

FIRST AMENDMENT

WHEREAS, Clearwater Associates, Inc. ("Declarant"), has caused a Declaration Establishing a Plan for Condominium Ownership of Premises located in Island Park, Town of Hempstead, County of Nassau, State of New York ("Condominium") to be filed with the Office of the Nassau County Clerk ("Declaration"), covering property described in Schedule A annexed hereto; and

WHEREAS, Declarant is the owner of all of the Units of the Condominium; and

WHEREAS, Declarant desires to amend the Declaration ("Declaration") and By-Laws annexed thereto ("By-Laws");

NOW, THEREFORE, the Declaration and By-Laws are hereby amended as follows:

1. Paragraph 8A of the Declaration is hereby amended by adding thereto the following:

"(k) The Boatslips described in Exhibit 1 annexed to the First Amendment to the Declaration."

2. A new Paragraph 8 of the Declaration is hereby amended by adding thereto the following new paragraph:

"C Marina Common Elements. The Marina Common Elements shall consist of the Boatslips."

3. Unless otherwise expressly provided, the following words and phrases, when used herein, shall have the meanings herein specified:

Section 1. "Boat" shall mean and include any ship, yacht, sailing vessel, catamaran or other marine craft that meets the requirements for issuance of a Marina License Certificate, as described in this First Amendment.

Section 2. "Boatslip" shall mean a pier (or portion thereof) and its surrounding waters as shown in the plot plan which is a part of Exhibit 1 of this First Amendment.

Section 3. "First Amendment" shall mean this instrument as it may be amended from time to time.

Section 4. "License Fee" shall mean an assessment payable by Marina Licensees as set by the Board of Managers from time to time on the basis of projected costs and expenses of the operation, maintenance and administration of the Marina.

Section 5. "Marina" shall mean all of the waters, structures and/or improvements consisting of boatslips, bulkheads, dolphin pilings, jetties and auxiliary improvements.

Section 6. "Marina License" shall mean the right of exclusive use of a Boat slip in the Marina, subject to all applicable rules and regulations of the Board of Managers and laws and ordinances of governmental bodies.

Section 7. "Marina License Certificate" shall mean a certificate executed by Declarant or the Board of Managers and a Marina Licensee, in form and content approved from time to time by Declarant or the Board of Managers, evidencing the purchase of a Marina License and an agreement to the terms and conditions for the continued use of same.

Section 8. "Marina Licensee" shall mean Declarant, the Board of Managers or an owner who shall have purchased a Marina License from Declarant, a previous owner or the Board of Managers or a person who shall have purchased a sublicense from a Marina Licensee pursuant to the provisions of this First Amendment.

4. Article 11 of the Declaration is supplemented by the following subsections:

"E.(i) Every Marina Licensee shall have a right and easement of ingress and egress to and over the common elements to and from the Marina and Boatslips, subject to (a) the right of Declarant and/or the Board of Managers to convey Marina Licenses as provided herein and (b) the rights of Marina Licensees, to use the Boatslips pursuant to such licenses.

"(ii) Every Marina Licensee shall have a right and easement of ingress and egress to and over the common elements to and from the Marina and Boatslips, subject to the right of the Board of Managers and Declarant to restrict ingress and egress

to, and enjoyment of, the Marina and Boatslips to Marina Licensees and the Board of Managers for uses and needs determined from time to time by the Board of Managers or as expressed in this First Amendment.

F. The users of any easement granted by subparagraph E of this Paragraph 11 shall have the responsibility of repairing any damages resulting therefrom.

5. Section 2 of Article II of the By-Laws is supplemented by the following subsections:

"(t) From time to time, promulgate, amend, add to and modify rules and regulations for the use, operation, enjoyment, ingress and egress to and maintenance of the Marina, provided that no such rule or regulation shall unreasonably discriminate against or unreasonably hinder Marina Licensees in the exercise of their rights under their Marina Licenses, and further provided that such rules and regulations shall conform to applicable laws, rules, ordinances and regulations of appropriate governmental bodies.

"(u) From time to time, set, change or add to License Fees in accordance with the provisions hereof, and from time to time, establish policies as to the payment of same.

"(v) Together with Declarant, for so long as Declarant owns any of the licenses, create, change, prepare and approve a Marina License Certificate form.

"(w) Grant Marina Licenses on such terms and conditions, including the provisions of this First Amendment, which the Board of Managers deems appropriate."

6. Article V of the By-Laws is supplemented by the following section:

"Section 1-A. Marina Expenses. All expenses for the upkeep, operation, maintenance and reconstruction of the Marina or as a result of governmental requirements, shall be included in an annual Marina budget prepared by the Board of Managers, with the advice of a Board-appointed committee of Marina Licensees and shall be paid from License Fees and any other Marina income. The License Fees shall be paid by Marina Licensees to the Board of Managers in the same manner as owners shall pay common charges to the Board of Managers. All rights, duties, obligations and remedies applicable in the event of a default in the payment of common charges shall apply in the event of a default in the payment of License Fees. In the event of damage, destruction or a taking by right of eminent domain (or deed in lieu thereof) of the Marina or part thereof, resulting in reconstruction of the Marina or part thereof as provided in Section 18(ff) hereof, Marina Licensees shall pay their share of the reconstruction expenses not covered by award(s) or insurance proceeds in the same proportion as their share in the expenses of the Marina evidenced by their License Fees. If as a result of damage, destruction or taking, as aforesaid, all or any portion of the Marina cannot be rebuilt, the net award, after expenses of and costs of restoration, shall be paid to the Marina Licensees affected thereby in the same proportion as their share in the expenses of the Marina. The Board of Managers may also levy special assessments and/or capital improvement assessments against Marina Licensees for the Marina. Marina Licensees shall be subject to such special and/or capital improvement assessments in relation to their proportionate share in the expenses of the Marina evidenced by their License Fees."

7. Article V of the By-Laws is supplemented by the following section:

"Section 18. Marina. The use, operation, maintenance and upkeep of the Marina and ownership of Marina Licenses shall be governed by this section, plus such other and additional requirements as may be promulgated, amended or modified from time to time by the Board of Managers:

"(a) Declarant, for so long as it owns a license, and the Board of Managers, thereafter, shall have the right to eliminate, expand, change or alter the design, layout, construction and appurtenances of the Marina from that shown in Exhibit 1, provided the existing Boatslips are not permanently adversely affected thereby, unless required by law or governmental rule or regulation, in which event, just compensation shall be paid to affected Marina Licensees. Following any such change, Declarant or the Board of Managers, whichever is applicable, shall record an amended Exhibit 1.

"(b) A Marina License shall be valid and continue unless and until the occurrence of any of the following events: (i) the failure of the Marina Licensee to comply with all applicable laws, ordinances, regulations and the provisions of this First Amendment, the Marina License Certificate and the rules and regulations of the Board of Managers for thirty days after notice (or such longer period as is necessary to cure such failure provided the Marina Licensee commences to cure such default within such thirty day period and diligently prosecutes such cure to completion); or (ii) if required by law or the operation of the Marina is no longer legally permitted.

"(c) A Marina Licensee shall be allowed to sublicense his Marina License only to Declarant, the Board of Managers or another Unit owner. Such sublicensee shall strictly comply with all obligations of the Marina License. Such Marina Licensee and sublicensee shall execute a sublicense in form and content approved by the Board of Managers. Such sublicense shall not

release the Marina Licensee from any obligation arising from the Marina License Certificate or otherwise owing to the Board of Managers.

"(d) Timely payment of the License Fee shall be a condition to the continued use of the Boatslip by a Marina Licensee. The License Fee shall be based upon a proration computed by multiplying the total projected costs and expenses of operation of the Marina by the percentage described in Exhibit 2 annexed hereto.

"(e) The Marina, Boatslips and boats docked in, berthed in or plying the waters of the Marina, shall strictly comply at all times with the regulations, rules, directives, laws, statutes and ordinances of all appropriate governmental bodies, now or hereafter promulgated or in force.

"(f) Only boats properly registered and documented and operating under their own power shall use the Marina. The name and address of the registered owner, the length, make, model and state registration and/or documentary number of each boat shall be filed with the Board of Managers prior to the use of the Marina by such boat. No boat shall be permitted to use a Boatslip which exceeds the maximum overall centerline boat length and beam (including propeller, outdrive, diving platform, keel, etc.) specified in the subject Marina License Certificate.

"(g) The rules and regulations of the Board of Managers, whenever promulgated, pertaining to the Marina, shall apply to all who may use, enjoy and have ingress and egress to the Marina.

"(h) No fuel shall be sold or purveyed within the Marina. Boats shall not be fueled within the Marina.

"(i) Except as expressly permitted by the Board of Managers' policy with regard to boat repair and maintenance, as

same may be announced and amended from time to time, no repairing, power sanding or painting of boats shall be done within the Marina and no other work shall be performed in or about the Marina which may result in damage, scarring or staining to the Marina, surface of the piers, dock boxes or garbins or other boats or which may obstruct passage of normal vehicular and pedestrian traffic.

"(j) No boat which is inoperable or unseaworthy shall be kept, maintained or stored in the Marina for more than twenty-four (24) hours.

"(k) Only Declarant, owners, their guests and invitees and the Board of Managers, its guests, invitees and agents shall use, enjoy or have ingress or egress to the Marina. Children, twelve (12) years of age and younger, shall not be permitted into the Marina area unless accompanied by an adult.

"(l) No houseboats shall be permitted in the Marina.

"(m) No boats in the Marina shall be used for residential purposes, except that boat captains and crews may remain overnight on a boat for a duration not in excess of three (3) days.

"(n) No boat shall be used for business, immoral, illegal, hotel or transient guest purposes.

"(o) No boat shall be permitted in the Marina which shall be used for purposes other than the recreation of its owner and its owner's invitees, guests and family, except that Declarant and the Board of Managers may keep in the Marina such other boat(s) for other purposes.

"(p) No boat, when berthed, shall extend beyond the boundaries of usable area designated on the plot plan, which is a part of Exhibit 1, for the specific Boat-slip in which it is located.





"(w) No refuse, solid or liquid, shall be thrown overboard from boats or piers. All garbage and trash shall be removed from the Marina by the persons responsible for the existence thereof or shall be placed in discharge containers or systems maintained by the Board of Managers. No oil or bilge water shall be discharged into the waters in or about the Marina.

"(x) No recreational swimming, fishing or diving shall be allowed within the Marina.

"(y) No laundry or other item of an unsightly nature shall be hung or spread in public view within the Marina.

"(z) No advertising or soliciting shall be permitted in the Marina, except that a Marina Licensee may display a small sign (not to exceed one foot square) advertising his boat for sale. After so advertising and selling a boat, a Marina Licensee shall not so advertise again for the sale of another boat for a period of one (1) year from the date of the previous sale.

"(aa) Water siphons shall not be used, except in case of emergency, and fresh water may not be used as a coolant for air conditioners or other machinery. Air conditioners shall be turned off on unattended boats. Water supply hoses of unattended boats shall be disconnected at the dock and stowed aboard. No person may use either the electrical power or fresh water, if furnished at a Boatslip, for any purpose other than to supply power and water to the vessel officially assigned to that Boatslip.

"(bb) All boats shall have adequate, permanently installed electrical or mechanical bilge pumps in constant state of readiness. Switches therefor shall be

labeled and installed in readily discernible locations near the helm.

"(cc) In the event that a boat shall not be removed or attended as required herein, or in the event that a Marina Licensee (or sublicensee) shall fail to pay any applicable License Fee or other charge when due, or in the event that a Marina Licensee (or sublicensee) shall fail to comply with any other of his obligations under this Declaration within forty-eight (48) hours of written notice from the Board of Managers detailing such failure, then the Board of Managers (acting through its agents, representatives and/or employees) may, at its sole discretion: (i) board and remove the boat from the Marina; (ii) anchor or store the boat as it sees fit; and/or (iii) bar the use of the boat by the offending party, his agents, invitees, guests, family and employees. The Board of Managers, in the exercise of such discretionary authority and/or in performance of any upkeep, maintenance, management, reconstruction, operation or repair of the Marina, shall not be liable or responsible to any Marina Licensee (or sublicensee) nor to any owner of a boat nor to any person or entity that may hold a security interest in a boat or its contents, except as may be caused by the gross negligence or malicious wanton act of the Board of Managers.

"(dd) Each Marina Licensee (and sublicensee), by acceptance of a Marina License (and sublicense), agrees to hold harmless and indemnify Declarant, the Board of Managers and its respective agents, representatives and employees, from and against any claims, cause of action, litigation expenses, damage or loss that may be claimed by himself or another due to damage, loss or destruction of a boat or its contents which was berthed, except for the gross negligence or malicious wanton act of the Board of Managers or its agents, representatives and/or employees. Such indemnification shall include, without

limitation, attorneys' fees incurred at or before trial and appellate levels, litigation and court costs and expenses and investigation expenses of Declarant, the Board of Managers and its respective agents, representatives and employees.

"(ee) Only Declarant, the Board of Managers and Marina Licensees and sublicensees shall be entitled to use Boatslips. As of the date of conveyance of his Unit in the Condominium, a Marina Licensee (or sublicensee) shall not be entitled to use a Boatslip, but a Marina Licensee shall have the continuing right to sell his Marina License to a Unit Owner in the manner set forth herein and shall have the continuing obligation to pay assessments due the Board of Managers until so sold. Declarant or the Board of Managers (in this subparagraph, such reference in the alternative means whichever entity owns the common elements), shall have the right to repurchase a Marina License from a selling Marina Licensee, pursuant to the right of first refusal procedures for Units set forth in the Declaration of Condominium applicable to such owner's Unit, as such procedures are modified herein. Repurchase monies shall be applied as follows: (i) first, to satisfy the balance of the original purchase price of the Marina License and any accrued interest thereon to the original seller; (ii) then, to bring current any assessments or other charges due the Board of Managers; and (iii) the balance to be paid to the selling Marina Licensee. Payment by the Board of Managers or Declarant in such circumstances shall be made within thirty (30) days after election to repurchase, unless the Marina Licensee cannot be found to accept such payment, in which event the repurchase price shall be held in escrow by Declarant or the Board of Managers for two (2) years or until such earlier date when the repurchase is consummated. If the repurchase transaction shall not be consummated (except due to fault of the Board of Managers or Declarant) within

two (2) years, the repurchase monies shall be deemed automatically abandoned to Declarant or the Board of Managers.

"(ff) In the event of any damage, destruction or taking by right of eminent domain (or deed in lieu thereof) of the Marina or any portion of the Marina, the Board of Managers shall, within thirty (30) days of receiving notice of the amount of all insurance proceeds or award(s), determine whether such proceeds or award(s) are sufficient to restore and rebuild the Marina. If the Board of Managers finds that the proceeds or award(s) are sufficient, the Board of Managers shall, as soon as practicable, commence to rebuild and restore the Marina in accordance with the original construction plans and specifications therefor, except as to such areas of the Marina taken or found by the Board of Managers to be permanently unavailable. If the Board of Managers finds the proceeds or award(s) to be insufficient, the Board of Managers shall schedule a meeting of the Marina Licensees, to be held on at least five (5) days' written notice to the Marina Licensees. The purpose of such meeting shall be to determine whether to restore and rebuild the Marina. Each Marina License Certificate shall have one (1) vote. Declarant shall have the votes of all Marina Licenses it owns, whether or not Marina License Certificates have been issued for same. The Marina shall be restored and rebuilt unless two-thirds (2/3) of the votes entitled to be cast oppose same. Upon a determination not to restore and rebuild, the Board of Managers shall attend to the removal of the remaining portions of the Marina and/or such reconstruction of the Marina as is required to meet the needs of the Board of Managers. The proceeds or award(s) shall be used for such purpose(s). If any surplus remains after payment of expenses of removal and/or such reconstruction, then such surplus shall be disbursed to the Marina Licensees

in the same percentage as their Percentage of Interest in the Marina as set forth on Exhibit 2. In the event of such damage, destruction and a determination not to restore and rebuild or in the event of such a taking, then, from the date of such damage, destruction or taking, each affected Marina Licensee shall have no obligation to pay his License Fee and each affected Marina License shall be deemed cancelled and terminated. In the event of such damage or destruction and a restoration of a Marina Licensee's Boatslip, the payment of any amount of the License Fee due for the period from the date of such damage or destruction to the date when substantial use is again available to the Marina Licensee shall be waived. Anything herein to the contrary notwithstanding, if any such damage or destruction is caused by any Marina Licensee(s), the obligations and liabilities of such person(s) shall not be abated by any provisions hereof. Except as provided in this subsection, no Marina Licensee shall be entitled to any proceeds or award(s) made by reason of damage, destruction or taking. By acceptance of his Marina License Certificate, each Marina Licensee expressly acknowledges such limitation. All proceeds and award(s) shall be the property of the Board of Managers. The Board of Managers shall make the decision as to whether a Marina Licensee is deprived of permanent or temporary use of his Boatslip, which decision shall be final and binding for all purposes on the Marina Licensee. Other than as noted above, no Marina Licensee shall have claim against the Board of Managers or Declarant by reason of the determination not to rebuild or restore. Should restoration or rebuilding commence, each Marina Licensee shall pay a reconstruction assessment pursuant to Article V, Section 18(ff), of the By-Laws, to meet expenses over and above available proceed or award(s). The provisions of this subsection shall supersede and take priority over any conflicting provision herein.

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SIXTH AMENDMENT

TO

OFFERING PLAN FOR THE SALE OF CONDOMINIUM APARTMENTS

LOCATED IN

THE YACHT CLUB CONDOMINIUM

BARNUM ISLE

ISLAND PARK, NEW YORK

Dated: June 15, 1984

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