

WHEN RECORDED, RETURN TO:

'93 FEB 25 P 1:06

Warren E. Koons, Esq.
DAVIS WRIGHT TREMAINE
10500 NE 8th Street, Suite 800
Bellevue, WA 98004-4300 9302250060

**DECLARATION
AND
COVENANTS, CONDITIONS, RESTRICTIONS,
AND RESERVATIONS
FOR
FIDALGO MARINA CONDOMINIUM**

Amendments

Contents

ARTICLE 1 DEFINITIONS	6
1.1. Words Defined	6
1.2. Form of Words.....	9
1.3. Statutory Definitions.	9
ARTICLE 2 SUBMISSION OF THE PROPERTY TO THE CONDOMINIUM STATUTE	9
ARTICLE 3 BUILDING AND UNIT LOCATION AND DESCRIPTION	9
3.1. Building Location	9
3.2. Unit Location	9
3.3. Unit Description	9
3.4. Allocation of Interests	9
ARTICLE 4 COMMON ELEMENTS.....	10
4.1. Description	10
4.2. Use; Maintenance	10
ARTICLE 5 LIMITED COMMON ELEMENTS	10
5.1. Description	10
5.2. Appurtenant to Units	10
ARTICLE 6 ACCESS.....	10
6.1. Access to Common Elements	10
6.2. Access to Limited Common Areas	11
6.3. Access to Units	11
6.4. Access to Public Streets.....	11
ARTICLE 7 PARKING	11
7.1. Allocation to Unit Transfer	11
7.2. Use of Parking Spaces.....	11
7.3. Easement for Parking on Adjacent Property.....	11
ARTICLE 8 PERMITTED USES; MAINTENANCE OF UNITS; CONVEYANCES.....	11
8.1. Marina-Related Use.....	11
8.2. Leases	12
8.3. Maintenance of Units.....	12
8.4. Exterior Appearance.....	12
8.5. Effect on Insurance.....	12
8.6. Alteration of Common Elements.....	12
8.7. Signs.....	12
8.8. Pets.....	12

8.9.	Offensive Activity	13
8.10.	Conveyances.....	13
ARTICLE 9 ENTRY FOR REPAIRS		13
ARTICLE 10 ASSOCIATION OF UNIT OWNERS.....		14
10.1.	Form of Association.....	14
10.2.	Qualification for Membership	14
10.3.	Transfer of Membership.....	14
10.4.	Voting	14
10.5.	Voting Representative.....	14
10.6.	Joint Owner Disputes	14
10.7.	Pledged Votes.....	14
10.8.	Annual and Special Meetings	14
10.9.	Books and Records	15
10.10.	Audits.....	15
10.11.	Articles and Bylaws.....	15
10.12.	Inspection of Condominium Documents.....	15
ARTICLE 11 NOTICES.....		15
11.1.	Perm and Delivery of Notice	15
11.2.	Eligible Mortgagees	15
ARTICLE 12 PERIOD OF DECLARANT CONTROL		16
12.1.	Transition Date	16
12.2.	Declarant's Powers Until Transition Date	16
12.3.	Mortgagee Assumption of Declarant's Position.....	16
12.4.	Transfer of Association Control.....	16
ARTICLE 13 AUTHORITY OF THE BOARD.....		17
13.1.	Adoption of Rules and Regulations	17
13.2.	Enforcement of Declaration, Etc	17
13.3.	Goods and Services	17
13.4.	Managing Agent	17
13.5.	Protection of Property.....	18
13.6.	Imposition of Payments, Fees, Fines	18
ARTICLE 14 BUDGET AND ASSESSMENT POR COMMON EXPENSES		18
14.1.	Preparation of Budget	18
14.2.	Annual Assessments for Common Expenses.....	19
14.3.	Special Assessments	20

14.4.	Notice of Assessment	20
14.5.	Payment of Assessments.....	20
14.6.	Proceeds Belong to Association	20
14.7.	Failure to Assess	20
14.8.	Certificate of Unpaid Assessments.....	20
14.9.	Separate Accounts.....	20
ARTICLE 15 LIEN AND COLLECTION OF ASSESSMENTS.....		21
15.1.	Assessments Are a Lien; Priority	21
15.2.	Lien May be Foreclosed.....	21
15.3.	Assessments Are Personal Obligations	22
15.4.	Receiver	22
15.5.	Late Charges and Interest.....	22
15.6.	Recovery of Attorneys' Fees and Costs	22
15.7.	Termination of Utility Service.....	22
15.8.	Remedies Cumulative.....	22
15.9.	Security Deposit	23
ARTICLE 16 COMPLIANCE WITH DECLARATION		23
16.1.	Enforcement.....	23
16.2.	No Waiver of Strict Performance	23
ARTICLE 17 LIMITATION OF LIABILITY		23
17.1.	Liability for Utility Failure, Etc	23
17.2.	No Personal Liability	23
ARTICLE 18 INDEMNIFICATION		24
ARTICLE 19 INSURANCE.....		24
19.1.	General Requirements	24
19.2.	Casualty Insurance.....	25
19.3.	Comprehensive Public Liability Insurance.....	25
19.4.	Additional Policy Provisions	25
19.5.	Fidelity Bonds	26
19.6.	Owners' Individual Insurance	26
19.7.	Insurance Proceeds	27
19.8.	Insurance to Meet Secondary Market Requirements.....	27
ARTICLE 20 DAMAGE AND REPAIR OF DAMAGE TO PROPERTY.....		27
20.1.	Initial Board Determination.....	27
20.2.	Notice of Damage.....	27

20.3.	Definitions: Damage, Repair, Emergency Work	27
20.4.	Execution of Repairs	28
20.5.	Damage Not Substantial.....	28
20.6.	Substantial Damage.....	28
20.7.	Effect of Decision Not to Repair	29
ARTICLE 21 CONDEMNATION.....		30
21.1.	Consequences of Condemnation; Notices	30
21.2.	Proceeds.....	30
21.3.	Complete Taking.....	30
21.4.	Partial Taking	31
21.5.	Reconstruction and Repair	31
ARTICLE 22 EASEMENTS		31
22.1.	In General	31
22.2.	Encroachments.....	31
22.3.	Utility Easements.....	32
ARTICLE 23 HARBOR AREA LEASE; MARINA SUBLEASES		32
23.1.	Nature of Declarant's Interest in the Harbor Area; Assignment of The City Lease; Indemnification	32
ARTICLE 24 AMENDMENTS OF DECLARATION AND SURVEY MAP AND PLANS		38
24.1.	Amendments by the Association.....	38
24.2.	Approvals Required	38
ARTICLE 25 ABANDONMENT OR TERMINATION OR CONDOMINIUM STATUS		39
ARTICLE 26 SEVERABILITY.....		39
ARTICLE 27 EFFECTIVE DATE		39
ARTICLE 28 REFERENCE TO SURVEY MAP AND PLANS.....		39
ARTICLE 29 ASSIGNMENT BY DECLARANT		39
ARTICLE 30 PROTECTIONS FOR MORTGAGEES TO FACILITATE MORTGAGE LENDING.....		39
30.1.	Mortgagee Approvals.....	39
ARTICLE 31 CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.....		42
EXHIBITS:		42
A: Legal Description of Land in Condominium		42
B: Map of Condominium and Marina.....		42
C: Unit, Condominium and Marina Pro Rata Shares, Assigned Marina Slip and Allocated Parking Spaces		42
D: Legal Description of Adjacent Property		42

DECLARATION
AND
COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS FOR
FIDALGO MARINA CONDOMINIUM

ARTICLE 1 DEFINITIONS

- 1.1. **Words Defined.** For the purposes of this Declaration and any amendments hereto, the following definitions shall apply.
- 1.1.1. Adjacent Project shall mean the project as described in Section 14.2 below.
- 1.1.2. Adjacent Property shall mean that real property owned by the Declarant that is legally described on Exhibit D attached hereto and located adjacent to and to the south of the Property approximately as shown on **Exhibit B** attached, hereto.
- 1.1.3. Affiliate of Declarant shall mean any person who controls, is controlled by, or is under common control with Declarant (as "control" is defined in the Condominium Statute).
- 1.1.4. Articles shall mean the Articles of Incorporation of the Association defined below.
- 1.1.5. Association shall mean the Association of Owners described in Article 10 of this Declaration, which shall be known as "Fidalgo Marina Owners Association."
- 1.1.6. Board shall mean the Board of Directors of the Association.
- 1.1.7. Building shall mean the multi-purpose building (the "Building") located on the Property constructed principally of wood, concrete and fire resistant materials which contains 55 Units, an office, lounge area with kitchen facilities, a spa and sauna, restrooms, showers, laundry facilities and an observation area.
- 1.1.8. Bylaws shall mean the Bylaws of the Association.
- 1.1.9. City shall mean the City of Anacortes, Washington
- 1.1.10. City Lease shall mean that lease, dated May 6, 1990, as amended, between the City, as sublessor, and DVI, as sublessee, and assigned by DVI to Declarant y Assignment dated July 31, 1992 and recorded under Skagit County Auditor's No. 9207310172, pursuant to which Declarant subleases the Harbor Area from the City, and any amendments, renewals, replacements, modifications, or extensions thereof.
- 1.1.11. Common Elements shall mean the common elements described in Article 4.
- 1.1.12. Condominium shall mean the Property, portions of which, pursuant to and subject to the terms of this Declaration, are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.
- 1.1.13. Condominium Common Expenses shall mean the overall costs and expenses of operation and maintenance of the Condominium and all easements appurtenant thereto, including, but not limited to, (i) the charges, fees and expenses for creating, funding and maintaining reasonable repair, replacement and acquisition of Condominium structures, fixtures, equipment and supplies; (ii) financial obligations of the Association, including debt retirement, if any; (iii) taxes, utilities, expenses, uninsured losses, and insurance premiums to be paid during such year attributable to the Property; (iv) general operating expenses of the Condominium, including salaries and wages for management, staff and security personnel; and (v) all other matters deemed appropriate by the Board or described in Section 14.1 herein.
- 1.1.14. Condominium Pro Rata Share shall mean the ratio of one fifty-fifth (1/55). A schedule of each Unit's Condominium Pro Rata Share is attached hereto as **Exhibit C**.

- 1.1.15. Condominium Statute shall mean the Washington Condominium Act, Laws of 1989, Chapter 43, presently codified in Chapter 64.34, RCW, and any amendments thereto.
- 1.1.16. Declarant shall mean Fidalgo Marina Partnership, a Washington general partnership, and its representatives, successors, and assigns.
- 1.1.17. Declaration shall mean this Declaration and Covenants, Conditions, Restrictions, and Reservations for Fidalgo Marina Condominium, as it may from time to time be amended.
- 1.1.18. Declarant Control shall mean the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board pursuant to Article 12.
- 1.1.19. DNR shall mean the State of Washington Department of Natural Resources.
- 1.1.20. DNR Lease shall mean that certain Harbor Area Lease No. 22-002664, dated August 18, 1987, between the City of Anacortes and the DNR, pursuant to which the City of Anacortes leases the Harbor Area and certain additional tidelands from the DNR, and any amendments, renewals, replacements, releases, modifications or extensions thereof.
- 1.1.21. DVI shall mean Development Ventures, Inc., a Washington corporation that is a general partner of Declarant.
- 1.1.22. Eligible Mortgagee shall mean any holder of a Mortgage who has filed with the Secretary of the Association a written request, including its name and addressee and the Unit number for the Unit subject to the Mortgage held by such Mortgagee, that it be notified of any proposed action that requires consent of a specified percentage of Eligible Mortgagees.
- 1.1.23. Harbor Area shall mean that harbor area adjacent to the Property and subleased by Declarant from the City pursuant to the City Lease as generally depicted on the Map attached hereto as Exhibit B.
- 1.1.24. Institutional Holder of a Mortgage shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation in the business of owning or servicing real estate mortgages, an insurance company, or any federal or state agency.
- 1.1.25. Limited Common Elements shall mean those Common Elements described in Article 5.
- 1.1.26. Managing Agent shall mean the person designated by the Board under Articles 3. 17.
- 1.1.27. Marina shall mean that 54 or 55 slip yacht harbor marina now or hereafter constructed or improved by Declarant in the Harbor Area, on the Adjacent Property, and on that portion of the Property east of the top of rip rap line shown on sheet 2 of the Survey Map and Plans, all approximately as indicated on Exhibit B. If Marina Slip No. 54, as shown on **Exhibit B** is subsequently built, all piers, docks and other improvements creating such slip shall be deemed to be part of the Marina, regardless of whether it is built and used in conjunction with the Adjacent Project.
- 1.1.28. Marina Common Expenses shall mean the overall costs and expenses of operation, maintenance and repair of the Marina, including, but not limited to, (i) the charges, fees and expenses for creating, funding and maintaining reasonable repair, replacement and acquisition of Marina structures, fixtures, equipment and supplies, including but not limited to the Marina Improvements, and any breakwaters or jetties not located within the boundaries of the Harbor Area, the Adjacent Property, or that portion of the Property east of the top of rip rap line shown on sheet 2 of the Survey Map and Plans, but which service the Marina and to which easements or access for maintenance, repair or replacement has been granted; (ii) costs and expenses relating to the satisfaction of obligations of the lessee under the City Lease; (iii) taxes, utilities, expenses, uninsured losses, and insurance premiums to be paid during such year attributable to the Marina; (iv) general operating expenses of the

Marina, including salaries and wages for management, staff and security personnel; and (v) all other matters deemed appropriate by the Board or described in Section 14.1 herein.

- 1.1.29. Marina Improvements shall mean the concrete pier head, access ramp, floating walkways and finger piers, support beams, roof, pilings, breakwater of approximately 1,000 feet on the east side of the Harbor Area, and other improvements constituting the Marina, but excluding (i) any jetties or breakwaters servicing the Marina but not located within the boundaries of the Harbor Area, the Adjacent Property, or that portion of the Property to the east of the top of rip rap line as shown on sheet 2 of the Survey Map and Plans, and (ii) any of the structures or improvements built as part of the Adjacent Project described in Section 14.2 herein.
- 1.1.30. Marina Pro Rata Share shall mean a percentage based on (i) the lineal feet of slip length of the Marina Slip corresponding to a Unit over the total lineal feet of slip length for all Marina Slips, provided, for purposes of determining total lineal slip length for all Marina Slips and the Marina Pro Rata Share, Marina Slip No. 54 shall, at all times and regardless of whether Marina Slip No. 54 has been built or any reconfiguration of the Marina, be deemed to have 110 lineal feet of slip length, or (ii) if and when the owner of the Adjacent Property or the sublessee of Marina Slip No. 54 assumes one-half of the rent and other expenses under the City Lease as set forth in Section 14, the Marina Pro Rata Share for Marina Slips other than Marina Slip No. 54 shall, as to the one-half of the rent and other expenses under the City Lease not assumed by the owner of the Adjacent Property or the sublessee of Marina Slip No. 54, be the lineal feet of slip length of the Marina Slip corresponding to a Unit over the total lineal feet of slip length for all Marina Slips excluding the deemed slip length for Marina Slip No. 54. A schedule of Marinas' Pro Rata Shares for each Unit is attached hereto as **Exhibit C**.
- 1.1.31. Marina Slip shall mean that area of water, numbered as indicated on the map attached hereto as **Exhibit B** located between the finger piers of the Marina.
- 1.1.32. Mortgage shall mean a recorded mortgage or deed of trust that creates a lien against a Unit and shall also mean a real estate contract for the sale of a Unit.
- 1.1.33. Mortgagee shall mean the holder, insurer or guarantor of an encumbrance on a Unit created by a Mortgage and shall also mean the vendor of a real estate contract for the sale of a Unit.
- 1.1.34. Mortgage of the Condominium shall mean the holder of a Mortgage on the real property which this Declaration affects, if any, which Mortgage was recorded prior to the recordation of the Declaration. The term "Mortgagee of the Condominium does not include Mortgagees of the individual Units.
- 1.1.35. Owner shall mean the Declarant or other legal owner of a Unit and shall also mean the vendee of a real estate contract for the sale of a Unit.
- 1.1.36. Person shall mean a natural person, corporation, partnership, association, trustee under a trust, governmental subdivision or agency, or other legal entity.
- 1.1.37. Property shall mean the land and the buildings and all improvements and structures now or hereafter placed on the land described in Exhibit A, but excluding the Marina Improvements, which shall be deemed part of the Marina and not subject to the condominium form of ownership pursuant to this Declaration.
- 1.1.38. RCW shall mean the Revised Code of Washington.
- 1.1.39. Special Declarant Rights shall mean, individually and collectively, the rights reserved for the benefit of the Declarant to complete improvements described or shown on the Survey

Map and Plans, maintain sales and management offices, models and signs as described in Articles 4 and 8, exercise "Declarant Control" as described in Article 12, and use easements as described in Article 22.

- 1.1.40. Survey Map and Plans shall mean the survey map and the plans recorded simultaneously with this Declaration and any amendments, corrections, and addenda thereto subsequently recorded.
- 1.1.41. Transition Date is defined in Section 12.1.
- 1.1.42. Unit shall mean a storage locker unit composed of enclosed storage locker space in the Building. The boundaries of a Unit are the unfinished interior surfaces of a storage locker's perimeter walls, floors, ceilings, and door, and each Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, and the Unit includes the portions of the Building so described and the air space so encompassed, and all interior partitions and other fixtures and improvements, if any, so contained.
- 1.2. **Form of Words.** The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and neuter pronouns shall be used interchangeably.
- 1.3. **Statutory Definitions.** Some of the terms defined above are also defined in the Condominium Statute. The definitions in this Declaration are not intended to limit or contradict the definitions in the Condominium Statute. If there is any inconsistency or conflict, the definition in the Condominium Statute will prevail.

ARTICLE 2 SUBMISSION OF THE PROPERTY TO THE CONDOMINIUM STATUTE

Declarant, being the sole owner of the Property, makes this Declaration for the purpose of submitting the Property to the Condominium form of use and ownership and to the provisions of the Condominium Statute. Declarant declares that the Property shall be held, used, conveyed, encumbered, leased, occupied, rented, and improved subject to the covenants, conditions, restrictions, reservations, and easements stated in this Declaration, all of which are in furtherance of the division of the Property into Units and Common Elements and shall be deemed to run with the land and be a burden and benefit to Declarant and all persons who own or acquire an interest in the Property or any part thereof, and their grantees, successors, heirs, executors, administrators, and assigns.

ALTHOUGH PURSUANT TO THEIR RESPECTIVE MARINA SLIP SUBLEASES, OWNERS SHALL HAVE SUCH RIGHTS, INTERESTS AND OBLIGATIONS WITH RESPECT TO THE MARINA AND THE MARINA IMPROVEMENTS AS DISCUSSED HEREIN, THE MARINA, MARINA IMPROVEMENTS AND HARBOR AREA ARE NOT PART OF THE PROPERTY AND ARE NOT BEING SUBMITTED BY DECLARANT TO THE CONDOMINIUM FORM OF USE AND OWNERSHIP OR TO THE PROVISIONS OF THE CONDOMINIUM STATUTE.

ARTICLE 3 BUILDING AND UNIT LOCATION AND DESCRIPTION

- 3.1. **Building Location.** The Building is located as shown on the Survey Map and Plans.
- 3.2. **Unit Location.** Each Unit is identified by a Unit number, between 1 and 55, and is located in the Building, as shown on the Survey Map and Plans.
- 3.3. **Unit Description.** Each Unit will consist of approximately 35 square feet and 350 cubic feet of enclosed space, based on estimated dimensions of 5 feet wide, 7 feet deep and 10 feet high. The Units will not be separately heated or lighted.
- 3.4. **Allocation of Interests.** Each Unit shall be allocated a fraction of the undivided interests in the

Common Elements and Condominium Common Expenses of the Association based upon a fraction the numerator of which is one (1) and the denominator of which is the total number of Units in the Building. Each Unit shall be allocated one (1) vote in the Association.

ARTICLE 4 COMMON ELEMENTS

- 4.1. **Description.** The Common Elements consist of all portions of the Condominium other than the Units, including the following:
- 4.1.1. The tracts of land described in Exhibit A and the easements rights and appurtenances thereto, which have been included in this Condominium either by this Declaration or by a recorded subsequent amendment;
 - 4.1.2. The roofs, foundations, studding, joists, beams, supports, main walls (excluding nonbearing interior partitions of Units, if any), and all other structural parts of the Building other than the unfinished interior surfaces of the Units' perimeter walls, floors, ceilings, and doors;
 - 4.1.3. The pipes, wires, conduits, TV antennae, cable television and security systems, if any, other fixtures and equipment for utilities serving any Unit; and
 - 4.1.4. The clubhouse lounge, sauna, spa, restrooms, showers, laundry room and facilities, parking areas located on the Property, lobby areas, grounds, trees, gardens, landscaped areas, exterior fixtures, walkways, and driveways and that portion of the walkway leading to the Marina, and the security gate thereon and the pier leading to Marina Slips Nos. 54 and 55 that are located on or within the boundaries of the property.
- 4.2. **Use; Maintenance.** Each Owner shall have the right to use the Common Elements (except the Limited Common Elements reserved for other Units) in common with all other Owners. The right to use the Common Elements shall extend not only to each Owner, but also to his or her agents, servants, tenants, family members/ invitees, and licensees. The right to use the Common Elements, including the Limited Common Elements, shall be governed by the provisions of the Condominium Statute, this Declaration, the Bylaws and the rules and regulations of the Association. The Owners shall not by act or omission seek to abandon, partition subdivide, encumber, sell, or transfer the Common Elements and no other person shall have the right to have them partitioned or divided. The Association will be responsible for the operation, maintenance, repair and replacement of the Common Elements, including the Limited Common Elements and any Common Elements on or in real property subject to Development Rights, which Common Elements the Owners have a right to use, and the driveway and parking areas located on the Adjacent Property to which the Owners have access. Declarant may maintain signs on the Common Elements advertising the Condominium consistent with the provisions of any applicable state or local statute, law or ordinance.

ARTICLE 5 LIMITED COMMON ELEMENTS

- 5.1. **Description.** The Limited Common Elements are Common Elements that are reserved for the exclusive use of the Unit or Units to which they are adjacent or allocated. They consist of those specified in the Condominium Statute and the parking stalls allocated to particular Units as indicated on **Exhibit C**.
- 5.2. **Appurtenant to Units.** Conveyance of a Unit includes the exclusive rights to the use of the Limited Common Elements adjacent or allocated to that Unit.

ARTICLE 6 ACCESS

- 6.1. **Access to Common Elements.** Each Unit Owner has direct access to Common Element walkways, that portion of the parking areas other than particularly allocated parking stalls, driveways and

piers.

- 6.2. **Access to Limited Common Areas.** Each Unit Owner has direct, exclusive access to the Limited Common Areas relating to his or her Unit.
- 6.3. **Access to Units.** Each Owner has access to his or her Unit exclusive of any other Owner, provided, the Association retains the right to access any Unit as set forth in Section 9 herein.
- 6.4. **Access to Public Streets.** The Common Elements have direct access to a dedicated roadway "V" Street, Anacortes, Washington, which, together with the easement described as "Parcel B" on **Exhibit A** attached hereto, provides access to a public street 30th Street, Anacortes, Washington.

ARTICLE 7 PARKING

- 7.1. **Allocation to Unit Transfer.** The Condominium contains a parking lot with fifty-five stalls sufficient to accommodate an automobile. The parking stalls on the Property have been allocated to the Owners of particular Units as indicated on **Exhibit C**. Declarant or the Association may reallocate such stalls, or allocate additional stalls, in accordance with the Condominium Statute, provided no Unit may be allocated more than one stall. If the Declarant or the Association does reallocate stalls or allocates additional stalls, the Declarant or the Association, as the case may be, may execute and record amendments to this Declaration in the form of a schedule showing such reallocation or allocation of parking stalls, and such amendments shall require only the signature of the Declarant or the Association, as the case may be, and the owners of Units to which the parking stalls were or will be allocated.
- 7.2. **Use of Parking Spaces.** Parking spaces may be used for the parking of an Owner's operable passenger motor vehicles, including family vans and pick-up trucks. Parking by guests and use of such parking spaces for parking large trucks, trailers, commercial or recreational vehicles, or for other purposes shall be prohibited. The Board may prohibit or restrict the parking of automobiles owned by Owners or their tenants in the parking spaces, if any, held for common parking. The Board may direct that any vehicle or other thing improperly parked or kept in a parking space be removed, and if it is not removed within ten (10) days the Board may cause it to be removed at the risk and cost of the Owner thereof.
- 7.3. **Easement for Parking on Adjacent Property.** Owners have on and over portions of the Adjacent Property (i) a non-exclusive easement for ingress and egress over that portion of the access driveway and access to and use of nine (9) short-term parking spaces, and (ii) an exclusive easement to four (4) additional short-term parking spaces, all as described in or shown on Short Plat No. ANA 92-005 recorded in Book 10 of Short Plats, Page 165, under Skagit County Auditors File No. 9301110152, and/or Declaration of Easements (the "Declaration of Easements") recorded contemporaneously with this Declaration against the Property, the Adjacent Property and Declarant's leasehold rights in the Harbor Area. Such parking spaces shall be available to all Owners and their invited guests and subject to the same rules and regulations as apply to parking located on the Property. The driveway and parking spaces on the Adjacent Property are as indicated on the Survey Map and Plans.

ARTICLE 8 PERMITTED USES; MAINTENANCE OF UNITS; CONVEYANCES

- 8.1. **Marina-Related Use.** The Building and the Units are intended for and restricted to private recreational use in conjunction with the leasing of a Marina Slip only, on an ownership, rental, or lease basis, and for social, or other reasonable activities normally incident to such use, and for the purposes of operating the Association and managing the Condominium if required. Units may not be used for timeshare purposes or sold or leased on a timeshare basis. A Unit may not be sold or transferred except in conjunction with the transfer to such purchaser of the Owner's interest in

the Marina Improvements and leasehold rights in the Marina Slip corresponding to such Unit; provided, however, in the event of the expiration or termination of the City Lease, the Building may be used, and the Units may be sold separate and apart from any interest in the Marina Improvements or Marina Slip leasehold and may thereafter be used, for general recreational marina-related purposes; provided, further, that the Unit corresponding to Marina Slip No. 54 may be transferred or sold even if Marina Slip No. 54 has not been built, so long as such Owner transfers to such purchaser the Owner's interest in the Marina Improvements and all rights to sublease Marina Slip No. 54 when and if it is built.

- 8.2. **Leases.** A Unit may not be leased by an Owner or any other person except in conjunction with the equivalent transfer of the leasehold rights in the Marina Slip corresponding to such Unit and the Owner's interest in the Marina Improvements; provided, however, in the event of the expiration or termination of the City Lease, a Unit may be leased separate and apart from any Marina Slip. No lease or rental of a unit may be of less than the entire Unit. A Unit Owner may not transfer his or her Marina Slip interest or interest in the Marina Improvements separate and apart from his or her interest in the Unit except in accordance with the terms and conditions set forth in the Owner's Marina Slip sublease and deed to the Marina Improvements. Any lease or rental agreement for a unit, Marina Slip or an Owner's interest in the Marina Improvements must be approved as to form by the Association and provide that its terms shall be subject in all respects to the provisions of this Declaration and the Bylaws and rules and regulations of the Association and that any failure by the tenant to comply with the terms of such documents shall be a default under the lease or rental agreement. Other than as stated in this Section 8.1, and Section 8.2 and Section 8.10, there is no restriction on the right of any Owner to lease or otherwise rent his or her unit.
- 8.3. **Maintenance of Units.** Each Owner shall, at the Owner's sole expense, keep the interior of his or her Unit and its appurtenances in a clean and sanitary condition, free of rodents and pests, and in good order, condition, and repair and shall do all repairing and painting at any time necessary to maintain the good appearance and condition of the Unit. Each Owner may make any improvements or alterations to his or her Unit that do not affect the structural integrity, mechanical or electrical systems, or lessen the support, of any portion of the Condominium.
- 8.4. **Exterior Appearance.** In order to preserve a uniform exterior appearance of the Building, the Board shall provide for the painting of the Building and prescribe the type and color of paint. No Owner may modify or decorate the Common Elements, the exterior of the Building, or doors or other portions of any Unit visible from outside the Unit without the prior written consent of the Board or in accordance with rules or regulations of the Board. No exterior radio, television or satellite reception antennae or disc may be installed without the prior written consent of the Board.
- 8.5. **Effect on Insurance.** Nothing shall be done or kept in any Unit, Common Element or Limited Common Element that will increase the rate of insurance on the Property without, the prior written consent of the Board. Nothing shall be done or kept in any Unit, Common Element or Limited Common Element that will result in the cancellation of insurance on any part of the Property, or would be in violation of any applicable laws or regulations.
- 8.6. **Alteration of Common Elements.** Nothing shall be altered or constructed in or removed from any Common Element except with the prior written consent of the Board.
- 8.7. **Signs.** No sign of any kind shall be displayed to the public view on or from any Unit or Common Element. This section shall not apply to Declarant.
- 8.8. **Pets.** No animals or living creatures of any kind shall be kept in any Unit, Common Element or

Limited Common Element except subject to and in compliance with rules and regulations adopted by the Board, or Bylaws adopted by the Association. The Board may at any time require the removal of any animal that it finds is disturbing other Owners unreasonably, and may exercise this authority for a specific animal even though other similar animals are permitted to remain.

- 8.9. **Offensive Activity.** No noxious or offensive activity shall be carried on or permitted in any Unit or Common Elements, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners.
- 8.10. **Conveyances; Notice Required.** Except as permitted elsewhere in this Article 8, no Owner may sell, transfer, mortgage or otherwise convey his or her Unit except in conjunction with the transfer of the Owner's leasehold rights in the Marina Slip corresponding to such Unit and the Owner's interest in the Marina Improvements; provided, however, in the event of the expiration or termination of the City Lease, an Owner may sell, transfer, mortgage or otherwise convey his or her Unit separate and apart from any remaining interest in the Marina Improvements or Marina Slip in accordance with the provisions of this Section 8.10.

The right of an Owner to sell, transfer, lease, mortgage or otherwise convey his or her Unit, either together with the transfer of the leasehold interest in the Marina Slip corresponding to such Unit and such Owner's interest in the Marina Improvements, or, as permitted herein, separately, shall be subject to the written consent, which consent will not be unreasonably withheld, of the Board. The right of an Owner to sell, transfer, lease, mortgage or otherwise convey his or her Unit, Marina Improvement interest and corresponding Marina Slip is not subject to a right of first refusal or similar restriction by the Declarant, Association or the Board, or anyone acting on their behalf. An Owner intending to sell a Unit as permitted herein, at least sixty (60) days before closing and prior to or simultaneously with any request by such Owner for preparation of a resale certificate with respect to such Unit pursuant to the Condominium Statute, shall deliver a written notice to the Board specifying the Unit being sold; the names and addresses of the purchaser, closing agent, and title insurance company insuring the purchaser's interest; and the estimated closing date, and shall comply in all respects with the provisions of the Condominium Statute pertaining to resale of Units. The Board shall advise Owner in writing of its decision to approve or disapprove such sale within ten (10) days of receipt of such notice or request. The Board shall have the right to notify the purchaser, title insurance company, and closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested.

ARTICLE 9 ENTRY FOR REPAIRS

The Association and its agents or employees may enter and access any Unit and the Limited Common Elements adjacent or allocated thereto to effect repairs, improvements, replacements, or maintenance deemed by the Board to be necessary in the performance of its duties, to do necessary work that the Unit Owner has failed to perform, or to prevent damage to the Common Elements, Limited Common Elements or to another Unit. Except in cases of great emergency that preclude advance notice, the Board shall cause the Unit occupant to be given notice and an explanation of the need for entry as far in advance of entry as is reasonably practicable. Such entry shall be made with as little inconvenience to the Owners as practicable. Any damage caused by such entry shall be repaired by the Association as a common expense unless the repairs or maintenance were necessitated by the acts or default of the Owner of the Unit entered, in which event the costs of the repairs or maintenance shall be specially assessed to that Unit.

ARTICLE 10 ASSOCIATION OF UNIT OWNERS

- 10.1. **Form of Association.** No later than the date the first Unit in the Condominium is conveyed, the Association shall be organized as a nonprofit corporation under the laws of the state of Washington; provided that, from and after the formation of such corporation, the rights and duties of the members and of such corporation shall continue to be governed by the provisions of the Condominium Statute and of this Declaration.
- 10.2. **Qualification for Membership.** Each Owner (including Declarant) shall be a member of the Association. Declarant shall be considered an "Owner" as that term is used herein, and shall be a member of the Association and the voting representative with respect to any Unit owned by Declarant.
- 10.3. **Transfer of Membership.** The Association membership of each Owner (including Declarant) shall be appurtenant to the Unit giving rise to such membership, and shall not be transferred in any way except upon the transfer of the Owner's interest in the Unit in accordance with this Declaration and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of an Owner's interest in a Unit shall operate automatically to transfer the membership in the Association to the new Owner.
- 10.4. **Voting.** Each Unit shall have one (1) vote. A schedule of voting rights for each Unit is attached hereto as Exhibit C. An Owner (including Declarant) of more than one Unit shall have the votes appertaining to each Unit owned. No votes allocated to a Unit owned by the Association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to the Association shall be disregarded.
- 10.5. **Voting Representative.** An Owner may, by written notice to the Board, designate a voting representative for his or her Unit. The voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from the Owner or by actual notice to the Board of the death or judicially declared incompetence of the owner, except in cases in which the person designated is a Mortgagee of the Unit. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the Owner under a durable power of attorney, and the administrators or executors of an Owner's estate. If no designation has been made among multiple Owners of a Unit, or if a designation has been revoked no new designation has been made; all votes allocated to each Unit may be cast by the one of multiple Owners present at the meeting, or if more than one of multiple Owners are present, according to the agreement of a majority in interest of such Owners in the Unit.
- 10.6. **Joint Owner Disputes.** The voting interest of each Unit must be cast as a single vote. Fractional votes shall not be allowed. If joint Owners are unable to agree how their vote shall be cast, they shall lose their right to vote on the matter in question.
- 10.7. **Pledged Votes.** If an Owner is in default under a Mortgage on his or her Unit for sixty (60) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his or her vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, and if the pledge is then effective, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.
- 10.8. **Annual and Special Meetings.** There shall be an annual meeting of the members of the Association in the first quarter of each year at such reasonable place and time as may be designated by no less than ten (10) or more than sixty (60) days written notice from the Board. Special meetings of the Association may be called at any time by the president, a majority of the Board or Owners having twenty percent (20%) of the votes in the Association, for the purpose of

considering matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Any Institutional Holder of a Mortgage may attend or designate a representative to attend the meetings of the Association.

- 10.9. **Books and Records.** The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures of the Association, and, at least annually, shall prepare, or cause to be prepared, a financial statement of the Association, in a form that complies with generally accepted accounting principles.
- 10.10. **Audits.** At the annual meeting, there shall be presented an audited financial statement of the Association, prepared by a certified or licensed public accountant who is not a member of the Board or an Owner. If the above-described audit is waived, any holder of a Mortgage may cause an audited financial statement of the Condominium to be prepared at such holder's expense and the Association shall cooperate fully with any such audit. The Board, or persons having thirty-five percent (35%) or more of the voting power of the Association, may require that an audit of the Association and management books be presented at any special meeting. An Owner, at his or her expense, may at any reasonable time conduct an audit of the books of the Board and the Association.
- 10.11. **Articles and Bylaws.** The Association will adopt Bylaws to supplement this Declaration and the Articles and to provide for the administration of the Association and the Property and for other purposes not inconsistent with the Condominium Statute or this Declaration. The Articles and Bylaws may be amended by the affirmative vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated at any duly called regular or special meeting of the Association.
- 10.12. **Inspection of Condominium Documents, Books, and Records.** During normal business hours and at other reasonable times this Declaration, the Survey Map and Plans, the Articles, the Bylaws, and other rules governing the operation of the Condominium {collectively, the "Condominium Documents") shall be available for inspection free of charge by the Owners, Mortgagees, prospective purchasers and their prospective Mortgagees, and the agents or attorneys of either of them.

ARTICLE 11 NOTICES

- 11.1. **Perm and Delivery of Notice.** All notices given under the provisions of this Declaration or the Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third (3rd) day of regular mail delivery after it has been deposited in the United States mail, first class, postage prepaid, addressed to the person entitled to such notice at the most recent address known to the Board. Notice to the Owner of any Unit shall be sufficient if mailed to the Unit if no other mailing address has been given to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to the president or secretary of the Association.
- 11.2. **Eligible Mortgagees.** Until such time as any Eligible Mortgagee withdraws its request for notice or satisfies the Mortgage held, guaranteed or insured by such Eligible Mortgagee of record, the Board shall send to the Eligible Mortgagee a copy of all notices of any proposed actions which require the consent of a specified percentage of Eligible Mortgagees. All Institutional Holders of Mortgages shall be entitled to notices under Article 20 (damage and repair of damage to property) and Article 21 (condemnation) irrespective of whether they have filed requests for notices.

ARTICLE 12 PERIOD OF DECLARANT CONTROL

- 12.1. **Transition Date.** The "Transition Date" shall mean the date after which Declarant may no longer exercise Declarant Control (as defined in Section 12.2), which shall be the earlier of (1) sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; (2) two (2) years after the last conveyance or transfer of record of a Unit except as security for a debt; (3) two (2) years after any Development Right to add new Units was last exercised; or (4) the date on which Declarant records an amendment to the Declaration pursuant to which the Declarant voluntarily surrenders Declarant Control. Declarant may voluntarily surrender Declarant Control before the Transition Date, but require that until the Transition Date, specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they shall become effective. If the Transition Date has occurred under the foregoing provision (1), later expansion into a subsequent phase shall not act to revert Declarant Control to Declarant, but if the Transition Date has not occurred prior to the recording of a subsequent phase amendment, the seventy-five percent (75%) of the Units under provision (1) above shall be determined on the basis of all Units in the Condominium after recording of the Subsequent Phase Amendment.
- 12.2. **Declarant's Powers Until Transition Date.** Until the Transition Date, Declarant shall have the full power and authority to appoint and remove the Board and the Officers of the Association ("Declarant Control") subject to the limitations set forth in this Section 12.2. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one (1) member of the Board and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board must be elected by Owners other than Declarant. Section 12.3 Transfer of administration. Within thirty (30) days after Transition Date the Owners shall elect a Board of not fewer than three (3) directors, at least a majority of which must be Owners. The Board or the Managing Agent shall call a meeting of the Association to be held within thirty (30) days after the Transition Date for the purpose of electing the new Board. The new Board shall elect the officers of the Association and such members of the Board and officers shall take office upon election.
- 12.3. **Mortgagee Assumption of Declarant's Position.** In the event that the Mortgagee of the Condominium becomes bound by this Declaration by granting one or more partial releases or otherwise, and forecloses its mortgage or acquires a deed in lieu of the foreclosure, and obtains possessory rights, legal title or certificates of sale to an unsold Unit or Units and appurtenant Common Elements covered by the respective deed of trust or mortgage liens, then the Mortgagee of the Condominium or other transferee may succeed to and assume to the exclusion of Declarant, the rights and obligations of Declarant set forth in this Declaration including any Special Declarant Rights unless such transferee requires that such Special Declarant Rights not be transferred and such rights not being transferred are described in the instrument conveying title; and provided that the Transition Date shall be deemed to have passed unless the judgment or instrument transferring title provides for transfer of all Special Declarant Rights to such transferee.
- 12.4. **Transfer of Association Control.** Within sixty (60) days after the Transition Date, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant including, but not limited to, the original or a photocopy of this Declaration and each amendment hereto; the certificate of incorporation and a copy or duplicate original of the Articles of the Association as filed with the Washington Secretary of State; the Bylaws and minute books,

including all minutes and other books and records of the Association; any rules and regulations that have been adopted; any resignations of officers and members of the Board who are required to resign because Declarant is required to relinquish control of the Association; all financial records, including canceled checks, bank statements and financial statements of the Association and source documents from the time of incorporation of the Association through the date of transfer of control to the Owners; all Association funds or the control thereof; all tangible personal property of the Association represented by Declarant to be the property of the Association or ostensibly the property of the Association and an inventory of such property; a copy of Declarant's plans and specifications utilized in the construction or remodeling of the Condominium and a certificate of the Declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications used by the Declarant in the construction or remodeling of the Condominium (except for alterations to a Unit done by an Owner other than Declarant); insurance policies or copies thereof for the Condominium and the Association; copies of any certificates of occupancy that may have been issued to the Condominium; any other permits issued by governmental bodies applicable to the Condominium; all written warranties still in effect for the Common Elements or any areas or facilities which the Association has the responsibility to maintain and repair and all documents related thereto; a roster of Owners and Eligible Mortgagees and their addresses and telephone numbers; and any leases or contracts to which the Association is a party. Upon the transfer of control to the Owners, the records of the Association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted accounting principles unless the Owners other than Declarant by two-thirds (2/3's) vote elect to waive the audit.

ARTICLE 13 AUTHORITY OF THE BOARD

- 13.1. **Adoption of Rules and Regulations.** The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to ensure compliance with the general guidelines of this Declaration and to promote the comfortable use and enjoyment of the Condominium. The Declaration and the Bylaws and the rules and regulations of the Association shall be binding upon all Owners and occupants and all other persons claiming any interest in the Condominium.
- 13.2. **Enforcement of Declaration, Etc.** The Board shall have the power and the duty to enforce the provisions of this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association, as the same may be lawfully amended from time to time, for the benefit of the Association.
- 13.3. **Goods and Services.** The Board shall acquire and pay for as common expenses of the Condominium all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Condominium. The goods and services shall include (by way of illustration and not limitation) utility services for the Common Elements; policies of insurance and fidelity bonds (including directors and officers liability insurance); legal and accounting services; maintenance, repair, landscaping, gardening, and general upkeep of the Common and Limited Common Elements; and all supplies, materials, fixtures, and equipment that are, in the Board's judgment, necessary or desirable for the operation of the Condominium and enjoyment of it by the Owners. The Board may hire such full-time or part-time employees as it considers necessary.
- 13.4. **Managing Agent.** The Board may, but shall not be required to, contract with an experienced professional Managing Agent to assist the Board in the management and operation of the

Condominium and Marina, and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. If a Managing Agent is employed by the Board, the prior written approval of at least fifty-one percent (51%) of all Eligible Mortgagees and seventy-five percent (75%) of all Institutional Holders of Mortgages shall be required before the Board may terminate professional management and assume self-management. The Managing Agent shall not enter any Unit (directly or through agents) without the consent of the occupant unless entry has been directed by the Board. Only the Board can approve an annual- budget or a supplemental budget, and only the Board can impose a special assessment on a Unit or authorize foreclosure of an assessment lien. Any contract with a Managing Agent, or any other contract providing for management or operational services, shall have a term no longer than one (1) year (but may be renewable by agreement of the parties for successive one (1) year periods) and shall be terminable by the Board without payment of a termination fee, with or without cause, on thirty (30) days written notice.

- 13.5. **Protection of Property.** The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Property, settle claims, or otherwise act in what it considers to be the best interests of the Condominium or the Association.
- 13.6. **Imposition of Payments, Fees, Fines.** The Board may impose and collect charges for late payment of assessments described in Article 15 and, after notice and opportunity to be heard by the Board or by such representative designated by the Board and in accordance with procedures provided by the Bylaws or rules and regulations adopted by the Board, levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violations of the Declaration, Bylaws, or rules and regulations of the Association. The Board may impose and collect reasonable charges for the preparation and recording of amendments to the Declaration, resale certificates and statements of unpaid assessments, and may assign its right to future income, including the right to receive common expense assessments. The Board may impose and collect any payments, fees or charges for the use, rental or operation of the Common Elements other than Limited Common Elements appurtenant to each Unit, and for services provided to Owners. Upon ninety (90) days' notice, the Board may terminate without penalty any management contract, employment contract or lease of recreational parking areas or facilities or any other contract or lease between the Association and Declarant or an affiliate of Declarant, or any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing, if such contract or lease was entered into before the Board elected by the Owners pursuant to Article 12 took office.

ARTICLE 14 BUDGET AND ASSESSMENT POR COMMON EXPENSES

- 14.1. **Preparation of Budget.** At least ninety (90) days prior to the beginning of each calendar year, the Board shall prepare separate budgets for the Condominium (the "Condominium Budget") and Marina (the "Marina Budget") (collectively, the "Budgets") estimating the Condominium Common Expenses and the Marina Common Expenses, respectively. The Budgets shall take into account any expected income and any surplus available from the prior year's operating fund for the Condominium or Marina, respectively (which surplus may be applied by the Association to current operating expenses as referenced in the Budgets).

Without limiting the generality of the foregoing but in furtherance thereof, the Board shall create and maintain from Condominium annual assessments, and the Condominium Budget shall reflect as appropriate, a reserve fund for periodic maintenance and repair of Common Elements and

Limited Common Elements, and for replacement of those Common Elements and Limited Common Elements and appurtenances which can reasonably be expected to require replacement prior to the end of the useful life of such structures. The Board shall also create and maintain from Marina annual assessments, and the Marina Budget shall reflect as appropriate, a reserve fund for periodic maintenance and repair of the Marina and the Marina Slips, and for replacement of the Marina structures, roofs, pilings and appurtenances which can reasonably be expected to require replacement prior to the end of the useful life of such structures. The Board shall calculate the contributions to said reserve funds so that there are sufficient funds therein to replace each structure covered by the fund at the end of its estimated useful life. If the sum estimated and budgeted at any time proves inadequate for any reason {including nonpayment of any Owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the Owners in accordance with their Condominium Pro Rata Share or Marina Pro Rata Share, as the case may be.

Within thirty (30) days after adoption of any proposed budget for the Condominium and Marina as set forth in this paragraph, the Board shall provide a summary thereof to all Owners and set a date which is not less than fourteen (14) days nor more than ninety (90) days after mailing of the summary for a meeting of the Owners to consider ratification of the budget. The budget shall be ratified unless at such meeting Owners to which a majority of votes in the Association are allocated reject the budget, whether or not a quorum is present.

- 14.2. **Annual Assessments for Common Expenses and Accrual of Assessments.** The sums required by the Association for Condominium Common Expenses and Marina Common Expenses as reflected by the Budgets and any supplements thereto shall be paid annually. The annual payments shall be assessed to all of the Units and their respective Owners as follows: (i) amounts required under the Condominium Budget shall be assessed against each Unit based on its Condominium Pro Rata Share, and (ii) amounts required under the Marina Budget shall be assessed against each Unit and Marina Slip based on its Marina Pro Rata Share. Marina Budget assessments shall be made against the Unit corresponding to Marina Slip No. 54 (based on a deemed slip length of 110' feet) regardless of whether or not Marina Slip No. 54 is built, and regardless of its actual slip length, and Declarant shall pay the Marina Budget assessments against the Owner of the Unit corresponding to Marina Slip No. 54 until the sublessee of Marina Slip No. 54 (or the owner of the Adjacent Property) takes over responsibility for such assessments. Notwithstanding the foregoing, the respective Budgets may include expenses related to Limited Common Elements and Marina Slips which may be assessed against the Units to which such expenses appertain, including but not limited to expenses benefitting certain Units or Marina Slips which may be assessed exclusively against those Units. Assessments to pay a judgment against the Association perfected under RCW 4.64.020 relating to the operation of the Condominium or the Marina or other contractual obligations of the Association may be made only against Units in the Condominium at the time the judgment was entered in proportion to their Condominium Pro Rata Share or their Marina Pro Rata Share, respectively. Any common expenses caused by the misconduct of an Owner may be assessed exclusively against such Owner's Unit. Until the Association makes a common expense assessment, the Declarant shall pay all common expenses.

Declarant or the succeeding owner of the Adjacent Property may elect at some point in the future to separately develop the Adjacent Property with a dry-stack moorage and boat launching facility

and related improvements or some other marine-related or recreational/commercial development that the Adjacent Property owner may develop, such as facilities for boat maintenance and repair, yacht brokerage, office(s), retail sales or related uses (the "Adjacent Project"). In connection with the Adjacent Project, Declarant or the Adjacent Property owner may expand the Marina by constructing and adding Marina Slip No. 54 to or adjacent to the Marina. Marina Slip No. 54 shall not, however, be deemed to be part of the Adjacent Project. At such time as the Adjacent Project is substantially completed, and whether or not Marina Slip No. 54 is constructed, the sublessee of Marina Slip No. 54 (or the owner of the Adjacent Property) will (i) assume one-half (50%) of the rent, real estate or leasehold taxes, and other charges arising under the City Lease, whereupon the Marina Pro Rata Share of the other Marina Slip Subleases will be adjusted as to the other half of such rent and other charges under the City Lease, as set forth in Section 1.1.28, and (ii) continue to pay its regular Marina Pro Rata Share (based on a deemed slip length of 110 feet) of the other Marina Common Expenses arising under its Marina Slip sublease.

- 14.3. **Special Assessments.** If a special assessment becomes chargeable against a Unit under the authority of this Declaration or the Bylaws, the Board shall determine the amount of such special assessment and fix the time for payment, which may be annually, quarterly or monthly. Unless required to be paid at a different time, the special assessment shall be added to the Unit's annual payment of common expenses and be included in the assessment against the Unit.
- 14.4. **Notice of Assessment.** The Board shall notify each Owner in writing of the amount of the annual assessments to be paid for such Owner's. Unit and shall furnish copies of the Budgets to the Owners, and, if so requested, to their respective Mortgagees.
- 14.5. **Payment of Assessments.** On or before the first day of each calendar year, each Owner shall pay or cause to be paid to the treasurer of the Association the assessment against that Owner's Unit or Marina Slip for that year. Any assessment not paid by the first day of the calendar year shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article 15.
- 14.6. **Proceeds Belong to Association.** All assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.
- 14.7. **Failure to Assess.** Any failure by the Board or the Association to make the Budgets and assessments hereunder before the expiration of any budget period for the ensuing period shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent time period, and the annual assessments and amounts previously established shall continue until a new assessment is established.
- 14.8. **Certificate of Unpaid Assessments.** Upon the request of any Owner, Mortgagee, prospective purchaser (or sublessee), or prospective Mortgagee of a Unit, the Board shall furnish within fifteen (15) days after request therefor a certificate in recordable form stating the amount, if any, of unpaid assessments charged to a Unit. The certificate shall be binding upon the Board, the Association and every Owner as to the amount of such indebtedness on the date of the certificate unless and to the extent known by the recipient to be false.
- 14.9. **Separate Accounts.** The Board shall require that the Association maintain separate accounts for the Condominium and the Marina, and within each account separate accounts for current operations, reserves, and a special separate reserve account for payment of insurance. No funds of the Association shall be commingled with the funds of any other association or with the funds of the Managing Agent or any other person responsible for the custody of such funds. Each month the Board shall first deposit to the insurance reserve a count that portion of the common expense

assessment necessary to pay at least one-twelfth (1/12th) of the total cost of all of the insurance policies provided regarding the Condominium and Marina and such insurance reserve account shall be held separately and inviolate until utilized for payment of insurance premiums. Thereafter the remainder of the assessments and charges collected may be utilized for payment of other expenses or deposited or credited to other accounts. Any action affecting reserve funds, including issuance of checks, shall require the signature of at least two (2) persons who are officers and directors of the Association. All such assessments and charges shall be collected and held in trust for, and administered and expended for the benefit of, the Owners.

ARTICLE 15 LIEN AND COLLECTION OF ASSESSMENTS

- 15.1. **Assessments Are a Lien; Priority.** All unpaid sums assessed by the Association for the share of the common expenses chargeable to any Unit and any sums specially assessed to any Unit under the authority of this Declaration or the Bylaws (together with interest, fines, late charges, costs, and attorneys' fees in the event of delinquency) shall constitute a continuing lien on the Unit, the corresponding Marina Slip sublease, and all its appurtenances from the time the assessment is due. The lien for such unpaid assessments shall be prior to all other liens and encumbrances except (a) Liens and encumbrances recorded before the recording of the Declaration, (b) a Mortgage on the Unit recorded before the date on which the assessment sought to be enforced became delinquent, and (c) liens for real property taxes and other governmental assessments or charges against the Unit. Except as provided above (and subject to the provisions of Section 15.2 below), a Mortgagee that obtains the right of possession of a Unit through a foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Unit free of any claims for assessments or installments thereof that became due prior to such right of possession, but will be liable for the common expenses and assessments that become due thereafter. The Unit's past due share of common expenses or assessments shall become new common expenses chargeable to all of the Owners, including the Mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to their respective Condominium Pro Rata Share of the Common Elements; however, the Owner shall continue to be personally liable for such past accrued assessments, as provided in Section 15.3.
- 15.2. **Lien May be Foreclosed.** Each Unit in the Condominium and each Owner's leasehold interest in the corresponding Marina Slip is hereby granted to DWTR&J Corp., a Washington corporation, as trustee, in trust with power of sale, to secure the obligation of each Unit (and the Owner thereof) to pay assessments against such Unit made by the Association and to secure the obligations of such Owner under the Marina Slip sublease. The Units and Marina Slips are not used principally for agricultural or farming purposes. The power of sale granted hereby is operative in case of any default in the obligation of an Owner to pay any assessment made against such Owner's Unit. The Association's lien for delinquent assessments is not subject to the provisions of Chapter 6.13 RCW. The lien may be enforced by the Managing Agent or the Board, acting on behalf of the Association, judicially in the manner set forth in Chapter 61.12 RCW or nonjudicially in the manner set forth in Chapter 61.24 RCW for nonjudicial foreclosures of deeds of trust. Unless the Association elects to foreclose its lien nonjudicially pursuant to Chapter 61.24 RCW, the lien shall also be prior to any Mortgage described in Section 15.1(b) to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association, which would have become due during the six (6) months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a Mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a

Mortgagee, or the date of recording of the notice of forfeiture in a proceeding by the vendor under a real estate contract. The priority of the Association's lien against any Unit and Marina Slip encumbered by a Mortgage held by a Mortgagee which has given to the Secretary of the Association a written request for notice of delinquent assessments shall be reduced by up to three (3) months if and to the extent the Association's lien priority includes delinquencies which relate to a period after such holder has given such notice and before the Association gives the holder a written notice of the delinquency. The Managing Agent or the Board, acting on behalf of the Association, shall have the power to bid on at the foreclosure sale, acquire, hold, lease, mortgage and convey the Unit. The lien for delinquent assessments and the personal liability for payment of the assessments shall be extinguished unless proceedings to enforce the lien are instituted within three (3) years after the amount of assessment sought to be recovered become due.

- 15.3. **Assessments Are Personal Obligations.** In addition to constituting a lien on the Unit, Marina Slip leasehold and all appurtenances thereto, all sums assessed by the Association chargeable to any Unit (together with interest, costs and attorneys' fees in the event of delinquency) shall be the joint and several personal obligations of the Unit Owner when the assessment is made and such Owner's successors in title who assume such obligations, for all assessments due up to the time of each Owner's conveyance of the Unit, without prejudice to any such successor's ability to recover from the Owner the amounts paid by such successor therefor. Suit to recover a personal judgment for any delinquent assessments shall foreclosing or waiving the lien securing them.
- 15.4. **Receiver.** From the later of (a) commencement of an action by the Association to foreclose a lien for delinquent assessment(s) against a Unit or (b) delinquency of the assessment(s), the Association may appoint a receiver to collect from any lessee of the Unit the rent for the Unit and corresponding Marina Slip as and when due. If the rental is not paid, the receiver may obtain possession of the Unit and Marina Slip, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the Unit and Marina Slip, or permit its rental to others and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit and Marina Slip, then to applicable charges, then to costs, fees and charges of the foreclosure action, and then to the payment of the delinquent assessments. Exercise by the Association of the foregoing rights shall not effect the priority of any preexisting liens on the Unit.
- 15.5. **Late Charges and Interest on Delinquent Assessments.** The Board may from time to time establish late charges and a rate of interest to be charged on assessments that may thereafter become delinquent. In the absence of another established nonusurious rate, delinquent assessments shall bear interest at the rate of eighteen percent (18%) per annum.
- 15.6. **Recovery of Attorneys' Fees and Costs.** In any action to collect delinquent assessments, including appeal thereof and enforcement of a judgment, the prevailing party shall be entitled to recover as a part of its judgment a reasonable sum for attorneys' fees and expenses reasonably incurred in connection with the action, in addition to taxable costs permitted by law.
- 15.7. **Termination of Utility Service.** If an assessment becomes delinquent the Board may give notice to the delinquent Owner to the effect that unless the delinquent assessment is paid within ten (10) days (or such longer time as is specified in the notice) any or all utility services furnished to the Unit or Marina Slip by the Association or under the Association's control will be severed and remain severed until the delinquent assessment has been paid. If the delinquency is not cured in the time specified the Board may take the action described in the notice.
- 15.8. **Remedies Cumulative.** The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under the law although not

expressed herein, either concurrently or in any order.

- 15.9. **Security Deposit.** An Owner who has been delinquent in paying its annual assessments for two (2) of the three (3) preceding annual payment dates may be required by the Board, from time to time, to make and maintain a security deposit not in excess of two (2) estimated annual assessments, which shall be collected and shall be subject to penalties for nonpayment as are other assessments. The deposit shall be held by the Association in a separate fund, credited to such Owner, and may be resorted to by the Association at any time when such Owner is ten (10) days or more delinquent in paying its assessments.

ARTICLE 16 COMPLIANCE WITH DECLARATION

- 16.1. **Enforcement.** Each Owner and the Association shall comply strictly with the provisions of this Declaration and with the Bylaws and administrative rules and regulations passed hereunder, as the same may be lawfully amended from time to time, and with all decisions adopted pursuant to this Declaration and the Bylaws and administrative rules and regulations. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both maintainable by the Board acting through its officers on behalf of the Owners, or by any aggrieved Owner on its own.
- 16.2. **No Waiver of Strict Performance.** The failure of the Board (or the Managing Agent) in any instance to insist upon the strict compliance with this Declaration or the Bylaws or rules and regulations of the Association, or to exercise any right contained in such documents or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term covenant, condition, or restriction. The receipt by the Board of payment of an assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board.

ARTICLE 17 LIMITATION OF LIABILITY

- 17.1. **Liability for Utility Failure, Etc.** Except to the extent covered by insurance obtained by the Board, none of the Association, the Board, the Managing Agent or the Declarant shall be liable for: the failure of any utility or other service to be obtained and paid for by the Board; any injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may lead or flow from outside or from any parts of the Building and Common Elements or Limited Common Elements, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.
- 17.2. **No Personal Liability.** Except as otherwise provided in the Condominium Statute, so long as a Board member, Association committee member, Association officer, Declarant or the Managing Agent has acted in good faith, with ordinary and reasonable care (and in the case of Board officers and members appointed by Declarant, with the care required of a fiduciary of the Owners), without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for and damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person; provided that this section shall not apply where the Consequences of such act, omission, error, or negligence is covered by insurance obtained by the Board.

ARTICLE 18 INDEMNIFICATION

Each Board member and Association committee member and Association officer, and Declarant and the Managing Agent shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of holding or having held the position of Board member, Association committee member, Association officer or Managing Agent, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association; further provided that Declarant shall not be entitled to indemnification against any expenses or liabilities for which it is liable under the Condominium Statute; and further provided that nothing contained in this Article 18 shall be deemed to obligate the Association to indemnify any Owner who is or has been a Board member or officer of the Association with respect to any duties or obligations assumed or liabilities incurred by he or she under or by virtue of the Declaration as an Owner of a Unit covered thereby.

ARTICLE 19 INSURANCE

- 19.1. **General Requirements.** The Board shall cause the Association to purchase and maintain at all times as a common expense a policy or policies and bonds necessary to provide casualty insurance; comprehensive liability insurance; fidelity bonds; worker's compensation insurance to the extent required by applicable laws; insurance against loss of personal property of the Association by fire, theft, or other causes with such deductible provisions as the Board deems advisable; insurance, if available, for the protection of the Association's directors, officers, and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable or is required by the Condominium Statute. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from an insurance carrier rated Triple A (and rated in Class XI or better financial condition) by Best's Insurance Reports or equivalent rating service, and licensed to do business in the State of Washington. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect casualty, flood, and liability insurance and a fidelity bond that meets the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association ("FNMA") the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage corporation ("FHLMC"), or the Veterans Administration ("VA"), so long as either is a Mortgagee or Owner of a Unit, except to the extent such coverage has been waived in writing by FNMA, GNMA, FHLMC or VA, as may be appropriate. All such insurance policies and fidelity bonds shall provide that coverage may not be canceled, modified or allowed to lapse (including cancellation for nonpayment of premium) without compliance with all applicable provisions of Chapter 48.18 RCW pertaining to cancellation or nonrenewal of insurance and at least thirty (30) days prior written notice to any and all Mortgagees, designated servicers of Mortgagees, and all insurers that issue certificates or memoranda to the Association and, upon written request, to any Owner or Mortgagee. Promptly upon the conveyance of a Unit, the new Owner shall notify the Association of the date of the conveyance and the Owner's name and address. The Association shall notify each insurance

company that has issued an insurance policy to the Association for the benefit of the Owners under this Article 19 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

- 19.2. **Casualty Insurance.** The casualty insurance shall, at the minimum, consist of a standard form of fire insurance policy with extended coverage or "all risk" endorsements in an amount equal to the full replacement value (i.e., one hundred percent (100%) of current replacement cost exclusive of land, foundation, excavation, and other items normally excluded from coverage) of the Building, Common Elements, the Marina, and all fixtures and equipment belonging to the Association, including without limitation fixtures and equipment relating to the Marina, with an "Agreed Amount Endorsement" or its equivalent, if available, or an "Inflation Guard Endorsement," and, if required by FNMA, a "Demolition and Contingent Liability from Operation of Building Laws Endorsement," an "Increased Cost of Construction Endorsement," and "Earthquake Damage Endorsement," and such other endorsements as FNMA, GNMA, FHLMC, or VA deems necessary and so long as either is a Mortgagee or Owner of a Unit, except to the extent such coverage is waived by FNMA, GNMA, FHLMC, or VA, as may be appropriate. In addition to protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, the policy shall provide protection against loss or damage from sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as are customarily covered in policies for residential condominium projects of similar construction in the greater Seattle metropolitan area. The policy or policies shall provide for separate protection for each Unit to the full insurance replacement value thereof (limited as above provided), and a separate loss payable endorsement in favor of the holder of the Mortgage that creates a lien against such Unit. The insurance proceeds may be made payable to any trustee with which the Association may enter into an insurable trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies. The policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law. The policy or policies shall have deductibles of no greater than the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the coverage amount.
- 19.3. **Comprehensive Public Liability Insurance.** The comprehensive policy of public liability insurance shall insure the Board, the Association, the Owners, Declarant, and the Managing Agent, and cover 11 of the Building, Common Elements and Marina, with a "Severability of Interest Endorsement" or equivalent coverage that would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or of another Owner, and shall include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to residential condominium projects of similar construction in the greater Seattle metropolitan area. The limits of liability shall not be less than One Million Dollars (\$1,000,000) covering all claims for personal injury and/or property damage arising out of a single occurrence.
- 19.4. **Additional Policy Provisions.** The Board shall exercise its reasonable best efforts to obtain insurance policies pursuant to Sections 19.2 and 19.3 containing the following provisions and limitations:
- 19.4.1. The named insured shall be the Association, as trustee for each of the Owners in

accordance with their respective Condominium Pro Rata Share in the Condominium Common Elements and their Marina Pro Rata Share in the Marina. The insurance proceeds may be made payable to any trustee with which the Association may enter into an insurance trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies.

19.4.2. Such policies shall not provide for contribution by or assessment against mortgagees or become a lien on the Property or the Marina superior to the lien of a Mortgage.

19.4.3. In no event shall the insurance coverage be brought into contribution with insurance purchased by the Owners of the Units or their Mortgagees.

19.4.4. Coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Association, or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the Property or Marina over which the Association has no control.

19.4.5. A waiver of subrogation by the insurer as to any and all claims against the Association, any Owner and their respective agents, employees, household members, or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

19.4.6. A standard mortgagee clause which shall:

19.4.6.1. Provide that any reference to a mortgagee in the policy shall mean and include all holder of Mortgages that create liens against any Units or Marina Slips, or Unit or Marina Slip leaseholds or sub leaseholds in their respective order of preference, whether or not named therein;

19.4.6.2. Provide that such insurance as to the interest of any holder of a Mortgage shall not be invalidated by any act or neglect of the Board or Owners or any persons under any of them;

19.4.6.3. Waive any provision invalidating such mortgagee clause by reason of the failure of any holder of a Mortgage to notify the insurer of any hazardous use or vacancy, any requirement that such holder pay any premium thereon, and any contribution clause; and

19.4.6.4. Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Board or the insurance trustee.

19.5. **Fidelity Bonds.** The required fidelity bonds shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association or the Managing Agent and all other persons who handle or are responsible for handling funds of the Association and be in an amount equal to at least fifty-five percent (55%) of the estimated annual operating expenses of the Condominium, including reserves. All such fidelity bonds shall name the Association as an obligee and contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

19.6. **Owners' Individual Insurance.** Each Owner may obtain additional insurance on his or her Unit and its contents at his or her own expense but only if the Owner's insurance does not decrease the amount that the Board, or any trustee for the Board, on behalf of all of the Owners, will realize under any insurance policy that the Board may have in force on the Property. Each Owner shall notify the Board of all improvements by the Owner to his or her Unit the value of which is in excess of One Thousand Dollars (\$1,000). Any Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner shall file a copy of his or her individual policy or policies with the Board within thirty (30) days after

such Owner buys it, and the Board shall immediately review its effect with the Board's insurance broker, agent, or carrier.

- 19.7. **Insurance Proceeds.** Insurance proceeds for damage or destruction to any part of the Property shall be paid to the Board on behalf of the Association which shall segregate such proceeds from any other funds of the Association for use and payment as provided for in Section 14.9. The Association acting through the Board shall have the authority to settle and compromise any claim under insurance obtained by the Association, each Owner hereby appoints the Association as its attorney in fact for this purpose and the insurer may accept the release and discharge of liability made by the Board on behalf of the named insured under the policy.
- 19.8. **Insurance to Meet Secondary Market Requirements.** In addition to any other insurance requirements contained in this Declaration, the Association shall maintain in continuous effect such casualty, flood and liability insurance and fidelity bonds meeting the insurance and bonding requirements for the Condominium, as established by FNMA, GNMA, FHLMC and VA so long as such entity is an Owner or Mortgagee of any Unit, except to the extent such insurance coverage or bond has been waived in writing by such entity.

ARTICLE 20 DAMAGE AND REPAIR OF DAMAGE TO PROPERTY

- 20.1. **Initial Board Determination.** In the event of damage to any part of the Property, the Marina or the Harbor Area, the Board shall promptly, and in all events within thirty (30) days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable:
- 20.1.1. The nature and extent of the damage, together with an inventory of the Property or Marina improvements directly affected thereby.
- 20.1.2. A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two (2) or more firm bids obtained from responsible contractors.
- 20.1.3. The expected insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.
- 20.1.4. The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds and the amount of the assessments that would have to be made against each Unit and/or Marina Slip sublessee, as the case may be, if the excess cost were to be paid as a maintenance expense and specially assessed against all the Units or Marina Slip sublessees in proportion to their Condominium Pro Rata Share with respect to the Condominium damages or the Marina Pro Rata Share with respect to Marina or Harbor Area damage.
- 20.1.5. The Board's recommendation whether the damage should be repaired.
- 20.2. **Notice of Damage.** The Board shall promptly, and in all events within thirty (30) days after the date of damage, provide each Owner and each Institutional Holder of a Mortgage with a written notice describing the damage and summarizing the initial Board determinations made under Section 20.1. If the Board fails to do so within said thirty (30) days, any Owner or Institutional Holder of a Mortgage may make the determinations required under Section 20.1 and give the notice required under this Section 20.2.
- 20.3. **Definitions: Damage, Repair, Emergency Work.** As used in this Article 20:
- 20.3.1. Damage shall mean all kinds of damage, whether of slight degree or total destruction.
- 20.3.2. Repair shall mean restoring the improvements or Harbor Area to substantially the condition they were in before they were damaged, with each Unit or Marina slip having

substantially the same vertical and horizontal boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.

20.3.3. Emergency Work shall mean work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the improvements and to protect the Owners from liability from the condition of the site.

20.4. **Execution of Repairs:**

20.4.1. The Board shall promptly repair the damage and use the available insurance proceeds therefor unless (a) the Condominium or Marina Slip subleases are terminated, (b) the repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) before the repairs (other than Emergency Work) are begun the Owners decide in accordance with this Article not to repair. If the cost of repair exceeds the available insurance proceeds the Board shall impose a special assessment against all Units or Marina Slip sublessees, as the case may be, at the Condominium Pro Rated Share for Condominium damage and at the Marina Pro Rata Share for Marina or Harbor Area damage, in an amount sufficient to pay the excess costs.

20.4.2. The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and take such other action as is reasonably necessary to make the repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

20.4.3. The Board may enter into a written agreement with a reputable financial institution or trust or escrow company that the institution or company shall act as an insurance trustee to adjust and settle any claim for casualty loss in excess of Fifty Thousand Dollars (\$50,000) or for the institution or company to collect the insurance proceeds and carry out the provisions of this Article 20.

20.5. **Damage Not Substantial;** Assessment Under Three Thousand Five Hundred Dollars (\$3,500). If the estimated assessment determined under subsection 20.1.4 does not exceed Three Thousand Five Hundred Dollars (\$3,500) for any one Unit, the damage will be deemed not to be substantial and the provisions of this Section 20.5 shall apply.

20.5.1. Either the Board or the requisite number of Owners, within fifteen (15) days after the notice required under Section 20.2 has been given, may but shall be required to, call a special Owners' meeting in accordance not with Section 10.8 and the Bylaws to decide whether to repair the damage

20.5.2. Except for Emergency Work, no repairs shall be commenced until after the fifteen (15) day period and until after the conclusion of the special meeting if such a special meeting is called within the fifteen (15) days.

20.5.3. A concurring vote of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated (including Owners of all Units or Limited Common Elements which would not be rebuilt), and eighty percent (80%) of the Institutional Holders of Mortgages will be required to elect not to repair the damage. The failure of the Board and the Owners within the fifteen (15) day period to call a special meeting shall be deemed a decision to repair the damage.

20.6. **Substantial Damage;** Assessment Over Three Thousand Five Hundred Dollars (\$3,500). If the

estimated assessment determined under subsection 20.1.4 is Three Thousand Five Hundred Dollars (\$3,500) or more for any one Unit, the damage will be deemed substantial and the provisions of this Section 20.6 shall apply.

20.6.1. The Board shall promptly, and in all events within thirty (30) days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within thirty (30) days, then notwithstanding the provisions of Section 10.8 and the Bylaws, any Owner or Institutional Holder of a Mortgage may call and conduct the meeting.

20.6.2. Except for Emergency Work, no repairs shall be commenced until the conclusion of the special Owners' meeting.

20.6.3. A concurring vote of at least eighty percent (80%) of the total voting power {excluding that of Declarant} in the Association will be required to elect not to repair the damage. Failure of the Board, the Owners, and the Institutional Holders of Mortgages to conduct the special meeting provided for under subsection 20.6.1 within ninety (90) days after the date of damage shall be deemed a unanimous decision to repair the damage.

20.7. **Effect of Decision Not to Repair.** Prior to and notwithstanding a decision under either Subsections 20.5.3 or 20.6.3 not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the Property shall thereafter be held and distributed as follows:

20.7.1. If Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and eighty percent (80%) of the Institutional Holders of Mortgagees vote to terminate the Condominium:

20.7.1.1. The Property shall be owned in common by the Owners and shall no longer be subject to this Declaration or to condominium ownership;

20.7.1.2. Each Owner's respective undivided interest in the Property shall be the same as the proportion of the fair market value of that Owner's unit and Condominium Pro Rata Share of the Common Elements (as determined by one (1) or more appraisers selected by the Association) to the fair market value of all Units and Common Elements immediately before the casualty. If any Unit or any Common Element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, each Owner's respective undivided interest in the Property shall be the same as each Owner's Condominium Pro Rata Share of the Common Elements immediately before the termination;

20.7.1.3. Any Mortgages and other liens affecting any of the Units shall be deemed transferred in accordance with the existing priorities to the Owners' respective undivided interests in the Property; and

20.7.1.4. The Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund, which fund shall be divided into separate shares, one (1) for each Owner in a percentage equal to the percentage of undivided interest owned by such Owner in the Property. After first paying out of the respective share of each Owner, to the extent sufficient for the purpose, all Mortgages and other liens on such Owner's interest, the balance remaining in each share shall be distributed to the Owner. Notwithstanding the foregoing, the right of partition shall be suspended if an agreement ("Sales Agreement") to sell the

Property is provided for in an agreement ("Termination Agreement") to terminate the Condominium entered into by Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. The suspension of the right to partition shall continue unless and until the first to occur of the following: (1) no binding obligation to sell exists three (3) months after the recording of the Termination Agreement, (2) the Sales Agreement is terminated, or (3) one (1) year after the Termination Agreement is recorded.

20.7.2. If Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and eighty percent (80%) of the Institutional Holders of Mortgagees do not vote to terminate the Condominium:

20.7.2.1. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium;

20.7.2.2. The insurance proceeds attributable to any Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of such Units and the Owners of the Units to which such Limited Common Elements were allocated, or to the holders of any Mortgages or other liens affecting such Units, as their interests may appear; and

20.7.2.3. The remainder of the insurance proceeds shall be distributed to all of the Owners and holders of Mortgagees or other liens, as their interests may appear, in proportion to the Owners' respective Condominium Pro Rata Share in the Condominium Common Elements. If the Owners vote not to rebuild any Unit, that Unit's Condominium Pro Rata Share shall be automatically reallocated upon such vote as if the Unit had been condemned as provided in Article 21.

ARTICLE 21 CONDEMNATION

21.1. **Consequences of Condemnation; Notices.** If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority- (collectively, a "Taking") notice of the Taking shall promptly be given to each Owner and to each Institutional Holder of a Mortgage and the provisions of this Article 21 shall apply. The Association, acting through the Board, shall represent the Owners in any proceedings, negotiations, settlements or agreements in connection with any taking and each Owner shall appoint the Association its attorney-in-fact for this purpose.

21.2. **Proceeds.** All compensation, damages, or other proceeds of the Taking (collectively, the "Award") shall be payable to the Association, as trustee for the Owners and Mortgagees as their interests may appear.

21.3. **Complete Taking.** If the entire Property is taken the Condominium ownership shall terminate effective as of the acquisition of the Property by the condemning authority. The Award shall be apportioned among the Owners in proportion to their respective Condominium Pro Rata Share in the Condominium Common Elements; provided that, if a standard different from the value of the Property as a whole is employed to measure the Award in the Taking, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the foregoing principle, the Board shall as soon as practicable determine the share of the Award to which each Owner is entitled. Each Owner's share shall be applied first to the payment of all Mortgages and other liens on the Owner's interest in accordance with the existing priorities and the balance of each share, if any, shall be distributed to the Owner.

- 21.4. **Partial Taking.** If less than the entire Property is taken the Condominium ownership shall not terminate. The Condominium Pro Rata Share of all Units taken shall be reallocated to the remaining Units in proportion to the respective Condominium Pro Rata Share of those Units before the Taking and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of the Unit is taken, which remnant may not practically or lawfully be used for any purpose permitted by this Declaration, shall become a Common Element effective as of the acquisition of the Property taken by the condemning authority. If part of a Unit is taken and the remaining part may be practically and lawfully used for a purpose permitted by this declaration, that Unit's Condominium Pro Rata Share shall not be reduced. Each Owner shall be entitled to a share of the Award determined in the following manner:
- 21.4.1. As soon as practicable the Board shall, reasonably and in good faith, allocate the Award among compensation for Property taken, severance damages, or other proceeds.
- 21.4.2. Any amount allocated to taking of or injury to the Common Elements shall be apportioned among Owners in proportion to their respective Condominium Pro Rata Share in the Condominium Common Elements.
- 21.4.3. Any amount allocated to the taking or partial taking of or injury to particular Unit, Limited Common Elements appurtenant thereto and/or improvements made by the Owner therein shall be apportioned to the Unit.
- 21.4.4. Any amount allocated to severance damages shall be apportioned to the Units that were not taken.
- 21.4.5. Any amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board determines to be equitable in the circumstances.
- 21.4.6. If an allocation of the Award has already been established in negotiation, judicial decree, or otherwise, then in apportioning the Award the Board shall employ that allocation to the extent it is relevant and applicable.
- 21.4.7. Distribution of apportioned proceeds shall be made to the Owners and their respective Mortgagees in the manner provided in Section 21.3.
- 21.5. **Reconstruction and Repair.** Any reconstruction and repair necessitated by a Taking shall be governed by the procedures specified in Article 20 for repair of damage, provided that the Board may retain and apply such portion of each Owner's share of the Award as is necessary to discharge the Owner's liability for any special assessment arising from the operation of Article 20.

ARTICLE 22 EASEMENTS

- 22.1. **In General.** The Property is subject to those covenants, conditions, restrictions and easements of record, including but not limited to the easements described in the Short Plat No. ANA 92-005 and/or the Declaration of Easements described in Section 7.3. In addition, each Unit has an easement in and through each other Unit and the Common Elements for all support elements and utility, wiring, heat, and service elements and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. Each Unit and all the Common elements are specifically subject to easements as required for the electrical wiring and plumbing for each Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law.
- 22.2. **Encroachments.** Each Unit and all Common Elements are hereby declared to have an easement over all adjoining Units and Common Elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction,

repairs, settlement, shifting, or movement of any portion of the Property, or any other similar cause, and any encroachment due to Building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and/or Common Elements so long as such encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by such encroachments; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit if the encroachment was caused by the willful act with full knowledge of the Owner. The encroachments described in this Section 22.2 shall not be construed to be encumbrances affecting the marketability of title to any Unit.

- 22.3. **Utility Easements** Granted by Declarant. Declarant grants to each company or municipality providing utility services to the Condominium, the Marina or to the Owners an easement for the installation of all utilities serving the Condominium or the Owners, including, without limitation, such utilities services water, sanitary sewer, storm sewer, electricity, gas, cable television and telephone, and an easement for reasonable access over the roadways and Common Elements to the utility service facilities. The Property is also subject to those easements indicated on the Survey Map and Plans recorded with this Declaration.

ARTICLE 23 HARBOR AREA LEASE; MARINA SUBLEASES

- 23.1. **Nature of Declarant's Interest in the Harbor Area; Assignment of The City Lease; Indemnification.**

- 23.1.1. Declarant is subleasing the Harbor Area from the City pursuant to the City Lease. Declarant contemplates assigning its interests under the City Lease to the Association while reserving rights (i) to unleased Marina Slips, (ii) to Marina Slip No. 54, whether or not built, (iii) to build Marina and/or reconfigure Slip No. 54, and (iv) to unsold Marina Pro Rata Interests in the Marina Improvements. Declarant may assign its interests under the City Lease without the consent of any Owner or the Association. If Association shall assume Declarant's obligations under the City Lease and all Marina Slip Subleases, the Association shall indemnify and hold DVI and Declarant harmless from and against any further obligation or liability under the City Lease or any Marina Slip Sublease from and after the date of such assignment and neither DVI nor Declarant shall have any further liability or obligation under the City Lease or the Marina Slip Subleases to the Association or Owners. Declarant shall provide Owners with notice of any such assignment by Declarant.

Because the City Lease is a sublease of the DNR Lease, the consent of the DNR and the City is required before any assignment of the City Lease by Declarant to the Association can be completed. If the City or DNR fails to approve the assignment of the City Lease to the Association, Declarant may require the Association to enter into a management agreement or other contract by which the Association assumes complete control and management of the Marina and assumes all obligations relating to performance under and compliance with the City Lease and all Marina slip subleases and neither DVI nor Declarant shall have any further obligation or liability to the Association or Owners under the City Lease or any Marina Slip Subleases, and from and after such date the Association shall indemnify and hold Declarant and DVI harmless from and against any such obligations or liabilities arising out of or in connection with such obligations. Owners shall be deemed to have approved and agreed to the Association's entering into any such management agreement or other contract as the Declarant may require. The foregoing assumption and indemnity obligations of the Association shall be binding upon the Association notwithstanding the failure of the

Association and Declarant to enter into a management agreement.

For purposes only of this Article 23, references to "Lessor" shall be to either the Association if the City Lease is assigned by Declarant to the Association or if Declarant and the Association enter into a management agreement as set forth above, or the Declarant if the City Lease is not assigned to the Association by the Declarant or if the Declarant and the Association do not enter into a management agreement, and their respective successors or assigns.

NEITHER THE TERMINATION OR EXPIRATION OF THE CITY LEASE, DNR LEASE OR ANY MARINA SLIP SUBLEASE SHALL AFFECT THE EXISTENCE OF OR THE SIZE OF THE CONDOMINIUM OR THE OBLIGATIONS OR RIGHTS CREATED UNDER THIS DECLARATION PERTAINING TO THE CONDOMINIUM.

23.1.2. The Association shall indemnify and hold harmless DVI and Declarant, its authorized agents and employees, from all claims, costs, damages, cleanup costs, or expenses of any nature whatsoever (including, without limitation, attorneys' fees) arising out of or in connection with the City Lease or the DNR Lease and any Marina Slip Sublease, whether such claims are asserted for acts or omissions occurring prior to or after Declarant's assignment of the City Lease to the Association or transfer of management and control of the Marina to the Association, provided, (i) the Association shall: have no liability hereunder to indemnify a party with respect to injuries or claims caused by or resulting from the sole negligence or willful misconduct of such party, and (ii) if a claim or injury arises out of concurrent negligence or willful misconduct of DVI, Declarant and the Association, the Association shall be liable hereunder only to the extent of the negligence of the Association or its agents or employees.

23.2. –Terms and Conditions of Marina Slip Subleases. At the time of purchasing a Unit, Owners shall also enter into a Marina Slip Sublease (the "Sublease") with Declarant (or the Association, as the case may be) for the Marina Slip corresponding to the Unit purchased, substantially in the form of **Exhibit D** attached hereto. In addition to its other responsibilities, the Association shall collect rents and other charges owing under the Marina Slip Subleases, and shall pay Marina Common Expenses, including rent and other charges owing under the City Lease, and shall serve as the representative for all of the Owners, as sublessees of the Marina Slips, in all communications and negotiations with the City and DNR as may be required under the DNR Lease and/or City Lease; provided further, the Association may take such action with respect thereto as is reasonably necessary to protect the nondefaulting Owners/sublessees and shall have a right to reimbursement therefor from such defaulting Owner/sublessee.

The terms not otherwise defined herein shall have the meanings ascribed to them in the Sublease. Owners shall sublease Marina Slips on the terms and conditions contained in the Sublease executed with respect to such Owner's Marina Slip and the terms and conditions contained in this Article 23. Should any conflict or inconsistency arise between the terms and conditions of the Sublease and this Article 23, the terms and conditions of the Sublease shall control.

23.2.1. Condemnation. If the Harbor Area or the Marina or any material portion of the Harbor Area or the Marina is condemned or is taken in an eminent domain or condemnation proceeding, or is transferred in lieu thereof, then each Sublease may be terminated upon thirty (30) days written notice given by either party. As used herein, "material portion" means a portion that would render the balance of the Harbor Area or Marina inoperable as a boat moorage marina. All condemnation awards and payments in lieu thereof shall be paid to and owned by Lessor. Owner hereby assigns to Lessor any award made in such taking or

condemnation, together with all rights of Owner hereafter arising in or to any part thereof; provided, however, that if there is a specific award of damages to Owner for its relocation expenses, then Owner shall be entitled to such portion of the award notwithstanding the foregoing assignment.

- 23.2.2. Improvements. Except as provided in Section 14.2 above, no improvement or alterations of any kind shall be made to or placed upon the Marina by Owner without the prior written authorization of Lessor. Authorized improvements constructed or placed on the Marina during the term of the Sublease by Owner shall become part of the Marina Improvements and become the undivided property of all Owners' in accordance with their Marina Pro Rata Share subject to the terms of the Marina Slip Subleases, the City Lease and the DNR Lease. Owner shall not remove any improvements from the premises without Lessor's consent. Upon the cancellation or expiration of the Sublease, at Lessor's request, Owner shall sever, remove and dispose of those improvements on the premises placed thereon by Owner within thirty (30) days from date of termination or expiration. In removing such improvements, Owner shall use all due care necessary to avoid damaging the Marina. Owner shall repair any damage and indemnify Lessor for any loss arising from Owner's removal of any improvements from the premises.
- 23.2.3. Restrictions on Use. In connection with use of the Marina Slip, Harbor Area, and Marina, Owner, and any assignee or sublessee of any Owner, shall conform to all restrictions and requirements of this Declaration, the Rules and Regulations of the Association, the City Lease, and applicable laws, regulations, rules, ordinances, restrictions, permits, or order of any public authority affecting the premises and the use thereof. Owner represents and warrants to Lessor that Owner has and will maintain during the term of the Sublease all necessary licenses and permits required to operate and utilize its boat to be moored at the Marina Slip.
- 23.2.4. Access by Owners to Marina. As used herein, "Main Walkways, Docks and Piers" shall mean those walkways, docks and piers in the Marina other than those finger piers ("Finger Piers") located on either side of each Marina Slip. All Owners shall have common access to the Main Walkways, Docks and Piers in the Marina other than that walkway leads to Marina Slip No. 54. Other than access rights reserved to Declarant and in connection with the Adjacent Project as discussed in this Article 23, access to all of the walkway leading to Marina Slip 54 (if and when built) is restricted to the Owner of Marina Slip No. 54, and access to the first 50 feet of the walkway leading to Marina Slip No. 54 (if and when built) is restricted to the Owners of Marina Slips Nos. 54 and 55. Each Owner shall have exclusive access to the Finger Piers on either side of his or her Marina Slip and to the dockside locker located at the head of his or her Marina Slip.
- 23.2.5. Owner's Insurance on Personal Property and Boat. Owner may maintain an all-risk policy of casualty insurance on all personal property located in the Marina Slip or on the finger piers or in the locker located at the head of the Marina Slip, including, without limitation, Owner's boat moored at the Marina Slip, with malicious mischief and vandalism endorsement, in the amount of the full insurable value of the property insured. Upon the execution of the Sublease, Lessor shall be provided with copies of all such required insurance policies and periodically thereafter with evidence of the renewal thereof at least 30 days before the end of any insurance term. All such policies shall contain a certificate in favor of Lessor providing that such policy shall not be canceled or modified without at least 30 days' notice to Lessor.

- 23.2.6. Marina Slip Maintenance. Owner shall not permit or cause any waste to the Marina Slip or Marina. Owner shall not allow debris, material, or refuse to accumulate on the Marina Slip, and shall not release or dispose of any such material within the Harbor Area or Marina. Owner shall keep the Marina Slip clean of marine biological material in accordance with the standard maintained at first class marinas in the area or as may be reasonably required by Lessor. If Owner fails to comply with its obligations under this Paragraph, Lessor may cause such maintenance or repairs to be made or clean up and dispose of such debris, refuse or materials at the sole cost and expense of Owner, such cost, plus interest at the default rate of 18% per annum until paid, shall be due and payable on demand.
- 23.2.7. Indemnity. Owner will indemnify, defend, protect, save and hold harmless Lessor, its authorized agents and employees, from all claims, costs, damages, cleanup costs or expenses of any nature whatsoever (including, without limitation, attorneys' fees) arising out of or in connection with the use by Owner or its agents, guests, sublessees, employees, permittees or invitees of the Marina Slip, Marina or Harbor Areas, or caused by any act or omission of Owner or its agents, guests, employees, sublessees, permittees or invitees. Further, Owner shall be responsible for the payment of any fines or penalties charged against Lessor or the premises as a result of Owner's not complying with laws, permits, rules or regulations applying to the site or Owner's use thereof. Provided, however, that (i) Owner shall have no liability hereunder with respect to injuries or claims caused by or resulting from the sole negligence of Lessor or its agents or employees, and (ii) if a claim or injury arises out of the concurrent negligence of Lessor or its agents or employees and Owner or its agents or employees, then Owner shall be liable hereunder only to the extent of the negligence of Owner or its agents or employees. Owner assumes potential liability for actions brought by any employee, guest, invitee, permittee, sublessee or agent of Owner. Owner's indemnity obligations hereunder shall survive the termination of the Sublease, and shall not be limited by any worker's compensation, benefits or disability laws and Owner waives any immunity that Owner may have under the Industrial Insurance Act, Title 51 RCW, or similar workers' compensation, benefits or disability laws.
- 23.2.8. Insolvency of the Owner. If Owner becomes insolvent, bankrupt, has a receiver appointed, or his interest is transferred by operation of law, Lessor may cancel his or her Sublease at its option. Insolvency as used herein, will mean the inability of Owner to meet obligations as they come due or the filing of a voluntary or involuntary petition in bankruptcy with respect to Owner.
- 23.2.9. Non-Waiver. Waiver of any right or obligation under the Sublease or this Declaration shall only be effective if in writing and signed by the party to be bound. Waiver by either party of strict performance of any provisions of the Sublease or this Declaration shall not be a waiver of, nor prejudice the party's right to require strict performance of the same provision or of any other provision in the future.
- 23.2.10. Liens; Subordination. Neither Owner nor any person holding by, through or under the Owner shall have the right to create, file or place any lien of any kind or character upon the Marina Slip, Marina, Harbor Area or any portion thereof or any improvements thereto except in accordance with Section 8.10 of this Declaration, including, without limitation, without the prior written consent of Lessor. If any such unauthorized liens are placed thereon, arising out of Owner's actions directly or indirectly, Owner shall immediately cause such liens or charges to be discharged. Lessor may forthwith cancel any Sublease if Owner fails to discharge such

liens or charges within ten (10) days after having been given notice to do so by Lessor. Lessor, at its option, may pay amounts necessary to remove such liens, and Owner shall pay Lessor for all costs, damages or charges of whatsoever nature, including attorneys' fees necessary to discharge such liens or charges, together with interest thereon at the rate of 18% per annum until paid, whether such costs, damages or charges are incurred prior or subsequent to any cancellation of such Sublease.

Each Sublease shall be subject and subordinate to any mortgage or deed of trust hereafter placed on the leased property by Lessor, and Owner will execute any such instrument or instruments as are appropriate or necessary to further evidence the subordination of the Sublease to any such mortgage or deed of trust, so long as Owner is provided with a non-disturbance agreement from such purchaser or lienholder assuring that Owner shall be entitled to its rights under the Sublease so long as it fully complies with its obligations hereunder, is not in default and attorns to such lienholder or purchaser. Owner shall attorn to such lienholder or any person or entity who acquires the leased property through a foreclosure or deed in lieu thereof.

23.2.11. Estoppel Certificate. Owner shall, from time to time upon request of Lessor or its lender or the DNR or City execute and deliver to Lessor or its designee an estoppel certificate in form acceptable to Lessor certifying that (a) the Sublease has not terminated and is in full force and effect; (b) the Sublease has not been modified or amended (or setting forth all modifications and amendments); (c) there are no defaults existing under the Sublease {or, if there is a claimed default, stating the nature and extent thereof}; and (d) all Sublease Rent and other charges owing under the Sublease are paid and stating the dates to which Sublease Rent and other charges under the Sublease have been paid in advance. Owner shall deliver such statement to Lessor within ten (10) days after Lessor's request.

23.2.12. Lessor's Right to Cure Defaults. If Owner fails to perform any requirements or obligations under his or her Sublease, Lessor shall have the option to correct any such default. All of Lessor's expenditures to correct the default shall be reimbursed by Owner on demand, with interest at the rate of one and one-half percent (1-1/2%) per month accrued from the date of expenditure by Lessor until paid by Owner. In the event any violation or breach of the provisions of the Sublease by Owner is causing damage to the Marina, Harbor Area or leasehold premises or liability to Lessor, or in any case where an emergency exists or damages are occurring to Lessor, Lessor may, at its option, immediately without notice enter upon the Marina Slip and take such action as is necessary to cease such damages or use. Owner shall be liable for all costs incurred by Lessor if Lessor acts to cure such damages plus interest thereon at 18% per annum. Lessor, at its option, may send notice to Owner of such violations and Owner shall immediately cease such use or violation and correct and remedy such violations.

23.2.13. Covenant of No Hazardous Waste. Owner shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on or under the Marina Slip, Harbor Area, Marina or any adjacent property. As used herein, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect. Owner shall promptly comply with all laws, statutes, regulations, and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the

premises or any adjacent property. Owner shall immediately notify Lessor if Owner becomes aware of the release of any hazardous waste or materials in or on the Marina Slip, Marina, Harbor Area, Property or adjacent property or becomes aware of any other environmental problem on the premises. Owner shall be responsible for all costs and expenses relating to the cleanup of hazardous waste or materials from the premises or adjacent property for any contamination arising out of its operations or any other act or omission of Owner or its subtenants, agents or employees. Notwithstanding the foregoing, Owner shall not be responsible for any such cleanup costs to the extent the release of the hazardous waste or materials is caused by Lessor or another Marina slip subtenant and Owner is without fault.

23.2.14. Subrogation. Anything in any Sublease to the contrary notwithstanding, Lessor and Owner each hereby waive any and all rights of recovery, claim, action or cause of action, against the other, its agents, officers, guests, employees, invitees, permittees, or sublessees, for any injury, death, loss or damage that may occur to persons or the Marina or any improvements thereon, or any part thereof, or any personal property of any such party therein, by reason of fire, the elements or any other cause to the extent insured against under the terms of the policies of casualty insurance that Owner or Lessor is required to provide then in effect hereunder, regardless of causes or origin, including negligence of the other party hereto, its agents, officers or employees, and covenants that to such extent no insurer shall hold any right of subrogation against such other party. All insurance obtained by Owner or Lessor hereunder, expressly including the property damage and general liability insurance, shall contain, if reasonably obtainable, provisions whereby the insurer releases all rights of subrogation against both Lessor and Owner and any and all sublessees. The waiver of subrogation and the covenant that no insurer shall hold any such right of subrogation against the other party provided herein shall apply to the full extent, but only to the extent that the same shall be valid and enforceable without impairment of insurance coverage.

23.2.15. Destruction of Marina. If at any time or times during the term of the Sublease the Marina or Marina Slip or any material portions, thereof should be destroyed or damaged by fire or rendered unusable by other casualty then in such event Lessor shall, to the extent proceeds of insurance are available to Lessor for such purpose and only to such extent, commence promptly to reconstruct, restore and repair or cause to be reconstructed, restored and repaired the Marina and/or Marina Slip, as the case may be, to the extent possible from such available funds. In the event of damage to or destruction of the Marina, all insurance proceeds and insurance carried by Owner on the Marina shall be directly paid to Lessor for such reconstruction activities. If sufficient insurance proceeds are not available to Lessor to reconstruct the Marina or Marina Slip, or if the damage cannot be restored or repaired, as the case may be, then Lessor or Owner may on sixty (60) days' notice to the other party terminate the Sublease; provided however, that if prior to the expiration of said sixty (60) day period (i) Lessor or Owner and/or other sublessees of Marina Slips arrange for financing, or (ii) the Association and Owners determine to impose a special assessment in accordance with Article 20 herein, in the amounts needed to complete such repair or reconstruction of the Marina or Marina Slip, then in such event if such financing or assessment proceeds is made available for such repairs within such sixty (60) day period, the Sublease shall continue and Lessor shall use said funds (together with any available insurance proceeds) to repair and reconstruct the Marina and/or Marina Slip., as the case may be. In the event of the damage to or destruction of the Marina or the Marina Slip, as the case may

be, Owner shall not be entitled to any abatement, allowance, reduction or suspension of the Sublease Rent or any other charges required to be paid by Owner hereunder.

23.2.16. No Signage. Owner shall not place any signs or notices on the Marina Slip or on the Marina without the prior written consent of Lessor.

23.2.17. Accidents and Liability. Neither Lessor nor its agents or employees shall be liable for any injury or damage to persons or property sustained by Owner or others in and about the leased premises, Marina, or Harbor Area. Owner hereby expressly releases and waives any claim that may arise against Lessor with respect thereto. All items of personal property brought upon the Marina or the Marina Slip by the Owner shall be at Owner's sole risk and Lessor shall not be responsible for any theft, damage or loss thereof.

ARTICLE 24 AMENDMENTS OF DECLARATION AND SURVEY MAP AND PLANS

24.1. **Amendments by the Association.** Any Owner may propose amendments to this Declaration or the Survey Map and Plans to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners to which twenty percent (20%) or more of the votes in the Association are allocated, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of persons entitled to vote after notice has been given to all persons (including Mortgagees) entitled to receive notice of a meeting of the Association.

24.2. **Approvals Required.** The consent of Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated and all Owners particularly affected by the amendment shall be required for adoption of any amendment to this Declaration (1) increasing or creating any Special Declarant Rights, (2) increasing the number of Units, (3) changing the boundaries or Condominium Pro Rata Share or Marina Pro Rata Share of any Unit or the use to which any Unit is restricted, or (4) modifying the terms or conditions of a Marina Slip sublease or the manner in which an Owner is entitled to use, access or operate his or her Marina Slip. Any amendment to this Declaration affecting the Association's assumption of the City Lease and indemnification of assignee thereof and any prior lessee under the City Lease shall require unanimous consent of the Owners. Except for amendments that may be executed by the Association under Article 21 (condemnation) and except for amendments under Article 25 (terminating the Condominium), all other amendments shall be adopted if Owners of Units to which at least sixty-seven (67%) of the votes in the Association are allocated approve. In addition to the above and other provisions of this Declaration and of the Condominium Statute, (a) no amendment may restrict, eliminate, or otherwise modify any Special Declarant Right without the prior written approval of Declarant and any Mortgagee with a security interest in the Special Declarant Right or the property subject thereto, excluding Mortgagees of Units owned by persons other than Declarant, and (b) the prior written approval of at least seventy-five percent (75%) of all Institutional Holders of Mortgages will be required for any material amendment of this Declaration or the Bylaws, including, but not limited to, any amendment that would change the Condominium Pro Rata Share of any Unit in the Common Elements. Once an amendment has been adopted by the Association it shall become effective when the amendment has been prepared, executed, certified and recorded on behalf of the Association by any designated officer or the president of the Association in every county in

which a portion of the Condominium is located.

ARTICLE 25 ABANDONMENT OR TERMINATION OR CONDOMINIUM STATUS

Except as provided in Articles 20 and 21, the condominium status of the Property shall not be abandoned or terminated by reason of any act or omission by the Owners or the Association except with the consent of the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, by an instrument to that effect specifying a date after which such instrument will be ineffective unless recorded prior thereto and containing a description of the manner in which creditors of the Association will be paid or provided for and setting forth the terms of any sale of all or a portion of the Property to be sold following termination, which instrument must be duly recorded and then only if at least seventy-five percent (75%) of all Institutional Holders of Mortgages approve in writing. Proceeds of sale of any portion of the Property shall be distributed to, and title to any portion of the Property not sold upon termination shall vest in, the Owners, as described in the Condominium Statute.

ARTICLE 26 SEVERABILITY

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder complies with the Condominium Statute or, as covenants, affect the common plan.

ARTICLE 27 EFFECTIVE DATE

This Declaration shall take effect upon recording.

ARTICLE 28 REFERENCE TO SURVEY MAP AND PLANS

The Survey Map and Plans were filed with the Recorder of Skagit County, Washington, simultaneously with the recording of this Declaration under File No.9302250059 in Volume 15 of Condominiums, pages 75 through 77.

ARTICLE 29 ASSIGNMENT BY DECLARANT

Declarant reserves the right to assign, transfer, all, lease or rent all or a portion of the Property then owned by it or the Marina Slips then leased by it and reserves the right to assign all or any of its rights, duties and obligations created under this Declaration; however, such assignment shall not diminish Declarant's duties and obligations, including without limitation all contractual or warranty obligations imposed on the Declarant by the Condominium Statute.

ARTICLE 30 PROTECTIONS FOR MORTGAGEES TO FACILITATE MORTGAGE LENDING

30.1. **Mortgagee Approvals.** Notwithstanding any other provision of any of the Condominium Documents, to the extent required or permitted by law, the prior written approval of fifty-one percent (51%) of the Eligible Mortgagees, with each Eligible Mortgagee being counted as having the same percentage of votes in the Association allowed to it as if allocated to the Unit encumbered by its Mortgage, shall be required for any of the following, and without such approval, no person, the Board or the Association shall by either act or omission seek nor can they legally effect:

- 30.1.1. Any change of a material nature to any of the Condominium Documents, including but not limited to any change respecting:
 - 30.1.1.1. Voting rights;
 - 30.1.1.2. Assessments, assessment liens or the priority of such liens;

- 30.1.1.3. Reserves for maintenance, repair and replacement of the Common Elements;
 - 30.1.1.4. Insurance or fidelity bonds;
 - 30.1.1.5. Reallocation of Condominium Pro Rata Share or Marina Pro Rata Share in or rights to use of any of the Common Elements;
 - 30.1.1.6. Responsibility for maintenance and repair of the Condominium;
 - 30.1.1.7. Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
 - 30.1.1.8. Redefinition of the boundaries of any Unit;
 - 30.1.1.9. Convertibility of Units into Common Elements or of Common Elements into Units;
 - 30.1.1.10. Leasing of Units or Marina Slips;
 - 30.1.1.11. Imposition of any restrictions on the right of an Owner to sell, transfer or otherwise convey his or her Unit;
 - 30.1.1.12. Any decision by the Association to establish self-management when professional management had been required previously by the Condominium Documents or any Eligible Mortgagee;
 - 30.1.1.13. Restoration or repair of the Condominium (after a hazard, damage or partial condemnation) in any manner other than that specified in the Condominium Documents;
 - 30.1.1.14. Alter or terminate the allocation of Marina Slips to Units during such time as the City Lease remains in effect;
 - 30.1.1.15. Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; and
 - 30.1.1.16. Any provisions that expressly benefit Mortgagees; provided, however, that any abandonment or termination of the Condominium for reasons other than substantial destruction or condemnation of the Condominium shall require the consent and approval of at least sixty-seven (67%) of the Eligible Mortgagees and at least seventy-five (75%) of all Institutional Holders of Mortgages, as set forth in Article 25. Any Eligible Mortgagee, who fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested, shall be deemed to have approved and consented to the amendment in question. Notwithstanding anything to the contrary in this Declaration, no requirement for Mortgagee approval shall operate to (1) deny or delegate control over the general administration of affairs of the Association by the Owners or the Board, or (2) prevent the Association or the Board from commencing, intervening or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to Article 19.
- 30.2. Notice to Mortgagees. Upon a written request sent by any Mortgagee to the Association stating such Mortgagee's name and address and the Unit number or address of the Unit subject to the Mortgage held, guaranteed or insured by such Mortgagee, such Mortgagee shall be entitled to timely written notice without charge of:
- 30.2.1. Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit subject to the Mortgage held, insured or guaranteed by such Mortgagee;
 - 30.2.2. Any default in payment of assessments or charges owed by the Owner of a Unit subject

to the Mortgage held, insured or guaranteed by such Mortgagee, where the delinquency has not been cured in sixty (60) days;

30.2.3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

30.2.4. Any of the proposed changes referred to in Section 30.1 of this Declaration.

ARTICLE 31 CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS


Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if approved by the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated (including eighty percent (80%) of the votes allocated to Units not owned by Declarant or an Affiliate of Declarant), but in order to convey any Limited Common Elements or subject them to a security interest, all of the Owners of the Units to which such Limited Common Elements are allocated must consent in writing. Proceeds of any such sale or financing shall be an asset of the Association. Any agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement or ratification thereof in the same manner as a deed by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominium is located. The Association, on behalf of the Owners, may contract to convey Common Elements or subject them to a security interest but the contract shall not be enforceable against the Association until approved as required under this Article 31. Thereafter, the Association shall have all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Elements pursuant to this Article 31 shall deprive any Unit of its rights of access and support, or affect the priority or validity of any preexisting encumbrances.

Executed as of the 24th day of February 1993.

DECLARANT:


**FIDALGO MARINA PARTNERSHIP, a Washington
general partnership**

**By DEVELOPMENT VENTURES, INC, a Washington
corporation, Its General Partner**

By 

Gerald D. Hansen, Its Vice
President

**By B. C. INVESTMENTS CORP., Its General
Partner**

By 

William Taylor, Its Executive
Vice President and General
Manager

EXHIBITS:

A: Legal Description of Land in Condominium

B: Map of Condominium and Marina

C: Unit, Condominium and Marina Pro Rata Shares, Assigned Marina Slip and Allocated Parking Spaces

D: Legal Description of Adjacent Property