

Cocohatchee

ATTACHMENT G Vessel

Slip #

**COLLIER COUNTY BOARD OF COUNTY COMMISSIONERS
BOAT DOCK RECREATIONAL/COMMERCIAL USE AGREEMENT**

THIS RECREATIONAL/COMMERCIAL USE AGREEMENT (hereinafter "Agreement") is made this [redacted] day of [redacted], 20 [redacted], by and between the Collier County Board of County Commissioners (hereinafter "County"), whose address is 3299 East Tamiami Trail, Suite 300, Naples, Florida, 34112, and [redacted] ("User"), whose address is [redacted].

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

1. Premises / User's Vessel

1.1 County agrees to permit the User to use Slip # [redacted] (the "Slip"), located at the County Marina ("Marina"), which includes the right to use the Slip and the non-exclusive right to use, in common with other Users at the Marina, and the Public, the piers, wharves and loading platforms and the improvements constructed on them. The Slip and the Marina are located within the lands leased to the County pursuant to the State of Florida Sovereign Submerged Lease (as defined in Section 6.6 below). The Marina and location of the Slip are generally set forth on Exhibit "A" attached hereto and incorporated herein by reference. User agrees that the County shall at all times have the right and privilege of determining the nature and extent of the Marina and Slip, and of making such changes, rearrangements, additions or reductions to the Marina and Slip that the County 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 Marina.

1.3 User Information:

NAME: [redacted] TAX/ID: [redacted]

ADDRESS: [redacted]

CITY: [redacted] STATE: [redacted] ZIP: [redacted]

HOME PHONE: ([redacted]) [redacted] BUSINESS PHONE: ([redacted]) [redacted]

FAX: ([redacted]) [redacted] EMAIL: [redacted]

EMERGENCY CONTACT: [redacted] PHONE: [redacted]
[redacted]

Vessel 2566 Slip # 1

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

VESSEL NAME: 2566 FL REG. DOC. #: 19618NW

MANUFACTURER: Maverick Boat Group YEAR: 2004

LENGTH: 21' 10" BEAM: 8' 6" DRAFT: 3'

INSURANCE CARRIER: Shed EXP DATE: 1/10/2024

HULL SERIAL #: NVTPC751A404

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 prior to entering into this Agreement, upon any change of ownership of the User's Vessel, and any time requested by the County.

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

1.5 Notwithstanding anything to the contrary contained in this Agreement, the County reserves the right (in the County's sole and absolute discretion) to reassign User to another Slip within the Marina 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 County within ten (10) days of the County's request.

2. Authority

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

2.2 The term of this Agreement shall begin on the date first written above and shall continue from month to month thereafter until terminated by either party, unless sooner terminated in accordance with, and pursuant to, the terms and conditions of this Agreement, the Codes and Ordinances of Collier County, or the duly adopted rules and regulations of the Marina and any other local, state or federal laws. This Agreement may be terminated by the County on thirty (30) days notice to User of County's intent to terminate this Agreement. This Agreement may be terminated by User upon thirty (30) days notice to the County of User's intent to terminate this Agreement. Notices to terminate must be in writing; email is acceptable.

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

3. Use Fee / Security Deposit

3.1 For each month during the term of this Agreement, User agrees to pay County the use fee rate prescribed by Resolution of the Collier County Board of County Commissioners ("BCC") for the use of the Slip, which may be modified or amended in the sole and exclusive discretion of the BCC during the term of this Agreement. Upon signing this Agreement, User must pay the first month's use fee and last month's use fee.

3.2 Use fees shall be paid in advance and shall be considered delinquent if not paid in full on or before the tenth day of each month. In the event any use fee shall remain unpaid for thirty (30) days after the same become due and payable, County may, at the option of the County Manager or designee, terminate this Agreement.

3.3 Future use fee rates may be adjusted by the County annually based upon a formula approved by the BCC Resolution. Such adjustments shall be automatic without the need to amend the Agreement, provided, however, in the event the County elects to amend the Agreement to reflect such increased fees, User agrees to amend the Agreement.

3.4 All payments shall be made without demand at the Marina Office, or at such other place and to such other person as the County may from time to time designate in writing and shall be received by the County no later than the tenth (10th) day of each month.

3.5 When the Agreement begins on a date other than the first (1st) day of the month, the first month's use fee shall be prorated. If proper 30 day termination notice is given by the User, fees for the last month of the Agreement shall also be prorated.

3.6 A charge of five percent (5%) of the total monthly amount that is not paid when due shall be assessed each month. In addition, the County 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 County or to any other property or persons at the Marina.

4. Possession

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

5. Assignment

5.1 User shall not assign or encumber this Agreement, or assign or transfer in any way, any interest in User's Vessel, or use or permit the use of the Slip for any purpose other than

provided by the terms of this Agreement. User shall not allow anyone else to use the Slip by agreement or otherwise, or any part thereof.

5.2 No vessel other than User's Vessel may be moored at the Slip. If User sells the existing vessel, purchases a new vessel, or the vessel is otherwise permanently removed, User shall immediately notify County with the information on the new vessel, and provide intentions as to the future use of the Slip. Any and all uses of the Slip must conform to the terms of this Agreement, the Code of Ordinances of Collier County, and the duly adopted rules and regulations for the Marina.

6. *Use*

6.1 Recreational users only: The Slip is to be used for docking or mooring space for recreational vessel and use purposes only, and only for User's Vessel. Any other use of the Slip by User is not permitted without the written consent of the County, which consent may be withheld in the County's sole and exclusive discretion.

6.2 Commercial users only: The Slip is to be used for docking or mooring space for commercial charter vessel purposes, boat broker purposes, boat club or interval ownership purposes, water shuttle purposes, or similar commercial charter vessel purposes. Any other use of the Slip by User is not permitted without the written consent of the County, which consent may be withheld in the County's sole and exclusive discretion.

6.3 The Slip is to be used at the sole risk of User, and the County shall not be liable for the care, protection or security of User's Vessel, appurtenances or contents, or for any loss or damage of any kind or nature to the User's Vessel, User's Vessel 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 County shall not be responsible for any injuries to persons or property occurring at the Marina, or on Marina property, for any reason.

6.4 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 County and User must comply with any and all laws relative to proper storage, removal or disposal of refuse.

6.5 User shall not create or cause any nuisance (as determined by the County, in the County's sole discretion) to occur or continue at the Slip or Marina.

6.6 User shall not conduct or engage in any illegal activity at the Slip, at the Marina or upon User's Vessel.

6.7 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 Marina including any applicable Sovereign Submerged Land Lease. 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) Liveaboards at the Marina are prohibited and the User's Vessel shall not be a liveboard. "Liveboard" 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 County hereunder, entitle the County 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 Marina or the Slip is terminated or expires, this Agreement, at the sole option of the County, may be terminated by the County and this Agreement shall be deemed to expire as of the date the Sovereign Lease of such other governmental authority or permission necessary to operate the Marina or the Slip is terminated or expires, as the case may be.

6.8 User shall not do or permit any act which will conflict with provisions of any insurance policies covering the Marina.

6.9 The mooring of vessels at the Marina are subject to the ordinances, rules and regulations of Collier County (as may be amended from time to time), and the terms of this Agreement, and do not create any other rights in User.

6.10 Restroom facilities are available during regular Marina business hours. Sewage pump-out is also available for a fee within the Marina.

7. Boat lifts

7.1 No boat lifts of any kind are authorized for installation at the Marina. Lifts that are currently installed are authorized to remain pursuant to the terms of this Agreement. The User is

required to provide proof of safe operation to Parks and Recreation Director or designee within 30 days of signing this Agreement. Proof must be provided by a licensed lift installer or maintenance company. Failure to provide said proof within the time provided will automatically terminate this Agreement. If the documentation reveals that the lift is not operational, the User is required to come into compliance within 30 days or to remove the lift within 30 days from the date of the certification.

7.2 Boat lifts are subject to annual inspection and certification and must be provided to Parks and Recreation Director or designee without demand or notice on the anniversary of signing this Agreement. Failure to do so within 30 days from anniversary date will automatically terminate the Agreement. Once a boat lift is no longer operational, it must be removed. No new or replacement boat lifts will be authorized.

7.3 If an authorized User with a boat lift vacates the Marina, the User must remove the boat lift and restore the dock to its original condition. Failure to do so will result in the County seeking to recover the costs to have the boat lift removed and the dock restored.

8. Utilities

8.1 If utility charges are deemed necessary (as determined in the County'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.

8.2 In the event utility charges are due pursuant to Section 8.1, User shall be responsible for the timely payment of all utility charges, including without limitation charges for electricity, water, cable, and telephone, if any.

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

9. Repairs and Maintenance

9.1 The County agrees to operate and maintain dockage and mooring facilities at the Marina 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 Marina.

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

9.3 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. County will have the authority to make such determination in County's sole discretion.

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

9.5 If the Slip is destroyed or so damaged by fire or other casualty during the term of the Agreement so as to become no usable by User (as determined by County in County's sole discretion), County shall have at its option: (i) the right, notwithstanding anything to the contrary contained herein, to immediately terminate this Agreement; or (ii) 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 during the period of time that the Slip is unusable. In the event of such casualty, County shall not be required to make any repairs or replacement of any improvements, nor shall County be responsible for the replacement of User's Vessel or personal property. If the County elects to render the Slip usable and 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 Agreement, and if the Agreement is so canceled, the use fee shall be paid only to the date of such casualty. The cancellations herein contemplated shall be effected by written notice directed to the other party.

10. *Right of Entry*

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

11. *Signs*

11.1 No signs are permitted.

12. *Insurance*

12.1 User, at User's own cost and expense, shall at all times during the term of this Agreement maintain with an insurance company, acceptable to County, a Public Liability and Property Damage policy to include fuel and oil spill liability with limits of not less than three hundred thousand dollars and no/100 cents (\$300,000) per occurrence, naming Collier County Board of County Commissioners as additional insured, said minimum limit subject to future increase by County. Commercial users are required to maintain \$500,000 per occurrence as described herein.

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

12.3 Any contractors employed by User shall register at the Marina office prior to beginning work, providing a valid business license and proof of insurance naming the Collier County Board of County Commissioners as additional insured in compliance with the terms set forth herein and as designated by the County Risk Management with limits of not less than one million dollars and no/100 cents (\$1,000,000) annual aggregate and comply with all laws.

12.4 Commercial users only: User shall provide the County with proof of workers' compensation coverage for the conduct of User's business, or with proof of exemption from coverage requirements.

13. *Liability*

13.1 To the maximum extent permitted by Florida law, the User shall indemnify and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the User or anyone employed or utilized by the User in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of Collier County. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in section 768.28, Florida Statutes.

14. *Release of Liability Upon Sale, Lease, Renovation or Replacement*

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

15. *Rules and Regulations*

15.1 The County reserves the right from time to time to adopt and to amend ordinances, rules and regulations applicable to the Slip and the Marina. The County will provide at least ten (10) days notice of such ordinances, rules and regulations, prior to adoption by the BCC, to be posted at the Marina. Failure of the County to post at the Marina said ordinances, rules and regulations prior to adoption shall not affect the validity of said ordinances, rules and regulations nor their effect upon this Agreement.

15.2 User acknowledges that with the signing of this 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.

16. Default by User

16.1 Recognizing the importance to the County of maintaining a first-class image and operation of the Marina, User shall maintain at all time a professional relationship with the County, with other Users and with other persons visiting and using the Marina. Upon conviction of User for any felonious activity at the Marina, User shall be in default, and must vacate the Slip immediately.

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

(a) User's failure to pay any installment of the use fee when such failure continues for a period to 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 County;

(b) User's failure to comply with any term, provision or covenant of this 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; or

(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 County is notified of such repairs in writing.

16.3 In the event of any default by User under the Agreement, the County 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 an Agreement for the Slip to another party. Further, User shall be liable for any use fee and other monies due and owing under this Agreement accruing after the event of default, plus any accrued interest, costs, and damages;

(b) Terminate the Agreement and re-enter and take possession of the Slip for the exclusive use of the County 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.

16.4 Failure by the County to provide written notice of default shall not constitute a waiver nor abridge any rights of the County.

16.5 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 Agreement, the County is hereby irrevocably authorized, at its option, to cancel the Agreement, as for default.

16.6 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 Agreement as an additional remedy available for County, 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*.

16.7 If User fails to vacate the dock or mooring space within ten (10) days after receipt of Notice of Termination by the County, User hereby grants the County 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 County 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 the User's Vessel is unattended, the County 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 County provided by law or other provisions of this Agreement. User shall hold harmless the County from any damage, liability, claims, causes of action and suits imposed by the County pursuing the remedy set forth in this Section 13.

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

17. Attorney's Fees and Collection Costs

17.1 User agrees to pay the cost of collections and reasonable attorneys' fees on any part of delinquent rental payments or other sums due hereunder that may be collected by efforts of any attorney-at-law or a collection agency, as well as any attorneys' fees for the enforcement of any of the provisions of the Agreement.

17.2 All checks returned for insufficient funds shall be subject to a service charge equal to the greatest amount the County may charge pursuant to Section 166.251, *Florida Statutes* (as may be amended from time to time). Without limiting any other right or remedy, the County shall have the right to collect a late charge of five percent (5%) of the amount due for any use fee payments not received by the tenth (10th) of the month.

18. Miscellaneous / Notice

18.1 Time is of the essence as to all terms of the Agreement.

18.2 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 shall constitute sufficient notice to the County, 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.

18.3 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.

18.4 User shall be responsible for and shall promptly, upon demand, reimburse County for any and all costs necessary to repair any damage caused to the Slip and/or Marina by User, User's Vessel or User's employees, guests, agents, visitors or invitees. User, shall in and around the Marina, comply with all laws, rules and regulations concerning the protection of the environment and with all directions and orders of the County. User shall comply with the provisions of the *Florida Clean Marina Program*. User shall reimburse the County for any damage, expense or liability incurred by the County 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.

18.5 User shall not release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances (as determine by the County in the County's sole discretion), including, without limitation, oil, gasoline or treated or untreated sewage ("Hazardous Substances") into the water or land of the County, State of Florida, or the Marina. User shall immediately notify the County of any such spill and/or release. The County 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 booms, absorbent pads, disposal of the hazardous substance, cleanup by oversight of governmental agencies and County personnel or use of outside contractors, and any legal fees incurred in defense of any violations. User shall make best efforts to contact County of any such spill. County shall take any action it deems appropriate to clean up the release at User's expense. This provision is in addition to, and not in lieu of, the indemnity provisions set forth in this Agreement.

18.6 Venue for all claims brought pursuant to this Agreement shall lie exclusive in Collier County, Florida.

18.7 Both parties hereby agree to waive trial by jury.

18.8 If any clause or provision of this 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 Agreement shall not be affected thereby.

18.9 User shall not record a copy of this Agreement with the Collier County Clerk of Courts.

Vessel

[REDACTED]

Slip #

[REDACTED]

18.10 This Agreement shall be administered by the County's contracted vendor pursuant to the County's contract with the vendor.

19. Good Faith

19.1 All duties and obligations under the Agreement, and all attempts to enforce rights under the Agreement, shall be governed by reasonable standards of good faith.

20. Entire Agreement

20.1 This Agreement constitutes the entire agreement between the parties. No representations, warranties or promises pertaining to the Agreement or any property affected by the Agreement have been made by, or shall be binding on, either of the parties, except as expressly stated in the Agreement. The 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.

USER

[REDACTED]
[REDACTED]
[REDACTED]

Printed Name & Title

VENDOR on behalf of Collier County

[Signature]
[Signature]

Printed Name & Title

Approved as to Form & Legality

Assistant County Attorney