

RESOLUTION NO. : 46-12-13

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH FREEDOM ADVENTURES, LLC D/B/A FREEDOM BOAT CLUB TO LEASE SLIPS AT THE LAKE PARK HARBOR MARINA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town has all of the powers and authority conferred upon it pursuant to the Florida constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to its proprietary functions and authority, the Town owns and operates a marina known as the Lake Park Harbor Marina (the Marina) which leases slips to the operators of both recreational and commercial vessels; and

WHEREAS, Freedom Boat Club (FBC) has acquired the right to own and operate an exclusive Palm Beach County FBC franchise and would like to base its franchise at the Lake Park Harbor Marina; and

WHEREAS, FBC has negotiated an agreement with the Town whereby it would lease 10 slips to accommodate vessels it owns and leases to its members; and

WHEREAS, the Town Manager and Marina Director have recommended to the Town Commission that entering into the Agreement with FBC is in the best interests of the Marina.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The Mayor is hereby authorized and directed to execute the Agreement with FBC which is attached hereto and incorporated herein as **Exhibit "A"**.

Section 3. This Resolution shall be effective upon adoption.

The foregoing Resolution was offered by Commissioner O'Rourke, who moved its adoption. The motion was seconded by Vice-Mayor Glas-Castro and upon being put to a roll call vote, the vote was as follows:

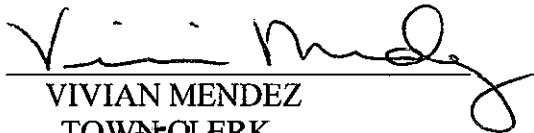
	AYE	NAY
MAYOR JAMES DUBOIS	<u>/</u>	<u> </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	<u> </u>
COMMISSIONER ERIN FLAHERTY	<u>/</u>	<u> </u>
COMMISSIONER MICHAEL O'ROURKE	<u>/</u>	<u> </u>
COMMISSIONER KATHLEEN RAPOZA	<u>/</u>	<u> </u>

The Town Commission thereupon declared the foregoing Resolution NO. 46-12-13 duly passed and adopted this 4 day of December, 2013.

TOWN OF LAKE PARK, FLORIDA

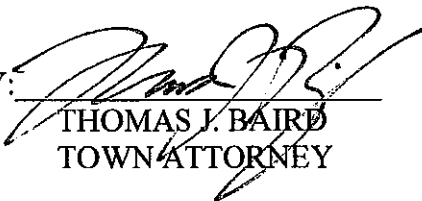
BY: 
JAMES DUBOIS
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK



Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY

**DOCKAGE AGREEMENT TO LEASE SLIPS TO
FREEDOM ADVENTURES, LLC (dba Freedom Boat Club)
at LAKE PARK HARBOR MARINA**

This Agreement to Lease Slips at the Lake Park Harbor Marina (Agreement) is entered into this ___ day of December 2013 between Freedom Adventures, LLC, aka Freedom Boat Club (hereinafter "FBC") and the Town of Lake Park (hereinafter the "Town").

RECITALS

WHEREAS, the Town has all of the powers and authority conferred upon it pursuant to the Florida constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to its proprietary functions and authority, the Town owns and operates a marina known as the Lake Park Harbor Marina (the Marina) which leases slips to the operators of both recreational and commercial vessels; and

WHEREAS, FBC has acquired the right to own and operate an exclusive Palm Beach County FBC franchise and would like to base its franchise at the Lake Park Harbor Marina.

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

1. RECITALS.

The above recitals are true and correct and are hereby incorporated herein.

2. TERM.

The initial term of this agreement shall be for one (1) year. This Agreement shall automatically renew for two (2) additional two (2) year terms unless either of the parties gives 60 days advance written notice of its intention not to renew the Agreement as provided for in paragraph 4..

3. PROPERTY SUBJECT TO LEASE.

The property to be leased by the Town to FBC is located within the Marina as shown on Exhibit "A" attached hereto and incorporated herein. As shown in Exhibit "A", FBC shall lease 10 slips, said slips to be designated by the Town, those slips designated by the Town as being located at the easternmost set of fixed slips against the seawall at the edge of the parking lot. The slips are identified as Slip No's: F-88 through F-97.

4. TERMINATION.

Either Party may terminate the Agreement at the end of the Term by providing the other with 60 days advance written notice of its intention to do so. Provided however, the Town may terminate this Agreement in the event FBC fails to timely pay the rent due as recited herein, or

for any violation of the "dockage agreement" following written notice to FBC from the Town to FBC. If the Town notices its intention to terminate the Lease, FBC shall vacate the premises prior to the 60th day of the notice.

5. **DEPOSIT.**

FBC shall deposit with the Town an amount equal to 1 month's rent for each of the 10 slips within 10 business days of the approval of the Lease by the Town Commission. The deposit for the 10 slips is calculated as \$7,650.00.

6. **RENT.**

FBC shall pay a monthly slip rental fee of \$17.00/ft. of dock space based on the assumed length of 45' per slip for the 10 slips identified above. This amount is calculated as \$7,650.00 per month. After the initial 1 year term, FBC shall pay the Town the same per foot slip rental rate as established by the Town for commercial vessels.

FBC shall reimburse the Town for the cost of electricity provided to the 10 rented slips at the established rate of .11 cents per kilowatt or at the prevailing rate during the term of the Lease. Water service shall be provided through the Town at a cost of \$60.00 per month for the 10 rented slips

7. **PARKING.**

The Town shall initially permit the use of 2 parking spaces per rental boat, not to exceed a maximum of 18 parking spaces, plus 1 handicapped parking space located adjacent to the 10 slips in an area designated by the Marina Director. FBC agrees to purchase a maximum of 19 parking spaces at a rate of \$100.00 per parking space per year. Parking is restricted for customer use only and under no circumstances may employees or guests of FBC use such parking designated for its customers or any additional parking that may be available in the parking lot that is also utilized for marina tenants.

Should the demand for parking also utilized by marina tenants in the designated parking lot shared by FBC become greater than the number of spaces available, FBC agrees to renegotiate the terms of parking for its customers to the satisfaction of FBC and the Town.

Should the Town modify its annual parking pass rate, FBC shall pay to the Town the then current annual parking pass rate on the anniversary date of the Town's original issuance of parking passes.

8. **SIGNS.**

FBC may put up signs in those parking spaces designating them for the exclusive use of FBC members. The cost of installation of those signs and the maintenance of those signs shall be the responsibility of the FBC.

9. **MODIFICATIONS TO SLIPS.**

Should FBC wish to modify any of the 10 fixed slips by adding floating dock systems, it may do so with the Town's written approval and only after presenting to the Town any and all appropriate permits which may be required by any regulatory agencies.

10. **TRASH CONTAINERS.**

FBC shall provide and maintain trash containers to be determined by the Town to adequately serve FBC. The number and location of the trash containers are subject to the approval of the Town's Marina Director. Storage of trash (e.g. cartons, boxes, etc.) outside of the trash containers is prohibited and FBC shall dispose of trash on a daily basis in the dumpster designated by the Town.

11. **STORAGE LOCKERS.**

FBC shall provide and maintain a sufficient number of secure storage lockers, which may be placed on the seawall facing the leased slips. The storage lockers shall be subject to the approval of the Town's Marina Director.

12. **TRAINING.**

FBC shall provide all appropriate training to their members before members are allowed to operate their vessels. FBC shall provide the Town's Marina Director with an outline of the appropriate training program that FBC will provide.

13. **DOCKAGE TERMS.**

FBC shall comply with all requirements of the Town's standard "dockage agreement". The dockage agreement is attached hereto and incorporated herein. To the extent any of the terms in the dockage agreement conflict with this Agreement, the terms herein shall apply.

14. **SPECIAL EVENTS.**

The Town reserves the right to require that FBC temporarily modify their operations during certain events/construction, however, the Town will accommodate FBC's on-going operations somewhere within the boundaries of the marina (with a minimum of three consecutive slips in any one relocated area). The Town shall provide FBC with a minimum of thirty (30) calendar day's notice of the need to temporarily modify their operations.

15. **NOTICES**

All notices required hereunder shall be made to the parties at the address listed below:

To FBC:

Freedom Adventure, LLC
Daniel J. Lund, Managing Member
63 River Drive
Tequesta, FL 33469

and in the case of the Town, to:

THE TOWN OF LAKE PARK
c/o Town Manager
535 Park Avenue
Lake Park, Florida 33403

16. **GOVERNING LAW/VENUE.**

This Agreement shall be governed by the laws of the State of Florida. Venue for any cause of action arising out of this Agreement shall lie in the 15th Judicial District in and for Palm Beach County, Florida, or the United States District Court, Southern District of Florida, West Palm Beach, Florida.

17. **ASSIGNMENT.**

This Agreement may not be assigned may not be assigned by FBC without the written approval of the Town. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns.

18. **SEVERABILITY.**

In the event that any sentence, section, paragraph or portion of this Agreement shall be held by a court to be invalid for any reason, such invalidity shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

19. **WAIVER.**

Any waiver by either party hereto of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

20. **ENTIRE AGREEMENT.**

This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. This Agreement may only be modified by written amendment executed by the Town and FBC.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year last executed below.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
James Dubois, Mayor

Date: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

WITNESSES:

FREEDOM ADVENTURES, LLC
(dba Freedom Boat Club)

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

LAKE PARK HARBOR MARINA DOCKAGE AGREEMENT

THIS DOCKAGE AGREEMENT made by and between the Town of Lake Park, Florida, the owner and operator of the Lake Park Harbor Marina, located at 105 Lake Shore Drive, Lake Park, FL 33403 (hereinafter referred to as "Town"), and _____, who is the owner of the Vessel as more specifically described herein (hereinafter referred to as "Tenant").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Tenant agrees to the terms and conditions contained herein. As follows:

1. TENANT:

Owner Name(s): _____ Home Phone: _____

Billing Address: _____ Work Phone: _____

City: _____ State: _____ Zip: _____ Cell Phone: _____

Emergency (Name): _____ Phone: _____ Email: _____

2. TENANT'S VESSEL: (certified copy of title indicating ownership must be submitted)

Vessel Name: _____ Make: _____ Year: _____

Registration/Documentation
No. _____ Length: _____ Beam: _____ Draft: _____

3. VESSEL INSURANCE (Proof of insurance required before occupancy commences)

Carrier: _____ Policy No: _____ Exp Date _____

Agent Name: _____ Phone No: _____

4. DOCKAGE TERM:

Monthly ___ Annual ___ Lease Commencement Date: _____ Termination Date: _____

5. MARINA CHARGES:

Dockage charges: \$ _____ Sales tax: \$ _____

Utility fee: \$ _____ Total: \$ _____

Credit Card #: _____ Exp. Date: _____ Visa MC Amex

CHARGES (INCLUDING APPLICABLE SALES TAX) ARE PAYABLE MONTHLY IN ADVANCE ON THE FIRST OF THE MONTH.

6) The Tenant represents that information contained in this Dockage Agreement is true, correct and accurate and shall update the information contained herein. If there is more than one owner, then the obligations and liabilities of the owners shall be joint and several.

7) The subleasing or assignment of the Slip by Tenant without the prior written approval of the Town is strictly prohibited. Any attempted sublease or assignment of the Slip, without the prior written approval of the Town is a violation of the requirements of this Agreement and shall be cause for the Town's immediate termination of this Agreement without further notice. Should the Town exercise its right to immediate termination, the Tenant hereby agrees that it shall be responsible for payment of the entire term and shall immediately vacate the Slip.

8) Utilities shall be charged to the Tenant at such rates as may be approved by the Town Commission from time to time. The established utility rates are subject to change by the Town Commission at any time taking into consideration such factors as the Town Commission, in its sole discretion deems just, fair, and appropriate. The Town shall not be liable for any interruption or stoppage of utilities, including, but not limited to, electrical or water service, or for any damage to persons, the Vessel or personal property resulting from that interruption or stoppage.

9) The Rules of the Road and the Navigation Laws in and of the United States apply to all Vessels entering and leaving the Marina, navigating within the Marina, and/or docking therein. The Vessel shall, at all times, maintain current Coast Guard approved heads which shall meet all federal, state and local regulations. The Tenant shall not create any wake in Marina waters. Tenants are responsible for any damage caused by wakes from vessel operation. No dinghies, inflatable boats, tenders or other watercraft or vessels may be moored within the Tenant's slip, except for the Tenant's Vessel as described above.

10) The Tenant shall comply with any and all applicable statutes, codes, laws, rules and regulations of the Town, the State of Florida, and the United States, as well as any rules by any state, federal or local governmental agency or regulatory authority.

11) Refuse, garbage, oil, spirits, inflammables and oily bilges, hazardous materials, and other similar substances shall not be discharged into the Marina waters. Should this occur, the Tenant shall be subject to such fines, or such other civil and criminal penalties as may be imposed by the Town and/or any other governmental authorities with jurisdiction. The Tenant and/or any other person on the Tenant's Vessel illegally discharging, shall be jointly and severally liable for all civil fines and penalties and for the entire cost of remediation and clean up of any hazardous or prohibited materials at the Marina or emanating from the Marina, or onto adjacent waters and lands, as a result of the release of hazardous or prohibited materials. The Tenant's compliance with such laws and regulations shall include any and all present or future federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal, or management of any hazardous material, or otherwise regulating or providing for the protection of the environment.

12) The Town is authorized to move the Vessel at any time should the Town determine, in its sole judgment that this is necessary in order for the Town to make repairs to or within the Marina, as necessary for any Marina operations, or for any other reason the Town deems necessary to the safe and efficient operation of its Marina. In such event, the Town shall not be deemed or

19) It is further agreed that even though the Town may, from time to time, provide security guards and/or other security devices and measures, the Town is under no duty or obligation to do so, and the security of the Vessel and its contents is the sole risk and responsibility of the Tenant.

20) The Tenant shall maintain full general liability insurance coverage with minimum limits of liability of \$1,000,000.00, combined single limits, and bodily injury and property damage liability per occurrence. The coverage shall specifically include but not be limited to, premises and operations; broad form property damage; and personal injury. The insurance shall cover all property damage, personal injury or death arising from or connected with, the use of the Marina, slip, the Vessel, and the mooring of the Vessel, by Tenant and Tenant's employees, family members, guests, agents, crew, invitees, and permittees. The insurance policy shall provide that Tenant's insurance shall at all times be primary, regardless of whether or not the Town has any collectible insurance. The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability: B+ or above. PRIOR TO EXECUTION OF THE AGREEMENT, THE TENANT SHALL PROVIDE THE TOWN'S MARINA DIRECTOR WITH A COPY OF THE INSURANCE CERTIFICATE EVIDENCE THAT THE TENANT MAINTAINS COVERAGE IN THE AMOUNTS SPECIFIED AND REQUIRED HEREIN. THE CERTIFICATE SHALL INDICATE THAT THE TOWN IS LISTED AS AN ADDITIONAL INSURED. NO LATER THAN 30 DAYS PRIOR TO EXPIRATION OF THE CERTIFICATE, THE TENANT SHALL PROVIDE TO THE MARINA DIRECTOR EVIDENCE OF RENEWAL, OR A NEW CERTIFICATE EVIDENCING COVERAGE AND INCLUDING THE TOWN AS AN ADDITIONAL INSURED. TENANT SHALL PROVIDE THE MARINA DIRECTOR ANY AMENDMENTS TO ANY CERTIFICATE OF INSURANCE OR NOTICE OF CANCELLATION OF COVERAGE.

21) The Tenant shall promptly pay when due all sums incurred pursuant to this Agreement, including charges on account, charges for fuel, ship's store, supplies and materials, necessary repairs made by the Marina to the Vessel, as well as other sums owed in connection with use of the Marina and facilities, regardless of who incurred the charges on behalf of the Tenant. A late charge of 5% of the amount then due will be assessed for all balances over 30 days past due. In addition, interest at the rate of 1.5% per month shall accrue against the delinquent payment(s) from the date due until the date the payment is received by the Marina. Tenant agrees that the late charge is a reasonable estimate of the extra administrative expenses incurred by Town in handling the delinquency. Any and all sums of money or charges required to be paid by Tenant under this Agreement other than the rent shall be considered "Additional Rent" whether or not the same is so specifically designated and the Town shall have the same rights to enforce due and timely payment by the Tenant of all Additional Rent as are available to the Town relating to rent.

22) In the event of Tenant's default for non-payment of any rent or charges due under this Agreement, the Tenant recognizes the Town's authority to sell the Vessel at non-judicial sale in accordance with the procedures set forth in Florida Statutes 328.17 (2006), as amended.

23) The Marina shall have a lien against the above described vessel, her appurtenances and contents, for unpaid sums due under this agreement and for use of dock facilities or services, or damage caused or contributed to or by above vessel or by tenant, or his agents, employees and guests, to any dock and property or person of the marina, its employees and agents. Marina shall have a right to all remedies available to Marina, both in rem and personal, under both state and federal law, including specifically a federal maritime lien against vessel as described under the Federal "Maritime Lien Act", 46 U.S.C. 31342, and Rule 9(H), Federal Rules of Civil Procedure.

IN WITNESS THEREOF, the parties hereto have affixed their signatures on the above forst written.

TOWN OF LAKE PARK

TENANT

By: _____
Marina Director

By: _____

Date: _____

Date: _____