

time of the Commercial Lots, for the benefit of the Commercial Lots. The foregoing shall not apply, however, to amendments made by the Declarant.

ARTICLE 7.

MARINA

7.1 Assignment of Exclusive Use. Declarant hereby reserves the right to grant, with or without consideration, a license for the exclusive right to use any boatslip located within the Marina (a "Boatslip") to one or more Lot and/or Unit. All such licenses shall be subject to the terms of the Marina Lease and, if no shorter term is provided, shall terminate upon the expiration of the Marina Lease. Such assignment shall not be recorded in the Public Records of the County but, rather, shall be made by way of instrument placed in the official records of the Master Association. A Unit Owner may transfer the license of the Boatslip appurtenant to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. The maintenance, repair and replacement of the Marina and the lease payments under the Marina Lease shall be the obligation of the Association, and the costs associated therewith shall be allocated equally among the Owners of the Lots and/or Units as to which a Boatslip has been licensed. The maintenance of any Boatslip so licensed shall be the responsibility of the Owner of the Lot and/or Unit as to which the Boatslip has been licensed.

7.2 Operation of Marina. The use, operation, maintenance and upkeep of the Marina and Boatslips shall be governed by the following provisions, as well as the terms of Section 7.3 below and such other requirements as may be promulgated, amended or modified from time to time by the Association:

- (a) Declarant, for so long as it controls the Board, shall have the right to change or alter the design, layout, construction and appurtenances of the Marina and Boatslips and/or the right to expand and/or eliminate the Marina (or portions thereof), including the elimination of some of the Boatslips, provided that the Declarant may not eliminate any Boatslip which has then been licensed.
- (b) Subject to any limitations imposed by the Marina Lease and/or applicable governmental authorities, a Boatslip licensee shall be allowed to sublicense his or her Boatslip license. Such sublicense shall transfer the right of exclusive use of the Boatslip for a limited period of time. Such sublicensee shall strictly comply with all obligations of the Boatslip license. Such Boatslip licensee and sublicensee shall execute a sublicense in form and content approved by the Association. Such sublicense shall not release the Boatslip licensee from any obligation arising from the Boatslip license or otherwise owing to the Association. In addition, the sublicense shall include, at minimum, the following provisions: (i) a requirement that the sublicensee (and his or her family, agents, guests and invitees) comply with all provisions of this Declaration and all applicable restrictions, rules and regulations of the Association; (ii) a requirement that the Boatslip licensee and sublicensee shall jointly and severally indemnify the Association and all other Unit Owners for any negligent or intentional acts or omissions of the sublicensee committed; and (iii) a provision that the sublicense may be terminated by the Association upon not more than seven (7) days' prior written notice to the Boatslip licensee and sublicensee for the Boatslip licensee's or sublicensee's failure to comply with the provisions of this Declaration and all restrictions, rules and regulations of the Association and/or any delinquency in the payment of assessments hereunder.
- (c) Each Boatslip licensee (and sublicensee) by acceptance of a Boatslip license (and sublicense) agrees to hold harmless and indemnify the Declarant, the Association and their respective agents, representatives and employees, from and against any claims, causes of action, litigation expenses, damage or loss that may be claimed by any person due to damage, loss, theft, vandalism or destruction of a boat or its contents which was berthed in a Boatslip, except for the gross negligence or malicious wanton act of the Association 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 Association and their respective agents, representatives and employees.
- (d) In the event of any damage, destruction or taking by right of eminent domain (or deed in lieu thereof) of the Marina, Boatslips or any portion thereof, the Board of Directors 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 and Boatslips. If the Board of Directors finds that the proceeds or award(s) are sufficient, the Association shall, as soon as practicable commence to rebuild and restore the Marina and Boatslips in accordance with the original construction plans and specifications thereof, except as to such areas of the Marina taken or found by the Board of Directors to be permanently unavailable. If the Board of Directors finds the proceeds or award(s) to be insufficient, the Board of Directors shall schedule a meeting of the Boatslip licensees to be held on at least five (5) days' written notice to the Boatslip licensees. The purpose of such meeting shall be to determine whether to restore and rebuild the Marina and Boatslips. Each Boatslip licensee shall have one (1) vote and the Declarant shall have one (1) vote for each Boatslip which has not then been licensed. The Marina and Boatslips shall be restored and rebuilt unless two-thirds (2/3) of the votes entitled to be cast opposes restoration. Upon a determination not to restore and rebuild, each Boatslip license (and any sublicenses thereunder) shall be deemed terminated, and the Association shall attend to the removal of the remaining portions of the Marina and Boatslips and/or such reconstruction of the

Marina and Boatslips as is required to meet the needs of the Association. 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 equitably disbursed to the Boatslip licensees, as reasonably determined by the Association. Except as provided in this subsection, no Boatslip licensee shall be entitled to any proceeds or award(s) made by reason of damage, destruction or taking. By acceptance of a Boatslip license, each Boatslip licensee expressly acknowledges such limitation. All proceeds and award(s) shall be the property of the Association. No Boatslip licensee shall have a claim against the Board of Directors, Association or Declarant by reason of the determination not to rebuild or restore. Should restoration or rebuilding commence, each Boatslip licensee shall pay an equal amount as a reconstruction assessment to meet expenses over and above available proceeds or award(s). The provision of this subsection shall supersede and take priority over any conflicting provision herein.

(e) Anything herein to the contrary notwithstanding, Declarant, for as long as it owns any Unit in the Condominium, shall have exclusive use of all unassigned Boatslips.

(f) Each Boatslip licensee shall obtain, maintain and pay for a liability insurance policy approved by the Association naming Declarant (so long as the Declarant owns any portion of The Properties) and the Association as additional insureds, whereby the insurance company agrees to pay for any and all damage or destruction or loss to persons and property in or about the Marina caused by the upkeep, maintenance, use or operation of such Owner's Vessel or Boatslip. The minimum required insurance coverage shall be established by the Association, and the amount of such minimum required coverage shall at all times be commercially reasonable. Notwithstanding anything herein contained to the contrary, neither the Association, the Board, nor the Declarant shall have the obligation to assure that each Boatslip licensee maintains the required insurance.

(g) Anything herein to the contrary notwithstanding, the Association may require a Boatslip licensee to temporarily use a different but substantially comparable Boatslip to permit the repair, redesign, modification and/or improvement of the Marina or any portion thereof.

7.3 Use of the Marina.

(a) Only pleasure and leisure Vessels in seaworthy condition and under their own power, may be moored in the Marina. Further, no more than one (1) Vessel may be moored in a boatslip; provided, however, that dinghies or other small craft may be stored with the Vessel. All operators of Vessels shall observe all posted speed limits and other rules when in the waters abutting The Properties. Vessels shall at all times comply, and be operated in compliance, with all applicable Association, City, County, State and Federal laws, rules and regulations pertaining to the operation of watercraft.

(b) Owners are solely responsible for the proper mooring of their Vessels and are required to maintain mooring lines in good condition and sufficiently strong to secure their Vessels at all times. Any special mooring rules or procedures issued by the Association shall be complied with at all times. No Owner may install a boat lift for the dry storage of Vessels, nor shall dry storage of Vessels be permitted by any other means whatsoever.

(c) During hurricanes and other high velocity wind threats, each Owner of a Vessel shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency, which may include, without limitation, removal of Vessels from the Marina. If an Owner's Vessel sinks as a result of a storm or for any other reason, the Owner must remove the sunken Vessel from the Marina immediately after the occurrence of such event and, if not so removed within three (3) hours after the sinking, the Association may (but shall not be obligated to) remove the same and charge the Owner for the cost of said removal. Each Owner shall be deemed to automatically agree to indemnify and hold harmless the Association, its agents, employees and designees for and from any and all loss or damages incurred in connection with the exercise or non-exercise of the Association's rights hereunder, unless such loss or damage is proximately caused by any of the aforesaid parties' gross negligence or willful misconduct. If an Owner plans to be absent during the hurricane season, such Owner must prepare his or her Boatslip and secure or remove, as appropriate, his or her Vessel prior to departure in accordance with the standards established by the Board of Directors of the Association (or in the absence thereof, with all due care), designate a responsible firm or individual to care for his or her Boatslip and Vessel should there be a hurricane or other storm, and furnish the Association with the name(s), address and telephone number of such firm or individual. Such firm or individual shall be subject to the approval of the Association. The Owner shall be liable for any and all damages caused to the Common Areas or to the Boatslips, Vessels, the Marina or other property of other Owners for such Owner's improper preparation or failure of removal, as the case may be, of his or her Boatslip and Vessel for hurricanes and other storms. Notwithstanding the right of the Association to enforce the foregoing requirements, the Association shall not be liable to any Owner or other person or entity for any damage to persons or property caused by an Owner's failure to comply with such requirements.

(d) Each Vessel, including any extensions or overhangs from the Vessel, must be fully contained within the assigned boatslip.

(e) The Association shall have the right (but not the obligation) to inspect any Vessel in the Marina to determine its seaworthiness, cleanliness and compliance with all applicable City, County, State and Federal fire, safety and other regulations, as well as to determine whether the Vessel fits within the applicable Boatslip. The Association shall have the right (but shall not be required) to remove any Vessel from the Marina which fails to comply with said regulations or fails to fit within the applicable Boatslip. Each Owner shall be deemed to automatically agree to indemnify and hold harmless the Association, its agents, employees and designees for and from any and all loss or damage incurred in connection with the exercise or non-exercise of the Association's rights hereunder, unless such loss or damage is proximately caused by any of the aforesaid parties' gross negligence or willful misconduct.

(f) Notwithstanding anything in this Declaration to the contrary, Declarant and/or the Association may permit police, U.S. Coast Guard and similar watercraft to tie-up to and be kept on any portion(s) of the Marina.

ARTICLE 8.

CERTAIN USE RESTRICTIONS

8.1 Applicability. The provisions of this Article 8 shall be applicable to all of The Properties but shall not be applicable to Declarant or any of its designees or Lots or other property owned by Declarant or its designees.

8.2 Uses of Lots and Units. All Lots and Units (and appurtenant Common Areas) shall be used for the general purposes for which they are designed and intended and at all times used, operated and maintained in accordance with applicable zoning and other requirements, conditions and restrictions applicable to same (including, without limitation, any contained in a deed or lease of the Lot/Unit from the Declarant, as same may be amended from time to time). Nothing in this Declaration shall preclude multiple uses from being made from any Commercial Lots.

8.3 Easements. Easements for the installation and maintenance of utilities are reserved as shown on the recorded plats covering The Properties and/or as provided herein. The area of each Lot covered by an easement and all improvements in such area shall be maintained continuously by the Association to the extent provided herein, except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association, and Declarant and its affiliates, and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewers, storm drains, and electric, telephone lines, cables and conduits, under and through the utility easements as shown on the plats.

8.4 Nuisances. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the occupants of other Lots. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. No activity specifically permitted by this Declaration, including, without limitation, activities or businesses conducted from the Commercial Lots, shall be deemed a nuisance, regardless of any noises and/or odors emanating therefrom (except, however, to the extent that such odors and/or noises exceed limits permitted by applicable law). Similarly, inasmuch as the Commercial Lots may attract customers, patrons and/or guests who are not members of the Association, such additional traffic over and upon the Common Areas shall not be deemed a nuisance hereunder. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

8.5 Oil and Mining Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

8.6 Parking and Vehicular Restrictions. Parking in or on the Common Areas shall be restricted to the parking areas therein designated for such purpose. No person shall park, store or keep on any portion of the Common Areas any large commercial type vehicle (for example, dump truck, motor home, trailer, cement mixer truck, oil or gas truck, delivery truck), nor may any person keep any other vehicle on the Common Areas which is deemed to be a nuisance by the Board. The foregoing shall not, however, preclude such vehicles being on The Properties during periods of construction and/or when performing deliveries. No trailer, camper, motor home or recreation vehicle shall be used as a residence, either temporarily or permanently, or parked on the Common Areas. No person shall conduct major repairs (except in an emergency) or major restorations of any motor vehicle, boat, trailer, or other vehicle upon any portion of the Improvements or Common Areas. All vehicles will be subject to height, width and length restrictions and other rules and regulations now or hereafter adopted. The decision of Declarant to assign specific parking spaces within the Common Areas to designated companies or persons; or for specified uses, shall be final, binding and conclusive.

8.7 Renewable Resource Devices. Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that same shall be installed only in accordance with the reasonable standards adopted from time to time by the Architectural Control Committee and with such