

# BOAT SLIP/STORAGE LICENSE AGREEMENT TERMS AND 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 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.

(c) The term "Designated Slip" shall mean the initial wet or dry slip location 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 or dry slip location at the Marina.

(d) The term "Live Aboard" shall refer to a Licensee whose vessel is located at an assigned wet slip and 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.

(e) The term "Marina" shall mean the marina containing the Designated Slip located at 2200/2500 Main Street in Ft. Myers Beach, Florida.

(f) 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.

(g) 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 successors, assigns, agents, contractors, invitees, officers, directors, managers, owners, employees and insurers.

(h) 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 agents, licensees, heirs, personal representatives, successors, assigns, guests, invitees, contractors, officers, directors, managers, owners, employees and insurers.

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 Marina property 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 the Designated Slip and is not a lease of the Designated Slip. Slip assignment is revocable and the Licensor may at any time change the location of the Designated Slip at its sole discretion. Licensee's use of the Designated Boat shall be for pleasure and recreation only and no commercial ventures of any kind, including, but not limited to, any boat brokerage, boat sales, or charter operations, shall be undertaken by Licensee from the Marina without prior written approval from Licensor. Nothing in this Agreement shall be construed to create a residential tenancy. Licensee shall not establish a permanent and/or primary residence on the Designated Boat while at the Designated Slip, regardless of Live Aboard status. 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, temporary or otherwise, is strictly prohibited. Should Licensee provide false information to Licensor regarding residence or Live Aboard status, or attempt to establish primary or permanent residence while at the Marina, Licensor shall have the right to immediately terminate this Agreement.

3. Duration and Termination. This Agreement shall be for the term set forth on the signature page (the "Term"). Terms are either 1) monthly or 2) prepaid annually.

(a) Licensor may terminate this Agreement immediately upon written notice to Licensee if 1) Licensee fails to make any payment due hereunder after five (5) days of the applicable due date, or 2) Licensee breaches any other obligation or covenant included in this Agreement, or fails to comply with any of the rules and regulations established by Licensor.

(b) Licensor 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 Licensor 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 Licensor, in which case the balance of the account will first be applied to those outstanding debts before being refunded.

(c) In the event the Designated Slip, Marina or portion thereof becomes damaged, unsafe, unserviceable, or requires significant repair, as determined by the Licensor, this Agreement may be terminated by the Licensor without notice, subject to the same proration in 4(b) above.

(d) Licensee shall give Licensor 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. If the Agreement calls for monthly payments, no proration will apply at termination. If Licensee has prepaid on an annual basis, the balance of the Licensee's account at termination will be refunded on a no interest modified prorated basis, with the months prior to termination being billed at the corresponding monthly rate(s) for that period, and provided Licensee owes no outstanding debts to Licensor, in which case the balance of the account will first be applied to those outstanding debts before being refunded. Any vessel remaining at the Marina after termination will be subject to higher daily rates for mooring and/or storage. Early termination of this Agreement with less than 30 days notice to the Licensor 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 term will be month-to-month and the monthly rate will be at then current published rates.

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 Designated Slip. Upon the basis of such inspection, Licensee represents that it finds the Designated Slip to be suitable for its intended purposes. Licensee's use of the Designated Slip is at Licensee's sole risk. 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 without the express written permission of the Licensor. If permitted by the Licensor, any such changes, modifications or alterations will be solely at the Licensee's expense. 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 changes, modifications, or alterations were made. For

dry storage, if the Designated Boat is a catamaran or stepped hull vessel, the Licensee acknowledges that these hulls are not suited to normal dry storage and expressly assumes the risk of any and all damage resulting from dry storing this type of vessel.

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 if a wet slip or one (1) week if a dry slip. 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. Unless prepaid, 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 not prepaid and 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 to hold a Designated Slip prior to the Designated Boat's arrival at the Marina.

(b) Credit Card Authorization. Licensee shall maintain a valid credit card and will fill out a Credit Card Authorization Form for Licensor to keep on file. Licensee expressly authorizes Licensor to charge said credit card, on or about the first day of each month, for such amounts as are reasonably necessary to remedy Licensee's defaults in obligations under this Agreement, including, but not limited to, defaults in the payment of the Monthly Fees and other charges, including late charges, or to repair damages to the Designated Slip or the Marina caused by Licensee, the Designated Boat, or Licensee's guests or invitees, exclusive of normal wear and tear; or to clean the Designated Slip, if necessary, upon termination of this Agreement. The Licensee further authorizes Licensor to charge the credit card for incidentals, including but not limited to, fuel, parts, accessories, paraphernalia, supplies, food, beverages and/or any convenience items purchased from the Licensor or Marina by the Licensee or for the account of the Designated Boat, or any services performed by, or on behalf of, the Licensor for the Licensee or the Designated Boat. If the Licensee disputes any charges to the credit card, the Licensee will promptly notify the Licensor prior to notifying the credit card company. In any event, all credit card surcharges and interest remain solely the Licensee's responsibility. In no event do the Licensor's charges to the credit card act as a waiver of any of the Licensor's rights, or to discharge any of the Licensee's obligations, under this Agreement.

(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 and shall remove all of Licensee's other personal property, if any, from the Marina.

iii. Notwithstanding i. and ii. above, standard daily rate charges will accrue for each day the Designated Boat remains without permission at the Designated Slip past the termination date; 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 \$50 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 greater of 5% of the check amount or a \$50.00 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.

(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. 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. The monthly utility charge includes moderate use of fresh water. Licensee shall supply any hoses that may be necessary for Licensee's use of fresh water. 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. Notwithstanding the foregoing, Licensor cannot and does not guaranty the continuity of electrical and fresh water service.

8. Outside Services. SHOULD THE LICENSEE NEED ANY WORK PERFORMED TO THE DESIGNATED BOAT BEYOND MINOR COSMETIC MAINTENANCE OR MINOR REPAIRS (i.e., teak re-staining or maintenance cleaning above the waterline) WHILE WITHIN THE MARINA OR AT THE DESIGNATED SLIP, LICENSEE MUST REQUEST THE WORK THROUGH THE MARINA'S SERVICE DEPARTMENT. 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. In addition, any Contractor who performs work on the Designated Boat while it is in the Marina shall pay to Licensor an amount equal to ten percent (10%) or greater of the Marina Service Department's posted rates for the equivalent services, parts and other equipment provided to Licensee as determined by Licensor. Licensee hereby guarantees the full and prompt payment of such amounts by all Contractors within thirty (30) days from the date consent for work is given by Licensor.

9. Storage Services. The Licensor splashes and removes vessels from the water during normal business hours only on a first come first serve basis. The Licensor will use its best efforts to splash/remove all requested vessels in a timely fashion; however, the Licensor does not warrant or guarantee its ability to splash/remove any vessel under this Agreement. Furthermore, it shall be within the sole discretion of the Licensor, its officers, agents and employees whether any vessel is splashed/removed taking into consideration weather, available staff, as well as condition of the vessel, delinquent charges, lack of insurance or other issues reasonably impacting the Licensor's ability to splash a vessel. The Licensor assumes no responsibility or liability for the safe storage, dockage and maintenance of the Designated Boat. The Licensee assumes full responsibility to ensure that all through-hull

fittings and drain plugs are properly closed before his or her vessel is splashed. The Licensee shall be solely responsible for 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. The Licensee shall be solely responsible for ensuring that the designated boat is appropriately secured prior to removal including, but not limited to, lowering tops, antennas and lights; securing loose items; and, raising trim tabs, sending units and transom mounted objects. The Licensee shall be solely responsible to remove drain plugs to allow drainage when the Designated Boat is stored out of the water. It is understood and agreed by the Licensee that the Licensor shall not have any care, custody, and control of the Designated Boat once it is placed in the water, even if it is not removed and remains in the water overnight at the Marina.

10. Rules and Regulations. Licensee shall abide by all rules and regulations established by Licensor as now existing or as hereafter amended. It is the Licensee's sole responsibility to make sure he or she is familiar with the rules and regulations and to periodically review them as they are amended from time to time. A copy of the rules and regulations is posted at [www.SaltySamsMarina.com/Contracts/RulesandRegulations.pdf](http://www.SaltySamsMarina.com/Contracts/RulesandRegulations.pdf) and in the Marina ship store, and Licensor will provide copies to Licensee on request.

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 protection and indemnity and/or liability insurance of at least \$300,000 combined limit. Licensee must also maintain pollution insurance under Licensee's policy and the insurance coverage shall include endorsements for extended perils, damage by fire, vandalism, burglary and fuel/oil spill. The Licensor shall be named as an Additional Insured under said insurance coverage, and the Licensee's signature on this Agreement is a warranty and representation that said insurance coverage is in effect. Upon Licensor's request, Licensee shall provide to Licensor within ten (10) days a certificate of insurance and policy of insurance showing that the terms of this paragraph have been satisfied. Such certificate shall name Licensor as an additional insured and require not less than thirty (30) days written notice to Licensor of termination of coverage. In no event shall the limits of said insurance coverage be considered as limiting the liability of the Licensee under this Agreement.

(b) Licensee waives any right or Claim against the Licensor 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) In the event that the Licensee fails to obtain or maintain in full force and effect any insurance coverage required under this Agreement, the Licensor shall have the right to immediately terminate this Agreement, notwithstanding any provisions herein to the contrary. Notwithstanding the foregoing, the Licensee shall and 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, Licensor, 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 Licensor or its employees or agents in order to better secure the Designated Boat and to protect Marina property, private property, and the environment. The Licensor will charge the posted rates associated with removing and/or securing the Designated Boat, and Licensee agrees to promptly pay same. Under no circumstances shall this be deemed to imply any obligation of any kind on the part of Licensor for the safety or protection of the Licensee, Designated Boat, other persons, or other property. Licensor 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 Licensor shall relieve the Licensee of his/her duty to take all reasonable precautions to secure the Designated Boat to protect the Licensor, Marina, and its employees and invitees from harm. Licensee shall be responsible for, and 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. Licensor Authorized to Operate, Move and take Reasonable Steps to Protect Boat. At all times, the Licensee warrants the Designated Boat will be operable and able to move under its own power, and will demonstrate operability at the Licensor's 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. Licensee expressly authorizes Licensor 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 Licensor deems necessary. Licensee further authorizes the Licensor 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, Licensor assumes no responsibility 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 indemnify, defend and hold Released Parties harmless for any such Claims.

14. Express Assumption of Risk for Natural and Inherent Conditions. The Marina is an outdoor environment and the Licensor and its officers, agents and employees are not responsible for weather and sea conditions, birds, rodents, insects, vermin, or other animals, dust mold, mildew, 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 wind, waves, and wet surfaces, and the Licensee expressly assumes any risk posed by these natural conditions.

15. RELEASE, INDEMNIFICATION AND HOLD HARMLESS. The Designated Slip, dry storage, docks and Marina facilities and associated premises subject to this Agreement are to be used at the Licensee's and the Releasing Parties' sole risk. Therefore, the Licensee, in addition to 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 Licensor, its officers, employees and/or agents in connection with the Marina and associated premises or the use of the Designated Slip, docks, dry storage space 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. If the Licensor 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 Licensor 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 Licensor from liability be declared or adjudged to be invalid, the Licensee agrees that in no event shall the Licensor's aggregate liability for all Claims and all parties, whether the Releasing Parties or others, exceed the sum of \$300,000. Licensee agrees to indemnify, defend and hold Releasing Parties harmless for any amount above this sum, including, if necessary, payment of said excess amount to third parties.

16. Licensor's 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.

17. **No Discharge.** Licensee shall not discharge sewage, oil, fuel, spirits, garbage, litter, inflammable liquid, oily bilge water or any other hazardous, toxic or inflammable substance or material into the waters of the Marina or the general area of the Marina. Licensee shall reimburse Licensor upon demand for the cost of cleaning up any pollution discharge created by the Designated Boat or Licensee. Licensee shall immediately report all such discharges to Licensor. Licensee shall waive any Claim against Released Parties related to any discharge by other vessels, whether or not located at the Marina. Licensee will indemnify, defend and hold Released Parties harmless from any Claims arising out of discharges from the Designated Boat.

18. **Reimbursement of Costs; Designated Boat as Security.** Licensee shall reimburse Licensor for the cost of any work necessary to repair or replace any damage 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 guests or invitees, including the costs of clean up, loss of use and lost profits. 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 under this Agreement, including reasonable attorneys' fees and costs through all appeals, whether or not a lawsuit is filed and whether or not Licensor is the plaintiff in any lawsuit filed; provided, however, that if Licensee is the initiating plaintiff, Licensee shall be liable for Licensor's costs and expenses only if Licensor is the prevailing party. Licensee hereby grants to Licensor a 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. **FOR UNDOCUMENTED VESSELS, PURSUANT TO FLORIDA STATUTE § 328.17, IN THE EVENT OF NONPAYMENT OF STORAGE FOR A PERIOD OF SIX (6) MONTHS, MARINA (LICENSOR) IS AUTHORIZED TO SELL OWNER'S (LICENSEE'S) VESSEL BOAT, ITS APPURTENANCES AND CONTENTS AT A NONJUDICIAL SALE.** In addition, Licensee hereby grants to Licensor a lien on the Designated Boat, its appurtenances and contents (including all personal property in the Designated Boat), to secure payments due to Licensor for any repair or other work performed on the Designated Boat. 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 and/or storage or other services provided under this Agreement are "necessaries" provided to Designated Boat and are assumed to be 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.

19. **Miscellaneous.**

(a) Licensee's name on Agreement must be identical to name on registration and insurance.

(b) All notices and payments called for herein shall be sent to Licensor or Licensee at the applicable addresses set forth on the signature page hereof, unless either party 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 a principal/agent, employer/employee, independent contractor or any other relationship other than licensor/licensee, 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.

**(e) 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.**

(f) 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.

(g) 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 a slip or storage space 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.

(h) 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 Licensor and Licensee.

(i) 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, nor shall it act as an estoppel preventing a party from suing under this Agreement.

(j) Headings in this Agreement are for convenience of reference only and shall not be used to interpret or construe its provisions.

(k) This Agreement shall be construed in accordance with the laws of the State of Florida, without regard to conflicts of law rules.

(l) 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.

(m) 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.

(n) There may be times when the Marina will host special events requiring the Designated Slip to be temporarily reassigned or moor or store the Designated Boat at a location outside the Marina for the duration of the event. 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.

(o) Patrons of the Marina must adhere to all applicable manatee ordinances and speed zones. Manatee educational materials are available in the ship store or from the Bureau of Protected Species Management web site, [www.floridaconservation.org/psm](http://www.floridaconservation.org/psm).

**(p) IMPORTANT: READ THIS PROVISION CAREFULLY -- IT PROVIDES THAT ANY CLAIM MUST BE RESOLVED BY BINDING ARBITRATION AND THAT THE PARTIES GIVE UP THEIR RIGHT TO A JURY TRIAL.** 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.

(q) 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.

(r) 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 arising out of or relating to this Agreement.