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HILL WARD HENDERSON

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**BASIC AMENDMENT**

**TWIN VEE MARINE GROUP, INC.**

Certificate of Status	1
Certified Copy	1
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Estimated Charge	\$52.50

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HILL WARD HENDERSON

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**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
TWIN VEE MARINE GROUP, INC.**

The following Second Amended and Restated Articles of Incorporation of Twin Vee Marine Group, Inc., a corporation organized and existing under the laws of the State of Florida (the "Corporation"), were duly approved and adopted by the Corporation pursuant to Sections 607.0704 and 607.0821 of the Florida Business Corporation Act by a written consent of the directors of the Corporation dated as of April 8, 2004 and a written consent of shareholders of the Corporation dated as of April 8, 2004, to be effective upon filing with the Florida Department of State. The number of votes cast for the amendment by the shareholders as a single class and by the holders of Common Stock, Series A-1 Preferred Stock and Series A-2 Preferred Stock each as a separate class was sufficient for approval.

**ARTICLE I. NAME**

The Corporation's name is: **TWIN VEE MARINE GROUP, INC.**

**ARTICLE II. ADDRESS**

The principal address and mailing address of the Corporation is 3101 South Federal Highway, Fort Pierce, Florida 34982.

**ARTICLE III. PURPOSES**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Act.

**ARTICLE IV. CAPITAL STOCK**

A. **Classes of Stock.** The authorized capital stock that the Corporation may issue shall be as follows:

<u>Class of Stock</u>	<u>Number of Authorized Shares</u>	<u>Par Value</u>
Common Stock	5,000,000	\$0.01
Preferred Stock	5,000,000	\$0.01

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The 5,000,000 authorized shares of Preferred Stock set forth above shall be designated in series as follows:

<u>Series of Preferred Stock</u>	<u>Number of Authorized Shares</u>	<u>Par Value</u>
Series A-1-a Preferred Stock	25,000	\$0.01
Series A-1 Preferred Stock	182,200	\$0.01
Series A-2 Preferred Stock	131,938	\$0.01
Undesignated Preferred Stock	4,660,862	\$0.01

**B. Designations.** The Preferred Stock may be issued from time to time by the Board of Directors as shares of one or more series. The description of shares of Series A-1-a Preferred Stock, Series A-1 Preferred Stock and Series A-2 Preferred Stock (collectively, the "Series A Preferred Stock") are as set forth in Section C of this Article IV. The description of shares of each other series of Preferred Stock, including any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption, shall be as set forth in resolutions adopted by the Board of Directors, and articles of amendment shall be filed with the Florida Secretary of State as required by law to be filed with respect to issuance of such Preferred Stock, prior to the issuance of any shares of such series.

Subject to the limitations and provisions set forth in this Second Amended and Restated Articles of Incorporation, the Board of Directors is expressly authorized, at any time, by adopting resolutions providing for the issuance of, or providing for a change in the number of, shares of any particular series of Preferred Stock (other than the Series A Preferred Stock) and, if and to the extent from time to time required by law, by filing articles of amendment which are effective without shareholder action: (i) to increase or decrease the number of shares included in each series of Preferred Stock (other than the Series A Preferred Stock), or (ii) to establish in any one or more respects the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms and conditions of redemption relating to the shares of each such series. Notwithstanding the foregoing, the Board of Directors shall not be authorized to change the right of holders of the Common Stock of the Corporation to vote one vote per share on all matters submitted for shareholder action. Without limiting the generality of the foregoing, the authority of the Board of Directors with respect to each series of Preferred Stock (other than the Series A Preferred Stock) shall include, but not be limited to, establishment of the following:

(a) the number of shares constituting that series and the distinctive designation of that series;

(b) the annual dividend rate, if any, on shares of such series, the times of payment and the date from which dividends shall be accumulated, if dividends are to be cumulative;

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(c) whether the shares of such series shall be redeemable and, if so, the redemption price and the terms and conditions of such redemption;

(d) the obligation, if any, of the Corporation to redeem shares of such series pursuant to a sinking fund;

(e) whether shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes and, if so, the terms and conditions of such conversion or exchange, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) whether the shares of such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the extent of such voting rights;

(g) the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Corporation; and

(h) any other relative rights, powers, preferences, qualifications, limitations or restrictions thereof relating to the series.

In accordance with Section 607.0602, Florida Statutes, the Board of Directors shall determine all of the preferences, limitations, and relative rights for each series of Preferred Stock before the issuance of any shares of that series. The shares of Preferred Stock of any one series shall be identical with each other in such series in all respects except as to the dates from and after which dividends thereon shall cumulate, if cumulative.

Subject to all of the rights of the Preferred Stock as expressly provided herein, by law or by the Board of Directors pursuant to this Article IV, the Common Stock of the Corporation shall possess all such rights and privileges as are afforded to capital stock by applicable law in the absence of any express grant of rights or privileges in the Corporation's Second Amended and Restated Articles of Incorporation, as amended, including, but not limited to, the following rights and privileges:

(i) subject to Section C.1.(d) of this Article IV, dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends;

(ii) the holders of Common Stock shall have the right to one vote per share held of Common Stock;

(iii) upon a Liquidation Event (as defined below), after making the payments required by Section C.2. of this Article IV, the net assets of the Corporation available for distribution shall be distributed pro-rata to the holders of the Common Stock and Preferred Stock in accordance with their respective rights and interest; and

(iv) the Common Stock does not have any redemption rights.

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C. Series A Preferred Stock.

1. Dividends.

(a) Rate. Except as provided below, the holders of record of shares of Series A Preferred Stock will be entitled to receive dividends (the "Series A Dividends") at a rate of eight percent (8%) per annum on the amount of their applicable Liquidation Price (as defined below), plus accrued and unpaid Series A Dividends.

(b) Accrual. The Series A Dividends shall be calculated monthly in arrears, and prorated on a daily basis for partial periods. The Series A Dividends, shall commence to accrue on each share of Series A Preferred Stock from the date of issuance of each share and continue to accrue thereafter until the applicable Liquidation Price with respect to such share is paid in full in cash, whether or not such dividends are declared by the Board of Directors and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends.

(c) Payment. The Corporation shall pay accrued and unpaid Series A Dividends in one lump sum cash payment to the holders of Series A Preferred Stock on the following events: (1) a Conversion Date (as defined below, as to the converted shares only, but only when and if at least a majority of the Series A Preferred Stock is converted and then on the earlier of October 31, 2008 or completion of a Qualified Public Offering), (2) a Redemption Date (as defined below, as to the redeemed shares only), or (3) a Liquidation Event (as defined below, actual or deemed). If a Series A Dividend cannot be paid in full, the Corporation shall pay dividends to the maximum possible extent first to the holders of the Series A-1-a Preferred Stock ratably based on the respective amounts of Series A Dividends otherwise payable to them. If, after paying the entire dividend due to the holders of the Series A-1-a Preferred Stock, funds remain available for payment of dividends, the Corporation shall pay such remaining funds as dividends to the holders of the Series A-1 Preferred Stock and Series A-2 Preferred Stock ratably based on the respective amounts of Series A Dividends otherwise payable to them.

(d) Rate Adjustment. The applicable rate for the Series A Dividends will increase from eight percent (8%) per annum (or twelve percent (12%) in the case of the Series A-1-a Preferred Stock if previously adjusted pursuant to the next sentence) to eighteen percent (18%) per annum for any time period during which payment of Series A Dividends are due but unpaid. In addition, the applicable rate for dividends payable on the Series A-1-a Preferred Stock will increase from eight percent (8%) to twelve percent (12%) immediately upon the Corporation's failure, with respect to two (2) consecutive monthly payments or any three (3) monthly payments during any 12 consecutive months, to pay, within ten (10) days after the date the payment is due, all principal and interest on the indebtedness evidenced by the Promissory Notes issued by the Corporation pursuant to the Note Purchase Agreement dated as of October 27, 2003, among the Corporation, as issuer, and the initial holders of the Series A-1-a Preferred Stock. Notwithstanding the foregoing, the dividend rate payable with respect to any series of Preferred Stock shall not exceed the maximum allowable rate chargeable under applicable law.

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(e) **Priority to Junior Securities.** The Corporation shall not pay any dividends (except for dividends payable in common stock) with respect to or redeem any shares of the Junior Securities (as defined below) if any Series A Dividends remain outstanding.

2. **Ranking; Preference on Liquidation.**

(a) **Ranking.** The Series A-1-a Preferred Stock ranks senior to every other class or series of the Corporation's Common Stock and each other class and series of its preferred stock, whether already existing or later created. The Series A-1 Preferred Stock and Series A-2 Preferred Stock rank senior to every other class or series of the Corporation's Common Stock and each other class and series of its preferred stock (other than the Series A-1-a Preferred Stock), whether already existing or later created (collectively, the "Junior Securities").

(b) **Payment on Liquidation.** If the Corporation liquidates, dissolves, or winds up its affairs (voluntarily or involuntarily) (a "Liquidation Event"), after paying or providing for payment of its debts and other liabilities, the Corporation shall pay to the holders of Series A Preferred Stock, before paying any amount to the holders of Junior Securities (other than payments made ratably among the holders of Series A Preferred Stock and holders of Junior Securities on an as-converted to common stock basis pursuant to Section 2(d)), a cash amount for each share of Series A Preferred Stock equal to the applicable Liquidation Price, as defined below. If its assets to be distributed among the holders of Series A Preferred Stock on a Liquidation Event are insufficient to permit the Corporation to pay the full Liquidation Price for each share of Series A Preferred Stock, the Corporation shall distribute its assets first among the holders of Series A-1-a Preferred Stock ratably based on respective amounts otherwise payable to them, and, if any assets remain after the full Liquidation Price with respect to each share of Series A-1-a Preferred Stock has been distributed, shall distribute its remaining assets among the holders of Series A-1 Preferred Stock and Series A-2 Preferred Stock ratably based on the respective amounts otherwise payable to them.

(c) **Deemed Liquidation Event.** The following will, at the option of the holders of either a majority of the outstanding shares of Series A-1-a Preferred Stock or a majority of the outstanding shares of Series A-1 Preferred Stock (either, the "Requisite Preferred A Shareholders"), be deemed to be a Liquidation Event and trigger the Corporation's obligation to pay the Liquidation Price applicable to the Series A Preferred Stock: (1) a merger or consolidation of the Corporation with or into one or more corporations or other entities that results in the exchange of 50% or more of the outstanding shares of any class of capital stock of the Corporation outstanding immediately before the merger or consolidation for securities or other consideration issued or paid by the other corporation; or (2) the sale, license or transfer of all or substantially all of the assets of the Corporation or any of its subsidiaries. The Corporation shall notify the holders of Series A Preferred Stock in writing (the "Liquidation Event Notice") not later than twenty (20) days before the shareholders'

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meeting called to approve the Liquidation Event, if any, or within twenty (20) days before closing of the transaction, whichever is earlier, and shall also notify the holders in writing of the final approval of the transaction. The first of these notices shall describe the material terms and conditions of the pending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The option of the Requisite Preferred A Shareholders to have the foregoing events treated as Liquidation Events may be exercised by written notice given to the Corporation within sixty (60) days after the notifying holders' receipt of the Liquidation Event Notice. If the requirements of this subsection 2(c) are not complied with in connection with the Liquidation Event, the Corporation shall either:

(i) cause the closing of the deemed Liquidation Event to be postponed until the requirements of this subsection (c) have been complied with; or

(ii) cancel the transaction that constituted a deemed Liquidation Event, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately before the date of the first notice referred to in subsection 2(c).

(d) **Liquidation Price.** The "Liquidation Price" is the sum of (i) for the Series A-1-a Preferred Stock, \$10 per share, for the Series A-1 Preferred Stock, \$10 per share and for the Series A-2 Preferred Stock, \$16.15 per share (in each case, as adjusted for any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or similar event with respect to such share) plus (ii) accrued and unpaid Series A Dividends, plus (iii) a share of the proceeds remaining after payment of this liquidation preference, distributed on a participating basis ratably among the holders of Series A Preferred Stock and the holders of Junior Securities on an as-converted to Common Stock basis.

(e) **Payment and Adjustment of the Liquidation Price.** The Corporation shall pay the applicable Liquidation Price to the holders of Preferred Stock within fifteen (15) days after the Company's receipt of notice from the Requisite Preferred A Shareholders of their option to have an event treated as a Liquidation Event under Subsection 2(c). The Corporation shall pay interest to each holder of Series A Preferred Stock at an annual rate of eighteen percent (18%) on any part of the Liquidation Price not paid when due. Notwithstanding the foregoing, that the dividend rate payable with respect to any series of Preferred Stock shall not exceed a rate of twenty-four and one-half percent (24.5%) simple interest per annum (or, if less, the maximum allowable rate chargeable under applicable law).

### 3. **Redemption.**

(a) **Generally.** The Series A Preferred Stock may be redeemed in whole or in part at the option of the Requisite Preferred A Shareholders on or after the earlier of (i) thirty (30) days after written notice by the Requisite Preferred A Shareholders of (A) if

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such Requisite Preferred A Shareholders are acting as holders of Series A-1 Preferred Stock, an Event of Default (as defined in the Stock Purchase Agreement) (the "First Stock Purchase Agreement") dated as of October 27, 2003, among the Corporation and the other parties to that agreement, by the Corporation if such default is not cured within the thirty (30) days following the Corporation's receipt of the notice (a "Default Redemption") or (B) if such Requisite Preferred A Shareholders are acting as holders of Series A-1-a Preferred Stock, an Event of Default (as defined in the Stock Purchase Agreement) (the "Second Stock Purchase Agreement") dated as of April 8, 2004, among the Corporation and the other parties to that agreement, by the Corporation if such default is not cured within the thirty (30) days following the Corporation's receipt of the notice (also, a "Default Redemption") or (ii) October 31, 2008 (an "Optional Redemption"). In any case, the Requisite Preferred A Shareholders shall notify the Corporation in writing (the "Redemption Notice") of their election to exercise the rights afforded by this Subsection 3(a). Upon receipt of the Redemption Notice, the Corporation shall promptly notify the remaining holders of the Series A Preferred Stock thereof. Any such remaining holders who submit a substantially similar notice within twenty (20) days following receipt of the Corporation's Notice shall be deemed to have the benefit of, and be subject to, the Redemption Notice upon the same terms applicable to the Requisite Preferred A Shareholders originally delivering such Redemption Notice. Subject only to Subsection 3(c), the redemption price for each share of Series A Preferred Stock shall be due and payable immediately following the Corporation's receipt of the Redemption Notice. The Corporation shall pay to each holder of redeemed Preferred Stock interest at an annual rate of fourteen percent (14%) on any amount of the applicable redemption price not paid when due. The interest shall accrue daily and be paid quarterly by the Corporation.

(b) **Redemption Date.** In the case of an Optional Redemption, the Corporation shall effectuate the redemption within six (6) months after the date of the holder's notice specifying the following: (1) the date of the requested redemption; and (2) unless all shares eligible for redemption are to be redeemed, the number of shares of Series A Preferred Stock, as the case may be, to be redeemed. A holder of Preferred Stock may cancel its notice with respect to a redemption (and nullify the related redemption) by notifying the Corporation at least ten (10) days before the scheduled Redemption Date (as defined below) or within ten (10) days following any later date on which the applicable redemption price is finally determined. In the case of a Default Redemption, the Corporation shall effectuate a required redemption on the day of its receipt of the Redemption Notice in the case of the Requisite Preferred A Shareholders and the date of the holder's notice for all other holders of Preferred Stock. The number of shares of Series A Preferred Stock to be redeemed is referred to herein as the "Redeemed Shares" and the date(s) on which the Company redeems shares of Series A Preferred Stock is referred to herein as a "Redemption Date."

(c) **Redemption.** In the case of a redemption, the Corporation shall redeem, on a pro rata basis, among shareholders of the same series, all of the Redeemed Shares by paying cash in an amount equal to the applicable redemption price as described below to

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the holders of the Redeemed Shares. The Corporation may, at its election, extend the schedule for redeeming the Redeemed Shares pursuant only to an Optional Redemption over three installments, as follows:

- (i) one-third (1/3) of the Redeemed Shares on the effective date of the redemption request (the "First Redemption Date");
- (ii) another one-third (1/3) of the Redeemed Shares on the first anniversary of the First Redemption Date (the "Second Redemption Date"); and
- (iii) the remaining Redeemed Shares on the second anniversary of the First Redemption Date (the "Third Redemption Date") (each of the First, Second and Third Redemption Dates is a Redemption Date).

If the Corporation elects to redeem the Redeemed Shares in increments, the holder retains all of its rights with respect to the Redeemed Shares that have not been redeemed until the Company completes each respective redemption transaction, including its right to vote, receive dividends on, sell free of the redemption, cause the Corporation to redeem immediately the shares pursuant to a Default Redemption, and convert the Redeemed Shares to Common Stock. On any actual or deemed Liquidation Event that occurs after the First Redemption Date and before all of the Redeemed Shares are actually redeemed, the holder will receive for the Redeemed Shares that have not been redeemed the greater of the Redemption Price or the Liquidation Price.

(d) **Redemption Price.** The "Redemption Price" for each share of Series A Preferred Stock is the sum of (i) the amounts set forth above in (i) and (ii) of the definition of Liquidation Price with respect to the share, plus (ii) the higher of the following: (1) the fair market value of the redeemed share of Series A Preferred Stock and (2) the sum of (I) four and one-half (4 ½) times EBITDA (as defined below) per share of Series A Preferred Stock on an as-converted to Common Stock basis, plus (II) the amount of the Corporation's cash and cash equivalents, and less (III) the amount of the Corporation's funded debt. For purposes of this subsection, the fair market value of Series A Preferred Stock will be determined on an as-converted to Common Stock basis in accordance with subsection 3(e) as of the date of the redemption request. In addition, the amount of the Corporation's cash and cash equivalents and funded debt will be based on an as-converted to Common Stock basis, and will be determined on a consolidated basis as of the date of the redemption request, after payment of the amounts set forth in subsection 3(d)(i).

(e) **Fair Market Value.** At least one hundred twenty (120) days before October 31, 2008 (or as soon as practicable for a Default Redemption or an Optional Redemption occurring on a date other than October 31, 2008), the Corporation shall cause its Board of Directors to establish in good faith the fair market value of the Series A-1-a Preferred Stock, Series A-1 Preferred Stock and Series A-2 Preferred Stock and notify each holder of Series A Preferred Stock of this value. The Requisite Series A Preferred Shareholders may, within twenty (20) days thereafter, notify the Corporation

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that they disagree with this value and request an appraisal process. Within twenty (20) days thereafter, each of the Corporation and the Requisite Series A Preferred Shareholders shall designate an appraiser experienced in the business of evaluating or appraising the market value of stock. The two designated appraisers (the "Initial Appraisers") shall, before sixty (60) days before the Redemption Date, appraise the Redeemed Shares as of the latest possible date, without discounting the Redeemed Shares for illiquidity or minority ownership interest and without control premium. If the difference between the resulting appraisals is less than ten percent (10%) of the higher appraisal, the average of the appraisals will be deemed the fair market value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), also experienced in a manner similar to the Initial Appraisers. If they fail to select the Additional Appraiser within thirty (30) days, either the Corporation or the Requisite Preferred A Shareholders may apply, after written notice to the other, to any judge of any court of general jurisdiction in Hillsborough County, Florida, for the appointment of the Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the Redeemed Shares, and this value will be the Appraised Value. The Additional Appraiser shall notify the Corporation and the holders of the Redeemed Shares of his determination before the Redemption Date. Each party shall pay the expenses and fees of the appraiser selected by him or it (ratably based on share ownership for the holders of the Redeemed Shares), and if an Additional Appraiser is employed, the party (ratably based on share ownership for the holders of the Redeemed Shares) who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

(f) **EBITDA.** For purposes of this subsection, the term "EBITDA" means the Corporation's aggregate earnings before interest, taxes, depreciation, and amortization for the prior full twelve months before the Redemption Date, based on the Corporation's consolidated financial statements for that time period, as determined by the Corporation's independent certified public accountants.

(g) **Closing.** The Corporation shall pay the Redemption Price to each holder of redeemed Series A Preferred Stock when the holder delivers to the place specified in its notice (1) the certificate(s) evidencing the redeemed Series A Preferred Stock, and (2) transfer instrument(s) sufficient to transfer to the Corporation the redeemed Series A Preferred Stock, as applicable, free of any adverse interest. If a holder redeems less than all of the shares evidenced by a certificate, the Corporation shall at its expense issue and deliver to the holder a new certificate evidencing the unredeemed shares.

(h) **Payment.** If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock are insufficient to redeem the total number of outstanding shares of Series A Preferred Stock entitled to redemption, (i) the holders of shares of Series A-1-a Preferred Stock entitled to redemption shall first share ratably in any funds legally available for redemption of such shares according to the respective amounts that would be payable with respect to the full number of such shares owned by them if all such outstanding shares were redeemed in full, and (ii) the holders of shares of

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Series A-1 Preferred Stock and Series A-2 Preferred Stock entitled to redemption shall then share ratably in any remaining funds legally available for redemption of such shares according to the respective amounts that would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Preferred Stock, such funds will be used at the earliest permissible time to redeem the balance of such shares in similar fashion, or such portion thereof for which funds are then legally available. The Corporation shall be obligated to use its best efforts to take such actions as may be necessary (including, without limitation, the issuance of additional equity securities, the revaluation or recapitalization of the Corporation or the consummation of a sale of the Corporation) in order to permit the full and timely redemption of the shares of Series A Preferred Stock entitled to redemption.

(i) **Expansion of Board of Directors.** If an Event of Default (as defined in either the First Stock Purchase Agreement or the Second Stock Purchase Agreement) has occurred and continues uncured for one (1) year after written notice to the Board of Directors, the number of directors constituting the Corporation's Board of Directors shall, at the request of the Requisite Preferred A Shareholders, be increased by two, and the holders of the Series A Preferred Stock shall have the special right, voting separately as a single class (with each share of Series A Preferred Stock being entitled to one vote) and to the exclusion of all other shareholders, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships, provided, however, that so long as BOCF, LLC ("BOCF"), a Delaware limited liability company, or its affiliates owns at least ten percent (10%) of the Series A Preferred Stock issued to it pursuant to the First Stock Purchase Agreement or the Second Stock Purchase Agreement, the holders of the Series A Preferred Stock shall elect nominees selected by BOCF. The special right of the holders of the Series A Preferred Stock to elect additional members of the Board of Directors may be exercised at the special meeting called pursuant to this subparagraph (i) at any annual or other special meeting of shareholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a meeting. Such special right shall continue until such time as the Event of Default is cured, at which time such special right shall terminate subject to revesting upon the occurrence and continuation of any Event of Default which gives rise to such special right hereunder.

4. **Conversion.** Each share of Series A Preferred Stock is convertible by its holder into Common Stock as follows:

(a) **Conversion Option.** Subject to the terms and conditions of this Section 4, the holder of any share of Series A Preferred Stock may, at the holder's option, at any time and from time to time, convert any or all of its shares of Series A Preferred Stock, into the number of fully paid and non-assessable shares of Common Stock determined pursuant to Section 4(c). The holders of Series A Preferred Stock may continue to exercise this conversion option notwithstanding their receipt of notice of a Liquidation Event.

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(b) **Mandatory Conversion.** All shares of Series A Preferred Stock then outstanding will automatically be converted into the number of fully paid and non-assessable shares of Common Stock set forth in Section 4(c) as of the date that the Securities and Exchange Commission declares effective a registration of the Common Stock under the Securities Act of 1933, as amended, and the Corporation completes a bona fide offering of its Common Stock to the general public (a "**Qualified Public Offering**") (1) that is underwritten on a firm commitment basis by one or more nationally recognized underwriters, (2) from which the Corporation receives gross cash proceeds of at least \$25,000,000, and (3) that provides for an initial offering price to the public per share of Common Stock of at least three (3) times the portion of the applicable Liquidation Price in effect on the effective date.

(c) **Conversion Price.** Each share of Series A-1-a Preferred Stock will be convertible into such number of shares of Common Stock as is determined by dividing \$10 by the Series A-1-a Conversion Price in effect on the Conversion Date (as defined in Section 4(d)). The "**Series A-1-a Conversion Price**" at which shares of Common Stock will be issuable on conversion of shares of the Series A-1-a Preferred Stock initially will be \$10 and, thus, initially each such share of Series A-1-a Preferred Stock is convertible into one share of Common Stock. Each share of Series A-1 Preferred Stock will be convertible into such number of shares of Common Stock as is determined by dividing \$10 by the Series A-1 Conversion Price in effect on the Conversion Date. The "**Series A-1 Conversion Price**" at which shares of Common Stock will be issuable on conversion of shares of the Series A-1 Preferred Stock initially will be \$10 and, thus, initially each such share of Series A-1 Preferred Stock is convertible into one share of Common Stock. Each share of Series A-2 Preferred Stock will be convertible into such number of shares of Common Stock as is determined by dividing \$16.15 by the Series A-2 Conversion Price in effect on the Conversion Date. The "**Series A-2 Conversion Price**" at which shares of Common Stock will be issuable on conversion of shares of the Series A-2 Preferred Stock initially will be \$16.15 and, thus, initially each such share of Series A-2 Preferred Stock is convertible into one share of Common Stock. Each of the Series A-1-a Conversion Price, Series A-1 Conversion Price and Series A-2 Conversion Price will be subject to adjustment as set forth in Section 4(h). If the holder converts more than one share of Series A Preferred Stock, the number of shares of Common Stock issuable on conversion will be computed on the basis of the aggregate number of shares of Series A Preferred Stock, as the case may be, so converted.

In case the Corporation declares a dividend or makes any other distribution on stock of the Corporation payable in Common Stock (except for dividends or distributions payable in shares of Common Stock upon the Series A-1-a Preferred Stock, Series A-1 Preferred Stock and Series A-2 Preferred Stock), rights to purchase Common Stock, or securities convertible into Common Stock, or subdivides its outstanding shares of Common Stock into a greater number of shares, the Series A-1-a Conversion Price, Series A-1 Conversion Price and Series A-2 Conversion Price then in effect will be proportionately reduced to reflect the distribution or subdivision. In case the Corporation combines its outstanding shares of Common Stock into a fewer number of shares, the

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Series A-1-a Conversion Price, Series A-1 Conversion Price and Series A-2 Conversion Price then in effect will be proportionately increased to reflect the combination. An adjustment made pursuant to this paragraph will become effective retroactively (x) in the case of any such dividend or distribution, to a date immediately following the close of business on the record date for determination of the holders of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision or combination, to the close of business on the day upon which such corporate action becomes effective.

(d) **Mechanics of Conversion.** A holder may exercise the conversion right specified in Section 4(a) as to all or any part of its Series A Preferred Stock by surrendering to the Corporation (or to another person designated by the Board of Directors) the certificates evidencing the shares it elects to convert, endorsed and assigned to the Corporation in blank, and accompanied by written notice confirming the holder's exercise of its conversion option as to all or a specified portion of the shares evidenced by the certificates. Each holder of outstanding Series A Preferred Stock will promptly surrender its stock certificates to the Corporation on a mandatory conversion pursuant to Section 4(b). Conversion of shares of Series A Preferred Stock to Common Stock will be effective when the holder delivers to the Corporation notice of its election to convert and certificates evidencing the converted shares (for a conversion pursuant to Section 4(a)) or on the date of the Qualified Public Offering (for a conversion pursuant to Section 4(b)) (the foregoing respective dates are the "Conversion Date"). As promptly as practicable after the Conversion Date and in any event within five (5) days after surrender of the certificate or certificates representing converted shares of Series A Preferred Stock, the Corporation will issue and deliver, or cause to be issued or delivered, at its expense to a converting holder (or to another person designated in writing by the holder), a certificate evidencing the number of whole shares of Common Stock to which such holder is entitled. The person in whose name the certificate or certificates for Common Stock are to be issued will be deemed the holder of such Common Stock as of the close of business on the Conversion Date. On conversion of only a portion of the number of shares evidenced by a certificate surrendered for conversion, the Corporation will issue and deliver at its expense to the converting holder (or to another person designated in writing by the holder) a new certificate for the number of shares of Series A Preferred Stock, as the case may be, evidencing the unconverted portion of the surrendered certificate. At the close of business on the Conversion Date, (1) the converted shares of Series A Preferred Stock will cease to be outstanding, (2) the holders of the converted shares will cease to have any further rights with respect to those shares, except to receive Common Stock and cash (as specified below) with respect to the converted shares, and (3) the holders of the converted shares will be deemed to have become the holder of the Common Stock for all purposes.

(e) **Reservation of Stock Issuable Upon Conversion.** The Corporation will reserve out of its authorized but unissued Common Stock, solely for the purposes of effecting the conversion of the Series A Preferred Stock, the number of shares of Common Stock issuable on conversion of all outstanding Series A Preferred Stock. The holders of Common Stock do not have any preemptive right to purchase these reserved

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shares. If at any time the number of authorized but unissued shares of Common Stock are not sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as are available to the holder to the Series A Preferred Stock, the Corporation shall take the corporate action that in the opinion of its counsel is necessary to increase its authorized but unissued shares of Common Stock to the number of shares that are sufficient for those purposes, including engaging in its best efforts to secure the requisite shareholder approval of any needed amendment to these Articles of Incorporation.

(f) Payment of Taxes. The Corporation will pay any and all taxes, documentary or otherwise, that are payable with respect to the issuance or delivery of Common Stock on conversion of the Series A Preferred Stock. The Corporation will not, however, be required to pay tax with respect to a transfer involved in the issue or transfer and delivery of shares of Common Stock in a name other than the record name of the converted Series A Preferred Stock, and no issuance or delivery will be made unless and until the person requesting such issue pays to the Corporation the amount of any such tax or establishes to the Corporation's satisfaction payment of the tax or that no tax is due. In no event need the Corporation pay or reimburse a registered holder for any income tax or ad valorem tax payable by the holder because of the issuance of Common Stock on conversion of Series A Preferred Stock.

(g) No Conversion of Series A Preferred Stock Being Redeemed. Notwithstanding this Section 4, no share of Series A Preferred Stock for which the holder has given a redemption notice pursuant to Section 3 may be converted into Common Stock, unless the holder effectively withdraws the redemption notice and nullifies the redemption.

(h) Adjustments for Merger, Consolidation, etc. In the case of any classification, reclassification, or other reorganization of the Corporation's capital stock, or in the case of the merger or consolidation of the Corporation with or into another corporation, or the conveyance to another corporation of all or any major portion of the Corporation's assets, then, as part of the classification, reclassification, merger, consolidation, or conveyance, adequate provision will be made for each holder of Series A Preferred Stock, on exercise of its conversion privilege, to receive on the same basis and conditions set forth in this Section 4 with respect to the Common Stock, the stock, securities, or other property that the holder would have been entitled to receive on such classification, reclassification, merger, consolidation, or conveyance, if the holder had exercised the conversion privilege immediately before the classification, reclassification, merger, consolidation, or conveyance, and in any such case appropriate provision will be made with respect to the rights and interests of the holder to the end that the provisions of this Section 4 (including without limitation, provision for adjustment of the Series A-1-a Conversion Price, Series A-1 Conversion Price and Series A-2 Conversion Price) will be applicable to the shares of stock, securities, or other property deliverable on the exercise of the conversion privilege; and, as a condition of any consolidation, merger, or conveyance, any corporation that succeeds to the Corporation by reason of the merger, consolidation or conveyance will assume the obligation to

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deliver, on exercise of the conversion privilege, the shares of stock, securities or other considerations that the holders of the Series A Preferred Stock are entitled to receive pursuant to this Section 4.

5. **Voting.** In addition to its voting rights specially provided for in these articles or granted by applicable law, each holder of Series A Preferred Stock will be entitled to voting rights with respect to all matters on which holders of Common Stock have the right to vote. Each holder of Series A Preferred Stock may vote that number of votes equal to the number of whole shares of Common Stock into which the holder's shares of Series A Preferred Stock would be convertible pursuant to the provisions of Section 4 as of the record date for the determination of shareholders entitled to vote on the matter. Each holder's votes will be counted together with all other shares of capital stock having general voting powers and not separately as a class, except as otherwise provided in these articles or by applicable law. The holders of the Series A-2 shall vote together as a single class with other holders of the Series A Preferred Stock, except to the extent required by law. In cases in which the holders of shares of Series A-1-a Preferred Stock, Series A-1 Preferred Stock or Series A-2 Preferred Stock are entitled to approve a matter or vote separately as a class, each holder will be entitled to one vote for each of its shares and the vote of a majority of the outstanding shares of Series A-1-a Preferred Stock, Series A-1 Preferred Stock or Series A-2 Preferred Stock, as applicable, will constitute the action of that class.

6. **Authorization of Additional Classes of Shares.** So long as shares of Series A Preferred Stock remain outstanding, the Corporation will not, without the affirmative vote or prior written consent of holders of a majority in interest of the then outstanding shares of Series A-1-a Preferred Stock voting as a class and the affirmative vote or prior written consent of holders of a majority in interest of the then outstanding shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock voting together as a class, authorize the creation of a new class of shares having dividend rights or liquidation preferences equal or superior to any of the Series A Preferred Stock or improve the dividend rights or liquidation preferences of the Junior Securities such that they become equal or superior to any of the Series A Preferred Stock.

7. **Amendment of Articles of Incorporation.** So long as any shares of the Series A Preferred Stock are outstanding, the Corporation will not, without the affirmative vote or prior written consent of holders of a majority in interest of the then outstanding shares of Series A-1-a Preferred Stock voting as a class and the affirmative vote or prior written consent of holders of a majority in interest of the then outstanding shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock voting together as a class, in addition to any other vote, consent, or approval required by law or otherwise, amend the Corporation's Articles of Incorporation or Bylaws in any manner which adversely affects the relative rights and preferences of the Series A Preferred Stock or changes any of the rights, preferences, or interests of the Series A Preferred Stock. All holders of the Series A Preferred Stock shall be bound by any amendment effected in accordance with this Section 7, whether or not such party has consented to such amendment; provided, however, that if any amendment, treats the Series A-1-a Preferred Stock, Series A-1 Preferred Stock or the Series A-2 Preferred Stock differently from other holders of Series A Preferred Stock, the consent of those shareholders will also be required for the amendment.

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8. **Reissuance of Shares.** Any shares of Preferred Stock redeemed or otherwise reacquired by the Corporation will be canceled and not available for further issuance.

#### **ARTICLE V. Board of Directors**

A. **Number of Members of Board of Directors.** Subject to Section C.3(i) of Article IV, the Board of Directors of the Corporation shall consist of five (5) members, of which (1) the holders of a majority of the Series A-1-a Preferred Stock and Series A-1 Preferred Stock, voting together as a separate class, will elect two (2) members of the Board of Directors (the "Series A-1 Directors"), (2) the holders of the majority of the Series A-2 Preferred Stock, voting together as a separate class, will elect two (2) members of the Board of Directors (the "Series A-2 Directors"), and (3) the Series A-1 Directors and Series A-2 Directors will elect one (1) member of the Board of Directors (the "Joint Director").

B. **Designation of Nominees.** The holders of a majority of the outstanding shares of Series A-1-a Preferred Stock and Series A-1 Preferred Stock, voting as a class, may nominate and elect the Series A-1 Directors, provided that so long as BOCF and/or its affiliates owns at least fifty percent (50%) of the shares of Series A Preferred Stock originally issued to it, the holders of a majority of the outstanding shares of Series A-1-a Preferred Stock and Series A-1 Preferred Stock shall vote to elect two (2) nominees selected by BOCF. The holders of a majority of the outstanding shares of Series A-2 Preferred Stock, voting as a class, may nominate and elect the Series A-2 Directors. Each Series A-2 Director shall be a management employee of the Corporation, provided that so long as Roger Dunshee owns at least fifty percent (50%) of the shares of Series A-2 Preferred Stock originally issued to him, the holders of a majority of the outstanding shares of Series A Preferred Stock shall vote to elect him, and provided that so long as David East works full time for the Corporation and owns at least fifty percent (50%) of the shares of Series A-2 Preferred Stock originally issued to him, the holders of a majority of the outstanding shares of Series A Preferred Stock shall vote to elect him. If BOCF or the holders of Series A-2 Preferred Stock fail to nominate a person to serve as the Series A-1 Directors and Series A-2 Directors, as applicable, that position(s) on the Board of Directors will be left vacant until they do so. If the holders of the outstanding shares of Series A-1-a Preferred Stock and Series A-1 Preferred Stock, voting as a class, or Series A-2 Preferred Stock, voting as a class, as the case may be, fail to nominate and elect a person to serve as a Series A-1 Director or Series A-2 Director, as applicable, that position on the Board of Directors will be left vacant until they do so, provided that the holders shall promptly elect a person nominated by BOCF or the holders of Series A-2 Preferred Stock, as the case may be, in accordance with this Section B. A majority of the Series A-1 Directors and Series A-2 Directors may nominate and elect the Joint Director. The Joint Director shall be an outside, independent director (*i.e.*, not officers, employees, stockholders, or consultants of the Corporation and not family members of those persons). If the Series A-1 Directors and Series A-2 Directors fail to nominate and elect a person to serve as the Joint Director, that position on the Board of Directors will be left vacant until they do so.

C. **Removal of Directors; Election of Successors.** The respective persons who elected a director pursuant to Section B may remove the director designated by those persons, with or without cause, by written notice to the Corporation. If a director is so removed, resigns,

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is unable to serve, or for any other reason a vacancy in a Board position occurs, the holders of shares or the directors that elected that director may replace the director. In each case, the applicable series or directors may act by written notice to the Corporation, signed by holders of a majority of the outstanding shares of that series or a majority of the Series A-1 Directors and Series A-2 Directors, as applicable, or by action at a meeting called for that purpose.

**D. Compensation and Audit Committees.** The Corporation establishes a Compensation Committee and an Audit Committee of the Board of Directors. The Compensation Committee and Audit Committee of the Board of Directors will be composed solely of one Series A-1 Director and one Series A-2 Director. The Corporation shall not pay Compensation to any management employee or Management Shareholder (as defined in the Stock Purchase Agreement), except as approved by the Compensation Committee of the Board of Directors. The purpose of the Audit Committee will be to consider and recommend to the Board of Directors the engagement of the Corporation's auditors and the annual audited financial statements prior to their issuance to the Corporation's stockholders.

**E. Quorum of Board of Directors; Meetings.** A quorum for the transaction of business at all meetings of the Board of Directors shall be a majority of the directors comprising the Board of Directors. Unless the Board of Directors (including at least one (1) of the Series A-1 Directors) determines otherwise, the Corporation shall furnish each member of the Board of Directors with at least ten (10) days' prior written notice of any meeting of the Board of Directors or any committee of the Board of Directors. Pursuant to a request of any two (2) directors made at least five (5) days before a meeting, the Corporation shall postpone a scheduled meeting to another time that is at least five (5) days after the scheduled meeting (unless the directors making the request otherwise agree to a period shorter than five (5) days), but will not be required to postpone a meeting more than one (1) time.

**F. Expense Reimbursement.** The Corporation shall reimburse each member of the Board of Directors for all reasonable out-of-pocket expenses (including travel and lodging) incurred by the member in connection with serving in the position, including but not limited to the cost of attending meetings of the Board of Directors.

#### **ARTICLE VI. LIMITATION OF LIABILITY; INDEMNIFICATION**

No director of the Corporation shall be personally liable for monetary damages to the Corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless, according to the Act: (a) the director breached or failed to perform his or her duties as a director; and (b) the director's breach of, or failure to perform those duties constitutes: (i) a violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful, as further defined under Section 607.0831 of the Act; (ii) a transaction from which the director derived an improper personal benefit, either indirectly or directly; (iii) a circumstance under which the liability provisions of Section 607.0834 of the Act would be applicable; (iv) in a proceeding by or in the right of the Corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best

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interest of the Corporation, or willful misconduct; or (v) in a proceeding by or in the right of someone other than the Corporation or a shareholder, recklessness, as defined under Section 607.0834 of the Act, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The Corporation shall indemnify any director or officer of the Corporation who was or is party to any proceeding (other than an action, by or in the right of, the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted by the Florida Business Corporation Act as now in effect and as hereafter amended. The indemnification provided herein shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person.

Any indemnification permitted under the laws of the State of Florida shall be made by the Corporation only as authorized in the specific case upon a determination that the indemnification of the officer or director, employee or agent has met certain specified standards of conduct. Upon application for indemnification by any such person, the Corporation shall promptly cause such determination to be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; (ii) if a quorum cannot be obtained by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding; (iii) by independent legal counsel selected by the Board of Directors prescribed in (i) or its committee in the manner prescribed in (ii), or if a quorum of the Board of Directors cannot be obtained under (i) and a committee cannot be designated under (ii), selected by majority vote of the full Board of Directors (in which selection directors who are parties may participate); or (iv) by the shareholders by a majority vote of a quorum consisting of shareholders who are not parties or, if no such quorum is obtainable, by a majority vote of shareholders who are not parties to such proceeding.

The Corporation may purchase and maintain insurance on behalf of any such persons whether or not the Corporation would have the power to indemnify such officers and directors against any liability under the laws of the State of Florida. If any expenses or other amounts are paid by way of indemnification, other than by court order, action by shareholders or by an insurance carrier, the Corporation shall provide notice of such payment to the shareholders in accordance with the provisions of the laws of the State of Florida.

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APR. 9. 2004 3:31PM


HILL WARD HENDERSON

NO. 1474 P. 19

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IN WITNESS WHEREOF, the Corporation has caused these Amended and Restated Articles of Incorporation to be signed by its President, on this 8<sup>th</sup> day of April, 2004.

TWIN VEE MARINE GROUP, INC.

By:   
Name: Roger Dunshee  
Title: President

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