard, the Board of Directors shall set a time and date (not less than ten (10) days thereafter) for a hearing before the committee. A majority vote of the committee shall be grounds for any fine, suspension or reprimand to be imposed.

ARTICLE XVI
AMENDMENT OF BY-LAWS

These By-Laws may be amended, altered or rescinded by a majority vote of the Board of Directors prior to the Slip Owners electing a majority of the Board of Directors, and thereafter by

a majority vote of the Slip Owners. At no time shall the By-Laws conflict with the terms of the Declaration or the Articles of Incorporation. Any Member may propose an amendment to the Board of Directors and the Board of Directors shall act upon the proposal at its next meeting. In the event the Condominium Act requires a vote of Slip Owners to amend any provision of these By-laws, the vote of Slip Owners required shall be no greater than the minimum vote required by the Condominium Act.

ARTICLE XVII **VALIDITY**

If any By-Law, rule or regulation shall be adjudged invalid, such fact shall not affect the validity of any other By-Law, rule or regulation.

ARTICLE XVIII **CONSTRUCTION**

These By-Laws shall be construed, in case of any ambiguity or lack of clarity, to be consistent with the provisions of the Declaration. In the event of any conflict between the terms of the Declaration, the Articles of Incorporation or these By-Laws, the following order of priority shall apply: The Declaration, the Articles of Incorporation and these By-Laws.

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
4-05-06	37986	J.R.C.	1"= NONE	1 OF 18	9-46-23

EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM OF SANIBEL HARBOR YACHT CLUB, A CONDOMINIUM SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA

SURVEYORS NOTES

The property shown hereon is as filed in Official Record Book 4323 at Page 627 of the public records of Lee County, Florida.

Bearings based on the recorded documents of Punta Rassa Condominium.

The dimensions shown hereon are in feet and decimal parts thereof.

Elevations based on National Geodetic Vertical Datum (NGVD 1929).

Parcel subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Parcel lies in Flood Zone V20, Base Flood Elevation +15'. This information taken from Flood Insurance Map 125124 0407 C, effective date 11-04-92 (index dated 5-05-03).

The F.E.M.A. flood zone information indicated hereon is based on maps supplied by the federal government. This flood information must be verified with all permitting regulatory entities prior to commencing any work or application dependent on said flood information.

Iron rods set are 5/8" x 18" rebar with yellow cap bearing corporation no. 4919.

Underground improvements, utilities and/or foundations were not located unless otherwise noted.

Wetlands, if any, were not located.

This plat prepared as a boundary survey and is not intended to delineate the jurisdiction or jurisdictional areas of any federal, state, regional or local agency, board, commission or other entity.

The property is subject to any claim that any part of said land is owned by the State of Florida by right of sovereignty, riparian rights, and the title to filled in lands, if any.

Survey meets or exceeds the accuracy standards of an urban survey.

CONDOMINIUM EXHIBIT NOTES

- These drawings, numbered sheet 1 through 18, constitute Exhibit "D" annexed to and expressly made a part of The Declaration of Condominium of Sanibel Harbour Yacht Club, a Condominium (the Declaration).
- Reference is hereby made to a boundary survey of the subject property prepared by Bean, Whitaker, Lutz & Kareh, Inc., Project Number 35389, dated March 31, 2004, updated for inclusion in this Exhibit "D".
- C.E. indicates "Common Element" as defined in the Declaration.
- L.C.E. indicates Limited Common Element as defined in the Declaration.
- O.R. #, PG. # indicates the Official Record Book and Page numbers of an instrument filed in the Public Records of Lee County, Florida.
- Instr. # indicates the instrument number of an instrument filed in the Public Records of Lee County, Florida.
- The easements shown hereon are only those known to the undersigned. Additional easements may exist or may be created as provided for in Article 2, Section 8 of the Declaration.
- The Unit Boundaries are as shown hereon, subject to the wording of the Declaration.
- The unit dimensions shown hereon are approximate and are based on the dimensions shown on the building plans supplemented, where necessary, by field measurements. The wording contained in the unit boundary definitions, Article 2, Section 11 of the Declaration shall be used to identify the intended limits of individual unit ownership.

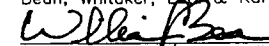
EXHIBIT "D" SHEET INDEX

Sheet Number	Description
1	Cover Sheet
2	Boundary Survey
3	Condominium Plot Plan - Sheet 1
4	Condominium Plot Plan - Sheet 2
5	Graphic Representation of Unit Boundaries - North Aisle Units
6	Graphic Representation of Unit Layout - North Aisle, North Side Units
7	Graphic Representation of Unit Layout - North Aisle, South Side Units
8	Graphic Representation of Unit Boundaries - South Aisle Units
9	Graphic Representation of Unit Layout - South Aisle, North Side Units
10	Graphic Representation of Unit Layout - South Aisle, South Side Units
11	Graphic Representation of Unit Boundaries - Section D
12	Graphic Representation of Unit Layout - Section D
13	Typical Dry Slip Configuration
14	Graphic Representation of Unit Boundaries - Storage Units
15	Multi Purpose Building Floor Level Diagram
16	Multi Purpose Building Floor Plan - Ground Floor and Second Floor
17	Multi Purpose Building Floor Plan - Third Floor and Fourth Floor
18	Graphic Representation of Wet Slip Unit Boundaries and Layout

SURVEYORS CERTIFICATE

We hereby certify that the boundaries of the real property shown and described hereon, as well as the location and dimensions of the surface visible improvements depicted hereon for Sanibel Harbour Yacht Club, A Condominium, are true and correct to the best of our knowledge and belief, the same being based on a recent exterior boundary survey thereof, performed under the personal direction of the undersigned Registered Land Surveyor, and that this Exhibit "D" together with the wording of the Declaration are sufficient in detail to determine the identification, location and approximate dimensions of the Units and the appurtenances thereto, and further, that all improvements, buildings and other facilities shown on this drawing and the accompanying drawings numbered 1 through 18 of 18 of this Exhibit "D" are substantially complete as of the date of this certificate.

Bean, Whitaker, Lutz & Kareh, Inc.

 Date: 4-06-2006
William E. Bean (For the firm)
Registered Land Surveyor
Florida Certificate Number 3261

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
4-05-06	37986	J.R.C.	1" = 50'	3 OF 18	9-46-23

EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

CONDOMINIUM PLOT PLAN

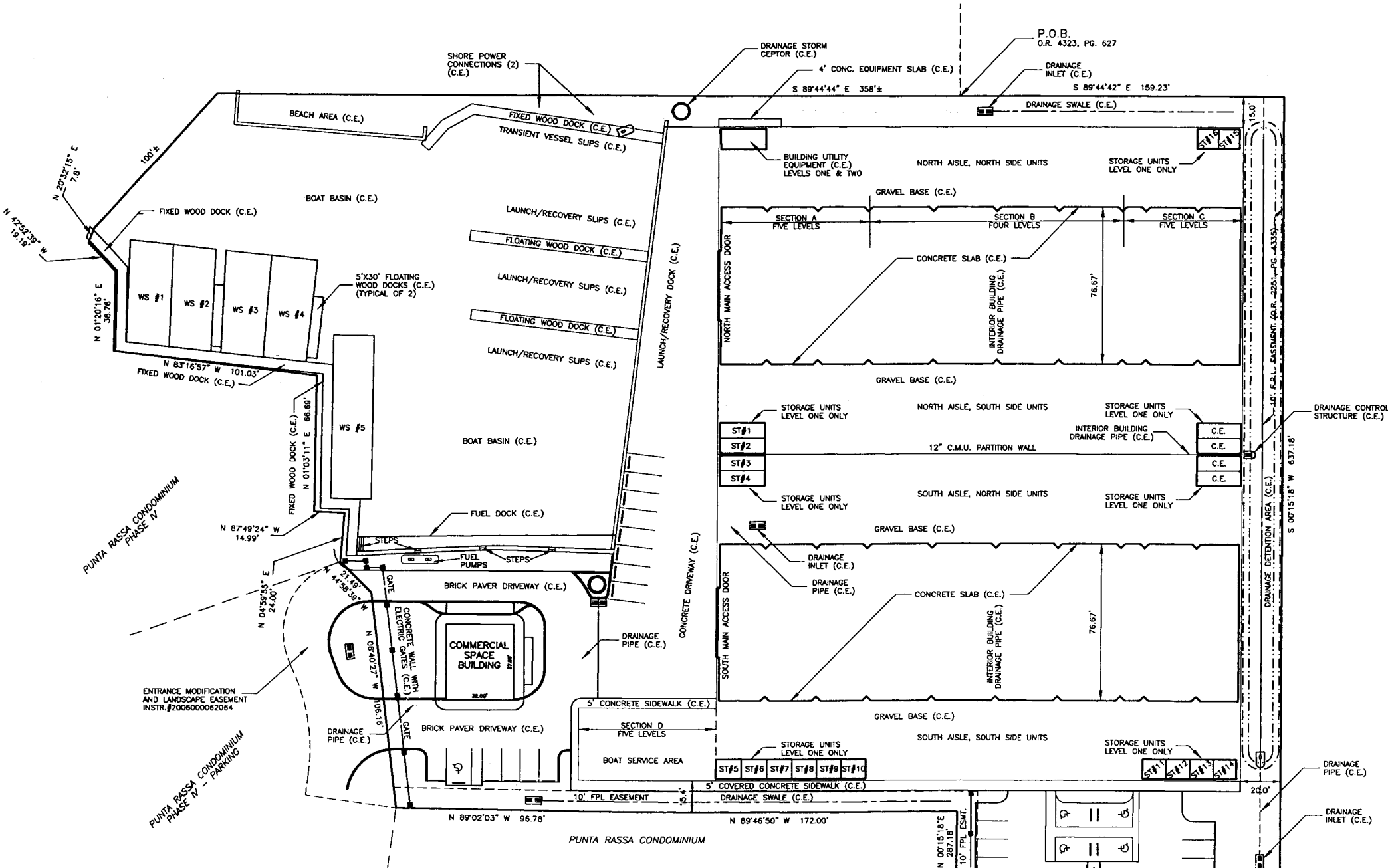


EXHIBIT "D"
TO THE DECLARATION OF CONDOMINIUM OF
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SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

CONDOMINIUM PLOT PLAN

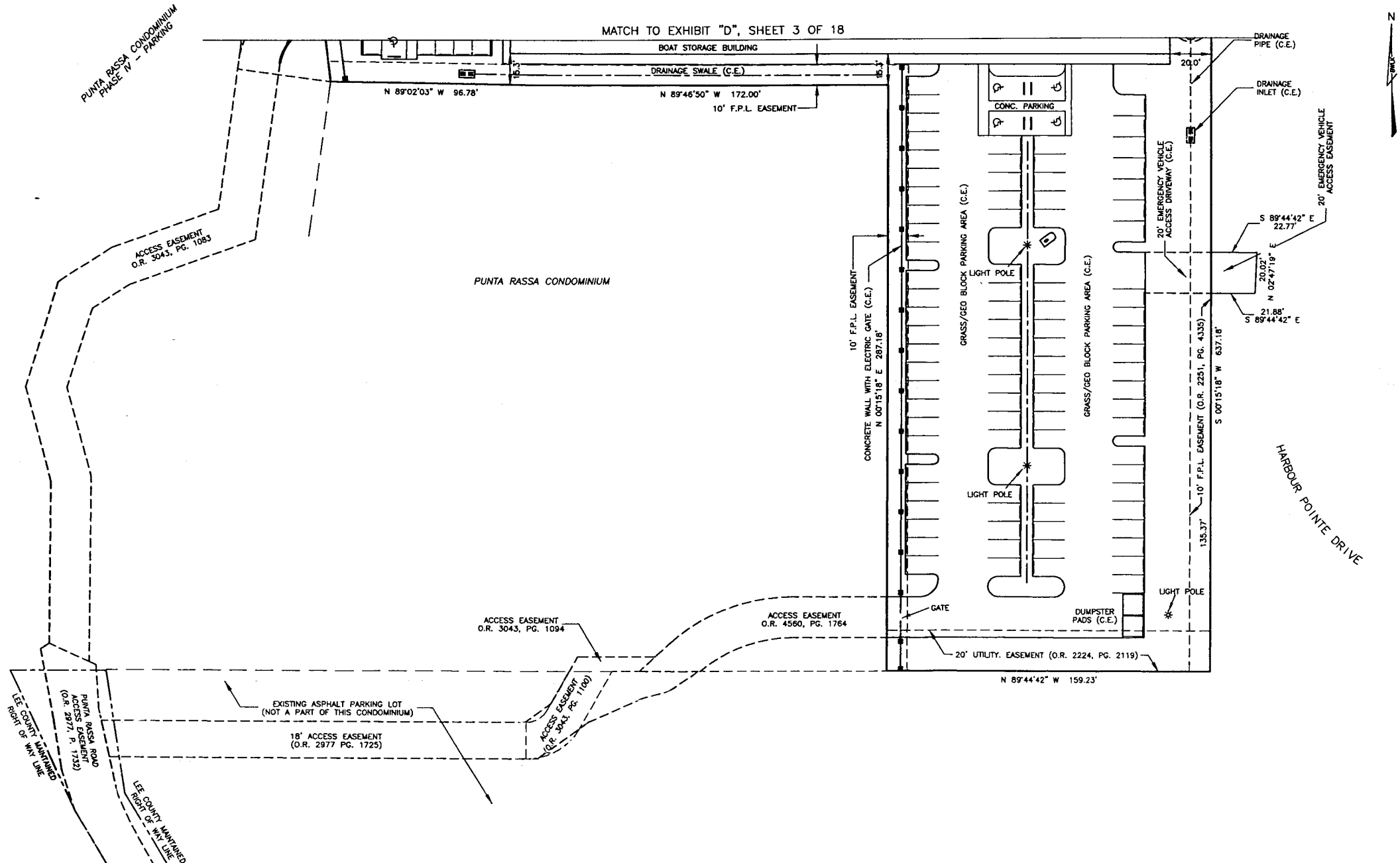
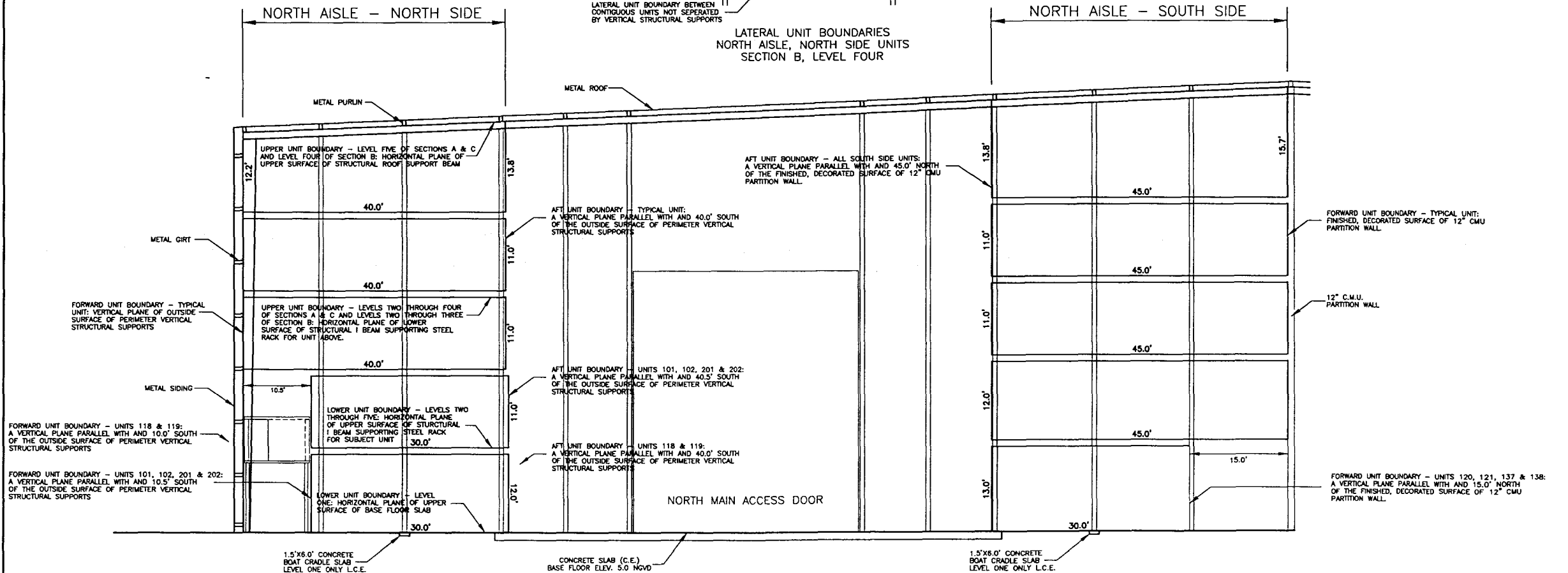
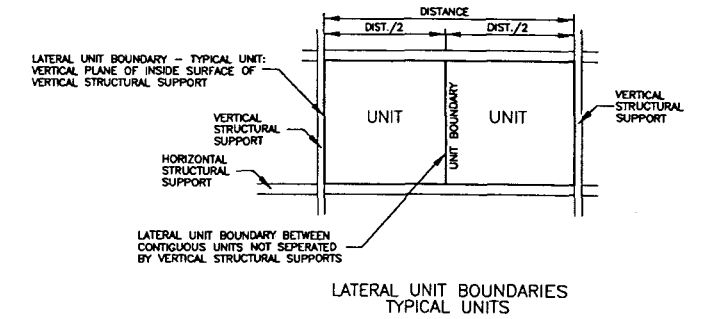
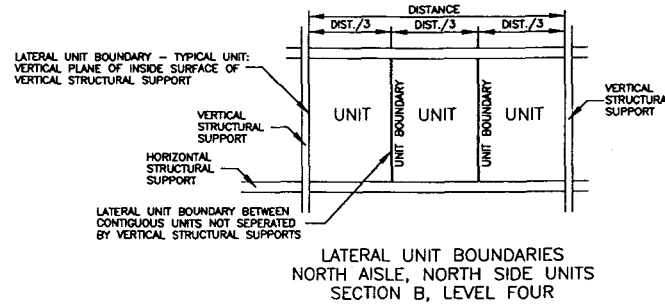


EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



GRAPHIC REPRESENTATION OF UNIT BOUNDARIES
NORTH AISLE UNITS

UNIT BOUNDARY NOTE:

THE UPPER AND LOWER UNIT BOUNDARIES EXTEND TO THE PLANER INTERSECTION WITH THE LATERAL, FORWARD AND AFT UNIT BOUNDARIES.

THE LATERAL, FORWARD AND AFT UNIT BOUNDARIES EXTEND TO THE PLANER INTERSECTION WITH THE UPPER AND LOWER UNIT BOUNDARIES, AND WITH EACH OTHER.

EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

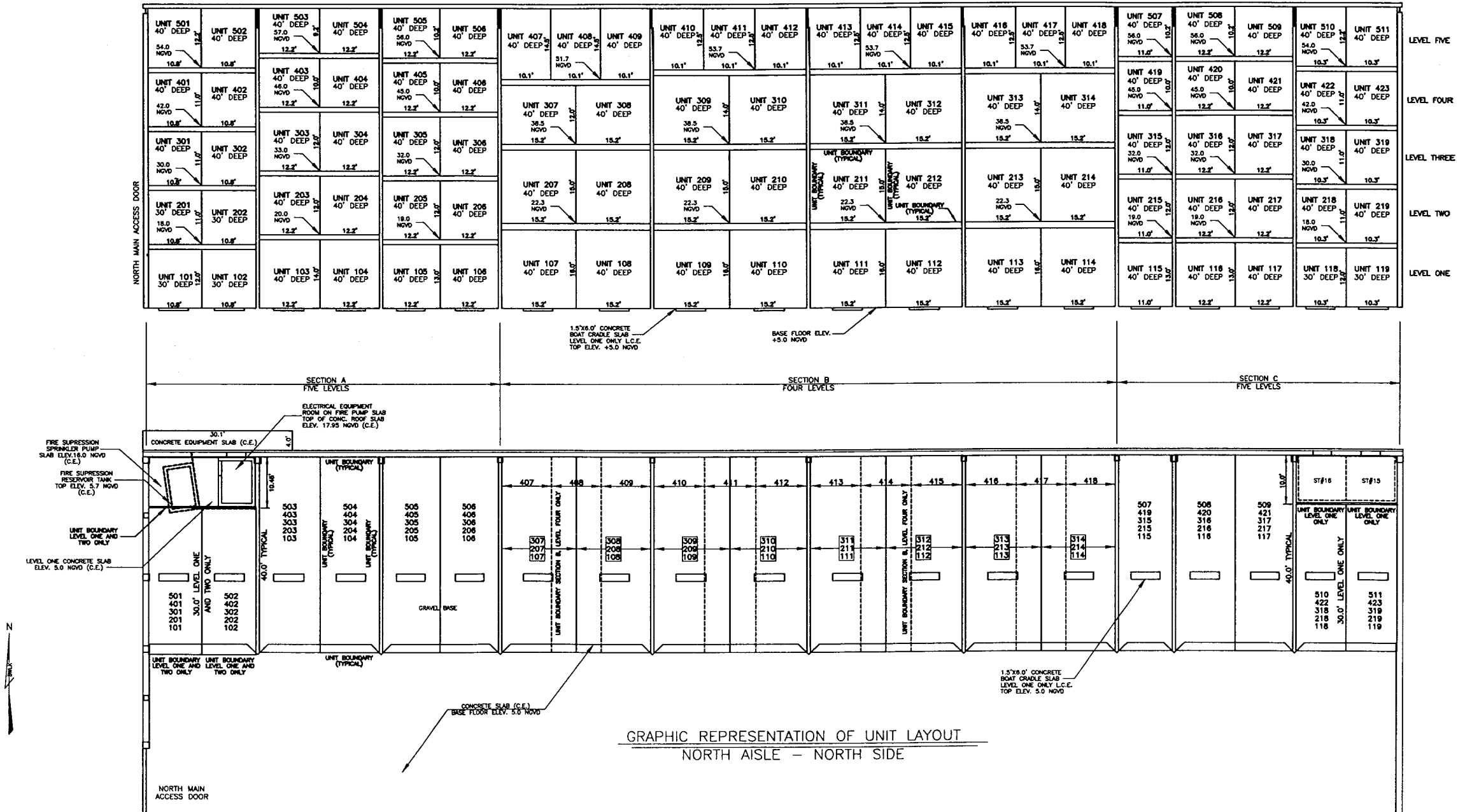
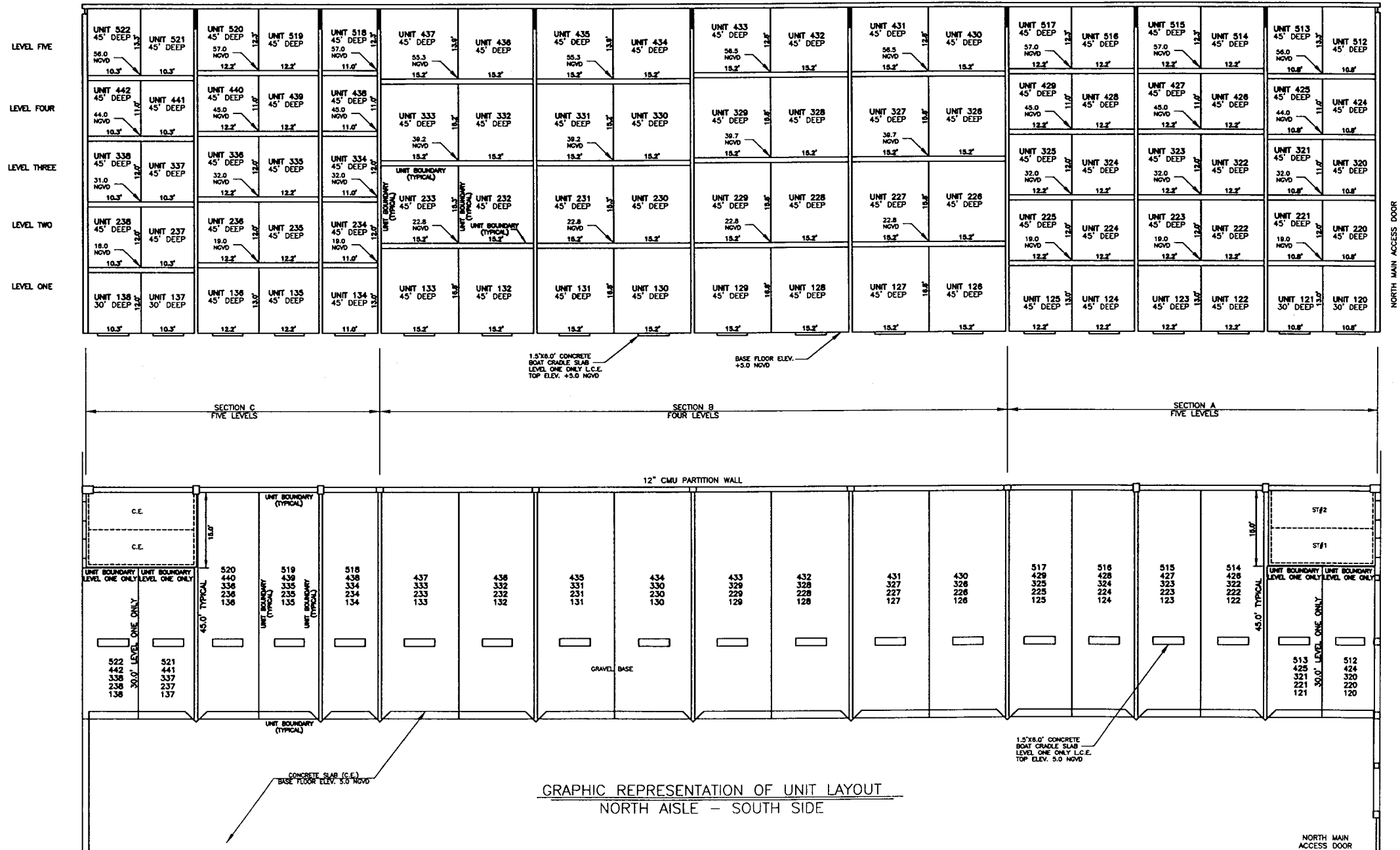


EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

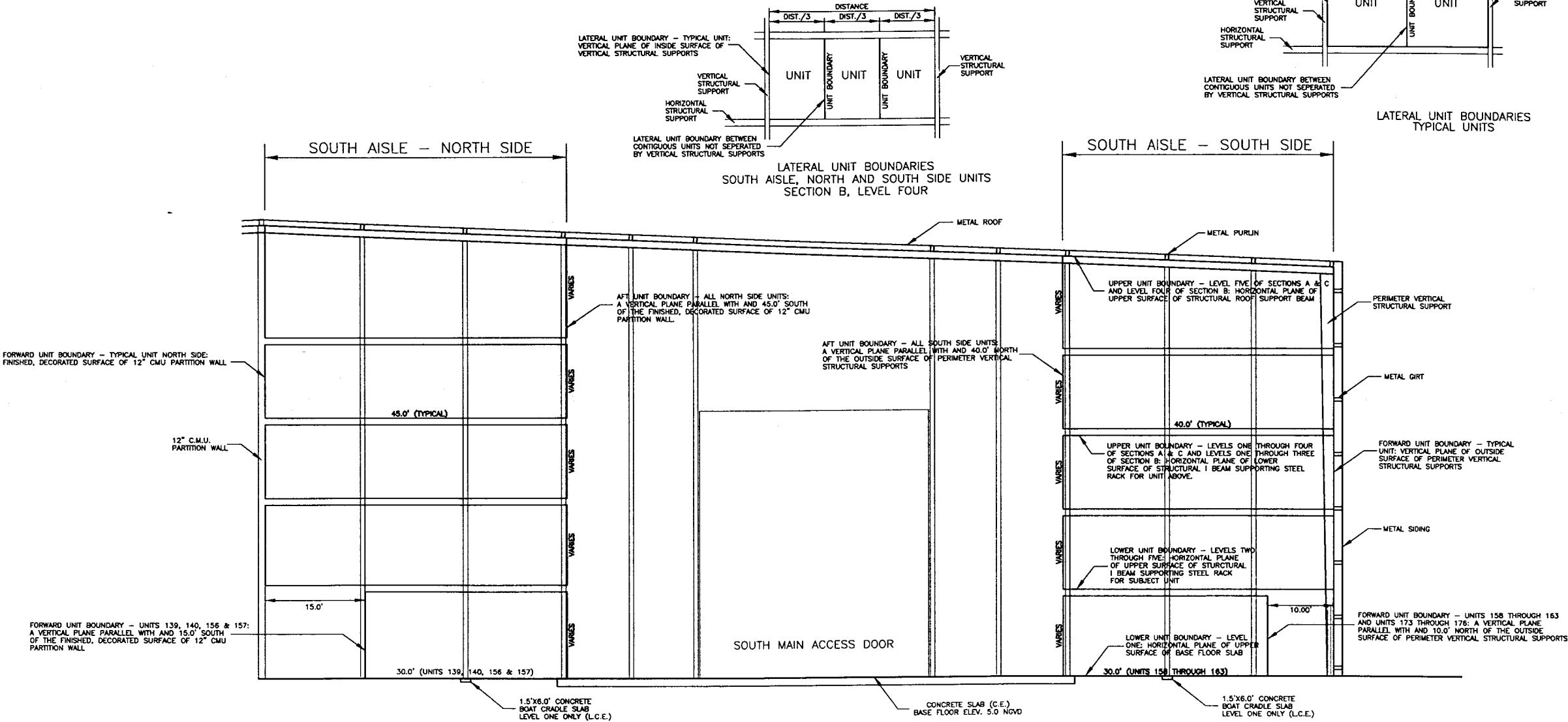


South_Aisle-End.dwg

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
4-05-06	37986	J.R.C.	1"= NONE	8 OF 18	9-46-23

EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



GRAPHIC REPRESENTATION OF UNIT BOUNDARIES
SOUTH AISLE UNITS

UNIT BOUNDARY NOTE:

THE UPPER AND LOWER UNIT BOUNDARIES EXTEND TO THE PLANNER INTERSECTION WITH THE LATERAL, FORWARD AND AFT UNIT BOUNDARIES.

THE LATERAL, FORWARD AND AFT UNIT BOUNDARIES EXTEND TO THE PLANNER INTERSECTION WITH THE UPPER AND LOWER UNIT BOUNDARIES, AND WITH EACH OTHER.

GRAPHIC REPRESENTATION OF UNIT LAYOUT
SOUTH AISLE – NORTH SIDE

EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM OF SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA

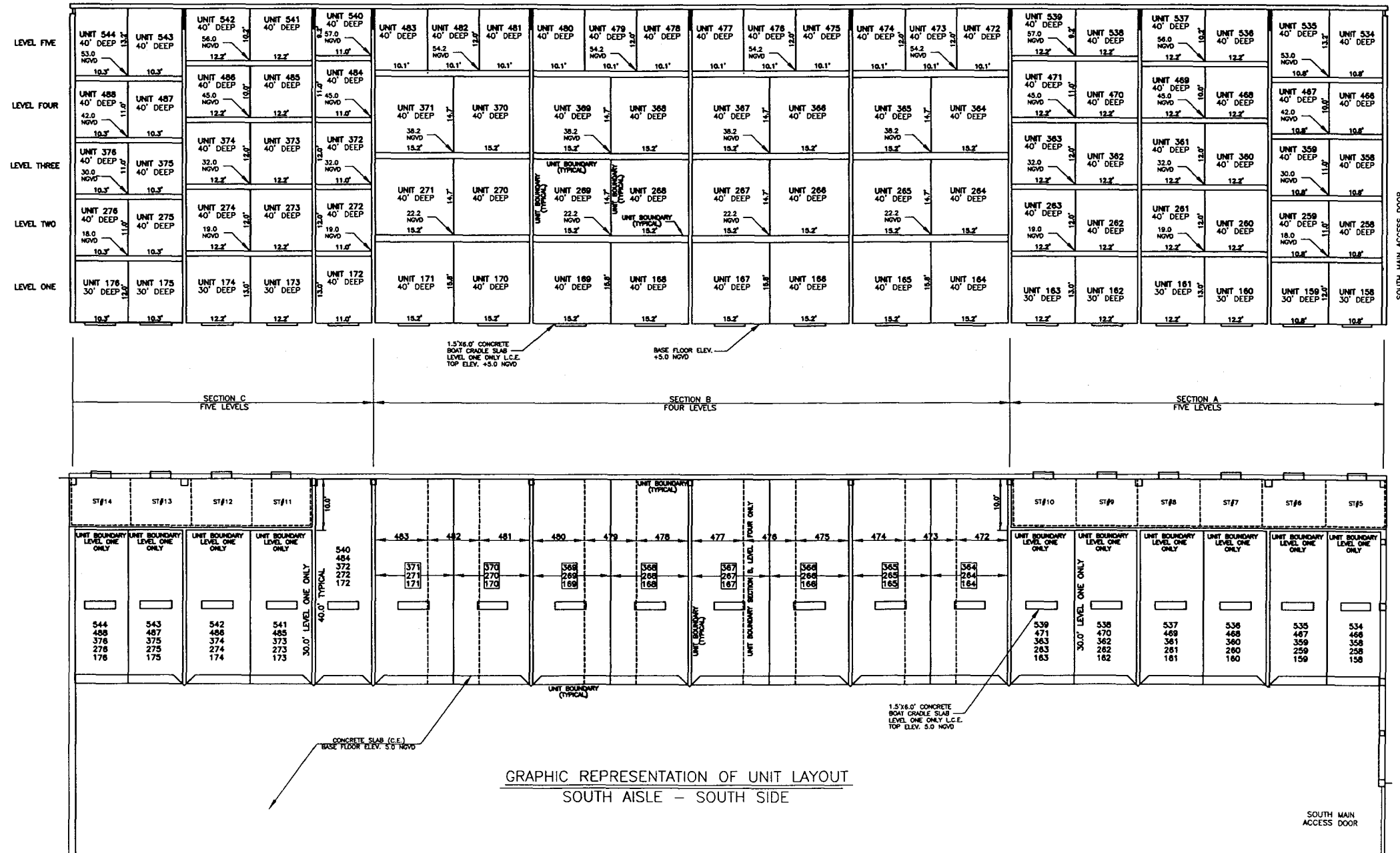


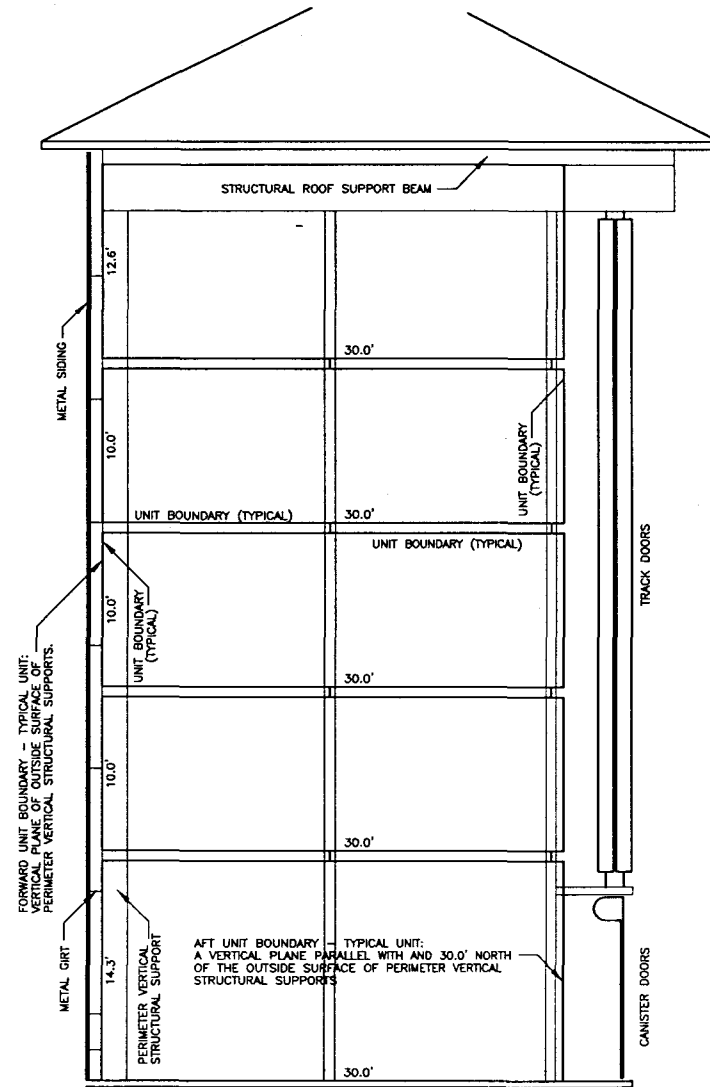
EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

UNIT BOUNDARY NOTE:

THE UPPER AND LOWER UNIT BOUNDARIES EXTEND TO THE PLANNER INTERSECTION WITH THE LATERAL, FORWARD AND AFT UNIT BOUNDARIES.

THE LATERAL, FORWARD AND AFT UNIT BOUNDARIES EXTEND TO THE PLANNER INTERSECTION WITH THE UPPER AND LOWER UNIT BOUNDARIES, AND WITH EACH OTHER.

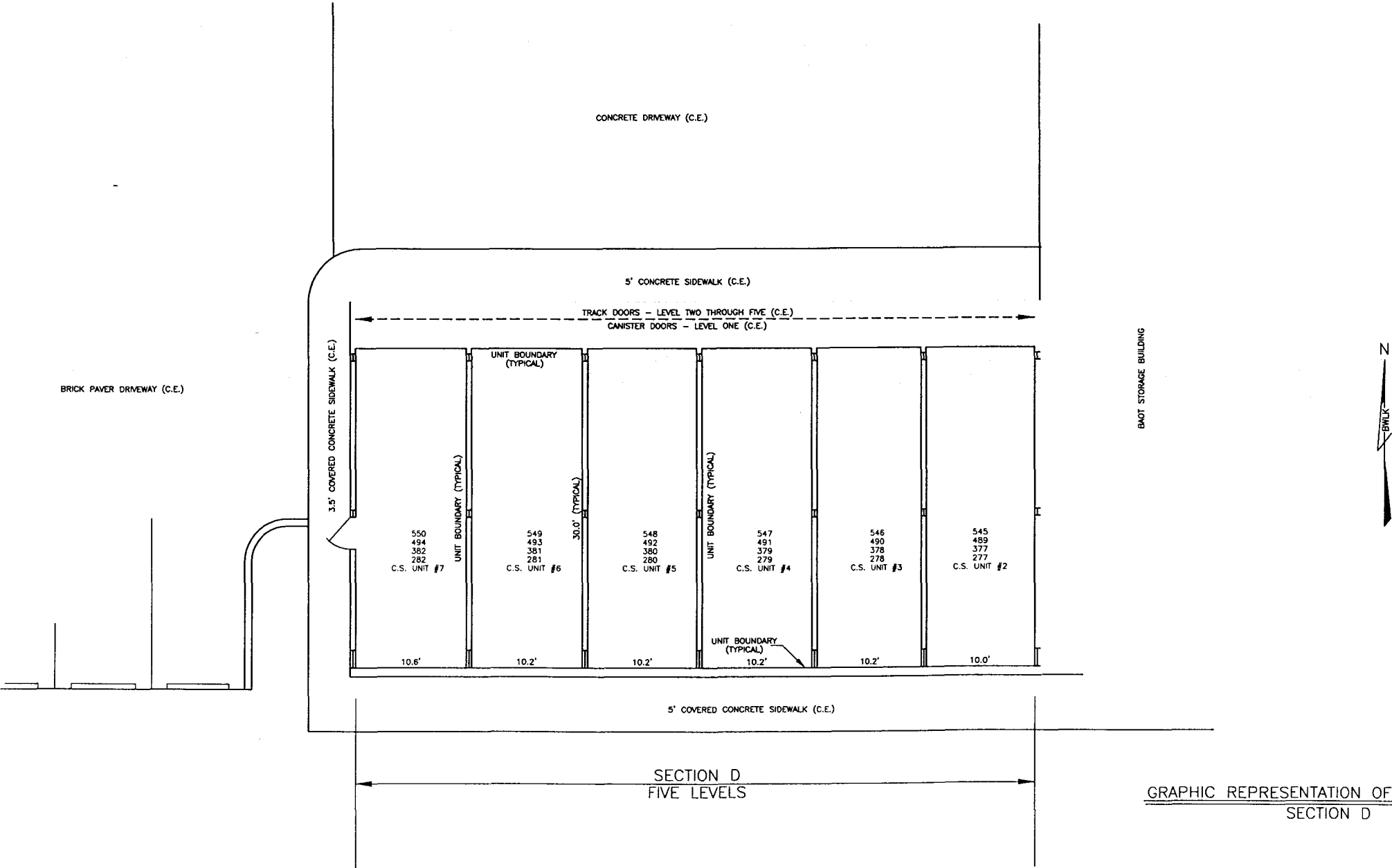


Boat_service_02.dwg

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
4-05-06	37986	J.R.C.	1"= 10'	12 OF 18	9-46-23

EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



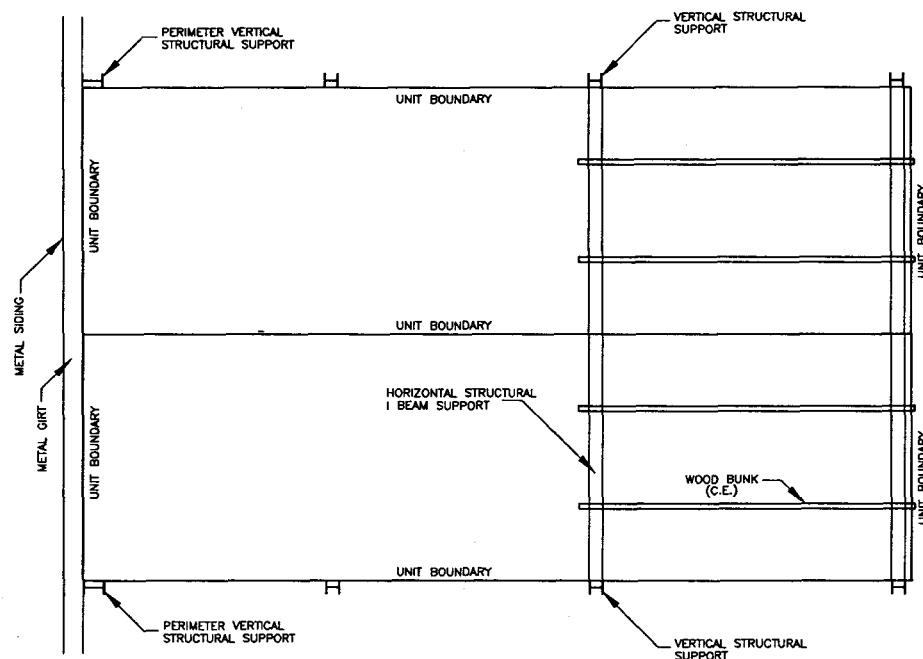
DS_Typical.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
4-05-06	37986	J.R.C.	1" = 10'	13 OF 18	9-46-23

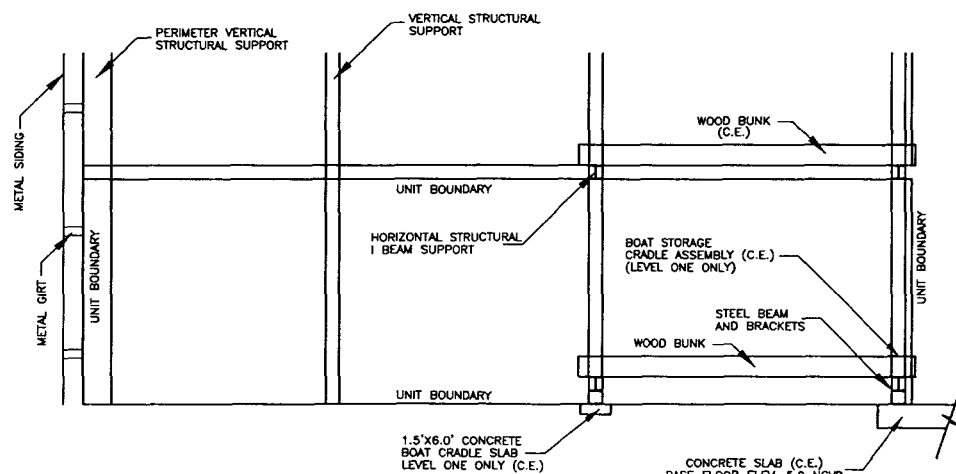
EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

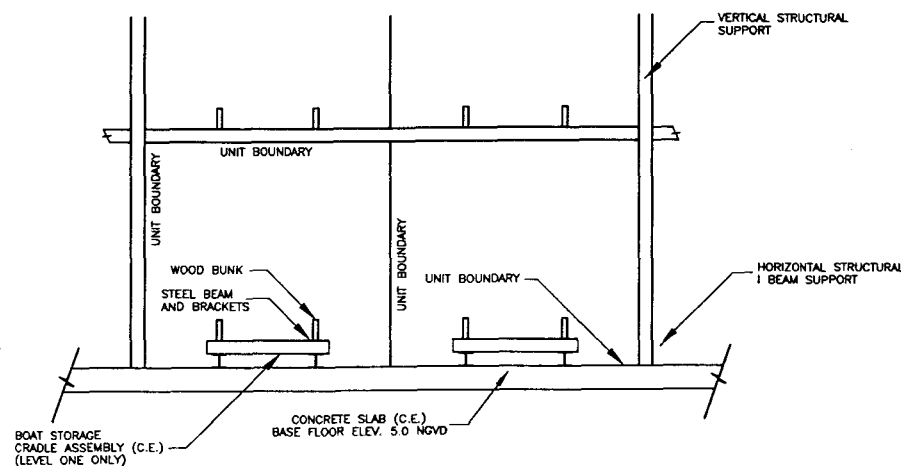
TYPICAL DRY SLIP CONFIGURATION



TOP VIEW



LATERAL VIEW



AFT VIEW

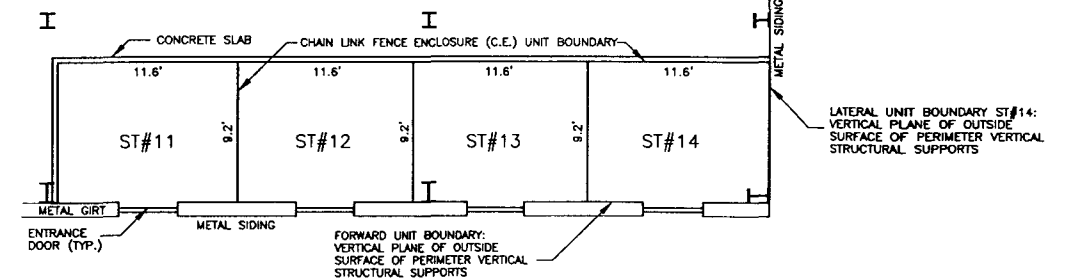
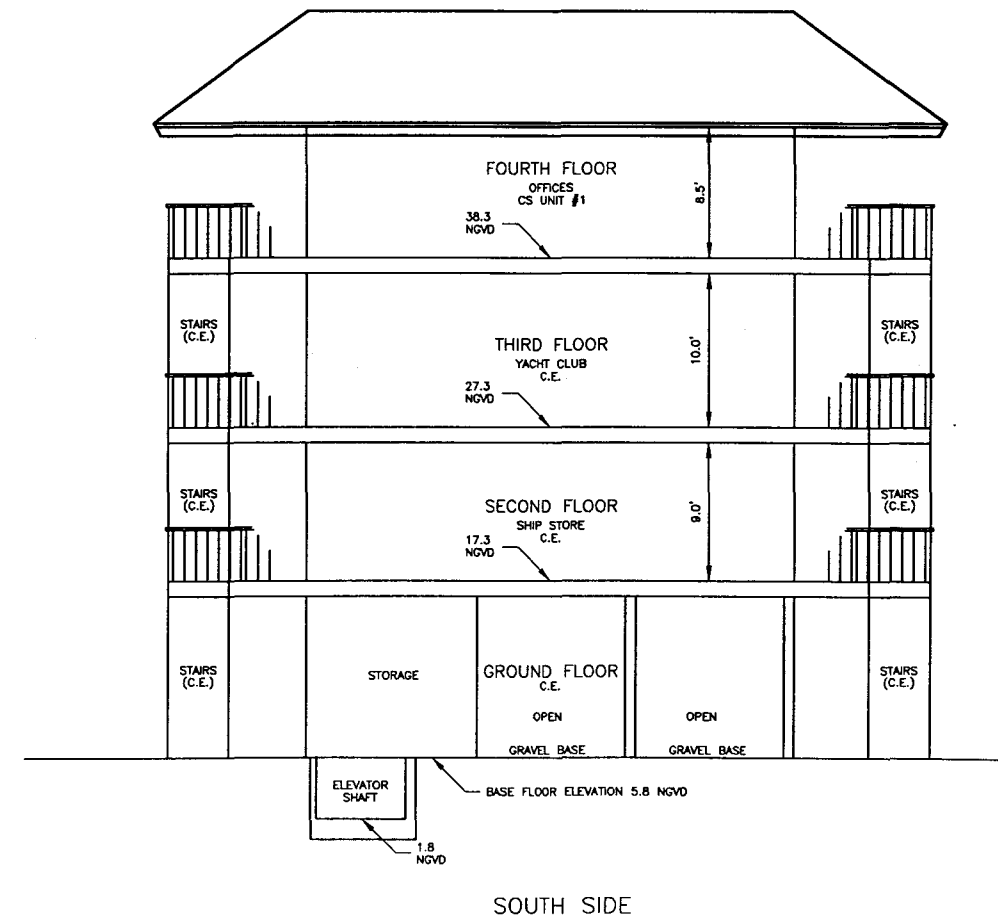
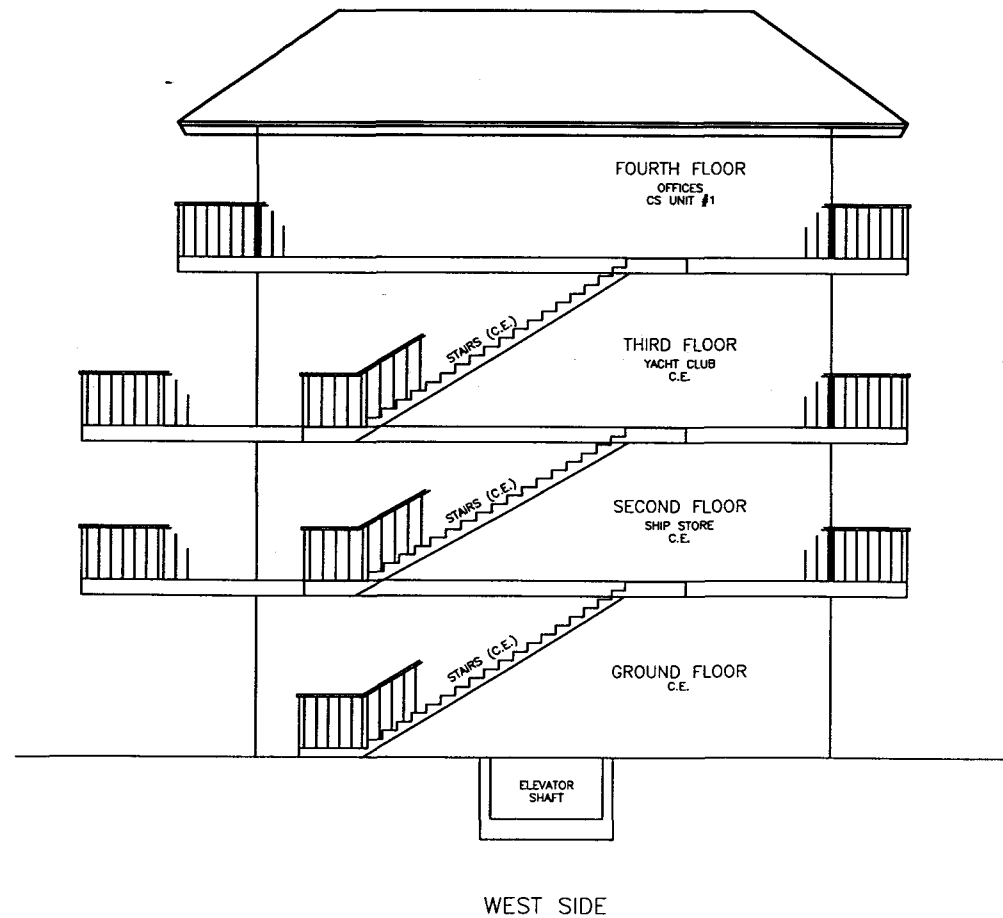


EXHIBIT "D"
TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



MULTI PURPOSE BUILDING FLOOR LEVEL DIAGRAM

CS_UNIT_1.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
4-05-06	37986	J.R.C.	1"= 10'	16 OF 18	9-46-23

EXHIBIT "D"

TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

MULTI PURPOSE BUILDING FLOOR PLAN

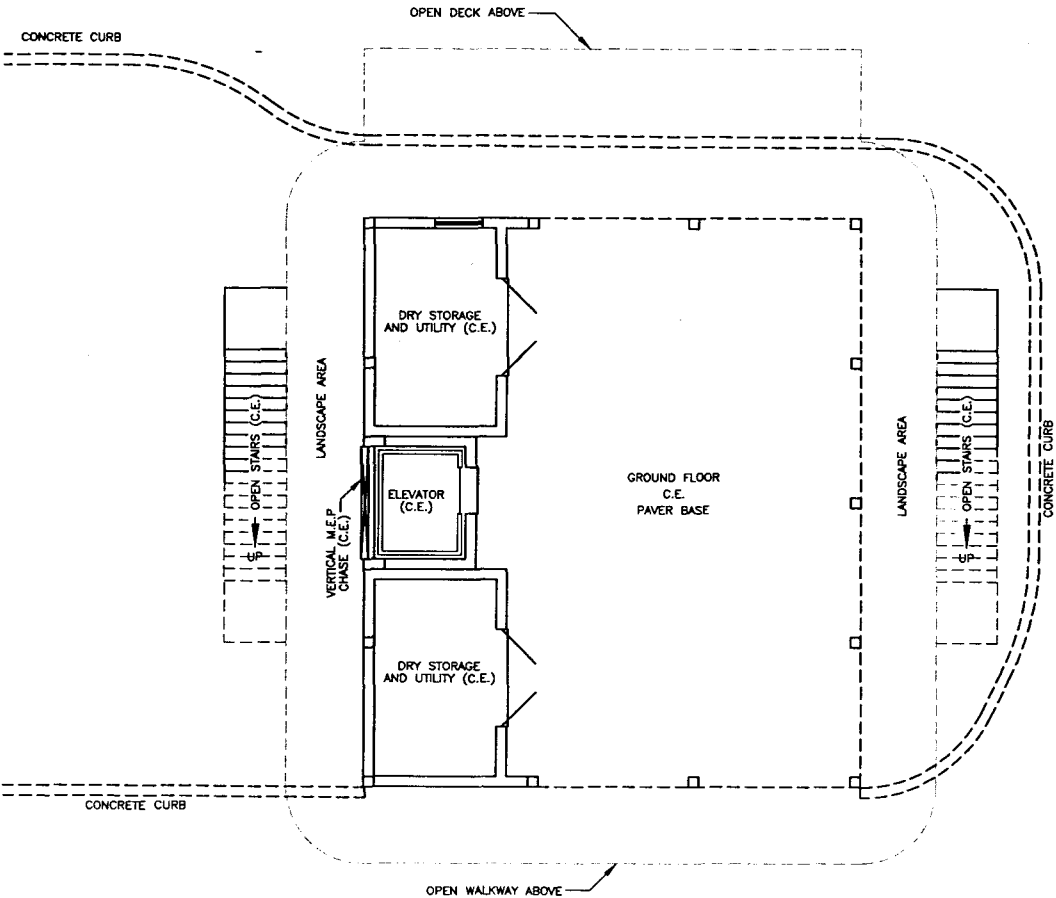
UNIT BOUNDARIES

COMMERCIAL SPACE UNITS

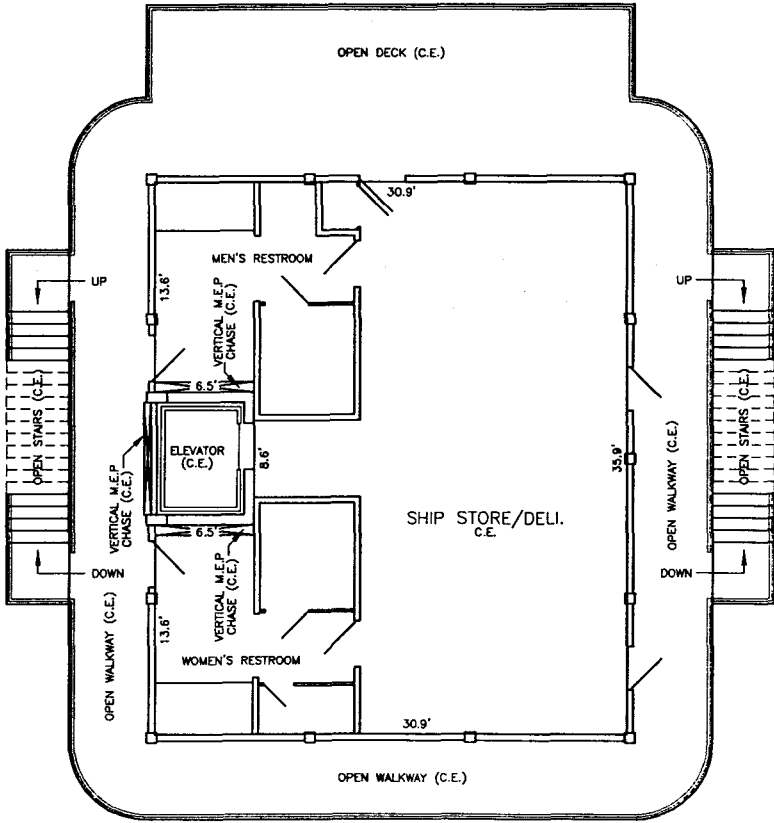
UPPER BOUNDARY - THE HORIZONTAL PLANE OF THE UNFINISHED LOWER SURFACE OF THE STRUCTURAL CEILING OF THE UNIT, EXTENDED TO MEET THE PERIMETER BOUNDARIES.

LOWER BOUNDARY - THE HORIZONTAL PLANE OF THE UPPER SURFACE OF THE CONCRETE FLOOR OF THE UNIT, EXTENDED TO MEET THE PERIMETER BOUNDARIES.

PERIMETER BOUNDARY - THE PERIMETER BOUNDARIES WILL BE BOTH THE UNFINISHED INTERIOR SURFACES OF THE PERIMETER WALLS OF THE UNIT EXTENDED TO MEET WITH EACH OTHER AND THE UPPER AND LOWER BOUNDARY OF THE UNIT, AND THE PLANES OF THE INTERIOR SURFACES OF THE UNIT'S WINDOWS, DOORS AND OTHER OPENINGS THAT ABUT THE EXTERIOR OF THE BUILDING OR COMMON ELEMENTS.



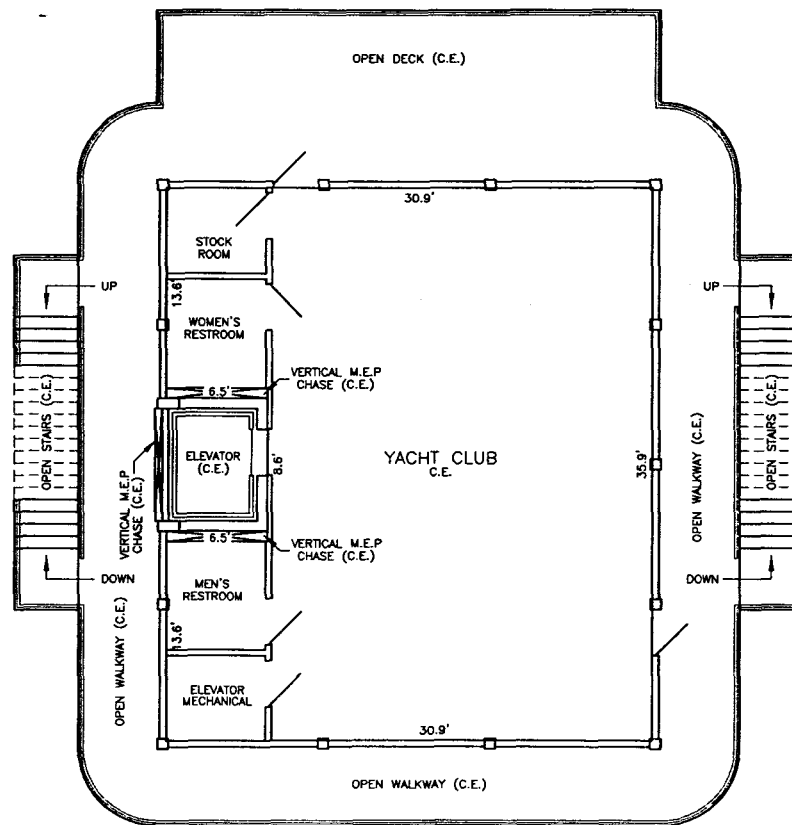
GROUND FLOOR PLAN



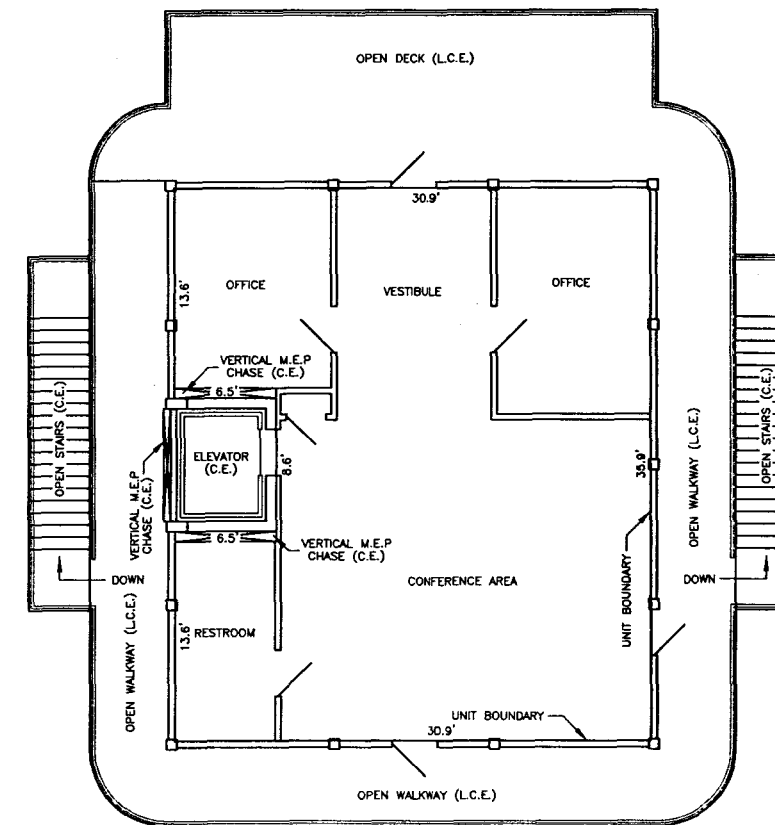
SECOND FLOOR PLAN
SHIP STORE

EXHIBIT "D"
TO THE DECLARATION OF CONDOMINIUM OF
SANIBEL HARBOUR YACHT CLUB, A CONDOMINIUM
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

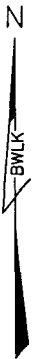
MULTI PURPOSE BUILDING FLOOR PLAN



THIRD FLOOR PLAN
YACHT CLUB



FOURTH FLOOR PLAN
CS UNIT #1



13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-8910 (239) 481-1331

DATE 4-05-06	PROJECT NO. 37986	DRAWN BY J.R.C.	SCALE 1" = 20'	SHEET <u>18</u> OF <u>18</u>	FILE NO. (S-T-R) 9-46-23
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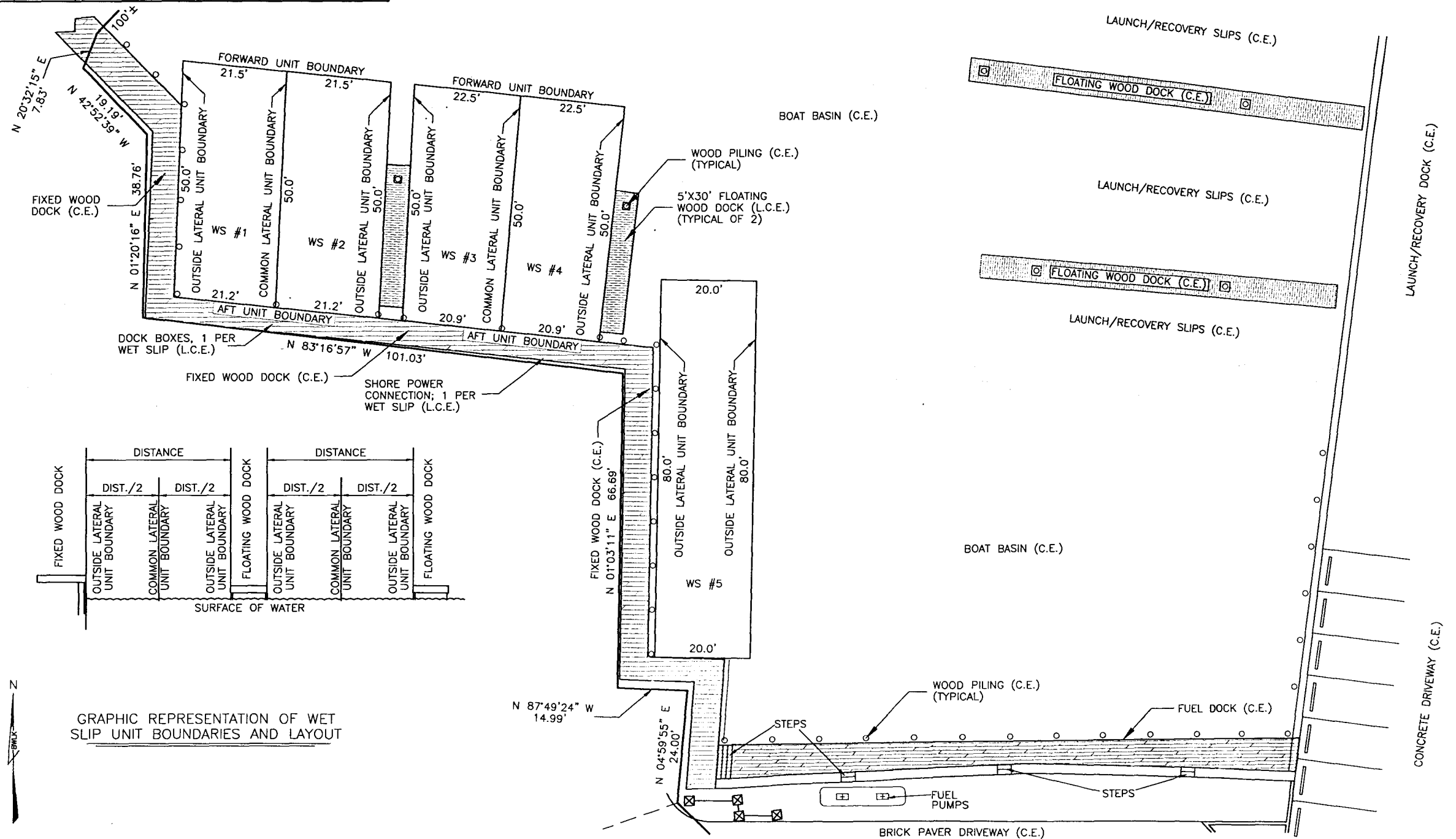


EXHIBIT E



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE
STANDARD GENERAL PERMIT NO. 36-00400-S
DATE ISSUED: February 16, 2005**

Form #0941
08/95

Corrected Copy

PERMITTEE: MARINA ACQUISITIONS LLC
15051 PUNTA RASSA ROAD
FT MYERS, FL 33908

Revised Date: Mar. 7, 2005

PROJECT DESCRIPTION: This application is a request for a General Permit Modification authorizing construction and operation of a surface water management system serving 4.99 acres of commercial development known as Sanibel Harbour Yatch Club with discharge into tidal waters of San Carlos Bay.

PROJECT LOCATION: LEE COUNTY, SEC 09 TWP 46S RGE 23E

PERMIT DURATION: See Special Condition No.1. See attached Rule 40E-4.321, Florida Administrative Code.

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 041028-23, dated October 28, 2004. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 19 General Conditions (See Pages: 2 - 4 of 6),
3. the attached 16 Special Conditions (See Pages: 5 - 6 of 6) and
4. the attached 2 Exhibit(s).

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on this 16th day of February, 2005, in accordance with Section 120.60(3), Florida Statutes.

BY: Jacqueline Rippe
Jacqueline Rippe, P.E.
Director
Lower West Coast Service Center

Certified mail number 7004 2510 0004 6696 2349

NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1999), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

Petition for Administrative Proceedings

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing. If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing. If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order. If a Respondent objects to a SFWMD Administrative Complaint and Order pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

d. State Lands Environmental Resource Permit. Pursuant to Section 373.427, Fla. Stat. and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

e. Emergency Authorization and Order. A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action. A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal. If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat. within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by

any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 31 days of rendering of the final SFWMD action.

LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (FLAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with FLAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with FLAWAC within 30 days of rendition of the DEP's order; and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat., to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

MEDIATION

12. A person whose substantial interests are or may be affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting of

publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

(1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;

(2) a statement of the preliminary agency action;

(3) an explanation of how the person's substantial interests will be affected by the agency determination; and

(4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

(a) the caption shall read

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, telephone number and any facsimile number of the petitioner

(c) The name, address, telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);

(d) the applicable rule or portion of the rule;

(e) the citation to the statute the rule implementing;

(f) the type of action requested;

(g) the specific facts that demonstrate substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute and

(i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

a) the specific facts that make the situation an emergency; and

b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

28-106.201 INITIATION OF PROCEEDINGS (INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known.

(b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination.

(c) A statement of when and how the petitioner received notice of the agency decision.

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate.

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

28-106.301 INITIATION . PROCEEDINGS
(NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

- (2) All petitions filed under these rules shall contain:
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
 - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
 - (c) A statement of when and how the petitioner received notice of the agency decision;
 - (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
 - (e) A demand for relief.

28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL

- (3) Requests for hearing filed in accordance with this rule shall include:
- (a) The name and address of the party making the request, for purposes of service;
 - (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
 - (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:

- (a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S. or rules duly adopted thereunder;

- (b) the rule or order sought to be reviewed affects the interests of the party seeking review;

- (c) The oral or written statement, sworn or unsworn which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

- (d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and

- (e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

28-107.005 EMERGENCY ACTION

- (1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.
- (2) The 14-day notice requirement of Section 120.569(2)(b), F.S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57, and 120.60, F.S.

40E-1.611 EMERGENCY ACTION

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion/Certification Form Number 0881A, or Environmental Resource/Surface Water Management Permit Construction Completion Certification - For Projects Permitted prior to October 3, 1995 Form No. 0881B, incorporated by reference in Rule 40E-1.659, F.A.C. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and

GENERAL CONDITIONS

maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignly lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of

GENERAL CONDITIONS

ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on February 16, 2010.
2. Operation of the surface water management system shall be the responsibility of SANIBEL HARBOUR YATCH CLUB CONDOMINIUM ASSOCIATION, INC. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.
3. Discharge Facilities:

1-0.25 ft. circular orifice with invert at elevation 2.5 ft. NGVD.
64 L.F. of 15" RCP.

Receiving body: Tidal waters.

Control elevation: 2.5 ft. NGVD.
4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
7. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
8. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
9. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.
10. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
11. Silt screens, hay bales, turbidity screens/barriers or other such sediment control measures shall be utilized during construction. The selected sediment control measures shall be installed prior to the commencement of construction in or adjacent to other surface waters in accordance with the approved construction plans and shall remain in place until all adjacent construction is completed. All areas shall be stabilized and vegetated immediately after construction to prevent erosion.
12. If prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, should contact the Florida Department of State, Division of

SPECIAL CONDITIONS

Historical Resources, Review and Compliance Section at (850-) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

13. The Permittee shall utilize the criteria contained in the Stormwater Pollution Prevention Plan (Exhibit "K" of the Property Owners Association documents) and on the applicable approved construction drawings for the duration of the projects construction activities.
14. The Permittee shall utilize the criteria contained in the Urban Stormwater Management Program (Exhibit "J" of the Property Owners Association Documents) for post construction activities.
15. All special conditions and exhibits previously stipulated by permit number 36-00400-S remain in effect unless otherwise revised and shall apply to this modification.
16. Plan sheet 3 dated on October 27, 2004, sheet 6 dated on January 3, 2005, sheets 2 and 5 dated on February 11, 2005, signed and sealed by David L. Douglas, P.E. from DDA Engineers-Planners, Inc., have been included in this permit by reference (please see permit file).

Last Date For Agency Action: 19-MAR-2005

GENERAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT

Project Name: Sanibel Harbour Yacht Club

Permit No.: 36-00400-S

Application No.: 041028-23

Application Type: Environmental Resource (General Permit Modification)

Location: Lee County, S09/T46S/R23E

Permittee : Marina Acquisitions Llc

Operating Entity : Sanibel Harbour Yacht Club Condominium Association,

Project Area: 4.99 acres

Project Land Use: Commercial

Drainage Basin: GULF OF MEXICO

Sub Basin: SAN CARLOS BAY

Receiving Body: Tidal waters

Class: CLASS III

Special Drainage District: NA

Conservation Easement To District : No

Sovereign Submerged Lands: No

PROJECT PURPOSE:

This application is a request for a General Permit Modification authorizing construction and operation of a surface water management system serving 4.99 acres of commercial development known as Sanibel Harbour Yacht Club with discharge into tidal waters of San Carlos Bay.

PROJECT EVALUATION:

PROJECT SITE DESCRIPTION:

The site is located on the northside of McGregor Blvd, just east of the Sanibel Causeway. Location maps are attached as Exhibits 1.0 and 1.1.

The site is part of the existing Sanibel Harbour Marina, which was built in the late 1950's and rebuilt to its current configuration in 1975. The site consists of dry storage buildings and outside boat storage totaling over 460 dry boat slips in addition to 8 wet slips. There are four dry storage buildings, a service center, yacht club, ship store and private offices with 38,040 s.f. of buildings and 77,908 s.f. of pavement, directly discharging to San Carlos Bay. A portion of the project site includes privately held submerged lands. A large mangrove wetland system is located adjacent to the eastern boundary of the project site. No adverse impacts to the adjacent wetlands and other surface waters are anticipated.

PROPOSED PROJECT:

The project consists of a redevelopment of an existing marina to create a new facility for 400 dry storage boats slips including replacing the service center, ships store, yacht club and offices. The project site has been divided into two Basins, "A" and "B".

Basin "A" (3.90ac.), 4 dry storage buildings, a service center, yacht club, ships store, and private offices consisting of 38,040 s.f. of buildings, 76,325 s.f. of asphalt and concrete paving totaling 114,365 s.f. of impervious area, directly discharging to Pine Island Sound will be re-developed using "Best Management Practices" (BMP's) to re-direct all re-constructed buildings, parking, and boat loading areas into a system of storm water inlets, pipe conveyances, and stormceptors prior to discharge to the existing marina basin.

The new development area, Basin "B" (1.09ac.) will consist of developing the south 47,480 s.f. into a 28,104 s.f. stabilized grass parking lot, where currently an existing stabilized area and asphalt tennis court are used to store boat trailers. Water quality attenuation will be stored in a dry detention area located on the east side of Basin "A" to store 150% equivalent to 1" of runoff from the entire Basin "B". The 25 year 3day storm event for Basin "B" will then overflow to control structure #2 and flow into a dry detention area inside the boat storage building until the 25 year stage is met while discharging through control structure # 1 to the existing marina basin.

LAND USE:

Basin B includes 0.64 acres of Turf Block Parking, which has been reduced to a value equal to 80% of the impervious coverage or 0.51 acres.

Construction:

Project:

Total Project		
Building Coverage	1.93	acres
Pavement	1.24	acres
Pervious	.90	acres
Water Mgmt Acreage	.92	acres
Total:	4.99	

WATER QUANTITY :

Discharge Rate :

The proposed project discharges into Tidal Waters through a three-inch circular bleeder with invert at elevation 2.5 ft. NGVD.

No adverse discharge impacts are anticipated as a result of the proposed project.

WATER QUALITY :

The proposed dry detention system provides the required 5,881 c.f. of water quality treatment for the proposed improvements within Basin "B", which includes an additional 50% of water quality treatment. This system discharges through control structure #2 into the proposed storage area underneath the proposed dry storage building and then through control structure #1 into tidal waters.

Two stormceptors are proposed as Best Management Practices to treat direct runoff from the reconfigured buildings and service areas within Basin "A" prior to discharge into the marina basin.

An Urban Stormwater Management Program and Construction Pollution Prevention Plan specifications and guidelines are part of the required water quality. Construction and daily operation of the project shall be conducted in accordance with Special Conditions No. 13 and 14 and Exhibits "J" and "K" of the Property Owners Association documents which are retained in the permit file.

No adverse water quality impacts are anticipated as a result of the proposed project.

Endangered Species:

The project site includes privately held submerged lands which is accessible to West Indian manatees. The project site has been reviewed for the potential of entrapment and drowning of West Indian manatee due to the activities proposed by this project. Manatee Guards have been provided for the submerge outlet pipes proposed for the project. No wetland-dependent endangered/threatened species or species of special concern were observed onsite. This permit does not relieve the applicant from complying with all applicable rules and any other agencies' requirements if, in the future, endangered/threatened species or species of special concern are discovered on the site.

CERTIFICATION AND MAINTENANCE OF THE WATER MANAGEMENT SYSTEM:

It is suggested that the permittee retain the services of a Professional Engineer registered in the State of Florida for periodic observation of construction of the surface water management (SWM) system. This will facilitate the completion of construction completion certification Form #0881 which is required pursuant to Section 10 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, and Rule 40E-4361(2), Florida Administrative Code (F.A.C.).

Pursuant to Chapter 40E-4 F.A.C., this permit may not be converted from the construction phase to the operation phase until certification of the SWM system is submitted to and accepted by this District. Rule 40E-4.321(7) F.A.C. states that failure to complete construction of the SWM system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization unless a permit extension is granted.

For SWM systems permitted with an operating entity who is different from the permittee, it should be noted that until the permit is transferred to the operating entity pursuant to Rule 40E-1.6107, F.A.C., the permittee is liable for compliance with the terms of this permit.

The permittee is advised that the efficiency of a SWM system will normally decrease over time unless the system is periodically maintained. A significant reduction in flow capacity can usually be attributed to partial blockages of the conveyance system. Once flow capacity is compromised, flooding of the project may result. Maintenance of the SWM system is required to protect the public health, safety and the natural resources of the state. Therefore, the permittee must have periodic inspections of the SWM system

EXHIBIT 2.2

performed to ensure performance for flood protection and water quality purposes. If deficiencies are found, it is the responsibility of the permittee to correct these deficiencies in a timely manner.

RELATED CONCERNS:

Water Use Permit Status:

The applicant has indicated that potable water supply will be used as a source for irrigation water for the project.

The applicant has indicated that dewatering is not required for construction of this project.

This permit does not release the permittee from obtaining all necessary Water Use authorization(s) prior to the commencement of activities which will require such authorization, including construction dewatering and irrigation, unless the work qualifies for a No-Notice Short-Term Dewatering permit pursuant to Chapter 40E-20.302(3) or is exempt pursuant to Section 40E-2.051, FAC.

Historical/Archeological Resources:

The District has received correspondence from the Florida Department of State, Division of Historical Resources indicating that numerous significant historical or historical sites exist in the vicinity of the project area and some potential for the identification of archeological resources may exist in the area. Please refer to Special Condition No. 12 regarding fortuitous finds or unexpected discoveries during ground disturbing activities on the project site.

DCA/CZM Consistency Review:

The District has not received a finding of inconsistency from the Florida Department of Environmental Protection or other commenting agencies regarding the provisions of the federal Coastal Zone Management Plan.


Enforcement:

There has been no enforcement activity associated with this application.

STAFF REVIEW:

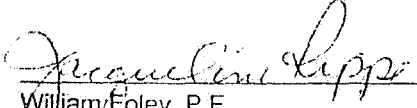
DIVISION APPROVAL:

NATURAL RESOURCE MANAGEMENT:


Edward Cronyn

DATE: 2/16/05

SURFACE WATER MANAGEMENT:


for William Foley, P.E.

DATE: 2/16/05

URBAN STORMWATER MANAGEMENT PROGRAM

1.0 Introduction

This document provides details of the Urban Stormwater Management Program for the (Project Name) in (location). This Plan discusses non-structural controls, intended to improve the quality of stormwater runoff by reducing the generation and accumulation of potential stormwater runoff contaminants at or near the respective sources for each constituent, along with significant structural components of the primary stormwater treatment system. Although many of the methodologies and procedures outlined in this document are general Best Management Practices (BMP's) which can be useful in attenuating pollutants in many types of urbanized settings, the implementation of these practices has been optimized, to the maximum extent possible, to reflect the unique character of the (Project name) and the surrounding hydrologic features.

Pollution prevention guidelines are provided for the areas of (1) nutrient and pesticide management; (2) street sweeping; (3) solid waste management; (4) operation and maintenance of the stormwater management and treatment system; (5) routine water quality testing; and (6) construction activities. A discussion of each of these activities is given in the following sections.

2.0 Nutrient and Pesticide Management

Nutrient and pesticide management consists of a series of practices designed to manage the use of fertilizers and pesticides so as to minimize loss of these compounds into stormwater runoff and the resulting water quality impacts on adjacent waterbodies. Implementation of a management plan will also maximize the effectiveness of the nutrients and pesticides that are applied.

Each homeowner must commit themselves to the practice of responsible and careful landscape design and maintenance of each lot to prevent contamination of surface waters. The guidelines included in this section are intended to help homeowners make educated environmental choices regarding the maintenance of individual yards within the community. These maintenance and management guidelines are meant to promote an attractive neighborhood that preserves the health of adjacent waterways and environmental features.

2.1 General Requirements

- * A landscape plan must be developed for each residence. The plan must be comprehensive in nature and follow the landscape design guidelines established by the Homeowners Association and must promote revegetation of each lot as quickly as possible.

Commercial applicators of chemical lawn products must register with the Homeowners Association annually and provide a copy of their current occupational license, proof of business liability insurance, and proof of compliance with applicable education and licensing requirements. Individual employees working under the direction of a licensed commercial applicator are exempt from the educational requirements.

Only registered commercial applicators and individual lot owners are permitted to apply chemicals within the property on a private lot. All chemical products must be used in accordance with the manufacturer's recommendations. The application of any chemical product within five (5) feet of any surface water including but not limited to ponds, lakes, drainage ditches or canals, is prohibited. The use of any chemical product in a manner that will allow airborne or waterborne entry of such products into surface water is prohibited. This rule shall not apply to the use of chemical agents, by certified lake management specialists, for the control of algae and vegetation within the stormwater lakes or ponds.

2.2 Nutrient Management Program

Management and application of nutrients and fertilizers in the (Project Name) will adhere to the following guidelines:

- A. All fertilizers shall be stored in a dry storage area protected from rainfall and ponding.
- B. No fertilizer containing in excess of 2% phosphate/phosphorus (P_2O_5) per guaranteed analysis label (as defined by Chapter 576, Florida Statutes) shall be applied to turf grass unless justified by a soil test.
- C. Fertilizer containing in excess of 2% phosphate/phosphorus (P_2O_5) per guaranteed analysis label shall not be applied within 5 feet of the edge of water or within 5 feet of a drainage facility.
- D. All fertilizer shall be applied such that spreading of fertilizer on all impervious surfaces is minimized.
- E. Liquid fertilizers containing in excess of 2% phosphate/phosphorus (P_2O_5) per guaranteed analysis label shall not be applied thorough an irrigation system within 10 feet of the edge of water or within 10 feet of a drainage facility.
- F. Liquid fertilizers containing in excess of 2% phosphate/phosphorus (P_2O_5) per guaranteed analysis label shall not be applied through high or medium mist application or directed spray application within 10 feet of the edge of water or within 10 feet of a drainage facility.

2.3 Pest Management Program

Proper maintenance of plants and turf areas will minimize the ability of pests to successfully attack landscaping. Several general guidelines follow:

- A. Apply fertilizer and water only when needed and in moderate amounts. Excessive amounts of either can cause rapid growth that is attractive to insects and disease.
- B. Mow St. Augustine grass to a height of 3-4 inches. If cut shorter, the plants may become stressed and more vulnerable to pest infestation. Each mowing should remove no more than one-third of the leaf blade, and those cuttings should remain on the lawn to decompose.
- C. It is recommended that pesticides, fungicides, and herbicides be used only in response to a specific problem and in the manner and amount recommended by the manufacturer to address the specific problem. Broad application of pesticides, fungicides and herbicides as a preventative measure is strongly discouraged.

The use of pesticides, fungicides, or herbicides is limited to products that meet the following criteria:

- A. Must be consistent with the USDA-NRCS Soil Rating for Selecting Pesticides
- B. Must have the minimum potential for leaching into groundwater or loss from runoff
- C. Products must be EPA-approved
- D. The half-life of products used shall not exceed seventy (70) days

3.0 Street Sweeping

This practice involves sweeping and vacuuming the primary streets to remove dry weather accumulation of pollutants, especially particulate matter, before wash-off of these pollutants can occur during a storm event. This practice reduces the potential for pollution impacts on receiving waterbodies by removing particulate matter and associated chemical constituents. Although street cleaning operations are frequently conducted primarily for aesthetic purposes, the primary objective of the street sweeping program for the (Project Name) is to improve the quality of stormwater runoff generated from impervious traffic areas. Street sweeping activities can be particularly effective during periods of high leaf fall by removing solid leaf material and the associated nutrient loadings from roadside areas where they could easily become transported within stormwater flow.

Street sweeping operations will be performed in the (Project Name) at a minimum frequency of one event every other month. A licensed vendor using a vacuum-type sweeping device will perform all street sweeping activities. Sweeping activities during each event will include all primary street surfaces. Disposal of the collected solid residual will be the responsibility of the street sweeping vendor.

4.0 Solid Waste Management

In general, solid waste management involves issues related to the management and handling of urban refuse, litter and leaves that will minimize the impact of these constituents as water pollutants.

Maintenance of adequate sanitary facilities for temporarily storing refuse on private premises prior to collection is considered the responsibility of the individual homeowner. Local requirements for refuse collection will be brought to the attention of every homeowner at closing for the sale of the property. Information will be distributed as necessary stating specifications for containers, separation of waste by type, where to place containers prior to collection, and established collection schedules.

Fallen tree leaves and other vegetation, along with grass clippings, may become direct water pollutants when they are allowed to accumulate in swales and street gutters. All homeowners will receive periodic educational materials that address proper disposal of leaves and other vegetation to minimize water quality impacts.

5.0 Stormwater Management and Treatment System

The stormwater management system for the (Project Name) is designed to maximize the attenuation of stormwater generated pollutants prior to discharge to the off-site wetland systems. Operational details and maintenance requirements of the various system components are given in the following sections.

5.1 Wet Detention Lakes and Lake Interconnect Pipes

The basic element of the stormwater management system consists of a series of interconnected wet detention ponds that provide stormwater treatment through a variety of physical, biological, and chemical processes. A wet detention pond acts similar to a natural lake by temporarily detaining stormwater runoff, allowing opportunities for treatment processes to occur, prior to slow controlled discharge of the treated water through the outfall structure. Pollutant removal processes in wet detention systems occur during the quiescent period between storm events. Significant removal processes include gravity settling of particulate matter; biological uptake of nutrients and other ions by aquatic plants, algae and microorganisms; along with natural chemical flocculation and complexation processes.

Maintenance of the wet detention ponds will consist of an annual inspection. During each annual inspection, the following items will be reviewed and corrected as necessary:

- A. Inspect the outfall structure and orifices to ensure free-flowing conditions and overall engineering stability of the outfall system.
- B. Review the banks of the lakes and canals to ensure proper side slope stabilization and inspect for signs of excessive seepage that may indicate areas of excessive groundwater flow and possible subsurface channeling.
- C. Physically evaluate each of the lakes and canals for evidence of excessive sediment accumulation or erosion.
- D. Inspect the planted aquatic vegetation in the littoral zone to ensure that the desired vegetation species, percent coverage, and density are maintained.

At the completion of the inspections, a written inspection report will be prepared, listing any deficiencies that need to be addressed or corrected by the Homeowners Association.

5.2 Stormwater Inlets, Pipes and Culverts

The grates should be unobstructed and the bottom, inside the inlet, should be clean. Check for any accumulation of sediment, trash such as garbage bags, or debris in the culverts connecting these inlets. Flushing out with a high-pressure hose may clean some sediment. Any noted blockage (due to a possible obstruction, or broken pipe, etc.) should prompt further investigation. Crushed or corroded culverts should be replaced with new ones of the same size.

5.3 Swales and Grassed Water Storage Areas

These provide for conveyance and/or above-ground (or surface) storage of stormwater. With age, these areas usually fill in with vegetation and sediment. Swales may need to be regraded and/or revegetated. It is a good idea to compare the existing slope and dimensions of the swale with the permitted design plans prior to the removal of excess sediment or regrading. Areas that show erosion should be stabilized with appropriate material such as sod, planting, rock, sand bags, or other synthetic geotextile material.

Regular mowing of grass swales is essential. These areas also improve water quality by catching sediment and assimilating nutrients, and recharge the underground water table. Remove any undesirable exotic vegetation. Culverts underneath driveways should be checked for blockage, and, if necessary, flushed with a high-pressure hose. After a storm, swales may remain wet for an extended period of time. This is normal and the water will recede gradually.

5.4 Ditches or Canals

Fill material, yard waste, clippings and vegetation, sediment, trash, appliances, garbage bags, shopping carts, tires, cars, etc. should be completely removed. Also check to make sure there are no dead trees or any type of obstructions which could block the drainage flow way.

Maintenance cleaning/excavation must be limited to the same depth, width and side slope as approved in the current permit. Making a ditch deeper or wider may trigger a need for a permit modification. Provisions must also be made to prevent any downstream silting or turbidity (*Contact the SFWMD Resource Compliance staff if you are unsure or need clarification.*) Be sure to dispose of all removed material properly so it won't affect any other water storage or conveyance system, environmental area, or another owner's property.

5.5 Outfall Structure (also called the Discharged Control Structure or Weir)

The outfall structure should be routinely inspected to determine if any obstructions are present or repairs are needed. Trash or vegetation impeding water flow through the structure should be removed. The structure should have a "baffle" or trash collector to prevent flow blockage and also hold back any floating oils from moving downstream. Elevations and dimensions should be verified annually with all current permit information. Periodic inspections should then be regularly conducted to make sure these structures maintain the proper water levels and the ability to discharge.

5.6 Earthen Embankments (Dikes and Berms)

Check for proper elevations, width and stabilization. Worn down berms - especially if used by all-terrain vehicles or equestrian traffic - and rainfall - created washouts should be immediately repaired, compacted and re-vegetated.

6.0 Water Quality Testing

To ensure proper operation of the overall treatment system, monitoring will be performed at one outfall (SW-1) from the (Project Name) if there is a flow over the weirs. According to the proposed Water Quality Monitoring Plan, monitoring may occur 3 times a year, once during the dry season (February/March) and twice during the wet season (August/September). A manual grab sample will be collected at the SW-1 outfall location and analyzed for various constituents and parameters as described in the Surface Water Quality Monitoring Plan. Trained and certified personnel will perform sample collection and laboratory analysis. The results of the laboratory analyses will be submitted to South Florida Water Management District as part of an annual water quality monitoring report by December 31 of each year.

7.0 Construction Activities

A Stormwater Pollution Prevention Plan (SWPPP) has been prepared for construction activities to minimize activities contamination that may be caused by erosion and sedimentation during the construction process. The plan includes provisions related to soil stabilization, structural erosion controls, waste collection disposal, offsite vehicle tracking, spill prevention and maintenance and inspection procedures. A copy of the SWPPP is attached hereto and made a part of hereof.

STORM WATER POLLUTION PREVENTION PLAN

(SWP3)

FOR CONSTRUCTION ACTIVITIES

AT

SANIBEL HARBOUR YACHT CLUB

CONSTRUCTION POLLUTION PREVENTION PLAN

SITE DESCRIPTION

Project Description:

The project will consist of re-developing the existing Sanibel Harbour Marina. The parcel is 4.99 acres and is located at 15051 Punta Rassa Road. The existing marina was built in the late 1950's and was rebuilt to its current basic configuration after a fire destroyed the storage buildings in 1975. The existing Sanibel Harbour Marina consists of dry storage buildings and outside boat storage totaling over 460 dry boat slips in addition to 8 wet slips. There are 4 dry storage buildings, a service center, yacht club, ship store, and private offices consisting of \pm 38,040sf of buildings and 77,908sf of asphalt and concrete paving totaling 115,948sf of impervious area, directly discharging to Pine Island Sound unattenuated. The address is **15051 Punta Rassa Road**. The strap number(s) are **09-46-23-00-00009.0000**. The owners are **Marina Acquisitions, 24280 S Tamiami Trail, Bonita Springs, FL 33908 Phone (239) 489-2969 Fax (239) 489-2996**(name, address, phone, fax).

Sequence of Major Activities:

The order of activities will be as follows:

1. Demolish existing building and dispose of at any approved dump site.
2. Install stabilized construction entrance
3. Install perimeter berm or straw bale barrier and filter barrier in wetland areas if required.
4. Clear and grub for earth dike.
5. Continue clearing and grading detention area excavation, embankment for roads, site, and building areas.
6. stockpile topsoil
7. Stabilized denuded areas and stockpiles within 21 days of last construction activity in that area.
8. Install utilities, storm sewer, curb and gutter.
9. Apply stone to parking area and road
10. Construct building(s)
11. Complete grading, subgrade, base construction, and install permanent seeding and planting.
12. Complete final paving.
13. Remove accumulated sediment from basin.
14. When all construction activity is complete and the site is stabilized, remove earth dike, straw hay bale barriers, silt filter barriers (if necessary) and reseed any areas disturbed by their removal.

CONTROLS

Erosion and Sediment Controls Stabilization Practices

Temporary Stabilization:

Top soil stock piles and disturbed portions of the site where construction activity temporarily ceases for at least 21 days will be stabilized with temporary seed and mulch no later than 21 days from the last construction activity in that area. The temporary seed shall be Rye (grain) applied at the rate of 120 pounds per acre. Prior to seeding, 1,000 pounds of 10-10-10 fertilizer shall be applied to each acre to be stabilized. After seeding, each area shall be mulched with 4,000 pounds per acre of straw. Areas of the site that are to be paved will be temporarily stabilized by applying stone sub-base until bituminous pavement can be applied.

Fill Material Stockpiles

Fill material stockpiles which will not be utilized for at least 90 days will be stabilized with temporary seed no later than 30 days from the last placement of fill in that area. The temporary seed shall be Rye (grain) applied at the rate of 120 pounds per acre.

Permanent Stabilization:

Disturbed portions of the site where construction activities permanently ceases shall be stabilized with permanent seed as soon as possible, or within 14 days after the last construction activity.

Storm Water Management

Stormwater drainage will be provided by swales, storm sewers, and stormwater detention facilities in accordance with South Florida Water Management District (SFWMD) criteria. The areas, which are not developed, will be graded at less than 0.5:1 and have permanent seeding or plantings. When construction is complete the entire site will drain to the lake detention facilities. It is expected that this design will result in an 80 percent removal of total suspended solids from the site's stormwater runoff. The outlet of the lake will be stabilized by a riprap apron or other approved control structure.

OTHER CONTROLS

Waste Materials

All waste materials will be collected and stored in a securely lidded metal dumpster. The dumpster will meet all local County and any State solid waste management regulations. All trash and construction debris from the site will be deposited in the dumpster. The dumpster will be emptied a minimum of once per week or more often if necessary. This trash will be hauled off- site by a licensed waste management company. No construction waste materials will be buried on site. All personnel will be instructed regarding the correct procedure for waste disposal.

Hazardous Waste

All hazardous waste materials will be disposed of in the manner specified by local or state regulation or by the manufacturer. Site personnel will be instructed in these practices. Materials will be stored in a weatherproof area/building.

Sanitary Waste

All sanitary waste will be collected from the portable units a minimum of once per week by a licensed sanitary waste management contractor, as required by local regulation.

Offsite Vehicle Tracking

A stabilized construction entrance will be provided to help reduce vehicle tracking of sediments. The paved street adjacent to the site entrance will be swept as needed to remove any excess mud, dirt or rock tracked from the site. Dump trucks hauling material from the construction site shall be covered.

Timing of Controls/Measures

Stabilized construction entrance and bale/silt barriers (within wetlands) will be constructed prior to extensive clearing or grading of any other portions of the site. Areas where construction activity temporarily ceases for more than 21 days will be stabilized with a temporary seed and mulch within 21 days of the last disturbance. Once construction activity ceases permanently in an area, that area will be stabilized with permanent seed and mulch.

CERTIFICATE OF COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS

The storm water pollution prevention plan reflects United States Environmental Protection Agency (EPA) and SFWMD requirements for storm water management and erosion and sediment control, as established in FS Chapter 373, and the Florida Administrative Code (FAC). This plan was prepared in accordance with the "Basis of Review and Permit Information Manual", published by the SFWMD.

MAINTENANCE/INSPECTION PROCEDURES

Erosion and Sediment Control Inspection and Maintenance Practices

These are the inspection and maintenance practices that will be used to maintain erosion and sediment controls:

- All control measures will be inspected at least once each week and within 24 hours following any storm event of 0.50 inch or greater.
- All measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours to 7 days of report.
- Built up sediment will be removed from the silt fence when it has reached one-third the height of the fence.
- Silt fence will be inspected for depth of sediment, breaches, to see if the fabric is securely attached to the fence posts, and to see that the fence posts are firmly in the ground.
- The sediment basin will be inspected for depth of sediment, and built up sediment will be removed when it reaches 10% of the design capacity or at the end of the job.
- Diversion berm (if constructed) will be inspected and any breaches promptly repaired.
- Temporary and permanent seeding and planting will be inspected for bare spots, washouts, and healthy growth.
- A maintenance inspection report will be made after each inspection. A copy of the report form to be completed by the inspector is attached.
- Site superintendent will select one individual who will be responsible for inspections, maintenance and repair activities, and filling out the inspection and maintenance report.
- Personnel selected for inspection and maintenance responsibilities must be a "qualified inspector" according to FDEP CGP (effective May 2003).

Non-Stormwater discharges

It is expected that the following non-stormwater discharges will occur from the site during the construction period:

- Water from water line flushing.
- Pavement wash waters (where no spills or leaks of toxic or hazardous materials have occurred).

All non-stormwater discharges will be directed to the Water management Detention Facilities basin, prior to discharge.

INVENTORY FOR POLLUTION PREVENTION PLAN

The materials or substances listed below are expected to be present on site during construction

- | | |
|---------------------------|----------------------------|
| ◦ Concrete | ◦ Fertilizers |
| ◦ Detergents | ◦ Petroleum Based Products |
| ◦ Paints (enamel & latex) | ◦ Cleaning solvents |
| ◦ Metal Studs | ◦ Wood |
| ◦ Tar | ◦ Masonry Block |
| ◦ Roofing Shingles | ◦ Bricks |

SPILL PREVENTION

Material Management Practices

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to storm water runoff.

Good Housekeeping:

The following good housekeeping practices will be followed on site during the construction project:

- An effort will be made to store only enough product required to do the job.
- All materials stored on site will be stored in a neat, orderly manner in their appropriate containers and, if possible, under a roof or other enclosure.
- Products will be kept in their original containers with the original manufacturer's label.
- Substances will not be mixed with another unless recommended by the manufacturer.
- Whenever possible, all of a product will be used up before disposing of the container.
- Manufacturer's recommendations for proper use and disposal will be followed.
- The site superintendent will inspect daily to ensure proper use and disposal of materials on site.

Hazardous Products:

These practices are used to reduce the risks associated with hazardous materials.

- Products will be kept in original containers unless they are not resealable.
- Original labels and material safety data will be retained; they contain important product information.
- If surplus product must be disposed of, manufacturers or local and state recommended methods for proper disposal will be followed.

Product Specific Practices

The following product specific practices will be followed on site:

Petroleum Products:

All on site vehicles will be monitored for leaks and receive regular preventative maintenance to reduce the chance of leakage. Petroleum products will be stored in tightly sealed containers, which are clearly labeled. Any asphalt substances used on site will be applied according to the manufacturer's recommendations.

Fertilizers:

Fertilizers used will be applied only in the minimum amounts recommended by the manufacturer. Once applied, fertilizer will be worked into the soil to limit exposure to storm water. Storage will be in a covered shed. The contents of any partially used bags of fertilizer will be transferred to a sealed plastic bin to avoid spills and stored out of the weather.

Paints:

All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm sewer system but will be properly disposed of according to manufacturer's instructions or state and local regulations and stored under cover out of the weather.

SPILL CONTROL PRACTICES

In addition to the good housekeeping and material management practices discussed in the previous sections of this plan, the following practices will followed for spill prevention and cleanup:

- Manufacturer's recommended methods (MSDS sheets) for spill cleanup will be clearly posted on-site and site personnel will be made aware of the procedures and the location of the information and cleanup supplies.
- Materials and equipment necessary for spill cleanup will be kept in the material storage area on site. Equipment and materials will include but not be limited to brooms, dustpans, mops, rags, gloves, goggles, kitty litter, sand, sawdust, and plastic and metal trash containers specifically for this purpose.
- All spills will be cleaned up immediately after discovery.
- The spill area will be kept well ventilated and personnel will wear appropriate protective clothing to prevent injury from contact with a hazardous substance.
- Spills of toxic or hazardous material will be reported to the appropriate state or local governmental agency, regardless of the size.
- The spill prevention plan will be adjusted to include measures to prevent this type of spill from reoccurring and how to cleanup the spill if there is another one. A description of the spill, what caused it and the cleanup measures will also be included.
- The site superintendent will be responsible for the day-to-day site operations and will be the spill prevention and cleanup coordinator. He will designate at least 2 other site personnel who will receive spill prevention and clean up training. These individuals will each become responsible for a particular phase of prevention and clean up. The names of responsible spill personnel will be posted in the material storage area and in the office trailer on-site.
- In the event of a spill in the excess of a reportable quantity, the operator shall contact the State Warning Point at 800-320-0519 or 850-413-9911.

POLLUTION PREVENTION PLAN CERTIFICATION

Project Name and Location:

Project Name: Sanibel Harbour Yacht Club

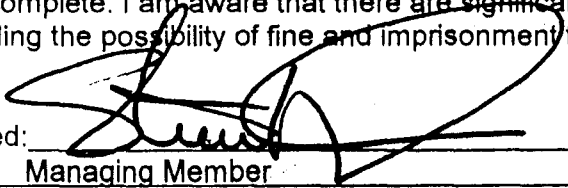
Location: 24280 S Tamiami Trail, Bonita Springs, FL 33908

Latitude: 82:0:41.9W

Longitude: 26:29:16.8N

OWNER'S CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed: 

Date: 9/14/04

Title: Managing Member

Print Name/Title: Steeven Knight, Managing Member

Company: Marina Acquisitions, LLC

Address: 24280 S. Tamiami Trail

Phone Number: (239) 489-2969

Fax Number: (239) 489-2996

PREPARER'S CERTIFICATION

I certify that to the best of my knowledge, this Stormwater Pollution Prevention Plan presented herein has been prepared in accordance with the "NPDES General Permit for Stormwater Discharges from Construction Activities that are classified as 'Associated with Industrial Activity' " as published in the Federal Register on September 9, 1992/The Florida Stormwater Erosion and Sedimentation Control Inspectors Manual/Good Engineering Practices.

Signed: 

Date: 9/16/04

Title: Vice President

Print Name/Title: David L. Douglas, VP

Company: David Douglas Associates, Inc.

Address: 2037 W. First Street

Phone Number: (239) 337-3330

Fax Number: (239) 337-1236

CONTRACTOR'S CERTIFICATION

I certify under penalty of law that I understand the terms and conditions of the general National Pollution Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

General Contractor Responsible for:

Signed: _____ Date: _____
Title: _____
Print Name/Title: _____
Company: _____
Address: _____
Phone Number: _____
Mobile: _____
**24 Hour Emergency Phone _____

General Contractor Responsible for:

Signed: _____ Date: _____
Title: _____
Print Name/Title: _____
Company: _____
Address: _____
Phone Number: _____
Mobile: _____
**24 Hour Emergency Phone _____

Project Name and Location:

Project Name: Sanibel Harbour Yacht Club
Location: 24280 S Tamiami Trail, Bonita Springs, FL 33908
Latitude: 82:0:41.9W Longitude: 26:29:16.8N