



Vessel _____ Slip # _____

**NAPLES MUNICIPAL DOCK
COMMERCIAL USE AGREEMENT**

THIS COMMERCIAL USE AGREEMENT ("USE AGREEMENT") is entered into this ____ day of _____, 20__, between the City of Naples, a Florida municipal corporation (hereinafter referred to as the "CITY"), the address of which is 735 Eighth Street South, Naples, Florida 34102, and _____ ("USER"), whose address is _____.

For valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties hereby agree as follows:

1. SLIP/ USER'S VESSEL

1.1 City agrees to permit the User to use Slip #_____ (the "Slip"), located at the City of Naples Municipal Dock, 880 Twelfth Avenue South, Naples, Florida, 34102 (the "Municipal Dock") which includes the right to use the Slip and the non-exclusive right to use, in common with other users at the Municipal Dock, and the public, its piers, wharves and loading platforms and the improvements constructed on them. The Slip and Municipal dock are located within the lands leased to the City pursuant to the Sovereign Lease (as defined in Section 6.6 below), said lands legally described on Exhibit "A" attached hereto and incorporated herein by reference. The Municipal Dock and location of the Slip are generally set forth on Exhibit "A-1" attached hereto and incorporated herein by reference. User agrees that the City shall at all times have the right and privilege of determining the nature and extent of the Municipal Dock and Slip (including, without limitation, the right to modify or revise the descriptions of the Slip and Municipal Dock attached hereto as Exhibit "A"), and of making such changes, rearrangements, additions or reductions to the Municipal Dock and Slip that the City shall deem proper, or which are made as a result of any federal, state or local law, rule, regulation, guideline or order.

1.2 Nothing contained herein shall be deemed to grant an ownership right, leasehold interest or tenancy right to User in the Slip or in the Municipal Dock.

1.3 User Information

NAME: _____ Tax/ID: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

HOME PHONE: (____) _____ BUS. PHONE: (____) _____

FAX: (____) _____ EMAIL: _____

EMERGENCY CONTACT: _____ PHONE: _____

1.4 User's Vessel. The following vessel shall be hereinafter referred to herein as "User's Vessel":

Vessel _____ Slip # _____

VESSEL NAME: _____ FL. REG. DOC. # _____

MANUFACTURER: _____ YEAR: _____

LENGTH: _____ BEAM: _____ DRAFT: _____

INSURANCE CARRIER: _____ EXP. DATE: _____

HULL SERIAL # _____

CIRCLE TYPE OF OWNERSHIP: Individual Partnership Corporation LLC Other _____

CIRCLE TYPE OF VESSEL: Fishing boat Sailboat Other

User must own a controlling interest (greater than 50%) in the User's Vessel. User must provide an affidavit of ownership interest in the User's Vessel and the business prior to entering into a Use Agreement, upon any change of ownership of the business or of the User's Vessel, and any time requested by the City.

OTHER OWNERS: _____ (_____%). _____ (_____%).

1.5 Notwithstanding anything to the contrary contained in this Use Agreement, the City reserves the right (in the City's sole and absolute discretion) to reassign User to another slip within the Municipal Dock that is of equal or greater size to the Slip, upon ten (10) days notice to User. User agrees to acknowledge in writing the reassignment of the Slip if requested by the City within ten (10) days of the City's request.

2. AUTHORITY/TERM

2.1 The City's Manager or designee shall be authorized to execute, administer and provide for notification of termination of this Use Agreement.

2.2 The term of this Use Agreement shall not exceed five 5 year(s). The term shall begin on the _____ day of _____, 20____ (the "Commencement Date") and shall end on the _____ day of _____, 20____ (the "Termination Date"), unless sooner terminated in accordance with, and pursuant to, the terms and conditions of this Use Agreement, the Code of Ordinances of the City of Naples, or the duly adopted rules and regulations for the Municipal Dock and any other local, state or federal laws.

2.3 User acknowledges that User has no renewal option or renewal right under this Use Agreement and that upon the expiration or sooner termination of this Use Agreement, User shall immediately deliver possession of the Slip to the City.

2.4 The City will endeavor to notify the User, at least one hundred and eighty (180) days prior to the Termination Date, that the Use Agreement is scheduled to expire, requesting User to indicate whether User desires to enter into a new Use Agreement. User will endeavor to notify the City, at least one hundred and eighty (180) days prior to the Termination Date, as to whether User desires to enter into a new use agreement. Failure to notify under this provision shall have no effect on the validity of this Use Agreement or create any other rights or obligations, including any right or obligation to enter into a new use agreement.

2.5 User may apply for a new use agreement by submitting an application in a form an substance acceptable to the City within ninety (90) days prior to the Termination Date (“New Use Agreement Application”). The review of the New Use Agreement Application shall be performed by the City Manager or designee. Simultaneously with the submittal of said New Use Agreement Application, User shall pay to the City a non-refundable application review fee in the amount established by the City Council to review the New Use Agreement Application. If the New Use Agreement Application for a new use agreement is denied, the User may appeal the determination to the City Council within fourteen (14) days after receipt of notice of denial. The City Council will review the decision in a de novo hearing and shall make a final determination; provided, however, nothing contained in this Section 2.5 shall create a right on the part of User or shall obligate the City to enter into a new use agreement.

3. USE FEE/SECURITY DEPOSIT

3.1 Upon signing the Use Agreement, User must pay the first month’s use fee, last month’s use fee and a security deposit equal to one (1) month’s use fee (“Security Deposit”).

3.2 Subject to adjustment as set forth in subparagraph 3.3 below, the “use fee” for the right to utilize the Slip pursuant to this Use Agreement shall consist of the following:

Annual use fee:

Annual base use fee:	\$_____;	plus
Commercial charter surcharge (if applicable)	\$_____;	plus
Applicable sales tax (six percent (6%) of all use fee due and payable subject to change as set forth in subparagraph 3.3 below)	\$_____	
Total yearly use fee due	\$_____	

Use fee shall be payable monthly as follows:

Monthly installments of base use fee	\$_____,	plus
Commercial charter surcharge (if applicable)	\$_____;	plus
Monthly sales tax	\$_____	
Total monthly use fee due	\$_____	

3.3 If this Use Agreement is for a term of greater than one (1) year, then as of October 1 of the first and each succeeding year of this Use Agreement, the use fee for each succeeding year of this Use Agreement shall be recalculated. Increases in the use fee will be as described in the following sentence and shall be automatically applied to the Use Agreement as of October 1st of each year. The annual use fee shall increase by the greater of: (a) two and one-half percent (2.5%); or (b) the percentage, if any, by which the then most recently published

CPI (as hereinafter defined) figure shall have increased over the CPI figure for the month occurring one (1) year prior to the most recently published CPI figure. For purposes of this Use Agreement, the term "CPI" shall refer to the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), 1982-84=100) U.S. City Average. Any increase in sales taxes, whenever occurring, will be paid by User regardless of whether the term of this Use Agreement is for a term greater than one (1) year.

- 3.4 All payments shall be made without demand at the City of Naples Department of Finance, 735 Eighth Street South, Naples, Florida 34102, or at such other place and to such other person as the City may from time to time designate in writing and shall be received by City no later than the 10th day of each month.
- 3.5 When the Use Agreement begins on a date other than the first day of the month, the first month's use fee shall be prorated.
- 3.6 A charge of five percent (5%) of the total monthly amount that is not paid when past due shall be assessed each month. In addition, the City shall be able to place a lien against User's Vessel, or any vessel hereafter moored by User at the Slip, including the appurtenances and contents thereof, in the event of any unpaid sums due for the use of the docking facilities or other services or for damages or injuries caused or contributed to by User or any vessel owned by User to any docks or property of the City or to any other property or persons at the Municipal Dock.
- 3.7 The City shall not be required to keep the Security Deposit separate from its general funds or in an interest bearing account and the City shall not be obligated to pay any interest to User that may be collected on the Security Deposit. If User defaults with respect to any provision of this Use Agreement, including without limitation, the payment of the use fee, the City may use, apply or retain all or any part of the Security Deposit for the payment of any use fee, or to compensate the City for any other loss, cost or damage which the City may suffer by reason of User's default. If any of the Security Deposit is so used or applied, User shall, within five (5) days after notice thereof, deposit cash with the City in an amount sufficient to restore the Security Deposit to its original amount.

4. POSSESSION

- 4.1 In return for User's proper performance of all obligations under this Use Agreement, the City shall provide to User use of the Slip in reasonably good condition, and without unreasonable disturbance.

5. ASSIGNMENT

- 5.1 Except as provided herein, User shall not assign or encumber this Use Agreement, nor assign or transfer in any way, an interest in User's business, nor use or permit the use of the Slip for any purpose other than provided by the terms of this Use Agreement, except that individuals or partners may cause their vessels and this Use Agreement to be assigned to a corporation, limited liability company or trust so long as the percentage of ownership interest in the new entity is held in the same proportions by the same individuals as was the previous vessel ownership and Use Agreement as determined by the City, in the City's sole discretion. User shall not permit any other entity and/or person to utilize the Slip, or any

part thereof or have any rights whatsoever under this Use Agreement. For the purposes of this Use Agreement, an "assignment" prohibited by this section shall be deemed to include the following: if User is a partnership, a withdrawal or change (voluntary, involuntary, by operation of law or otherwise) of any of the partners thereof, or the dissolution of the partnership except in the event the partnership continues operation by the remaining partners upon the death of a partner; or, if User consists of more than one person, a purported assignment, transfer, mortgage or encumbrance (voluntary, involuntary, by operation of law or otherwise) from one thereof unto any other party; or, if User is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of User, or any change in the ownership (voluntary, involuntary, by operation of law or otherwise) of its capital stock or membership interests (as the case may be) from the ownership existing on the date of execution hereof.

- 5.2** Notwithstanding the provisions set forth in Section 5.1 above, the City may (but shall not be obligated too), in the City's sole and absolute discretion, permit a transfer or assignment of this Use Agreement by User. Any proposed transferee or assignee prior to execution of any permitted transfer, permitted assignment, shall submit for review, an application to the City (collectively the "Assignment Application"), which contains personal and business financial statements with financial and business references, a credit check, prior related commercial chartering or business experience, insurance policy, criminal record, current business licenses, personal references and any other items that may be requested by the City as part of said Assignment Application. Simultaneously with the submittal of said Assignment Application, User shall pay to the City a non-refundable application review fee in the amount established by the City Council to review the Assignment Application for the proposed transfer or assignment. User shall give authorization (or cause such proposed transferee or assignee to give authorization) to the City to obtain the credit check and User shall pay for the cost of the credit check. The City reserves the right to reject any Assignment Application for any reason including, without limitation, an application based on false or misleading information, prior or current criminal conviction, bad credit history or incomplete or inaccurate application information. In the event the City permits an assignment of this Use Agreement: (i) any such permitted assignment shall be in a written form and substance acceptable to the City (in the City's sole discretion) and executed by the City; (ii) the term of any such permitted assignment shall not exceed the remainder of the term of this Use Agreement; and (iii) no such permitted assignment shall affect the continuing primary liability of User (which, following assignment, shall be joint and several with the assignee), and User shall not be released from performing any of the terms, covenants and conditions of this Use Agreement. Pursuant to the Sovereign Lease (as defined in Section 6.6 below) the instrument permitting any permitted transfer or assignment shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of the Slip to be paid to the City, which upon receipt, shall report and transmit said amount to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, the Lessor under the Sovereign Lease. Such instrument of the User to transfer the right to use the Slip or assign this Use Agreement shall also include a provision that clearly notifies any subsequent transferee or assignee that the provision set forth in the proceeding sentence is placed in each succeeding instrument or agreement used to transfer the Slip or assign the Use Agreement, that is permitted pursuant to the Use Agreement.

5.3 The review of the Assignment Application set forth in Section 5.2 shall be performed by the City Manager or designee. If the transfer or assignment is denied, the User may appeal the determination to the City Council within fourteen (14) days after receipt of notice of denial. The City Council will review the decision in a de novo hearing and shall make a final determination; provided, however, nothing contained in this Section 5.3 shall create a right on the part of User, transferee, or assignee or obligate the City to enter into a new use agreement.

6. USE

6.1 The Slip is to be used for docking or mooring space for commercial charter vessel purposes only, and only for User's Vessel. User's Vessel shall not carry more than six (6) passengers. Any exceptions may be considered and extended at the sole discretion of the City's City Council on an individual and case-by-case request. Any other use of the Slip by User is not permitted without the written consent of the City which consent may be withheld in the City's sole and exclusive discretion.

6.2 The Slip is to be used at the sole risk of User, and the City shall not be liable for the care, protection or security of User's Vessel, User's Vessel's appurtenances or contents, or for any loss or damage of any kind or nature to the User's Vessel, User's Vessel's appurtenances or contents, due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains, other casualties or any other reason. There is no warranty of any kind as to the condition of the piers, walks, gangways, ramps, mooring gear, electrical and water services and the City shall not be responsible for any injuries to persons or property occurring upon the Municipal Dock for any reason.

6.3 User shall not deposit or allow garbage or trash to be deposited at the Slip. All garbage must be properly deposited and contained within the appropriate containers supplied by the City and User must comply with any and all laws relative to proper storage, removal or disposal of refuse.

6.4 User shall not create or cause any nuisance (as determined by the City, in the City's sole discretion) to occur or continue at the Slip or Municipal Dock.

6.5 User shall not conduct or engage in any illegal activity at the Slip, on the Municipal Dock or upon User's Vessel.

6.6 User, in the use and occupancy of the Slip, shall promptly comply with all statutes, ordinances, rules, orders, regulations, and requirements of any governmental agency with authority over the Municipal Dock, including, without limitation, the Naples City Dock Marina Operations and Management Plan which is attached hereto and incorporated herein as Exhibit "B" (collectively "Government Regulations"). Without limiting the generality of the foregoing, User acknowledges this Use Agreement is subject to that certain Sovereignty Submerged Land Lease Renewal and Modification to Reflect Current Structures, Reduce Term to Five Years and Remove Special Lease Condition (as may be further amended or renewed) with an effective date of July 1, 2008, between the City and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (collectively "Sovereign Lease"). User agrees to abide by all the provisions of the Sovereign Lease, and any amendments, renewals and modifications to the same. Further, User agrees that:

- (a) All parts of User's Vessel (including, without limitation, any extensions of the User's Vessel's bow pulpits, dive platforms, nets, trawl doors, outboard motors, outdrives and dinghies) moored at the Slip shall at all times be located wholly within the boundary of the Slip;
- (b) User shall possess a current registration and title as required by Chapters 327 and 328, Florida Statutes for User's Vessel, or current vessel registration and title as required in another state or country for User's Vessel;
- (c) User's Vessel shall be maintained in a fully operational condition and capable of self-propulsion;
- (d) Discharge to surface waters of User's Vessel's sewage is prohibited;
- (e) Liveboards at the marina are prohibited and the User's Vessel shall not be a livaboard. "Livaboard" is defined as a vessel docked at the marina that is inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period; and
- (f) A violation or failure to comply with any of the foregoing shall, in addition to and not as a limitation of any other remedy of the City hereunder, entitle the City to immediately eject from the Slip and marina the User.

Notwithstanding the term set forth in Section 2.2 above, in the event the Sovereign Lease or any other governmental authority or permission necessary to operate the Municipal Dock or the Slip is terminated or expires, this Use Agreement, at the sole option of the City, may be terminated by the City and this Use Agreement shall be deemed to expire as of the date the Sovereign Lease or such other governmental authority or permission necessary to operate the Municipal Dock or the Slip is terminated or expires, as the case may be.

- 6.7** User shall not do or permit any act which will conflict with provisions of any insurance policies covering the Municipal Dock.
- 6.8** A maximum of one (1) use agreement for one (1) Slip will be entered into and be in effect with any User, whether an individual, corporation, limited liability company, firm, partnership, trust or other entity, or to any affiliate of same, at any time. "Affiliate" shall mean any individual or business that directly owns or controls, is owned or controlled by or is under common ownership or control with, another individual or business entity. "Own" shall mean to possess an equity interest or equivalent in a vessel. Any User in possession of a fully executed and authorized use agreement issued by the City will be prohibited from having any financial investment or ownership of any kind in any other charter business or vessel, or recreational vessel operating or moored at the Municipal Dock, or within any designated mooring area managed by the City.
- 6.9** The mooring of vessels and the operation of a business at the Municipal Dock are subject to the ordinances, rules and regulations of the City of Naples (as may be amended from time to time), and the terms of this Use Agreement, and do not create any other rights in User.

6.10 Restroom facilities are available 24 hours per day, seven days a week. Sewage pump-out is also available within the Municipal Dock. The locations of the restroom facilities and sewage pump-out are generally shown on Exhibit "A-1".

7. UTILITIES

7.1 If utility charges are deemed necessary (as determined in the City's sole discretion) at some future date, utility charges (including any and all taxes) shall be added to User's monthly use fee bill without further negotiation.

7.2 In the event utility charges are due pursuant to Section 7.1, User shall be responsible for the timely payment of all utility charges, including, without limitation, charges for electricity, water, cable, and telephone, if any.

7.3 In the event utility charges are due pursuant to Section 7.1 and User fails to make timely payments on utility charges, the City may require the amounts due to be paid as additional use fee on the date the next use fee payment is due.

8. REPAIRS AND MAINTENANCE

8.1 The City agrees to operate and maintain dockage and mooring facilities at the Municipal Dock in a reasonably clean, sanitary, and safe condition and comply with federal, state, and local law and the terms and conditions of federal, state, and local permits regarding the operation and maintenance of the Municipal Dock.

8.2 The City shall be responsible for the repair, maintenance and reconstruction, if and when the need arises (as determined by the City in the City's sole discretion), of the Slip and the Municipal Dock in a good, tenantable, and structurally sound condition, unless needed repairs and reconstruction are caused by the negligence, the wrongful acts or other acts of User, User's Vessel, User's employees, guests, agents, visitors or invitees.

8.3 User shall keep the Slip in a clean, sanitary, and safe condition in accordance with any rules, codes or regulations of any governmental agencies having proper jurisdiction. The City will have the authority to make such determination in the City's sole discretion.

8.4 User shall not make any improvements or alterations to the Slip without prior written approval of the City, which approval may be withheld in the City's sole and exclusive discretion.

8.5 If the Slip is destroyed or so damaged by fire or other casualty during the term of the Use Agreement so as to become not usable by User (as determined by the City in the City's sole discretion), the City shall have the right (but not the obligation) to render said Slip usable by repairs within one hundred and twenty (120) days therefrom, and User shall not be obligated to pay any use fee only during the period of time that the Slip is unusable. In the event of such casualty, the City shall not be required to make any repairs or replacement of any improvements, nor shall the City be responsible for the replacement of User's Vessel or personal property. If the Slip is not rendered usable within such one hundred and twenty (120) day period, either party then shall have the option to cancel the Use Agreement, and if the Use Agreement is so canceled, the use fee shall be paid only to the date of such casualty.

The cancellation herein contemplated shall be effected by written notice directed to the other party.

9. RIGHT OF ENTRY

9.1 The City has the right, at all reasonable times, to enter upon the Slip to inspect, maintain, repair, or to make reasonable alterations to the Slip. The City may not unreasonably interfere with User's business.

10. SIGNS

10.1 The City shall provide User with one (1) sign and the City shall designate the location, dimensions and design. The User shall be responsible to pay for name and personal information to be placed on the sign. One separate sign or board announcing space availability for charter trips will also be authorized by the City.

10.2 All signage must be approved by the City in writing prior to being installed. The City shall be the sole judge as to the acceptability and location of any sign erected at the Slip or on the Municipal Dock.

11. INSURANCE

11.1 User, at User's own cost and expense, shall at all times during the term of this Use Agreement maintain with an insurance company, acceptable to the City, a Public Liability and Property Damage policy to include fuel and oil spill liability with limits of not less than five hundred thousand and no/100 dollars (\$500,000.00), per occurrence, naming the City of Naples as an additional insured, said minimum limit subject to future increase by the City.

11.2 User shall provide the City with a copy of the insurance policy evidencing coverage upon execution of this Use Agreement and no later than thirty (30) days prior to expiration of a policy, evidence of the renewal of the policy.

11.3 Any contractors employed by User shall register at the Municipal Dock office prior to beginning work, providing a valid business license and proof of insurance naming the City of Naples as additional insured in compliance with the terms set forth herein and as designated by the office of risk management of the City with limits of not less than one million and no/100 dollars (\$1,000,000.00), annual aggregate and comply with all laws.

11.4 User shall provide the City with proof of workers' compensation coverage for the conduct of User's business, or with proof of exemption from coverage requirements.

12. INDEMNIFICATION

12.1 It is expressly agreed by the parties that the City shall not be liable for any damage, injury or death, which may be sustained by User, its agents, servants, employees, customers and invitees, or other person, resulting from the intentional acts, carelessness, negligence or improper conduct on the part of any other Users (or such Users, servants, employees, agents, or invitees) or any other person utilizing the Municipal Dock, or by reason of the breakage, leakage, or obstruction of the water, sewer or other pipes, or other leakage or condition, or action of whatever nature or cause, in or about the Slip and Municipal Dock.

- 12.2 User agrees to hold harmless and to indemnify the City from any loss, damage, liability, claims, causes of action and suits imposed by reason of any acts or omissions (including, without limitation, violation of any laws) on the part of User, or User's agents, employees, invitees or guests in the use of the Slip or Municipal Dock.
- 12.3 The indemnification provided herein shall include, but not be limited to, all costs and expenses incurred by the City in any action based on the foregoing, including, but not limited to, any action brought by User, or User's invitees, guests, customers, employees, agents, heirs, assigns or subrogees.
- 12.4 The City and User acknowledge that good, sufficient, fair and independent consideration has been given for the indemnifications set forth in this Use Agreement and but for said indemnifications, the City would not have entered into this Use Agreement.

13. RELEASE OF LIABILITY UPON SALE, USE AGREEMENT, RENOVATION OR REPLACEMENT

- 13.1 In the event of: (i) any sale, or sales of the Slip or the Municipal Dock by the City; (ii) the assignment of this Use Agreement by the City; and/or (iii) any renovation, replacement or removal of the Slip or Municipal Dock by the City, the City shall have (at the City's sole option) the right (but not the obligation) to terminate this Use Agreement upon one hundred and eighty (180) days notice to User. The City's obligations under this Use Agreement shall be binding upon the City only for the period of time that the City is a party to this Use Agreement and upon an assignment of this Use Agreement by the City, User shall look solely to the City's assignee under this Use Agreement for the satisfaction of each and every obligation of the City hereunder.

14. RULES AND REGULATIONS

- 14.1 The City reserves the right from time to time to adopt and to amend ordinances, rules and regulations applicable to the Slip and the Municipal Dock. The City will endeavor provide at least ten (10) days notice of such ordinances, rules and regulations, prior to adoption by the City Council, to be posted at the Municipal Dock. Failure of the City to post at the Municipal Dock said ordinances, rules and regulations prior to adoption shall not affect the validity of said ordinances, rules and regulations nor their effect upon this Use Agreement.
- 14.2 User acknowledges that with the signing of this Use Agreement, the User has received a copy of the current ordinances, rules, regulations and policies and agrees to abide by such ordinances, rules, regulations, and policies; and further agrees to abide by such ordinances, rules, regulations and policies as may in the future be adopted or amended; and further agrees to abide by all applicable federal, state and local laws and regulations.

15. DEFAULT BY USER

- 15.1 Recognizing the importance to the City of maintaining a first-class image and operation of the Municipal Dock, User shall maintain at all times a professional relationship with the City, with other Users and with other persons visiting and using the Municipal Dock. Upon

conviction of User for any felonious activity, User shall be in default, and must vacate the Slip immediately.

15.2 In addition to any other default as so defined by the Use Agreement or by law, the following events shall be deemed to be events of default by the User under this Use Agreement:

- (a) User's failure to pay any installment of the use fee when such failure continues for a period of ten (10) days after the due date, or the User's failure to pay any other expense as herein provided when such failure continues for a period of ten (10) days after written demand by the City;
- (b) User's failure to comply with any term, provision or covenant of this Use Agreement, other than the payment of the use fee or expenses;
- (c) harassment, intimidation, retribution, or verbal, physical or emotional abuse directed by any person to any other person;
- (d) desertion or vacation of the Slip. Actual removal of User's Vessel for more than thirty (30) consecutive days, together with the failure to pay the use fee as required herein, will constitute desertion or vacation. Vessels removed from the facility for emergency or major vessel repairs will not be considered desertion as described herein, provided the City is notified of such repairs; or
- (e) User's failure to maintain a sufficient level of activity from charter business equal to at least fifty two (52) charter trips or eighteen thousand seven hundred and twenty and no/100 dollars (\$18,720) annually in gross income (as determined in 2008 constant dollars) from the charter business (the "Charter Business Activity"). It shall be the express obligation of User (and not of the City) to maintain adequate records to evidence such Charter Business Activity (as determined by the City in its reasonable discretion) and User shall provide evidence of the same to the City: (i) annually on October 1 of each year of this Use Agreement; and (ii) upon ten (10) days request by the City to User.

15.3 In the event of any default by User under the Use Agreement, the City may, at its option and without limiting any other right or remedy:

- (a) Recover possession of the slip on behalf of User and enter into a use agreement for the Slip to another party. User shall remain liable for and shall pay to the City all the use fee accrued to date of default, plus any accrued interest, costs and damages. Further, User shall be liable for any use fee and other monies due and owing under this Use Agreement accruing after the event of default (including the difference between the use fee and other charges stipulated to be paid hereunder and what the City is able to recover from reletting the Slip). In the event the City enters into a new use agreement for the Slip with another party, User shall not be relieved of its obligations under this Use Agreement, including, without limitation, the payment of the use fee hereunder;
- (b) Terminate the Use Agreement and re-enter and take possession of the Slip for the exclusive use of the City and bring an action for accrued use fee and costs; or

(c) Pursue any other remedy provided under law or equity including, without limitation, those set forth in Section 15.6 below.

15.4 Failure by the City to provide written notice of default shall not constitute a waiver of any rights of the City.

15.5 Unless otherwise prohibited by law, if User becomes insolvent or if bankruptcy proceedings are instituted by or against User before the end of the term of the Use Agreement, the City is hereby irrevocably authorized, at its option, to cancel the Use Agreement, as for default.

15.6 The remedies provided in Section 328.17, Florida Statutes, for the non-judicial sale of a vessel for non-payment of dockage are specifically included and incorporated into this Use Agreement as an additional remedy available for the City, and User agrees to be notified at the above address specified for User in connection with the notice required under Section 328.17, Florida Statutes.

15.7 If User fails to vacate the dock or mooring space within ten (10) days after receipt of Notice of Termination by the City, User hereby grants the City permission to board the User's Vessel and move it under its own power or place it in tow and remove the User's Vessel from its dockage or mooring space to a location to be chosen by the City at its sole discretion, at User's expense, and to take possession of the docking space. If it becomes necessary to move User's Vessel, for safety purposes or otherwise, and User's Vessel is unattended, the City is authorized to effect the necessary move at User's expense, which costs shall become a part of the use fee for docking and mooring of User's Vessel. This is in addition to any remedies available to the City provided by law or other provisions of this Use Agreement. User shall hold harmless the City from any damage, liability, claims, causes of action and suits imposed by the City pursuing the remedy set forth in this Section 15.7.

15.8 For violations of rules and regulations other than non-payment of the use fee or other monies due and owing under this Use Agreement, the City will provide notice and opportunity to cure or to challenge action taken, as set forth in the rules and regulations adopted by the City Council, as they may be amended from time to time.

16. DISHONORED CHECKS

16.1 All Checks returned for insufficient funds shall be subject to a service charge equal to the greatest amount the City may charge pursuant to Section 166.251, Florida Statutes (as may be amended from time to time).

17. MISCELLANEOUS / NOTICE

17.1 Time is of the essence as to all the terms of the Use Agreement.

17.2 Written notice, mailed or delivered to the address for the User listed in Section 1 shall constitute sufficient notice to User and written notice mailed or delivered to the office of the City's Manager shall constitute sufficient notice to the City, as to all instances herein contemplating notice. Any such notice shall be deemed given when so mailed or delivered. Any notice given by mail shall be by registered or certified mail, return receipt requested, except as otherwise provided herein.

- 17.3** The rights of the parties shall be cumulative. The failure of either party to insist on a strict performance of any provision herein is not a waiver of such provision in any other instance.
- 17.4** User shall be responsible for and shall promptly, upon demand, reimburse the City for any and all costs necessary to repair any damage caused to the Slip and/or Municipal Dock by User, User's Vessel or User's employees, guests, agents, visitors or invitees. User, shall in and around the Municipal Dock, comply with all laws, rules and regulations concerning the protection of the environment and with all directions and orders of the City's Dockmaster. User shall comply with the provisions of the *Florida Clean Marina Program*. User shall reimburse the City for any damage, expense or liability incurred by the City due to User, User's Vessel or User's agents failure to comply with such laws and regulations or due to any pollution created by, or contributed to the User.
- 17.5** User shall not release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances (as determined by the City in the City's sole discretion), including, without limitation, oil, gasoline or treated or untreated sewage ("Hazardous Substances") into the waters or land of the City, State of Florida or the Municipal Dock. User shall immediately notify the City of any such spill and/or release. The City may take any action it deems appropriate to clean up any such spill and/or release at User's sole expense. The costs for which User and User's Vessel shall be responsible include, but are not limited to, the costs of any booms, absorbent pads, disposal of the Hazardous Substance, cleanup by oversight of governmental agencies and City personnel and/or use of outside contractors. This provision is in addition to, and not in lieu of, the indemnity provisions set forth in this Use Agreement. User shall comply with the City's Waste Recovery Ordinance as may be amended from time to time.
- 17.6** The commercial charter boat business shall be operated in a businesslike manner, and User shall be solely and individually responsible for promoting and running advertised charters on a regular and consistent basis.
- 17.7** Venue for all claims brought pursuant to this Use Agreement shall lie exclusively in Collier County, Florida.
- 17.8** Both parties hereby agree to waive trial by jury.
- 17.9** If any clause or provision of this Use Agreement is or becomes illegal or unenforceable because of present or future laws, ordinances, or any rule or regulation of any governmental body or entity the remaining parts of the Use Agreement shall not be affected thereby.
- 17.10** User shall not record a copy of this Use Agreement with the Collier County Clerk of Courts.

18. GOOD FAITH

- 18.1** All duties and obligations under the Use Agreement, and all attempts to enforce rights under the Use Agreement, shall be governed by reasonable commercial standards of good faith.

19. ENTIRE USE AGREEMENT

19.1 The Use Agreement constitutes the entire agreement between the parties. No representations, warranties or promises pertaining to the Use Agreement or any property affected by the Use Agreement have been made by, or shall be binding on, either of the parties, except as expressly stated in the Use Agreement. The Use Agreement cannot be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any such change is sought.

In Witness whereof, the parties to this Use Agreement have hereunto set their hands at Naples, Collier County, Florida effective the date first above written:

WITNESSES

"USER":

(Print Name: _____)

By: _____

(Print Name: _____)

Name: _____

Title: _____

STATE OF FLORIDA)
) ss:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, as _____ of _____, a _____, on behalf of the _____, who () is personally known to me or () has produced _____ as identification.

(SEAL)

NOTARY PUBLIC
Notary Name: _____
My Commission Expires: _____

Vessel _____ Slip # _____

WITNESSES

(Print name _____)

(Print name _____)

"CITY":

City of Naples

By: _____

Name: _____

Title: City Manager (or designee _____)