**DOCKAGE AND MOORING AGREEMENT**

Licensor: **WIGGINS BAY DOCK OWNERS ASSOCIATION, INC.**

Email address:

Licensee:

 Email address:

In consideration of the covenants herein contained on the part of Licensee to be kept and performed, Licensor hereby grants unto Licensee a license for the use of the Slip described below (the “License”), upon the terms and conditions contained herein:

1. **SLIP.** Mooring Slip No. \_\_\_\_\_\_\_\_ (the “Slip”) and a non-exclusive right of use of the docks adjacent and appurtenant thereto (the “Docks”), all as shown on Attachment “A” of that certain Sovereignty Submerged Land Lease No. 110705645 issued by the Board of Trustees of the Internal Improvement Fund of the State of Florida, recorded in OR Book 2574, Page 2722 of the Public Records of Collier County, Florida, and all extensions, renewals, modifications, and amendments thereof (the “State Lease”).
2. **TERM.** The Term of this Agreement shall commence on the date hereof and continue for the duration of the State Lease, unless sooner terminated by reason of Licensee’s default. Licensor shall make such payments and take such actions as may be necessary to maintain the State Lease in force and to cause the same to be renewed and extended for so long as the State of Florida is willing to extend said Lease. Provided, however, that Licensee acknowledges and agrees that Licensor shall have no liability of any kind should the State of Florida fail or refuse to renew the State Lease.
3. **TRANSFER FEE; STATE LEASE PAYMENTS.** Licensee agrees to pay to Licensor a transfer fee in the amount of $500.00 which is the current fee established by the Licensor’s Board of Directors. The transfer fee is intended to reimburse Licensor for its cost and expense incurred in reviewing, approving, and facilitating Licensee’s acquisition of this License, by assignment from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Assignor”). Licensee also represents and warrants that the total purchase price or other consideration paid by Licensee to Assignor is $\_\_\_\_\_\_\_\_\_\_\_\_\_ Licensee acknowledges that Florida Administrative Code Section 18-21.001 requires that a percentage of the gross income derived from any agreement or sub-agreement for the sale, rental or other use of the Slip must be paid to Licensor, who must report and transmit such payments upon receipt to the Board of Trustees of the Internal Improvement Fund of the State of Florida. Licensee agrees that he shall be jointly and severally liable with Assignor, and with any future assignee of Licensee, for payment of the forgoing amount (and any applicable sales tax) to Licensor. Licensee agrees to indemnify and hold Licensor harmless from and loss, cost, or expense associated with a failure to comply with the requirements of the Administrative Code.
4. **USE SLIP AND TYPE OF VESSEL.** The license granted hereunder is limited to the use of the Slip solely for mooring one (1) recreational vessel having a length and width which is appropriate, in Licensor’s sole judgment, for the dimensions of the Slip. Licensee shall not permit any vessel in the Slip to be used for commercial purposes nor shall the Slip itself be used for commercial purposes. For purposes of this License: (a) “vessel” means and includes every description of watercraft, barge, or airboat, used or capable of being used as a means of transportation on water including, but not limited to, motorized boats, row boats, kayaks, jet skis, paddle boards, etc.; (b) “recreational” means personal use for pleasure or sport; and (c) “commercial" means any use or activity involving, directly or indirectly, an exchange of goods or services for money or other consideration, whether or not conducted primarily for profit. Notwithstanding the forgoing, commercial use does not include the rental of the Slip to a third party for the mooring of a recreational vessel when such rental is not attendant to a commercial enterprise as described in Paragraph below. The forgoing use provisions may only be amended in a writing signed by the Licensor’s President after having been duly authorized by Licensor’s Board of Directors.
5. **SIZE & DESIGN OF SLIP**. The average dimensions of each class of “A”, “B”, “C” and “D” mooring slips are shown on Exhibit “A” hereto. Licensor hereby notifies Licensee, and Licensee acknowledges, that the mooring slips may vary considerably in size and the dimensions shown on Exhibit “A” are approximations only. Licensee acknowledges that Licensee has made a personal inspection of the Slip and it is of sufficient size for Licensee’s purposes, and Licensor shall have no liability to Licensee if the Slip’s dimensions differ from the dimensions shown on Exhibit “A”. If Licensee moors a vessel which, in Licensor’s sole judgment, is too large for the Slip, Licensee shall have five (5) business days after written notice from Licensor to remove said vessel or Licensee shall be in default hereunder. Licensee acknowledges and agrees that no vessel shall be placed within the Slip unless and until a slip layout (“Slip Layout”) has been submitted to and approved in writing by Licensor in its sole discretion and any improvements shown thereon have been completed in accord with the approved Slip Layout and all required permits and approvals of all governmental authorities. The Slip Layout shall show the location and orientation of all lifts, floating docks, vessels, etc. and include such other information in narrative or schematic form as Licensor may require. Licensee shall utilize the Slip only in strict accord with the approve Slip Layout. Licensee shall be responsible for removing any improvement or other change to the Slip Layout not approved by Licensor in accordance with this Paragraph 5.
6. **SUBORDINATION.** This Agreement is subordinate, and subject to, the terms and conditions of the State Lease and all governmental acts and regulations now or hereafter promulgated including, but not limited to, Florida Administrative Code Section 18-21.001.
7. **ASSESSMENTS.** Licensee shall pay to Licensor, within thirty (30) days after notice, as an assessment for the use of the Slip, an amount equal to Licensee’s proportionate share (based on the total number of mooring slips) of all amounts due under the State Lease, all costs and expenses of insuring, maintaining, repairing and replacing the Docks, all costs of dredging and maintaining the channels and bottomlands benefiting the Slip and the Docks, all administrative, legal and overhead costs attributable to the Docks, all electric, water and other utility services at the Docks, all sales or use taxes which Licensor shall be required to pay in consequence of the State Lease or Licensee’s assignment of this License and any special assessments imposed by Licensor for capital improvements. Licensee hereby grants to Licensor a possessory lien upon any vessel kept within the Slip for all assessments due hereunder in the same manner as provided in Section 328.17 Florida Statutes and Licensee agrees that Licensor may exercise all rights described in that section, as if Licensor was a marina as defined therein, including selling any such vessel at private sale. Licensee agrees that any overage or surplus of assessments may be retained by Licensor in a dock maintenance and repair fund in accord with a policy duly adopted, from time to time, by Licensor’s Board of Directors.
8. **STATE LEASE FEES.** Licensor shall not be liable to Licensee for failure to make any payment on the State Lease, or otherwise, when such failure is the consequence of the failure of Licensee to promptly pay assessments. If Licensor shall default in payment of any installment of the rental or fee due on the State Lease for more than thirty (30) days after the due date, then Licensee, alone or jointly with other persons similarly situated, may pay such rent to the State of Florida for the account of Licensor in order to continue the State Lease in force; such payment by Licensee shall be deemed a loan to Licensor payable sixty (60) days after written demand and proof of payment with interest at the legal rate in the State of Florida.
9. **WIGGINS BAY DOCK OWNERS’ ASSOCIATION.** Licensee acknowledges and agrees that, as a condition of the grant of this License, Licensee must be and remain a member in good standing of Licensor and that such membership shall be appurtenant to, and may not be separated from, ownership of this License. Licensee acknowledges and agrees that Licensee shall be subject to and bound by Licensor’s Articles of Incorporation, By-Laws, and Rules and Regulations, as the same may be amended from time to time and which are incorporated herein by reference. Licensee shall not exercise its rights hereunder or utilize the Slip except in full compliance with the same. The parties intend and agree that the forgoing are incorporated herein by reference, and this License shall be interpreted in such a manner as to eliminate any inconsistencies between this License and those documents but that in the event any inconsistencies cannot be reconciled, then the terms and provisions of the Articles, By-Laws, and Rules and Regulations shall prevail.
10. **INSURANCE.** Licensor may, in its sole discretion, secure and maintain in force comprehensive general liability and casualty insurance for the Docks. If Licensor chooses to do so, then the cost of such insurance shall be included as an assessment. Licensor shall not be responsible for loss or damage to moored vessels or for securing insurance with respect to such vessels. Licensee shall secure and maintain in force, (a) a comprehensive general liability and casualty insurance for, and in connection with, vessels moored in the Slip on an occurrence basis, with a combined minimum single limit of Three Hundred Thousand Dollars ($300,000.00) for bodily injury including death of any one person or any one accident and in respect to property damaged or destroyed; and (b) a minimum of Two Hundred Fifty Thousand Dollars ($250,000.00) of oil spill or fuel spill coverage. Licensor shall be named as an additional insured on said policies. Upon execution of this Agreement, and annually thereafter on or before January 10th of each year, Licensee will provide to Licensor a certificate of insurance, acceptable to Licensor, evidencing the forgoing insurance and providing that such insurance may not be cancelled or otherwise terminated without thirty (30) days prior written notice to Licensor.
11. **DESTRUCTION**. While Licensor is not required to maintain casualty insurance on the Docks, if the Slip and/or Docks are destroyed by hurricane, storm, fire or other casualty, Licensor agrees to use any insurance proceeds which may be paid or payable to Licensor to repair, restore or rehabilitate the same to their original condition. In the event the insurance proceeds are insufficient, Licensee shall be assessed Licensee’s proportionate share for any deficiency, as an additional special assessment.
12. **INDEMNITY; WAIVER**. Licensee agrees to defend, hold harmless, and indemnify Licensor from all claims, damages, loss, cost, expense, or liability arising from or in any way connected with Licensee’s use of, or presence at, the Slip, Docks, or any other property of Licensor. By way of illustration, and not as a limitation, the items contemplated by the forgoing include financial loss attributable to Licensee or his guests and invitees, penalties and fines incurred by Licensor as a result of Licensee’s acts or omissions violating the State Lease, and damage to the Docks caused by Licensee’s vessels, etc. including those resulting from Licensee utilizing an inadequate lift. Further, Licensee waives and releases all claims which Licensee may now or hereinafter have against Licensor in connection with the approval of any Slip Layout, or the condition or use of the Slip or Docks. Licensee waives all rights of subrogation on behalf of the insurers of Licensee.
13. **LAWS.** Licensee shall comply with all applicable laws and ordinances, all leases and permits issued by governmental authorities having jurisdiction, and all orders and decrees of any court and all requirements of other governmental authority applicable to the use of the Slip or Docks. Licensee also agrees to be bound by, and to timely comply with, any and all rules and regulations duly adopted by Licensor’s Board of Directors from time to time.
14. **DEFAULT.** Licensee’s failure to pay assessments or to perform any other covenant on Licensee’s part to be performed, shall constitute a default hereunder. Licensor shall give written notice to Licensee of such default. If any default by Licensee continues for more than thirty (30) days after notice of default, Licensor may at any time thereafter, at its option, either commence an action to collect such assessments, foreclose its lien upon any vessel moored in the Slip for unpaid assessments or repurchase this License and all the rights herein granted to Licensee for an amount equal to seventy-five percent (75%) of the purchase price paid by Licensee (exclusive of sales taxes), less any amounts due Licensor at such time. A repurchase by Licensor shall terminate this Agreement.
15. **LICENSOR’S REMEDIES.** All rights and remedies of Licensor provided in this Agreement shall be cumulative, and none shall exclude any other right or remedy allowed by law. Licensee shall pay upon demand all costs, charges and expenses, including the fees of attorneys, brokers, agents and others, incurred by Licensor in enforcing Licensee’s obligations hereunder in any litigation, negotiation or transaction in which Licensee causes Licensor, without Licensor’s fault, to become involved or concerned.
16. **NON-WAIVER.** No waiver of any condition expressed in this Agreement shall be implied by any neglect of Licensor to enforce any remedy on account of the violation of such condition whether or not such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than one specified in such waiver for the time and in the manner specifically stated. Receipt of monies by Licensor from Licensee after any termination of this Agreement shall not reinstate, continue or extend the term or affect any notice given to Licensee prior to the receipt of such monies, unless specifically reinstated, continued or extended by Licensor. After the service of notice of termination or the commencement of a suit or after final judgment for possession of the Slip, Licensor may receive and collect any monies due, and the payment of said monies shall not waive or affect said notice, suit or judgment.
17. **ASSIGNMENT OR SALE BY LICENSOR.** Upon Licensor assigning this Agreement, such assignment shall operate to release Licensor from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Licensee, and in such event, Licensee agrees to look solely to Licensor’s successor-in-interest. This Agreement shall not be affected by such assignment or sale and Licensee agrees to attorn to the assignee.
18. **TERMINATION.** Licensor shall undertake to maintain the State Lease in full force and effect at all times; however, if the State Lease is terminated by governmental action, this License shall also terminate. Licensee shall bear all risks of any termination and hereby waives and releases any claims against Licensor with respect to the consideration paid for this License and for any damages resulting from the termination. At the end of the term hereof, or upon the earlier termination of this License as provided herein, Licensee shall surrender possession and vacate the Slip immediately, and deliver possession thereof to Licensor, and Licensor may re-enter the Slip, with or without process of law, using such force as may be necessary, and remove all persons, fixtures, vessels and chattels from the Slip or Docks, and Licensor shall not be liable for any resulting damages.
19. **ASSIGNMENT AND SUBLICENSE.** Subject to the terms and conditions of this License, including but not limited to paragraph 9 above, Licensee shall have the right to sell and assign Licensee’s interest herein; provided, however, Licensee’s purchaser/assignee shall be required to enter into a new Dockage and Mooring Agreement with Licensor and become a Member of Licensor, according to such terms and conditions as Licensor then may require. If Licensee desires to sell or assign Licensee’s interests in this License or any portion of the rights granted hereunder (including renting the Slip), Licensee shall first obtain Licensor’s prior written approval and comply with any of Licensor’s policies and procedures adopted from time to time in connection therewith. Licensee may rent the Slip to a third party provided, however, that Licensee shall not rent more than 2 slips in the Docks to a third party at any one time. For purposes of calculating the number of slips rented by Licensee, any slip owned or controlled by an Affiliate (as defined in Paragraph 19) of Licensee also shall be included. Notwithstanding obtaining Licensor’s approval to rent the Slip, Licensee shall remain primarily liable hereunder. Licensor may require that any rental agreement be made in writing on a form prescribed by Licensor. Licensee shall be entitled to set the price of any assignment of his rights herein. However, Licensee acknowledges that Florida Administrative Code Section 18-21.001 requires that a percentage of the gross income derived from any agreement or sub-agreement for the sale, assignment, rental or other use of the Slip must be paid by Licensee to Licensor, who must report and transmit such payments upon receipt to the Board of Trustees of the Internal Improvement Fund of the State of Florida. Licensee agrees to comply with such provisions and to remit such payment to Licensor. In addition, Licensee acknowledges that Florida Administrative Code Section 18-21.001 provides that no interest in the Slip may be further transferred unless a clause substantially similar to the forgoing is placed in any succeeding document effecting a transfer to each successive new slip license holder. Licensee agrees to indemnify and hold Licensor harmless from and loss, cost or expense associated with Licensee’s failure to comply with the requirements of the Administrative Code.
20. **LIMITATION ON NUMBER OF LICENSES OWNED**. Licensee acknowledges and agrees that Licensee shall not own or control more than four (4) licenses for mooring slips at the Docks at any time. For purposes of calculating the number of licenses owned or controlled by Licensee, any license owned or controlled by an Affiliate of Licensee also shall be included. “Affiliate” means a person or entity that directly, or indirectly through one or more intermediaries, owns or controls, is owned or is controlled by, or is under common ownership or control with, another person or entity. As used herein, “control” means the ability to direct the management or affairs of a person or entity, and “ownership” means the beneficial ownership of at least 1% of the equity interest in an entity. For purposes of clarity, and not by way of limitation, “Affiliate” shall include a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law, or son-in-law (including adoptive relationships) and any trust, partnership, or other estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals.
21. **NOTICES.** Any notice required or permitted hereunder shall be accomplished via e-mail addressed to the email address of the respective party set forth on Page 1 of this License and each party hereby authorizes the same. Electronic notice shall constitute written notice for all purposes. Notice shall be deemed effective upon receipt provided the sender receives a “read” receipt to evidence the same. Otherwise, the sender must deliver a tangible copy of the notice to the recipient with end-to-end tracking and all delivery fees prepaid and notice by those means shall be effective when delivered to the physical address the parties as set forth on Page 1.
22. **ATTORNEYS FEES**. Should either party commence a judicial or other adversarial proceeding related to this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys’ fees, paralegal fees, expert witness fees, and all other expenses in addition to any other relief to which it may be entitled.
23. **MISCELLANEOUS.** Singular words shall include the plural, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed. Each provision hereof shall extend to and shall, as the case may require, bind and inure to the benefit of Licensor and Licensee and their respective heirs, legal representatives, successors, licensees and assigns.

**[Remainder of this page intentionally left blank]**

**IN WITNESS WHEREOF,** the parties executed this Agreement on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023.

WITNESSES: **LICENSEE**

STATE OF )

 SS

COUNTY OF )

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ remote online notarization this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is  personally known to me or  who has produced a driver’s license as identification.

(NOTARY SEAL)

 Printed Name:

 My Commission Expires:

WITNESSES: **LICENSOR**

 WIGGINS BAY DOCK OWNER’S

 ASSOCIATION, INC.

 By:

 Printed Name: Leo Sniger

STATE OF )

COUNTY OF  )

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ remote online notarization this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023, by Leo Sniger, who is  personally known to me or  who has produced a driver’s license as identification.

(NOTARY SEAL)

 Printed Name:

 My Commission Expires:

**EXHIBIT “A”**

**Fleet Characteristics Table**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Slip Designation** | **Boat Length** | **Beam Clearance Typical** | **Slip Length to Dolphin Typical** | **Number of Slips** |
| A | Up to 30’ | 12’ | 30’ | 22 |
| B | Up to 36’ | 14’ | 36’ | 45 |
| C | Up to 42’ | 16’ | 42’ | 19 |
| C | Up to 48’ | 18’ | 48’ | 7 |

Exceptions may be made only with Board approval.

Table updated 5/07.