

**JOE'S DOCKSIDE MARINA
BOAT SLIP LICENSE
TERMS & CONDITIONS**

1) Definitions

- a) The term "Claim" or "Claims" shall mean all claims, losses, damages, expenses (including, but not limited to, all reasonable attorneys' fees and expenses of litigation through all appeals), liabilities, costs and obligations (including, but not limited to, claims for personal injury, claims for loss of life, claims for damage to property owned by Licensee, including any vessel docked or stored under this Agreement, or any property owned by any Releasing Party, the Released Parties, or any other Person) arising from any act or omission of (or the condition of any property owned by) the Released Parties, the Releasing Parties, or any other Person, or arising as a result of any hurricane, tropical storm, flood, hail or other weather condition or act of God, or any fire or explosion or other natural event or event caused by man. The term "Claims" shall further include, but not be limited to, any claim, liability or incidental or consequential damages arising from any act, omission or condition of property, whether attributable to the sole or joint negligent acts or omissions of the Releasing Parties or any other Person including the Released Parties, except to the extent that such act, omission or condition is caused by the gross negligence or willful misconduct of the Released Parties.
- b) The term "Commercial Licensee" shall mean a Licensee that is not a "Recreational Licensee" as defined herein.
- c) The terms "Designated Boat" and "Licensee's Declaration of Total Value," shall mean the vessel description, and monetary values ascribed to such terms on the signature page of this Agreement, provided that the term "Designated Boat" shall include all accessories on and all motors attached to the Designated Boat.
- d) The term "Designated Slip" shall mean the initial wet slip location and appurtenant equipment assigned to the Designated Boat, and/or any subsequent space assigned by the Licensor for the "Designated Boat." The term "Designated Slip" is used for identification purposes only, and does not confer upon the Licensee any rights to a specific wet slip location at the Marina.
- e) The terms "Length Overall" or "Length O/A" shall mean the horizontal distance between the forward-most and after-most points on the hull, including any appurtenance extending past those points, such as swim platforms, bowsprits, tender davits, pulpits, etc.
- f) The term "Licensee's Marina Patrons" shall mean Licensee's guests, invitees, passengers, customers, employees, contractors or any other person that may come to the Marina at the direction or cause of the Licensee.
- g) The term "Live Aboard" shall refer to any vessel that is occupied for ten (10) or more consecutive nights in a calendar month or for fourteen (14) or more non-consecutive

nights in a calendar month.

- h) The term "Marina" shall mean the marina containing the Designated Slip located at 18250, 18300, 18350, and 18400 San Carlos Blvd, Fort Myers Beach, FL 33931, and all encompasses all associated docks, piers, seawalls, structures, facilities, equipment, improvements, and upland premises.
 - i) The term "Person" shall include any individual, partnership, limited partnership, limited liability partnership, trust, corporation, joint venture, Limited Liability Company or other natural or non-natural person.
 - j) The term "Recreational Licensee" shall mean Licensee's use of the Designated Boat shall be for pleasure, sport, and recreation only and no commercial ventures of any kind, including, but not limited to, charter or passenger operations, shall be undertaken by Licensee for which Licensee trades, barter, charges a fee, or receives any compensation for the Designated Boat's use. Any boat brokerage activity or boat sales are prohibited without prior written approval from Licensor.
 - k) The term "Released Parties" shall mean Licensor and all Persons that have a direct or indirect ownership interest in Licensor; all Persons in which Licensor has a direct or indirect ownership interest, and their respective predecessors, successors, officers, directors, managers, members, owners, shareholders, assigns, agents, contractors, invitees, employees and insurers.
 - l) The term "Releasing Parties" shall mean Licensee and all Persons that have a direct or indirect ownership interest in Licensee, all Persons in which Licensee has a direct or indirect ownership interest, and their respective officers, directors, managers, members, owners, shareholders, insurers, agents, licensees, heirs, personal representatives, successors, assigns, and Licensee's Marina Patrons.
- 2) License Rights. Licensor grants Licensee the right to moor or store the Designated Boat at the Designated Slip, together with a non-exclusive right of ingress and egress over and through the Marina to the Designated Boat when at the Designated Slip. This Agreement confers no property rights or other rights or benefits to Licensee and is only a license to use, and is not a lease of, the Designated Slip. Licensor may inspect, clean, repair, maintain or make alterations to the Designated Slip, or to take any other actions Licensor deems necessary. Slip assignment is revocable and the Licensor may at any time change the location of the Designated Slip at its sole discretion. Licensee shall not be entitled to any abatement or reduction of any payment due under the Agreement by reason of Licensor's access to or reassignment of the Designated Slip. There may be times when the Marina will require the Designated Slip to be temporarily reassigned or to moor or store the Designated Boat at a location outside the Marina. In the event that the Designated Boat is moved outside the Marina, Licensor will credit the Licensee for the storage of the Designated Boat during its absence or provide for all costs required for the temporary mooring as decided by the Licensor. Live Aboards are not permitted and nothing in this Agreement shall be construed to create a residential tenancy. Licensee shall not establish a permanent and/or primary residence or place of business on the Designated Boat while at the Designated Slip. Licensee agrees to maintain a

mailing address separate and apart from their address at the Marina. While at the Marina, leasing or renting the Designated Boat to third parties for the purpose of residency, domicile, temporary lodging, or otherwise, is strictly prohibited.

- 3) Duration and Termination. This Agreement shall be for the term set forth on the signature page (the "Term").
- a) Lessor may terminate this Agreement immediately upon written notice to Licensee if 1) Licensee fails to make any payment due hereunder (including, but not limited to, indemnification or defense under Section 15 or reimbursement for damage under Section 19) after five (5) days of the applicable due date, or 2) Licensee breaches any other obligation or covenant in this Agreement, or fails to comply with any of the Rules and Regulations established by Lessor.
 - b) Lessor further reserves the right to terminate the Agreement for any reason at its sole discretion upon no less than seven (7) days written notice to Licensee. Should Lessor terminate pursuant to this provision, the balance of the Licensee's account, if any, will be refunded on a prorated basis, without interest, provided Licensee owes no outstanding debts to Lessor, in which case the balance of the account will first be applied to those outstanding debts before being refunded.
 - c) Lessor shall have the right to immediately terminate this Agreement without notice, subject to the same proration in 3(b) above, if:
 - i) Licensee fails to obtain or maintain in full force and effect any insurance coverage required under this Agreement;
 - ii) Licensee provides false information to Lessor regarding residence or Live Aboard status, attempts to lease or rent the Designated Boat for lodging purposes, or attempts to establish primary or permanent residence or place of business while at the Marina;
 - iii) The Licensee attempts to assign or transfer the Designated Slip or attempts to substitute another vessel for the Designated Boat;
 - iv) The Designated Slip, Marina or portion thereof becomes damaged, unsafe, unserviceable, or requires significant repair, as determined by the Lessor.
 - d) Licensee shall give Lessor a minimum 30 days written notice of intent to terminate or renew the Agreement. Notice shall be given such that the Agreement terminates no earlier than at the end of a full calendar month, and no proration will apply at termination. Any vessel remaining at the Marina after termination will be subject to higher rates for mooring and/or storage, accruing daily at a rate equal to 1.5 times the monthly fees currently advertised for the slip in which the vessel is located after termination. Early termination of this Agreement with less than 30 days notice to the Lessor or by the Licensee's default as described in 3(a) above will result in no refund and may subject Licensee to immediate higher daily rates for mooring and/or storage.
 - e) Should the Term expire without termination, the Agreement will automatically renew subject to the same terms and conditions, except the renewed holdover term will be

"Month-to-Month" and the monthly rate will be 1.5 times the monthly rates charged during the expired Term.

- 4) Licensee's Inspection and Use of Designated Slip. Licensee accepts the Designated Slip in "as is, where is" condition, and represents that Licensee has inspected the Marina and the Designated Slip. Upon the basis of such inspection, Licensee represents that it finds the Marina and Designated Slip to be suitable for its intended purposes. Licensee's use of the Designated Slip and the Marina is at Licensee's sole risk, per Sections 14 and 17. Licensor has no responsibility for the boarding or debarking of persons on/off the Designated Boat, and Licensee shall provide its own gangway, plank, ladder, or steps, as appropriate. Licensor, its officers, agents, and employees shall not be liable for the care or the protection of the Designated Boat including its gear and contents. Licensor makes no warranties express or implied as to underwater or bottom conditions anywhere at the Marina, Designated Slip, or approaches to same. Licensee may not change, modify or alter the Designated Slip or any portion thereof (including, but not limited to the installation, modification, or removal of a lift) without the express written permission of the Licensor (henceforth "alteration"). If permitted by the Licensor, any such alteration will be solely at the Licensee's expense and risk, per Sections 14 and 17, as will the sole responsibility to maintain any alteration in good and serviceable condition. Upon slip reassignment or termination of this Agreement, the Licensee at its sole cost and expense shall return the Designated Slip to its condition at the commencement of the Term, regardless of whether any alterations were made; however, Licensor at its option may require Licensee to leave any alteration unless previously agreed in writing otherwise.
- 5) Extended Absence. At or before removing the Designated Boat, Licensee shall notify Licensor when the Designated Boat will be out of the Designated Slip for more than forty-eight (48) hours. During such period, Licensor will be allowed to use the Designated Slip for Licensor's own purposes, or those of its invitees or licensees. Such use shall cease the date of expected return of the Designated Boat, which date is to be provided in writing by Licensee to Licensor.
- 6) Payments
 - a) Monthly Fees. Licensee shall, commencing on the date set forth on the signature page and continuing on the first day of each month thereafter throughout the Term, pay Licensor, in advance, monthly fees in the amount set forth on the signature page (the "Monthly Fees") for the use of the Designated Slip and the other services provided by Licensor hereunder. If the Term does not commence on the first day of a calendar month, the Monthly Fee for the partial calendar month at the commencement of the Term shall be prorated on the basis of the number of days of the Term within such calendar month. The Licensor may require a security deposit in advance to hold a Designated Slip prior to the Designated Boat's arrival at the Marina, and to cover any potential arrears, damage, or liability incurred during the term.
 - b) Licensee shall allow Licensor to measure Length O/A at any time throughout the

Term to verify the accuracy of Monthly Fees or the appropriateness of the Designated Slip for the Designated Boat. If the measurement differs from what is indicated on the Agreement, Licensee's rate will be adjusted accordingly.

c) Removal of Designated Boat

- i) Licensee shall not remove the Designated Boat from the Designated Slip until all amounts due Licensor from Licensee hereunder have been paid in full.
- ii) If all amounts owed by Licensee to Licensor hereunder have been paid in full, upon the termination of this Agreement, Licensee shall immediately remove the Designated Boat from the Designated Slip, return the Designated Slip to its condition at the commencement of the Term, and shall remove all of Licensee's other personal property, if any, from the Marina.
- iii) Notwithstanding i. and ii. above, rate charges will accrue for each day the Designated Boat remains without permission at the Designated Slip past the termination date per Section 3)d; and if Licensee fails to remove the Designated Boat within five (5) days after termination of this Agreement, Licensor may (but is not required to) cause the Designated Boat to be removed (together with all personal property located on or about the Designated Boat) to a mooring or dry location of Licensor's choice, and Licensee shall pay or reimburse Licensor the sum of a) the greater of \$200 or all costs incurred by Licensor in connection with such removal, plus b) the cost of storage of the Designated Boat at the standard daily rate charged by Licensor for the entire period that the Designated Boat is so stored. Neither Licensor nor any other Released Party shall have any liability to Licensee or to any other Person for any loss or damage resulting from any such removal of the Designated Boat or failure to remove the Designated Boat, whether occurring by negligence or otherwise, and Licensee waives any rights against all Released Parties by reason of such removal or failure to remove.

d) Late Payment. If any payment due hereunder is not received by Licensor within five (5) days of the date such payment was due, Licensee shall pay to Licensor a late fee of 10% of the payment due or \$50, whichever is greater, and interest shall be charged on all such past due amounts at a rate equal to eighteen percent (18%) per annum. If Licensee's check is dishonored, all future payments must be made by money order, cash, or cashier's check; dishonored checks will be subject to the lesser of 5% of the check amount or a \$50 charge. If Licensor has actual knowledge that there are insufficient funds to cover a check, rent will be considered unpaid and Licensor will not be required to deposit the check. Third party checks are not permitted. Time is of the essence. The imposition of late fees and/or dishonored check charges is not a substitution or waiver of available Florida law remedies or such other remedies to which Licensor may be entitled.

e) Payments Generally. All payments owing from Licensee hereunder shall be made without notice or demand and without deduction, abatement or set-off and shall be delivered to Licensor at the Marina's physical address as specified on the signature page.

- 7) Utilities. Electrical service and water will be available to the Designated Slip. Licensee shall pay for all utilities used by Licensee at the Marina's standard rates. Licensee shall make payment of all amounts due for utilities hereunder to Licensor within five (5) days of the receipt by Licensee of written notice that such amounts are due. Licensee's use of electricity shall not, at any time, exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the Marina. In the event Licensee requires more than one (1) 50 AMP connection, Licensee shall make a written request to Licensor for an additional 50 AMP connection. Licensor may provide additional 50 AMP connections to Licensee at additional expense. The Monthly Fees include moderate use of fresh water. Licensee shall supply any hoses that may be necessary for Licensee's use of fresh water and equip them with automatic shut-off nozzles. Licensee must comply with all regulations concerning fresh water use and additional restrictions that may be established from time to time by Licensor or any other authority having jurisdiction over the Marina or the Designated Slip. Licensor reserves the right, in its sole discretion to charge Licensee for high water usage. Licensee shall not use the dockside water system for air conditioning purposes or use the electrical outlets in the Marina for the operation of power tools, battery chargers, welders, air conditioners, heating units, and similar items without the prior written permission of Licensor. Notwithstanding the foregoing, Licensor cannot and does not guaranty the continuity of electrical and fresh water service, and reserves the right without any liability to Licensee and without affecting Licensee's covenants and obligations hereunder, to stop service of electric and water, whenever and for so long as may be necessary, by reason of Force Majeure, or the making of repairs or changes which Licensor is required by law to make or in good faith deems necessary. Licensee waives any Claim arising out of any failure or defect in the supply, quantity or character of electricity or water furnished to the Marina, by reason of any requirement, act or omission of the public utility or others serving the Marina with electric energy, steam, oil, gas or water, or for any other reason whether similar or dissimilar, beyond Licensor's reasonable control.
- 8) Outside Services. SHOULD THE LICENSEE NEED ANY WORK PERFORMED TO THE DESIGNATED BOAT BEYOND MINOR COSMETIC MAINTENANCE OR MINOR REPAIRS (e.g., maintenance and cleaning on-deck and above the waterline) WHILE WITHIN THE MARINA OR AT THE DESIGNATED SLIP, Licensee shall not hire a mechanic, detailer, craftsman or any other Person (a "contractor") to do work on the Designated Boat while it is in the Marina without the prior written consent of Licensor. Licensor will not consent to a contractor performing work on the Designated Boat, unless such contractor shall provide Licensor in advance with proof that he or she is licensed to perform such work and with a standard certificate of worker compensation and liability insurance coverage of at least \$2,000,000 aggregate/\$1,000,000 per occurrence. All contractors must check in at the Main Office prior to engaging in any activity at the Marina.
- 9) Lifts. If the Designated Slip has a lift, the Licensee shall be solely responsible for maintaining it in good working order. Licensor does not warrant or guarantee any lift's suitability to splash/remove any vessel including the Designated Boat. Licensee fully

understands, acknowledges and agrees that vessel hulls in general are designed for the water and not for lifts or dry storage, that lifts and dry storage likely will result in normal wear and tear and possibly damage the Designated Boat including, but not limited to, fiberglass chips, stress cracks, dents, breaks, etc., that such wear and tear or damage can happen immediately or gradually, and that it is impossible to see the underside of a hull so as to avoid any such damage. Accordingly, Licensee expressly assumes all risk associated with lift use and dry storage of the Designated Boat per Section 14, and acknowledges that Licensor makes no warranty in this regard per Section 17. The Licensee shall be solely responsible for: ensuring that the designated boat is appropriately prepared for removal including, but not limited to, shutting off motors, securing loose items, removing excess weight, raising trim tabs, sending units and transom mounted objects, etc.; removing drain plugs, if practicable, to allow drainage when the Designated Boat is stored out of the water; ensuring that all through-hull fittings and drain plugs are properly closed before the Designated Boat is splashed; ensuring the proper operating condition of the Designated Boat's equipment and for the secure docking and safekeeping of it once it is placed in the water. Lifts should never be used to splash/remove a vessel while people are onboard.

- 10) Rules and Regulations. A copy of the Rules and Regulations is posted at **<https://www.joesdocksidemarina.com/>** and in the Marina Main Office, and Licensor will provide copies to Licensee on request. The Marina Rules and Regulations established by Licensor as now existing or as hereafter amended, are incorporated into this Agreement as if fully set forth herein. The term "Marina Patron" as used in the rules and regulations include Licensee and Licensee's Marina Patrons. Licensee shall abide by all Rules and Regulations, and shall ensure the compliance of Licensee's Marina Patrons; failing to do so is a material breach of this Agreement. Licensor will publish any amendments to the Rules and Regulations by posting at the Main office and on **<https://www.joesdocksidemarina.com/>** and the Licensee agrees that, thirty (30) days after the amendment(s) have been published, the amended Rule or Regulation is binding on the Licensee, with no further notice required. It remains the Licensee's sole responsibility to make sure he or she is familiar with the Rules and Regulations and to periodically review them. Licensor, at its sole discretion, may temporarily waive one or more of these rules and regulations as they affect Licensee, but such waiver shall neither be construed as a waiver as to other persons or other rules and regulations, nor prevent Licensor from enforcing any Rule, Regulation, or term of this Agreement. In the event any Rule or Regulation conflicts or is inconsistent with the terms expressly set forth herein, the express terms in this Agreement shall control.

11) Insurance and Waiver of Subrogation

- a) Licensee shall secure and maintain for the Designated Boat complete marine insurance, including hull coverage, in an amount equal to value of the Designated Boat and its contents, and pollution insurance which shall include endorsements for extended perils, damage by fire, vandalism, burglary and fuel/oil spill. In addition, a Recreational Licensee shall secure and maintain protection and indemnity and/or

liability insurance of at least \$300,000 combined limit. A Commercial Licensee shall secure and maintain protection and indemnity insurance of at least \$1,000,000 and commercial general liability coverage of at least \$2,000,000 aggregate/\$1,000,000 per occurrence. The Licensors shall be named as an Additional Insured under the aforementioned insurance coverage, and the Licensee's signature on this Agreement is a warranty and representation that said insurance coverage is in effect. Upon Licensors request, Licensee shall provide to Licensors within ten (10) days a certificate of insurance and policies of insurance showing that the terms of this paragraph have been satisfied. Such certificate, policy, or endorsements as applicable, shall name Licensors as an additional insured and require not less than thirty (30) days written notice to Licensors of termination or change of coverage. In no event shall the limits of said insurance coverage be considered as limiting the liability of the Licensee under this Agreement. Any insurance required herein shall be primary, and shall neither contribute to nor be in excess of any coverage which Licensors may carry.

- b) Licensee waives any right or Claim against the Licensors for damage sustained by Licensee which is covered under any insurance policy, and Licensee shall cause its insurance carriers to waive their respective rights of subrogation to same, and to so notify Licensee.
- c) Notwithstanding the foregoing, the Licensee shall and, per Section 15, does nevertheless indemnify, defend and hold Released Parties harmless from any loss or damage incurred or suffered by Released Parties from Licensee's failure to maintain such insurance.

12) Hurricane or Tropical Storm. Pursuant to Florida law, Licensee is not required to remove the Designated Boat from the Marina in the event of a tropical storm or hurricane watch or warning. However, Licensee agrees that in the event of a tropical storm or hurricane watch for Ft. Myers Beach, Florida, if the Licensee does not immediately remove the Designated Boat, Licensors, its agents and employees can remove the Designated Boat from the Designated Slip or take any and all other reasonable actions deemed appropriate by the Licensors or its employees or agents in order to better secure the Designated Boat and to protect Marina property, private property, and the environment, for which the Licensors will charge a reasonable sum, and for which Licensee agrees to promptly pay. Under no circumstances shall this be deemed to imply any obligation of any kind on the part of Licensors for the safety or protection of the Licensee, Designated Boat, other persons, or other property. Licensors shall not be held liable for any consequences in its attempts to protect life and property in the event of such a tropical storm or hurricane, watch or warning, including but not limited to damage to the Designated Boat. No action taken by the Licensors shall relieve the Licensee of his/her duty to take all reasonable precautions to secure the Designated Boat to protect the Licensors, Marina, and its employees and invitees from harm. Licensee shall be responsible for, and, per Section 15, will indemnify, defend and hold Released Parties harmless for any damage to other vessels or the Marina facilities caused by the

Designated Boat resulting from the Licensee's failure to take all such reasonable precautions. Should the Designated Boat be damaged or destroyed during a tropical storm or hurricane, Licensee is solely liable for all costs and obligations associated with the removal of the Designated Boat including any environmental damages.

- 13) Licensors Authorized to Operate, Move and take Reasonable Steps to Protect Boat. At all times, the Licensee warrants the Designated Boat will be seaworthy, in compliance with all applicable laws and regulations, operable, and able to move under its own power. Licensee will demonstrate operability at the Licensors request. Licensee agrees to maintain the Designated Boat in a state of readiness for movement in case of fire, evacuation, natural or manmade disaster, and under no circumstances will permanently or indefinitely attach the Designated Boat to the Designated Slip. For purposes of this Agreement, the Designated Boat's operability requirement is NOT satisfied by (1) motive power provided to the Designated Boat by another vessel (i.e. a tender or towing assist vessel); and/or (2) if the Designated Boat's own propulsion is underpowered such that it does not meet manufacturer's performance specifications (i.e. oars/paddles, a trolling motor and/or a temporary outboard do not meet this requirement; if the Designated Boat has two or more engines, all of them must be operational). Licensee expressly authorizes Licensors and its employees, agents, and representatives to move or operate the Designated Boat as may be needed for safety reasons, to prevent or minimize damage to the Designated Boat or other property, or should the Designated Slip be reassigned as Licensors deems necessary. Licensee further authorizes the Licensors and its officers, agents and employees to take reasonable steps, at their sole discretion, to protect the Designated Boat, and Licensee agrees to promptly pay the cost of labor and materials for such reasonable actions; however, regardless of any act or omission, Licensors is not obligated to provide any such services, and makes no guarantee that such services, if rendered, will remedy or prevent any damage to the Designated Boat; and Licensee waives any claims against Released Parties for actions taken pursuant to this paragraph, and will, Per Section 15, indemnify, defend and hold Released Parties harmless for any such Claims.
- 14) Express Assumption of Risk for Natural, Inherent, and Environmental Conditions. The Marina is an unsecured outdoor environment and the Licensors and its officers, agents and employees are not responsible for any weather, air, sea, water, and/or shore conditions, including but not limited to red tide, fish kills, algae, fungi, toxins, bacteria, viruses, parasites, worms, insects, arachnids, fish and other marine wildlife, reptiles, birds, rodents, vermin, any other animals, dust, mold, mildew, odors, fumes, corrosion, electrolysis or deterioration of any kind or nature, whether or not open and obvious. Licensee acknowledges the marine environment and the nature of boating includes potential hazards, not limited to temperature, wind, waves, currents, tides, wet surfaces, and hazardous water and/or air quality, and the Licensee expressly assumes any risk posed by such environmental conditions. Licensee acknowledges their sole responsibility to stay apprised of all federal, state, and local government announcements, alerts, warnings, orders and other information regarding any and all

hazardous environmental conditions which might affect the Marina, its vicinity, and the surrounding waters. The Marina is not gated, and at all times, it shall be the obligation and responsibility of the Licensee to safeguard and protect the Licensee's own property and person as well as the property and person of the Licensee's Marina Patrons, and the Licensors shall have no obligation to keep the Marina safe and secure. Licensors make no warranty regarding the Marina environment and its associated premises and facilities, and neither the Licensors nor its officers, agents, and employees are in any way responsible for warning any Releasing Party of any of the conditions discussed in this paragraph that might affect Licensee, any Releasing Party, and/or the Designated Boat.

- 15) **RELEASE, INDEMNIFICATION AND HOLD HARMLESS.** The Designated Slip, docks, Marina facilities, and associated premises subject to this Agreement are to be used at the Licensee's and the Releasing Parties' sole risk per Sections 14 and 17. Therefore, the Licensee, in addition to and notwithstanding all other covenants herein, on his/her own behalf and on behalf of the Releasing Parties agrees to indemnify, defend and hold harmless the Released Parties, for any and all Claims including, but not limited to personal injury, loss of life and property damage: (1) arising out of the ordinary negligence of the Licensors, its officers, employees and/or agents in connection with the Marina and associated premises or the use of the Designated Slip, lifts, docks, or other facilities; (2) in connection with the Designated Boat, motor, and all of its accessories while it is at, entering, or leaving the Marina whether in the water or not; (3) for loss or damage to the Designated Boat, its motor, and all of its accessories or contents thereof due to fire, theft, vandalism, collision, Marina equipment failure, windstorm, rain, hurricane or other casualty loss. The indemnification, defense, and hold harmless obligation shall apply to Claims made by the Licensee or any Releasing Party against Licensors and, if the Licensors or any Released Party shall be made a party to any litigation commenced against Licensee or by Licensee against any third party, then Licensee shall indemnify, defend and hold Released Parties harmless and pay all costs and attorney's fees incurred in connection with such litigation, and any appeals thereof. Licensee shall also indemnify, defend and hold Licensors harmless against any losses incurred as a result of Licensee's breach of this Agreement. This Release, Indemnification and Hold Harmless by Licensee shall survive the expiration or termination of this Agreement. Should any provision of this Agreement exempting Licensors from liability be declared or adjudged to be invalid, the Licensee agrees that in no event shall the Licensors' aggregate liability for all Claims and all parties, whether brought by the Releasing Parties or others, exceed either \$15,000 or the total Monthly Fees collected by Licensors from Licensee for the Agreement Term during which the Claim arose, whichever is greater. Licensee agrees to indemnify, defend and hold Released Parties harmless for any amount above this sum, including, if necessary, payment of said excess amount to third parties. In no event will the Released Parties be liable to the Releasing Parties for any consequential, special, incidental, indirect or punitive damages.
- 16) **Liability Waivers.** Licensee shall obtain signed liability waivers from all Licensee's Marina Patrons, and deliver said signed waivers to the Licensors at the Main Office prior to any

such persons accessing, or engaging in any activity in, the Marina. Obtaining the required waivers does not relieve Licensee of any of its obligations under this Agreement, including those outlined in Sections 14 and 15 above. The acceptable liability waiver form shall be made available to Licensee at the Main Office.

- 17) Licensors' Disclaimer of Warranties. **LICENSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, SUITABILITY, OR ANY OTHER CONDITION WHATSOEVER OF THE DESIGNATED SLIP, THE MARINA, OR ANY PART THEREOF, IT BEING AGREED THAT ALL SUCH RISKS ARE BORNE BY LICENSEE.**
- 18) No Discharge. The Designated Boat shall be equipped with an operable automatic bilge pump that is wired directly to the battery. If the Designated Boat has an in-board or in-board/outboard engine, it shall be equipped with a sorbent sock properly installed in the engine compartment bilge, which shall be renewed at least annually or more frequently if contaminated. Bilge cleaners and liquid detergents shall not be used in the Designated Boat's bilge. If the Designated Boat has an installed head, it shall be equipped with an operable, United States Coast Guard approved sanitation device which shall be subject to inspection and approval by Licensor. The y-valve on the Designated Boat shall be locked and sealed in the non-overboard position at all times. Licensee shall not store on the Designated Boat or in the Marina any flammable or combustible fluid or material other than limited quantities reasonably necessary for the operation or maintenance of the Designated Boat. Such limited quantities of flammable or combustible fluids and materials shall be stored on the Designated Boat only in appropriate tanks and containers designed for such storage and approved by the appropriate regulatory authorities. Licensee shall not discharge or deposit garbage, litter, sewage, human or animal waste, food waste, fish carcasses and associated waste, petroleum products (including but not limited to fuel, hydraulic fluid, grease, lube oils, spirits) inflammable liquid, oily bilge water, paint, solvents, metals (including lead, mercury, arsenic, and chromium), plastic, monofilament, asbestos, chlorines, phosphates, ammonia or any other hazardous, toxic or inflammable substances, chemicals, or material into the waters of the Marina or anywhere in the Marina (except where appropriate receptacles are provided). Licensee is responsible for the safe and legal disposal of the aforementioned materials. Hazardous materials, even if in sealed container (e.g. paint cans), shall not be deposited in Marina trash receptacles. Licensee shall reimburse Licensor upon demand for the cost of cleaning up any pollution discharge or deposit created by the Designated Boat, Licensee, and Licensee's Marina Patrons. Licensee shall immediately report all such discharges to Licensor. Licensee shall waive any Claim against Released Parties related to any discharge by other persons or vessels, whether or not located at the Marina. Per Section 15, Licensee will indemnify, defend and hold Released Parties harmless from any Claims arising out of discharges caused by the Licensee or from the Designated Boat.
- 19) Reimbursement of Costs; Designated Boat as Security. Notwithstanding any other provision in this Agreement, Licensee shall be liable for any damage, exclusive of normal

wear and tear, to the Designated Slip, the Marina, any other property of Licensor, or any property of others located on Licensor's property, caused by the Designated Boat, Licensee or Licensee's Marina Patrons including, if applicable, the costs of clean up, loss of use and lost profits. Licensee will promptly reimburse Licensor for the cost of any work necessary to repair or replace any such damage upon demand. Licensee hereby acknowledges Licensor's possessory lien on the Designated Boat, its appurtenances and contents (including all personal property in the Designated Boat), for amounts due and payable from Licensee pursuant to this Agreement, and that **PURSUANT TO FLORIDA STATUTE § 328.17, IN THE EVENT OF NONPAYMENT, LICENSOR IS AUTHORIZED TO SELL the Designated Boat, ITS APPURTENANCES, AND CONTENTS AT A NONJUDICIAL SALE.** Nothing in this Agreement, nor any action or inaction of the Licensor, shall waive any maritime lien arising in favor of the Licensor. The Licensee agrees that the mooring, storage or other services provided under this Agreement are "necessaries" provided to Designated Boat on the order of the Licensee or a person authorized by the Licensee within the meaning of the Federal Maritime Lien Act, and the Licensor, in addition to relying upon the credit of the Licensee, shall retain a maritime lien against the Designated Boat, its appurtenances and contents, for all unpaid fees, services, and delinquency charges, and for any damage caused by the Designated Boat to any Marina property or any personal injury to Licensor's officers, employees or agents. Licensee shall also pay all costs and expenses incurred by Licensor in enforcing the terms of this Agreement, including, but not limited to, all costs and expenses incurred in collecting any payments due or enforcing any lien, including reasonable attorneys' fees and costs whether or not a lawsuit is filed, and through all appeals.

20) Privacy. Licensee agrees that Licensor may share Licensee's personal information with companies, organizations or individuals if Licensor and/or its representatives have a good-faith belief that access, use, preservation or disclosure of such information is reasonably necessary to: (1) meet any applicable law, regulation, legal process, or enforceable governmental request; (2) enforce this Agreement, its Terms and Conditions, and/or the Marina Rules and Regulations, including investigation of potential violations thereof; (3) detect, prevent, or otherwise address fraud, security or environmental issues; (4) protect against harm to the rights, property or safety of the Licensor, the Marina, Marina Customers, or the public as required or permitted by law.

21) Miscellaneous

a) Licensee's name on this Agreement must be identical to the name on registration/documentation and insurance; Licensee will produce Designated Boat's registration/documentation if requested by Licensor. The signatory to the Agreement and all amendments thereto, if different from the Licensee, warrants that they have the authority to bind the Licensee, and further unconditionally and irrevocably agrees to be bound in their individual capacity by the terms of this agreement, including ensuring performance of all duties and meeting all obligations, including but not limited to, full, prompt, and faithful payment, jointly and severally with the Licensee.

- b) All payments called for herein shall be sent to Licensor at the applicable addresses set forth on the signature page hereof, unless otherwise agreed in writing, or Licensor provides notice to the party of a new address.
- c) Whenever notice is required or permitted under the terms of this Agreement, it shall be in writing and delivered to the other party via email to the email address set forth on the signature page. Notice shall be deemed given when the email is transmitted. It is the Licensee's responsibility to ensure the Licensor has the Licensee's current email address on file.
- d) Nothing in this Agreement shall be construed to create any other relationship other than licensor-licensee (e.g. joint venture, partnership, principal-agent, employer-employee, or any other relationship) and Licensee shall have no right, power or authority to bind, contract for or act on behalf of Licensor. Licensee shall not represent to any Person that he or she is in any way affiliated with, related to or acting on behalf of Licensor. Licensee must obtain prior written consent from Licensor to use the Licensor's name in connection with or in promoting or advertising the Licensee's business. Licensor shall have the right to prohibit the use of its name in any publicity by Licensee, and upon written notice from Licensor, Licensee shall immediately refrain from or discontinue such publicity.
- e) No sign, placard, picture, name, advertisement or notice, shall be inscribed, painted, affixed, installed or otherwise displayed by Licensee anywhere in the Marina without the Licensor's prior written consent, and Licensor shall have the right to remove without notice any such sign, placard, picture, name, advertisement, or notice at the Licensee's expense.
- f) Neither this Agreement nor any of its provisions creates a bailment and Licensor shall have no duties of care with respect to the Designated Boat.
- g) This Agreement confers no rights upon Licensee other than the right to the use of the Designated Slip and the right to moor or store the Designated Boat in accordance with this Agreement's terms.
- h) This Agreement may not be assigned or transferred by Licensee, and Licensee may not sublicense or assign any right conferred by this Agreement. Any attempt to assign or transfer the Designated Slip under this Agreement is void, terminates this Agreement and excuses Licensor from further performance under the Agreement. Licensee shall not substitute another vessel under this Agreement for the Designated Boat.
- i) Licensee shall remain fully responsible for Designated Boat in the event it is sold and up until it leaves the Marina or a new Agreement with the new owner has been executed with the Marina.
- j) This Agreement supersedes all agreements previously made between the parties relating to the subject matter hereof. It encompasses the complete agreement between the parties as to its subject matter and may be amended only in a writing signed by both Licensor and Licensee.

- k) No delay or failure by a party to exercise any right under this Agreement, no partial or single exercise of such a right, and no failure or delay to demand or require compliance with any duty or obligation contained in this Agreement, shall constitute a waiver of such right, duty or obligation, and no party shall allege estoppel as a defense in any dispute.
- l) Headings in this Agreement are for convenience of reference only and shall not be used to interpret or construe its provisions.
- m) This Agreement shall be construed in accordance with the general maritime law of the United States as supplemented by the laws of the State of Florida, without regard to conflicts of law rules.
- n) This Agreement shall not be construed against the party preparing it but shall be construed as if it were prepared jointly by all affected persons and entities, and any uncertainty or ambiguity, or both, shall not be interpreted against any such person or entity.
- o) If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be carried out as if such invalid or unenforceable provision were not contained in it.
- p) The Licensee's covenants and obligations that protect and inure to the benefit of the Licensor, including those set forth in Sections 4, 6, 11, 12, 13, 14, 15, 17, 18, 19, 21)b-d, 21)j, and 21)r)i-iii shall survive the Agreement's termination or expiration.
- q) Each party shall cooperate and shall take such further action and shall execute and deliver such further documents as may reasonably be requested by the other party in order to carry out the provisions and purposes of this Agreement.
- r) **IMPORTANT: READ THE BELOW CLAUSES CAREFULLY -- THEY PROVIDE, *INTER ALIA*, THAT ANY CLAIM MUST BE RESOLVED BY BINDING ARBITRATION AND THAT THE PARTIES GIVE UP THEIR RIGHT TO A JURY TRIAL.**
 - i) All Claims and disputes arising under or relating to this Agreement (except for in rem claims against, or nonjudicial sale of, the Designated Boat) shall be exclusively resolved by binding arbitration in Lee County, Florida. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association, however, the arbitrator shall have no authority to award equitable remedies or punitive damages. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees, if any. An award of arbitration may be confirmed in a court of competent jurisdiction. All disputes and demands for arbitration must be timely brought within one year after the date the alleged Claim accrued.
 - ii) Prior to the filing of any demand for arbitration by either party against the other

(and, except as described below, as a precondition to any such filing), the Licensee and Licensor shall engage in pre-arbitration mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all the laws and rules applicable to Court ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in and for Lee County, Florida (or the Mediation Coordinator for the Courts of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not peremptorily. While the request for and the conducting of such a mediation shall be a precondition to demanding arbitration, in the event that either party is in jeopardy of losing its right to arbitrate (e.g., the statute of limitations is about to expire), then arbitration may be demanded before mediation is conducted, provided that mediation is requested before, or simultaneously with, the commencement of arbitration, and is conducted before the named defendant in the arbitration is required to respond to the Complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall therefore grant the defendant an appropriate extension of time to respond to the Complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediator's fee shall be borne equally by the parties.

- iii) The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in any dispute in arbitration arising out of or relating to this Agreement.
- s) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Signatures required in this Agreement may be executed via "wet" original handwritten signature or initials, or via electronic signature or mark (including, without limitation, DocuSign), which shall be binding on the parties as originals, and the executed signature pages may be delivered using .pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of this Agreement. The Parties each hereby represent and warrant to each other that; (a) delivery of this Lease via electronic transmission or other electronic means shall be valid delivery for all purposes; (b) a party's electronic signature to this Agreement shall have been executed or adopted by the signatory with the intent to sign and be bound by its terms; (c) this Agreement and any additional information incidental hereto may be maintained as electronic records; (d) photocopies, facsimile transmissions, electronic images, and other copies of this Agreement and/or its signature pages shall be valid, binding, effective, and enforceable, the same as originals for all purposes, and may be so admitted in

any judicial proceeding, regulatory proceeding, or arbitration, and in making proof of this Agreement it shall be unnecessary to produce the original hereof or any or all original signature pages; and (e) each party to this Agreement will take any and all reasonable actions, if any, as may be necessary or as may be reasonably requested by the other party to further evidence such party's intent to be bound by the Agreement's terms and to ensure compliance with the provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001, et seq., the Uniform Electronic Transactions Act as incorporated into applicable law, and any other applicable law pertaining to electronic signatures.