

THE TOWN OF
Windermere



MAYOR AND COUNCIL OF THE TOWN OF WINDERMERE

Mayor Jim O'Brien

Council Members

Chris Sapp

Andy Williams

Bill Martini

Tony Davit

Mandy David

Agenda

Agenda

November 29, 2021

6:00 PM

VIRTUAL WORKSHOP

JOIN ZOOM MEETING

[HTTPS://US06WEB.ZOOM.US/J/86892850862?](https://us06web.zoom.us/j/86892850862?pwd=AKDSVNY4BWDJRS94U3LKCNBQUUZXXZ09)

PWD=AKDSVNY4BWDJRS94U3LKCNBQUUZXXZ09

MEETING ID: 868 9285 0862

PASSCODE: 902494

PLEASE TURN OFF ALL CELL PHONES AND PAGERS

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.26: Person with disabilities needing assistance to participate in any such proceedings should contact the Office of the Clerk at least 48 hours beforehand at (407) 876-2563.

Pursuant to Resolution No. 2005-12 adopted on December 13, 2005, the following Civility Code shall govern all proceedings before the Town of Windermere Town Council:

1. All electronic devices, including cell phones and pagers, shall be either turned off or otherwise silenced.
2. Prolonged conversation shall be conducted outside Council meeting hall.
3. Whistling, heckling, gesturing, loud conversations, or other disruptive behavior is prohibited.
4. Only those individuals who have signed the speaker list and/or/who have been recognized by the Mayor (or Chair) may address comments to the Council.
5. Comments at public hearings shall be limited to the subject being considered by the Council
6. Comments at Open Forums shall be directed to Town issues.
7. All public comments shall avoid personal attacks and abusive language
8. No person attending a Town Council meeting is to harass, annoy, or otherwise disturb any other person in the room.

Any member of the public whose behavior is disruptive and violates the Town of Windermere Civility Code is subject to removal from the Town Council meeting by an officer and such other actions as may be appropriate. PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the

AGENDA

- **The meeting is called to order**
- **Flag salute**
- **Invocation**

1. OPEN FORUM / PUBLIC COMMENT (3 minute limit)

~~2. SPECIAL PRESENTATION / PROCLAMATIONS / AWARDS~~

~~3. TIMED ITEMS AND PUBLIC HEARING~~

~~4. CONSENT ITEMS~~

5. NEW BUSINESS

~~a. Minutes~~

~~b. Resolutions / Ordinances for approval / First reading~~

c. Contracts & Agreements

i. Town of Windermere Boathouse Lease Agreements (Attachments - Board Discussion)

1. *Lottery Process*
2. *Rough Repair Estimate*
3. *Boathouse Lease Red Line*
4. *Boathouse Lease Draft*

~~d. Other Items for Consideration~~

6. MAYOR & COUNCIL LIAISON REPORTS

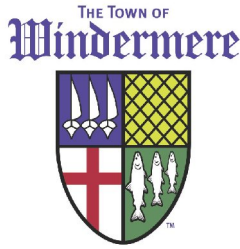
- a. Mayor O'Brien
- b. Council Member Williams
- c. Council Member Sapp
- d. Council Member Martini
- e. Council Member David
- f. Council Member Davit

7. STAFF REPORTS

- a. Town Manager Robert Smith
- b. Town Attorney Heather Ramos
- c. Police Chief Dave Ogden
- d. Public Works Director Tonya Elliott-Moore
- e. Clerk Dorothy Burkhalter

8. ADJOURN

- **REPORTS:**



EXECUTIVE SUMMARY

SUBJECT: Lottery Process
REQUESTED ACTION: Board Discussion

Work Session (Report Only) **DATE OF MEETING:** 11/29/21
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: _____

BUDGET IMPACT: _____
 Annual **FUNDING SOURCE:** _____
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

HISTORY/FACTS/ISSUES:

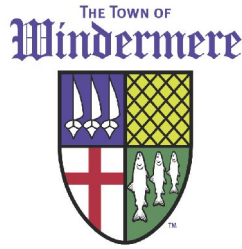
Mayor & Council,

Lottery Process

1. Town will advertise process for a time to be determined. Depending on repairs and maintenance to slip/boathouse up for lottery. (Based on HPB Recommendations)
2. Once process is closed, names will be submitted into name randomizer for selection. (One name per household)
3. We will generate a list of top 5 names and go down the list to enter into lease agreement.
4. Once another lease agreement becomes available, we will open the advertisement up again.

Cost Estimate – Boat House Repairs

| | |
|-----------------------------------|----------|
| Roofing | \$8,000 |
| Paneling repairs | \$5,000 |
| Boat house sinking | \$5,000 |
| Rafter repairs | \$8,000 |
| Walkways/Decking/Flooring repairs | \$4,000 |
| Painting | \$5,000 |
| Total Estimated Repairs | \$35,000 |
| 10% Contingency | \$3,500 |



EXECUTIVE SUMMARY

SUBJECT: Boathouse Leases
REQUESTED ACTION: Board Discussion

Work Session (Report Only) **DATE OF MEETING:** 11/29/21
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: _____

BUDGET IMPACT: _____
 Annual **FUNDING SOURCE:** _____
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

HISTORY/FACTS/ISSUES:

Mayor & Council,

The attached leases can be amended in any manner as the Town Council see fit. These leases will be awarded to those selected via whichever process the Town Council determines is fair and equitable.

- Term
- CPI: Can be flat % or fluctuate
- Slip Fees: Currently \$150 per slips 1-3. \$125 for 4-7
- Any additional items to add or delete.

Prepared by and return to:
Heather Ramos, Town Attorney
Town of Windermere
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando FL 32801

Property Appraiser's Parcel
Identification No:

TOWN OF WINDERMERE BOATHOUSE LEASE AGREEMENT

This Lease Agreement (the "Lease") is entered into on _____ (the "Effective Date") between the **Town of Windermere, a Florida municipal corporation**, whose mailing address is 614 Main Street, Windermere, FL 34786 (the "Town"), and _____ and _____, whose mailing address is _____ (the "Tenant"). The Town and the Tenant may also be referred to herein individually as a "party" or collectively as the "parties."

1. Lease of the Boathouse.

- (a) Subject to the terms and conditions set forth herein, the Town leases to Tenant ~~the~~ Boathouse # _____ and Slip # _____ as depicted in **Exhibit A** attached hereto ~~(the~~ "~~Boathouse~~"), together with all rights of way necessary to permit ingress to and egress from the Boathouse and Slip together with the non-exclusive use of the waterway wherein the Boathouse is situated for navigation and other lawful purposes.
- (b) Tenant accepts the Boathouse in "AS-IS" and "WHERE-IS" condition and acknowledges that the Town has made no covenant, representation or warranty of any kind, express or implied, with regard to the physical condition, location of, or other suitability of the Boathouse for Tenant's permitted use.
- (c) The Town is the owner of the Boathouse and all title and interest in the Boathouse remain vested in the Town notwithstanding the granting of this Lease.

2. Permitted Use of the Boathouse and Slip. The Tenant is hereby authorized to occupy, utilize, and maintain the Boathouse and Slip for housing recreational vessels owned by or leased to Tenant if such use meets the conditions of this Lease and all regulatory requirements of the Town, Orange County, and the State of Florida and agencies with jurisdiction. Such authorized use shall not include Tenant's renting or subleasing of all or any part of the Boathouse. The Town retains the sole and absolute right to determine whether any proposed or actual use of the Boathouse is within the uses contemplated and allowed by this Lease.

3. Term; Termination by Tenant. The term of this Lease commences on the Effective Date and shall expire on _____ ~~{20-year term}~~ unless terminated sooner (the "Term"). In the event of the death of a Tenant during the Term of this Lease, the Tenant's spouse may continue as the Tenant for the remainder of the Lease Term. The spouse must meet the property interest requirements in ~~section~~ Section 7, below. In the event that there is no living spouse at the time of death, this Lease Agreement shall automatically terminate. Tenant may terminate this Lease at any time by providing sixty (60) days prior written notice to the Town.

4. Rent; Triple Net.

- (a) Beginning on the Effective Date, Tenant shall pay annual Base Rent for the first year in the amount of _____ one thousand eight hundred dollars (\$1,800.00) [Boathouse/Slips 1-3] / one thousand five hundred dollars (\$1,500.00)

[Boathouse 4 & 5 /Slips 4-7], plus applicable taxes and fees. Base Rent for any partial month during the Term shall be prorated to reflect the number of days during the month that Tenant has possession of the Boathouse. The total annual Base Rent plus taxes and fees will be calculated by the Town and the Tenant shall be invoiced. ~~For each year thereafter the Base Rent will be increased by four percent (4%).~~

- (b) The Base Rent for each year during the Term hereof subsequent to the first year shall be increased in the same amount of an increase in the Consumer Price Index during the preceding Lease year. Such increase shall be calculated by multiplying the annual Base Rent by a fraction whose numerator is the Consumer Price Index for the twelfth month of the preceding Lease year and whose denominator is the Consumer Price Index for the first month of such Lease year. In no event shall the Base Rent be decreased due to changes in the Consumer Price Index. For purposes of this Lease, "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor.
- (c) ~~(b)~~ If Tenant fails to make any payment on or before the fifth day after the date such payment is due and payable, Tenant shall pay to the Town an administrative late charge of five percent (5%) of the amount of such overdue payment.
- (d) ~~(c)~~ This Lease is a "triple net lease," and unless specified otherwise in this Lease, Tenant shall pay all costs and expenses relating to the Boathouse of any kind or nature whatsoever. Such costs and expenses shall include, without limitation, all amounts attributable to, paid or incurred in connection with the operation, repair, ~~restoration~~, and maintenance of the Boathouse; real property taxes; rent taxes; liability insurance ~~premiums~~; utilities; refuse disposal; security; labor; maintenance and repair costs and service contracts; costs of licenses, permits and inspections; and all other costs and expenses paid or incurred with respect to the Boathouse.

5. **Special Lease Conditions.** In addition to all other terms and conditions herein, the Lease of the Boathouse is further conditioned as follows:

- (a) No part or portion of the Boathouse, Slip or any improvements, installations, or equipment constructed or installed in or on the Boathouse shall be occupied, used, or maintained as a commercial marina or for any other commercial or business purpose whatsoever.
- (b) In addition to all applicable Town of Windermere regulations, the following uses and activities are not permitted and shall not be conducted or allowed by Tenant:
 - (i) Bulk fuel/oil/chemical/flammable material storage. Storage of gasoline must be in government approved containers and shall not exceed at any one time ten (10) gallons in quantity.
 - (ii) Pumpout or other disposal or discharge of sewage or other hazardous waste from vessels, whether by use of permanent or portable equipment or service, or any other means.
 - (iii) Docking or storage of any vessel used for commercial purposes (e.g., sightseeing, fishing, passenger service, scientific, industrial, or otherwise operated for a fee, charge, or other exchange of value of any kind or otherwise used for other than private recreational purposes).
 - (iv) Major vessel repair or major service.
 - (v) The length of the vessel may not extend more than 3 feet beyond the end of the Slip. For example, if the Slip is 18 feet, the vessel length, including the outboard motor, cannot exceed 21 feet.

- (vi) ~~(v)~~ The sale or rental of any products or services, including the sale or rental of vessels, personal watercraft, equipment, or any other product or service whether or not marine related, with the exception of a private sale of a Tenant-owned vessel, watercraft, or equipment not conducted as a regular business or enterprise.
- (vii) ~~(vi)~~ Advertising signs or devices of any kind, including but not limited to any sign or device advertising any business or offering for sale or lease any real estate, vessel, or other property.
- (viii) ~~(vii)~~ Any permanent, temporary, or floating structures, fences, docks, pilings, or any other structures.
- (ix) ~~(viii)~~ Any additional activity or use not approved in advance and in writing by the Town. This condition does not apply to minor repairs required to maintain the Boathouse in a good state of repair and in a presentable condition; provided such activities shall not exceed the activities authorized by this Lease.
- (x) ~~(ix)~~ Any other use, activity, or conduct of a commercial nature or appearance or not authorized herein.

6. **Supervision of the Boathouse.** The Tenant shall ~~solely~~ be responsible for the operation and maintenance of the Boathouse pursuant to the terms and conditions of this Lease. The Tenant shall instruct, monitor and supervise all persons and entities in the use of the Boathouse consistent with the terms and conditions of this Lease and all limitations, restrictions, laws, and regulations. With written approval by the Town Manager, the Tenant may take reasonable steps to secure the Boathouse from access by members of the public.

7. **Property Interest in the Town.** The Tenant shall (i) maintain satisfactory evidence of sufficient real-property interest, as may be required by and determined in the Town's sole discretion, in real property within the Town limits, and (ii) be a resident of the Town. If such real-property interest or residency is terminated, or the Town determines that such interest did not exist on the Effective Date of this Lease, this Lease may be immediately terminated at the option of the Town. Further, if such real property interest is terminated or transferred, this Lease is not transferrable or assignable to the purchaser or lessee of Tenant's property within the Town limits.

8. **Permits and Licenses.** The Tenant is solely responsible for obtaining and paying for all required governmental, regulatory, and other approvals, permits, and licenses necessary for Tenant's occupation, use, improvement, maintenance, and repair of the Boathouse and access thereto. Unless required by the Town under ~~subsection~~ Subsection 14(a), Tenant shall obtain a permit for repairs, maintenance or other work to be performed on the Boathouse under this Lease when and if required by the policies, regulations, rules and ordinances of the Town.

9. **Compliance with Laws.**

- (a) On or before November 30 of each year, an appointee of the Town's Historic Preservation Board shall inspect the Boathouse and surrounding area. Within thirty (30) after the inspection date, the appointee shall prepare a written report which shall include repairs and modifications necessary to bring the Boathouse into compliance with applicable statutes, regulations, rules, and ordinances of the Town. The written report shall include reasonable deadlines by which the repairs and modifications shall be completed. The written report shall be provided to the Tenant and a copy provided to the Town Manager. ~~Such~~ Unless required by the Town under Subsection 14(a), such repairs and modifications shall be timely made by the Tenant.
- (b) During the Term the Tenant shall comply at its own expense with all statutes, regulations, rules, ordinances, policies and orders of the Town and any governmental body, department,

or agency thereof which apply to or result from Tenant's use or occupancy of the Boathouse and shall abide by and observe any and all rules and regulations adopted from time-to-time by the Town.

10. **Right to Inspect; Emergency Repairs.** The Boathouse shall be subject to inspection at any reasonable time by the Town and its designated agent(s) and all other governmental authorities having jurisdiction, and shall be otherwise subject to a right-of-entry at any reasonable time by Town employees and agents in performance of their duties. In furtherance of said right-of-entry, the Tenant irrevocably grants to the Town the privilege and right of ingress and egress for access to the Boathouse by the Town and Town employees, agents, contractors, and assigns in performance of their duties. In the event that the Town determines that repairs to the Boathouse are necessary to remedy a defective or dangerous condition, the Town shall provide written notice to the Tenant, and such repairs will be made by the Tenant or the Town if required under ~~subsection~~Subsection 14(a) below as soon as possible. If Tenant fails to make such repairs ~~are not~~in a timely ~~made~~manner, the Town may make such repairs at Tenant's expense.

11. **Utilities and Other Services.** The Tenant is solely responsible at its own expense for establishing and maintaining all utilities and other services needed to serve the Boathouse and for Tenant operations and activities.

12. **Refuse Removal.** The Tenant is solely responsible at its own expense for providing prompt removal from the Boathouse and proper disposal of all refuse, garbage, debris, trash, and other discarded materials and shall not allow an accumulation thereof on, in, or adjacent to the Boathouse.

13. **Taxes and Assessments.** The Tenant is solely responsible for making payment to the Town within 10 days of written notice from the Town setting forth the amount due of all taxes, fees, assessments, and other charges legally imposed or accruing against the Boathouse or the Tenant's interests under this Lease which, for purposes of example only, may include but are not limited to ad valorem taxes, non-ad valorem assessments, and intangible personal property taxes. Dispute of any such taxes, fees, assessments, or charges shall be the sole responsibility of the Tenant at Tenant's sole cost and expense and the Tenant shall defend (with legal counsel approved by Town), indemnify, and hold the Town harmless for any and all such taxes, fees, assessments, and charges as well as all costs and expenses arising from non-payment or late payment thereof or otherwise from any such dispute, including but not limited to all penalties, interest, attorneys' fees, experts' fees, and costs through trial and final appeal.

14. **Repairs, Maintenance and Replacement (keeping the Boathouse in working order).**

- (a) The Town's sole obligation shall be to repair and/or replace the Boathouse roof, when in the Town's sole discretion the roof needs to be repaired or replaced, and to perform other major repairs and maintenance for the Boathouse. For purposes of this ~~subsection~~Subsection (a), "major repairs and maintenance" includes repairs and maintenance requiring a permit. Major repairs and maintenance exclude alterations requested by Tenant and approved by the Town to enhance the value of or adapt the Boathouse to a different use as outlined in ~~section~~Section 15, below.
- (b) The Tenant agrees, at no cost to the Town, to perform all other maintenance and repairs to the Boathouse necessary to maintain the Boathouse in a good state of repair and to keep the Boathouse in a clean, neat and orderly condition. ~~The Tenant's responsibility under this Lease includes the repair, maintenance and replacement of the Boathouse.~~ Repairs will be made using substantially the same or similar quality of materials and supplies as originally used and approved. The Town may at its option and upon reasonable written notice to Tenant, make such repairs. Tenant shall pay to Landlord, upon demand, the cost of such repairs plus Town administrative fees.

- (c) If any part of the Boathouse is damaged by Tenant, or Tenant's agents, or invitees or any breaking and entering of the Boathouse, Tenant shall provide the Town with immediate written notification of all damage to the Boathouse. The Town is not responsible for major repairs or maintenance when damage is caused by the Tenant or Tenant's agents, or invitees.
- (d) Tenant will provide all maintenance and repair services required by Tenant under this Lease (i) in a timely, safe and proficient manner, (ii) in accordance with applicable standards of the Town and jurisdiction with authority, and (iii) and utilizing sufficient and properly trained personnel and equipment, as necessary. If Tenant fails to provide such services in accordance with these requirements and the other conditions of this Lease, and Tenant has been provided with notice of such default and has been given a reasonable opportunity to cure such default, the Town, in addition to all of the rights and remedies available to it at law, in equity or otherwise herein, shall have the right to immediately perform such services and charge Tenant for the same, plus a 10% Town administrative ~~fees~~fee.

15. **Improvements; Alterations (upgrades to enhance the value of or adapt the Boathouse to a different use)**. No alterations to or improvements under this Section 15 may be made to the Boathouse without the prior review and written consent of the Town. The Tenant shall comply with any and all applicable laws, rules, ordinances and codes when undertaking any ~~alteration or improvement to the~~such alterations or improvements to the Boathouse. If written consent is not obtained, the Town may require the Tenant to undo such alterations or improvements and restore the Boathouse to its condition prior to any unauthorized alteration or improvement at the sole expense of the Tenant.

16. **Surrender of the Boathouse.**

- (a) On the expiration of this Lease, or upon its earlier termination by the Town or Tenant, the Tenant will surrender the possession of the Boathouse, ~~including all approved improvements made or installed by Tenant,~~ to the Town in the same or better condition than the date that the Boathouse was brought into compliance under Subsection 9(a) of this Lease. If repairs are necessary and the responsibility of Tenant, if refuses to make such repairs, the Town may bring the Boathouse into compliance so that the Town can relet the Boathouse and the Tenant shall pay the Town upon demand and after receiving a copy of any written invoices any reasonable sum which have been expended by the Town in accomplishing the repair of the Boathouse.
- (b) Tenant shall remove all personal property placed in the Boathouse and all debris and rubbish, and Tenant shall repair all damage to Boathouse and surrounding area resulting from such removal. If Tenant fails to remove ~~the~~Tenant's personal property or other improvements placed in or around the Boathouse by the expiration of the Term or earlier termination of this Lease, then the Town may, at its sole option, (i) deem any or all of such items abandoned and the sole property of the Town; or (ii) remove any and all such items and dispose of same in any manner. Tenant shall pay the Town on demand any and all expenses incurred by the Town in the removal of such items, including, without limitation, the cost of repairing any damage to the Boathouse or surrounding area caused by such removal.
- (c) This Section shall survive the termination or expiration of this Lease with respect to any repair related costs.

17. **Events of Default; Remedies.**

- (a) The following events shall be deemed to be, but are not exclusively, “event(s) of default” by the Tenant under this Lease:
 - (i) The Tenant fails to timely pay the Base Rent, taxes and fees required under this Lease and such failure continues for five (5) days after the Town notifies Tenant in writing;
 - (ii) The Tenant fails to pay all or part of any other sum of money due under this Lease and such failure continues for five (5) days after the Town notifies Tenant in writing; or
 - (iii) The Tenant fails to comply with any other provision of this Lease not requiring the payment of money (all of which terms, provisions, and covenants shall be deemed material).
- (b) Upon the occurrence of any event or events of default by the Tenant, the Town shall have the option to pursue any one or more of the following remedies:
 - (i) Terminate this Lease, in which event the Tenant shall immediately surrender the Boathouse to the Town without further obligation to pay rent hereunder.
 - (ii) Enter and repossess the Boathouse and relet the Boathouse for the Tenant’s account, for a term or terms which may, at the Town’s option, be equal to, less than, or greater than the period which would otherwise have constituted the balance of the Term. The Tenant shall be liable for (1) any difference between the amount of rent received from such reletting and the rent due and payable under the terms of this Lease, and (2) the cost of repairs reasonably necessitated and applicable to the Tenant to bring the Boathouse in compliance with applicable building codes as of the date the Town enters or repossess the Boathouse.
 - (iii) Enter the Boathouse and remedy whatever the Tenant is obligated to do under the terms of this Lease, but is refusing or failing to do; provided that the Tenant shall reimburse the Town for any expense which the Town may incur in effecting compliance with the Tenant’s obligations arising prior to the Town’s entry and repossession.
 - (iv) Collect any rent, cost, expenses or fees due hereunder prior to expiration or earlier termination of the term.
 - (v) Exercise any other remedies available under this Lease.

18. **Holding Over.** In the event the Tenant continues to occupy the Boathouse after the expiration of the Term or the termination of the Tenant’s right of possession, the Tenant shall, throughout the entire holdover period, pay rent equal to double the most recent amount of Base Rent. No holding over by the Tenant after the expiration of the Term shall be construed to extend the Term of this Lease, and the Tenant shall be deemed to be a tenant-at-sufferance during such holdover period.

19. **Notices.** All notices provided for herein shall be sufficient if sent by overnight delivery service such as Federal Express, or hand delivery, or certified or registered mail, return receipt requested, postage prepaid, and addressed to the following addresses or to such other addresses as the Parties may designate to each other in writing, as follows:

The Town:

Robert Smith, Town Manager
Town of Windermere
614 Main St.
Windermere, FL 34786
rsmith@town.windermere.fl.us

With a copy to (for legal notices): Heather Ramos
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando FL 32801
Heather.ramos@gray-robinson.com

The Tenant:

With a copy to:

Notices shall be effective (i) on the business day hand delivered (or, if it is not a business day, then the next business day thereafter), (ii) on the first business day following the sending thereof by overnight courier, or (iii) on the seventh calendar day (or, if it is not a business day, then the next business day thereafter) after the depositing such notice into the exclusive custody of the U.S. Postal Service.

20. **Assignment; Subletting.** This Lease shall not be assigned, transferred, hypothecated, sold, mortgaged, or otherwise encumbered. Tenant shall not sublease the Boathouse or any portion thereof. Any such assignment, transfer, encumbrance or sublease shall be null and void and without legal effect.

21. **Assumption of Risk; Release and Indemnification.** The Tenant agrees as follows:

- (a) **“As-Is and Where-Is.”** The Tenant accepts the condition of the Boathouse as-is and where-is and recognizes and hereby expressly and fully assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition or use of or access to the Boathouse. The Town has not made and makes no warranty of any kind whatsoever as to the condition of the Boathouse or its fitness for any particular purpose. This express assumption of risk by the Tenant is made for and on behalf of the Tenant and all Tenant family members and relatives, employees, agents, guests, tenants or lessees, contractors, subcontractors, and all other of Tenant’s invitees.
- (b) **Release and Indemnification (the Boathouse).** The Tenant hereby releases and forever discharges the Town, its elected officials, officers, employees, and agents (collectively “Released Parties”), and agrees to defend (with legal counsel approved by the Town), indemnify, and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, costs, and expenses, of any kind or nature, including but not limited to, all costs of investigation and attorneys’ fees, experts’ fees, and costs through trial and appeal and proceedings for determination of entitlement to and amount of such fees and costs, arising out of, incidental to, or in any way connected with the condition, use, or maintenance of, or access to, the Boathouse, or any other improvement, installation, equipment, or property thereon or therein, or otherwise arising under this Lease. **THE TENANT UNDERSTANDS AND AGREES THAT THIS RELEASE AND INDEMNIFICATION INCLUDES ANY AND ALL CLAIMS BASED ON THE NEGLIGENCE, ACTIONS, OR INACTION OF THE TOWN OR ANY OTHER RELEASED PARTY AND INCLUDES ANY OTHER CAUSE OR CONDITION WHATSOEVER, AND COVERS, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE.**
- (c) **Indemnification (Occupation and Use).** The Tenant shall defend (with legal counsel approved by the Town), indemnify, and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including but not limited to, all

costs of investigation and attorneys' fees, experts' fees, and costs through trial and appeal and proceedings for determination of entitlement to and amount of such fees and costs, arising out of, incidental to, or in any way connected with: the use, occupancy, maintenance, repair, improvement or replacement of the Boathouse, and any other improvement, installation, vessel, or equipment thereon or therein, and the waterway wherein the Boathouse is situated, by the Tenant or any family member or relative, employee, representative, agent, guest, tenant or lessee, contractor, sub-contractor, material supplier, service supplier, or other invitee, or of any of the foregoing, and; any act or omission of the Tenant or any family member or relative, employee, representative, agent, guest, tenant or lessee, contractor, sub-contractor, material supplier, service supplier, or other invitee, or of any of the foregoing; or otherwise arising under this Lease. Said indemnification obligation includes any damage of any kind or nature to the Boathouse or any improvements, structures, installations, or equipment thereon or therein, or within the waterway wherein the Boathouse is situated.

- (d) **Release and Indemnification (Public Improvements).** Tenant's release and agreement to defend, indemnify, and hold the Released Parties harmless provided for herein shall also include any claim for damage suffered by Town. In addition, Tenant waives and releases all claims of any kind or nature whatsoever against the Released Parties for damages that Tenant may suffer by reason of the repair, improvement, construction, reconstruction, operation and/or maintenance of the Boathouse, whether presently in place or that may in the future be constructed or installed, including but not limited to: any water and/or sewer mains, lines, pipes, and other facilities or structures; storm water structures, pipes, and other facilities; and electric lines, conduit, vaults, transformers, and other facilities or structures. Said release includes but is not limited to any damage due to failure of any such public improvement or utility or installation, natural causes, waterway condition and maintenance, stormwater or other discharge, and from any other cause of whatsoever kind or nature.
- (e) **Intent and Effect.** It is the intent and effect of the provisions contained in this ~~section~~[Section 21](#), and a condition in consideration for granting of this Lease, that Tenant's release and indemnification shall be and include a full, total, and comprehensive release and indemnification of the Released Parties against any kind or nature of claim whatsoever that is or may be asserted by reason of or as a consequence of the Town having granted permission to the Tenant to occupy, use, and maintain the Boathouse or make any repair, improvement or replacement. The provisions of this ~~section~~[Section](#) are provided as additional separate consideration and material inducement for grant of the Lease hereunder and the Lease would not have been entered into by the Town absent the giving of such additional consideration by Tenant. Tenant's defense, release, and indemnification obligations shall survive the termination of this Lease.
- (f) **Sovereign Immunity.** Nothing in this Lease shall be construed as a waiver of sovereign immunity by the Town whether by contract or under any law or regulation. Failure of Tenant to promptly provide the defense or indemnification required herein is a material breach of this Lease which can result in immediate termination notwithstanding any other provision herein.

22. **Insurance.**

- (a) **Comprehensive Liability Coverage.** At all times during the Term of this Lease, Tenant shall procure and maintain comprehensive liability coverage for any and all claims for damage and destruction of property and injury and death to persons as a result of or arising out of the condition, occupancy, use, operation, or maintenance of the Boathouse and any other improvements, structures, installations, and equipment in connection therewith or

located thereon, whether or not authorized hereunder in the minimum amount of \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate. Such insurance must include the Town as an additional insured. Tenant's insurance in all instances shall be primary and any insurance that may be maintained by the Town shall not be contributory. Before the Effective Date, Tenant shall provide proof of such insurance to the Town. If Tenant fails to obtain the insurance or the policy is cancelled, the Town may obtain the insurance and Tenant shall reimburse the Town for the cost on written demand.

- (b) **Tenant's Failure to Maintain Liability Insurance.** Failure of Tenant to maintain comprehensive liability insurance coverage will be deemed detrimental to the public interest, an increased and unnecessary risk to the public and the Town, and a material breach of this Lease which may result in immediate termination of this Lease, notwithstanding any other provision herein, and Tenant being liable pursuant to the indemnification provisions of this Lease for the full amount of all claims and losses incurred as a result of Tenant failing to maintain adequate insurance coverage.
- (c) **Property Coverage.** The Town shall provide property coverage for the Boathouse in an amount equal to the full insurable value thereof. Property insurance coverage shall be adequate, as a minimum, for prompt restoration of the Boathouse to a condition which is in compliance with applicable statutes, regulations, rules and ordinances of the Town.
- (d) **Modification of Insurance Requirements.** Recognizing the length and continuing nature of this Lease, the Town shall have the right to periodically review the adequacy of the required insurance, its form and type, and the amount of coverage and, notwithstanding any other term or condition of this Lease, unilaterally modify the insurance requirements of this ~~section~~Section by written notice of such amendment to Tenant. Such modifications shall be as found reasonably necessary in the sole discretion of the Town. Factors which may be considered by the Town include, but are not limited to, changes in generally accepted insurance industry standards and practices, changes in risk exposure, measurable changes in local and national economic indicators, and changes in Town policies and procedures.

23. **Enforcement of Provisions; Waiver.** Any term or condition of this Lease may be waived by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Lease, in any one or more instances, shall not invalidate this Lease, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Lease. Except as otherwise provided herein, the failure of a party to assert any of its rights under this Lease or otherwise shall not constitute a waiver of such rights. A waiver by a party shall not invalidate this Lease, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

24. **Town Agent.** Except as otherwise provided herein, the Town Manager or his designee (collective referred to herein as the "Town Manager") shall be the Town's agent and shall administer this Lease on behalf of the Town, including but not limited to: providing notices to Tenant; enforcing the terms of this Lease; and exercising any right of the Town hereunder on its behalf.

25. **No Joint Venture or Agency.** Nothing in this Lease or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with

respect to the parties. Neither party is nor shall be deemed the agent or representative of the other party in any instance whatsoever.

26. **Third-Party Beneficiaries.** The terms and provisions of this Lease are intended solely for the benefit of the parties, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

27. **Entire Agreement; Captions.** This Lease and its exhibits and attachments set forth all the promises, agreements, conditions, and understandings, either oral or written, between the parties. The captions, paragraphs, sections, or letters appearing in this Lease are inserted only as a matter of convenience and in no way affect, define, limit, expand, construe, or describe the scope or intent of the sections and paragraphs hereof.

28. **Amendments.** Except to the extent otherwise provided herein, no subsequent alteration, amendment, change, or addition to this Lease or any exhibit or attachment hereto shall be binding on the Town or Tenant unless in writing and signed by them and made a part of this Lease. Any and all amendments to this Lease and any exhibit or attachment hereto shall require approval of the Town Council and must comply with all ordinances, rules, regulations, and statutes in existence at the time of the execution of the modification or amendment.

29. **Severability.** If any provision of this Lease is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any party under this Lease will not be materially and adversely affected thereby, such provision shall be fully severable; this Lease will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this Lease will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the parties shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this Lease a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible.

30. **The Town's Remedies Cumulative.** All rights and remedies of the Town herein enumerated are cumulative. In the event of any breach by the Tenant of any of the covenants or provisions of this Lease, then, regardless of whether the Term has commenced, this Lease has been terminated, or the Town has recovered possession of the Boathouse, the Town shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, and mention in this Lease of any particular remedy shall not preclude the Town from any other remedy at law or in equity.

31. **Governing Law; Venue; Waiver of Jury Trial.** This Lease shall be governed by and construed in accordance with the laws of the state of Florida as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies. Venue for resolution of any dispute arising from or under this Lease or its performance shall be in Orange County, Florida and all actions and proceedings arising from or under this Lease or Tenant's occupation, use, maintenance, or ~~restoration~~repair of the Boathouse or otherwise related to the subject matter of this Lease shall be in the court of the state of Florida in Orange County, Florida, which court shall have exclusive jurisdiction for such purpose. Each of the parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Lease or Tenant's occupancy, use, maintenance, or ~~restoration~~repair of the Boathouse or otherwise related to the subject matter of this Lease. This provision is a material inducement for the parties hereto to enter into this Lease, and shall survive the termination of this Lease.

32. **Attorneys' Fees.** Except as otherwise provided in this Lease, in the event there arises between the parties any dispute or litigation, each party shall be responsible for its own attorneys' fees, experts' fees, and costs.

33. **Attachments.** All attachments are incorporated herein and made a part of this Lease for all purposes. Any term that is not defined in any schedule or attachments shall have the meaning ascribed to it in this Lease.

34. **Recording.** This Lease will be recorded in the official records of Orange County, Florida, which recording shall be at Tenant's expense. Tenant shall promptly reimburse the Town for the cost of recording and any administrative fees to cover such expense.

35. **Statutory Notice Requirement.** Tenant hereby acknowledges receipt of the following notice as required by Section 404.056 of Florida Statutes:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date in the introductory clause and hereby warrant and represent that they are duly authorized to execute this Lease and bind their respective party.

WITNESSES:
[Two Required]

Tenant:

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, ~~2021~~20, by _____, who is personally known to me, or produced _____ as identification.

Notary Public Signature

[AFFIX NOTARY SEAL]

Print Notary Name: _____

My commission expires: _____

WITNESSES:
[Two Required]

Tenant:

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, ~~2021~~20____, by _____, who is personally known to me, or produced _____ as identification.

Notary Public Signature

[AFFIX NOTARY SEAL]

Print Notary Name: _____

My commission expires: _____

ATTEST:

Town of Windermere:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

By: _____
Jim O'Brien
Town of Windermere Mayor

(SEAL)

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, ~~2021~~20, by **Mayor Jim O'Brien**, who is personally known to me, or produced _____ as identification.

Notary Public Signature

[AFFIX NOTARY SEAL]

Print Notary Name: _____

My commission expires: _____

Exhibit A
Depiction of the Boathouse and Slip

/73/16#44573140.v6

[/73/16#44573140.v8](#)

| Summary report: Litera® Change-Pro for Word 10.3.0.1 Document comparison done on 10/18/2021 11:45:19 AM | |
|--|-----------|
| Style name: Default Style | |
| Intelligent Table Comparison: Active | |
| Original DMS: iw://FSDMS/ACTIVE/44573140/6 | |
| Modified DMS: iw://FSDMS/ACTIVE/44573140/8 | |
| Changes: | |
| <u>Add</u> | 51 |
| Delete | 38 |
| Move From | 0 |
| <u>Move To</u> | 0 |
| <u>Table Insert</u> | 0 |
| Table Delete | 0 |
| <u>Table moves to</u> | 0 |
| Table moves from | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| Format changes | 0 |
| Total Changes: | 89 |

Prepared by and return to:
Heather Ramos, Town Attorney
Town of Windermere
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando FL 32801

Property Appraiser's Parcel
Identification No:

TOWN OF WINDERMERE BOATHOUSE LEASE AGREEMENT

This Lease Agreement (the "Lease") is entered into on _____ (the "Effective Date") between the **Town of Windermere, a Florida municipal corporation**, whose mailing address is 614 Main Street, Windermere, FL 34786 (the "Town"), and _____ and _____, whose mailing address is _____ (the "Tenant"). The Town and the Tenant may also be referred to herein individually as a "party" or collectively as the "parties."

1. Lease of the Boathouse.

- (a) Subject to the terms and conditions set forth herein, the Town leases to Tenant Boathouse # _____ and Slip # _____ as depicted in **Exhibit A** attached hereto, together with all rights of way necessary to permit ingress to and egress from the Boathouse and Slip together with the non-exclusive use of the waterway wherein the Boathouse is situated for navigation and other lawful purposes.
- (b) Tenant accepts the Boathouse in "AS-IS" and "WHERE-IS" condition and acknowledges that the Town has made no covenant, representation or warranty of any kind, express or implied, with regard to the physical condition, location of, or other suitability of the Boathouse for Tenant's permitted use.
- (c) The Town is the owner of the Boathouse and all title and interest in the Boathouse remain vested in the Town notwithstanding the granting of this Lease.

2. **Permitted Use of the Boathouse and Slip.** The Tenant is hereby authorized to occupy, utilize, and maintain the Boathouse and Slip for housing recreational vessels owned by or leased to Tenant if such use meets the conditions of this Lease and all regulatory requirements of the Town, Orange County, and the State of Florida and agencies with jurisdiction. Such authorized use shall not include Tenant's renting or subleasing of all or any part of the Boathouse. The Town retains the sole and absolute right to determine whether any proposed or actual use of the Boathouse is within the uses contemplated and allowed by this Lease.

3. **Term; Termination by Tenant.** The term of this Lease commences on the Effective Date and shall expire on _____ unless terminated sooner (the "Term"). In the event of the death of a Tenant during the Term of this Lease, the Tenant's spouse may continue as the Tenant for the remainder of the Lease Term. The spouse must meet the property interest requirements in Section 7, below. In the event that there is no living spouse at the time of death, this Lease Agreement shall automatically terminate. Tenant may terminate this Lease at any time by providing sixty (60) days prior written notice to the Town.

4. Rent; Triple Net.

- (a) Beginning on the Effective Date, Tenant shall pay annual Base Rent for the first year in the amount of _____ **one thousand eight hundred dollars (\$1,800.00) [Boathouse/Slips 1-3] / one thousand five hundred dollars (\$1,500.00) [Boathouse 4 & 5 /Slips 4-7]**, plus applicable taxes and fees. Base Rent for any partial

month during the Term shall be prorated to reflect the number of days during the month that Tenant has possession of the Boathouse. The total annual Base Rent plus taxes and fees will be calculated by the Town and the Tenant shall be invoiced.

- (b) The Base Rent for each year during the Term hereof subsequent to the first year shall be increased in the same amount of an increase in the Consumer Price Index during the preceding Lease year. Such increase shall be calculated by multiplying the annual Base Rent by a fraction whose numerator is the Consumer Price Index for the twelfth month of the preceding Lease year and whose denominator is the Consumer Price Index for the first month of such Lease year. In no event shall the Base Rent be decreased due to changes in the Consumer Price Index. For purposes of this Lease, "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor.
- (c) If Tenant fails to make any payment on or before the fifth day after the date such payment is due and payable, Tenant shall pay to the Town an administrative late charge of five percent (5%) of the amount of such overdue payment.
- (d) This Lease is a "triple net lease," and unless specified otherwise in this Lease, Tenant shall pay all costs and expenses relating to the Boathouse of any kind or nature whatsoever. Such costs and expenses shall include, without limitation, all amounts attributable to, paid or incurred in connection with the operation, repair, and maintenance of the Boathouse; real property taxes; rent taxes; liability insurance; utilities; refuse disposal; security; labor; maintenance and repair costs and service contracts; costs of licenses, permits and inspections; and all other costs and expenses paid or incurred with respect to the Boathouse.

5. **Special Lease Conditions.** In addition to all other terms and conditions herein, the Lease of the Boathouse is further conditioned as follows:

- (a) No part or portion of the Boathouse, Slip or any improvements, installations, or equipment constructed or installed in or on the Boathouse shall be occupied, used, or maintained as a commercial marina or for any other commercial or business purpose whatsoever.
- (b) In addition to all applicable Town of Windermere regulations, the following uses and activities are not permitted and shall not be conducted or allowed by Tenant:
 - (i) Bulk fuel/oil/chemical/flammable material storage. Storage of gasoline must be in government approved containers and shall not exceed at any one time ten (10) gallons in quantity.
 - (ii) Pumpout or other disposal or discharge of sewage or other hazardous waste from vessels, whether by use of permanent or portable equipment or service, or any other means.
 - (iii) Docking or storage of any vessel used for commercial purposes (e.g., sightseeing, fishing, passenger service, scientific, industrial, or otherwise operated for a fee, charge, or other exchange of value of any kind or otherwise used for other than private recreational purposes).
 - (iv) Major vessel repair or major service.
 - (v) The length of the vessel may not extend more than 3 feet beyond the end of the Slip. For example, if the Slip is 18 feet, the vessel length, including the outboard motor, cannot exceed 21 feet.
 - (vi) The sale or rental of any products or services, including the sale or rental of vessels, personal watercraft, equipment, or any other product or service whether or not

- marine related, with the exception of a private sale of a Tenant-owned vessel, watercraft, or equipment not conducted as a regular business or enterprise.
- (vii) Advertising signs or devices of any kind, including but not limited to any sign or device advertising any business or offering for sale or lease any real estate, vessel, or other property.
- (viii) Any permanent, temporary, or floating structures, fences, docks, pilings, or any other structures.
- (ix) Any additional activity or use not approved in advance and in writing by the Town. This condition does not apply to minor repairs required to maintain the Boathouse in a good state of repair and in a presentable condition; provided such activities shall not exceed the activities authorized by this Lease.
- (x) Any other use, activity, or conduct of a commercial nature or appearance or not authorized herein.

6. **Supervision of the Boathouse.** The Tenant shall be responsible for the operation and maintenance of the Boathouse pursuant to the terms and conditions of this Lease. The Tenant shall instruct, monitor and supervise all persons and entities in the use of the Boathouse consistent with the terms and conditions of this Lease and all limitations, restrictions, laws, and regulations. With written approval by the Town Manager, the Tenant may take reasonable steps to secure the Boathouse from access by members of the public.

7. **Property Interest in the Town.** The Tenant shall (i) maintain satisfactory evidence of sufficient real-property interest, as may be required by and determined in the Town's sole discretion, in real property within the Town limits, and (ii) be a resident of the Town. If such real-property interest or residency is terminated, or the Town determines that such interest did not exist on the Effective Date of this Lease, this Lease may be immediately terminated at the option of the Town. Further, if such real property interest is terminated or transferred, this Lease is not transferrable or assignable to the purchaser or lessee of Tenant's property within the Town limits.

8. **Permits and Licenses.** The Tenant is solely responsible for obtaining and paying for all required governmental, regulatory, and other approvals, permits, and licenses necessary for Tenant's occupation, use, improvement, maintenance, and repair of the Boathouse and access thereto. Unless required by the Town under Subsection 14(a), Tenant shall obtain a permit for repairs, maintenance or other work to be performed on the Boathouse under this Lease when and if required by the policies, regulations, rules and ordinances of the Town.

9. **Compliance with Laws.**

- (a) On or before November 30 of each year, an appointee of the Town's Historic Preservation Board shall inspect the Boathouse and surrounding area. Within thirty (30) after the inspection date, the appointee shall prepare a written report which shall include repairs and modifications necessary to bring the Boathouse into compliance with applicable statutes, regulations, rules, and ordinances of the Town. The written report shall include reasonable deadlines by which the repairs and modifications shall be completed. The written report shall be provided to the Tenant and a copy provided to the Town Manager. Unless required by the Town under Subsection 14(a), such repairs and modifications shall be timely made by the Tenant.
- (b) During the Term the Tenant shall comply at its own expense with all statutes, regulations, rules, ordinances, policies and orders of the Town and any governmental body, department, or agency thereof which apply to or result from Tenant's use or occupancy of the Boathouse and shall abide by and observe any and all rules and regulations adopted from time-to-time by the Town.

10. **Right to Inspect; Emergency Repairs.** The Boathouse shall be subject to inspection at any reasonable time by the Town and its designated agent(s) and all other governmental authorities having jurisdiction, and shall be otherwise subject to a right-of-entry at any reasonable time by Town employees and agents in performance of their duties. In furtherance of said right-of-entry, the Tenant irrevocably grants to the Town the privilege and right of ingress and egress for access to the Boathouse by the Town and Town employees, agents, contractors, and assigns in performance of their duties. In the event that the Town determines that repairs to the Boathouse are necessary to remedy a defective or dangerous condition, the Town shall provide written notice to the Tenant, and such repairs will be made by the Tenant or the Town if required under Subsection 14(a) below as soon as possible. If Tenant fails to make such repairs in a timely manner, the Town may make such repairs at Tenant's expense.

11. **Utilities and Other Services.** The Tenant is solely responsible at its own expense for establishing and maintaining all utilities and other services needed to serve the Boathouse and for Tenant operations and activities.

12. **Refuse Removal.** The Tenant is solely responsible at its own expense for providing prompt removal from the Boathouse and proper disposal of all refuse, garbage, debris, trash, and other discarded materials and shall not allow an accumulation thereof on, in, or adjacent to the Boathouse.

13. **Taxes and Assessments.** The Tenant is solely responsible for making payment to the Town within 10 days of written notice from the Town setting forth the amount due of all taxes, fees, assessments, and other charges legally imposed or accruing against the Boathouse or the Tenant's interests under this Lease which, for purposes of example only, may include but are not limited to ad valorem taxes, non-ad valorem assessments, and intangible personal property taxes. Dispute of any such taxes, fees, assessments, or charges shall be the sole responsibility of the Tenant at Tenant's sole cost and expense and the Tenant shall defend (with legal counsel approved by Town), indemnify, and hold the Town harmless for any and all such taxes, fees, assessments, and charges as well as all costs and expenses arising from non-payment or late payment thereof or otherwise from any such dispute, including but not limited to all penalties, interest, attorneys' fees, experts' fees, and costs through trial and final appeal.

14. **Repairs, Maintenance and Replacement (keeping the Boathouse in working order).**

- (a) The Town's sole obligation shall be to repair and/or replace the Boathouse roof, when in the Town's sole discretion the roof needs to be repaired or replaced, and to perform other major repairs and maintenance for the Boathouse. For purposes of this Subsection (a), "major repairs and maintenance" includes repairs and maintenance requiring a permit. Major repairs and maintenance exclude alterations requested by Tenant and approved by the Town to enhance the value of or adapt the Boathouse to a different use as outlined in Section 15, below.
- (b) The Tenant agrees, at no cost to the Town, to perform all other maintenance and repairs to the Boathouse necessary to maintain the Boathouse in a good state of repair and to keep the Boathouse in a clean, neat and orderly condition. Repairs will be made using substantially the same or similar quality of materials and supplies as originally used and approved. The Town may at its option and upon reasonable written notice to Tenant, make such repairs. Tenant shall pay to Landlord, upon demand, the cost of such repairs plus Town administrative fees.
- (c) If any part of the Boathouse is damaged by Tenant, or Tenant's agents, or invitees or any breaking and entering of the Boathouse, Tenant shall provide the Town with immediate written notification of all damage to the Boathouse. The Town is not responsible for major repairs or maintenance when damage is caused by the Tenant or Tenant's agents, or invitees.

- (d) Tenant will provide all maintenance and repair services required by Tenant under this Lease (i) in a timely, safe and proficient manner, (ii) in accordance with applicable standards of the Town and jurisdiction with authority, and (iii) and utilizing sufficient and properly trained personnel and equipment, as necessary. If Tenant fails to provide such services in accordance with these requirements and the other conditions of this Lease, and Tenant has been provided with notice of such default and has been given a reasonable opportunity to cure such default, the Town, in addition to all of the rights and remedies available to it at law, in equity or otherwise herein, shall have the right to immediately perform such services and charge Tenant for the same, plus a 10% Town administrative fee.

15. **Improvements; Alterations (upgrades to enhance the value of or adapt the Boathouse to a different use).** No alterations to or improvements under this Section 15 may be made to the Boathouse without the prior review and written consent of the Town. The Tenant shall comply with any and all applicable laws, rules, ordinances and codes when undertaking any such alterations or improvements to the Boathouse. If written consent is not obtained, the Town may require the Tenant to undo such alterations or improvements and restore the Boathouse to its condition prior to any unauthorized alteration or improvement at the sole expense of the Tenant.

16. **Surrender of the Boathouse.**

- (a) On the expiration of this Lease, or upon its earlier termination by the Town or Tenant, the Tenant will surrender the possession of the Boathouse to the Town in the same or better condition than the date that the Boathouse was brought into compliance under Subsection 9(a) of this Lease. If repairs are necessary and the responsibility of Tenant, if refuses to make such repairs, the Town may bring the Boathouse into compliance so that the Town can relet the Boathouse and the Tenant shall pay the Town upon demand and after receiving a copy of any written invoices any reasonable sum which have been expended by the Town in accomplishing the repair of the Boathouse.
- (b) Tenant shall remove all personal property placed in the Boathouse and all debris and rubbish, and Tenant shall repair all damage to Boathouse and surrounding area resulting from such removal. If Tenant fails to remove Tenant's personal property or other improvements placed in or around the Boathouse by the expiration of the Term or earlier termination of this Lease, then the Town may, at its sole option, (i) deem any or all of such items abandoned and the sole property of the Town; or (ii) remove any and all such items and dispose of same in any manner. Tenant shall pay the Town on demand any and all expenses incurred by the Town in the removal of such items, including, without limitation, the cost of repairing any damage to the Boathouse or surrounding area caused by such removal.
- (c) This Section shall survive the termination or expiration of this Lease with respect to any repair related costs.

17. **Events of Default; Remedies.**

- (a) The following events shall be deemed to be, but are not exclusively, "event(s) of default" by the Tenant under this Lease:
 - (i) The Tenant fails to timely pay the Base Rent, taxes and fees required under this Lease and such failure continues for five (5) days after the Town notifies Tenant in writing;

- (ii) The Tenant fails to pay all or part of any other sum of money due under this Lease and such failure continues for five (5) days after the Town notifies Tenant in writing; or
 - (iii) The Tenant fails to comply with any other provision of this Lease not requiring the payment of money (all of which terms, provisions, and covenants shall be deemed material).
- (b) Upon the occurrence of any event or events of default by the Tenant, the Town shall have the option to pursue any one or more of the following remedies:
- (i) Terminate this Lease, in which event the Tenant shall immediately surrender the Boathouse to the Town without further obligation to pay rent hereunder.
 - (ii) Enter and repossess the Boathouse and relet the Boathouse for the Tenant's account, for a term or terms which may, at the Town's option, be equal to, less than, or greater than the period which would otherwise have constituted the balance of the Term. The Tenant shall be liable for (1) any difference between the amount of rent received from such reletting and the rent due and payable under the terms of this Lease, and (2) the cost of repairs reasonably necessitated and applicable to the Tenant to bring the Boathouse in compliance with applicable building codes as of the date the Town enters or repossess the Boathouse.
 - (iii) Enter the Boathouse and remedy whatever the Tenant is obligated to do under the terms of this Lease, but is refusing or failing to do; provided that the Tenant shall reimburse the Town for any expense which the Town may incur in effecting compliance with the Tenant's obligations arising prior to the Town's entry and repossession.
 - (iv) Collect any rent, cost, expenses or fees due hereunder prior to expiration or earlier termination of the term.
 - (v) Exercise any other remedies available under this Lease.

18. **Holding Over.** In the event the Tenant continues to occupy the Boathouse after the expiration of the Term or the termination of the Tenant's right of possession, the Tenant shall, throughout the entire holdover period, pay rent equal to double the most recent amount of Base Rent. No holding over by the Tenant after the expiration of the Term shall be construed to extend the Term of this Lease, and the Tenant shall be deemed to be a tenant-at-sufferance during such holdover period.

19. **Notices.** All notices provided for herein shall be sufficient if sent by overnight delivery service such as Federal Express, or hand delivery, or certified or registered mail, return receipt requested, postage prepaid, and addressed to the following addresses or to such other addresses as the Parties may designate to each other in writing, as follows:

The Town: Robert Smith, Town Manager
Town of Windermere
614 Main St.
Windermere, FL 34786
rsmith@town.windermere.fl.us

With a copy to (for legal notices): Heather Ramos
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando FL 32801
Heather.ramos@gray-robinson.com

The Tenant:

With a copy to:

Notices shall be effective (i) on the business day hand delivered (or, if it is not a business day, then the next business day thereafter), (ii) on the first business day following the sending thereof by overnight courier, or (iii) on the seventh calendar day (or, if it is not a business day, then the next business day thereafter) after the depositing such notice into the exclusive custody of the U.S. Postal Service.

20. **Assignment; Subletting.** This Lease shall not be assigned, transferred, hypothecated, sold, mortgaged, or otherwise encumbered. Tenant shall not sublease the Boathouse or any portion thereof. Any such assignment, transfer, encumbrance or sublease shall be null and void and without legal effect.

21. **Assumption of Risk; Release and Indemnification.** The Tenant agrees as follows:

- (a) **“As-Is and Where-Is.”** The Tenant accepts the condition of the Boathouse as-is and where-is and recognizes and hereby expressly and fully assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition or use of or access to the Boathouse. The Town has not made and makes no warranty of any kind whatsoever as to the condition of the Boathouse or its fitness for any particular purpose. This express assumption of risk by the Tenant is made for and on behalf of the Tenant and all Tenant family members and relatives, employees, agents, guests, tenants or lessees, contractors, subcontractors, and all other of Tenant’s invitees.
- (b) **Release and Indemnification (the Boathouse).** The Tenant hereby releases and forever discharges the Town, its elected officials, officers, employees, and agents (collectively “Released Parties”), and agrees to defend (with legal counsel approved by the Town), indemnify, and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, costs, and expenses, of any kind or nature, including but not limited to, all costs of investigation and attorneys’ fees, experts’ fees, and costs through trial and appeal and proceedings for determination of entitlement to and amount of such fees and costs, arising out of, incidental to, or in any way connected with the condition, use, or maintenance of, or access to, the Boathouse, or any other improvement, installation, equipment, or property thereon or therein, or otherwise arising under this Lease. THE TENANT UNDERSTANDS AND AGREES THAT THIS RELEASE AND INDEMNIFICATION INCLUDES ANY AND ALL CLAIMS BASED ON THE NEGLIGENCE, ACTIONS, OR INACTION OF THE TOWN OR ANY OTHER RELEASED PARTY AND INCLUDES ANY OTHER CAUSE OR CONDITION WHATSOEVER, AND COVERS, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE.
- (c) **Indemnification (Occupation and Use).** The Tenant shall defend (with legal counsel approved by the Town), indemnify, and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including but not limited to, all costs of investigation and attorneys’ fees, experts’ fees, and costs through trial and appeal and proceedings for determination of entitlement to and amount of such fees and costs, arising out of, incidental to, or in any way connected with: the use, occupancy, maintenance, repair, improvement or replacement of the Boathouse, and any other improvement, installation, vessel, or equipment thereon or therein, and the waterway

wherein the Boathouse is situated, by the Tenant or any family member or relative, employee, representative, agent, guest, tenant or lessee, contractor, sub-contractor, material supplier, service supplier, or other invitee, or of any of the foregoing, and; any act or omission of the Tenant or any family member or relative, employee, representative, agent, guest, tenant or lessee, contractor, sub-contractor, material supplier, service supplier, or other invitee, or of any of the foregoing; or otherwise arising under this Lease. Said indemnification obligation includes any damage of any kind or nature to the Boathouse or any improvements, structures, installations, or equipment thereon or therein, or within the waterway wherein the Boathouse is situated.

- (d) **Release and Indemnification (Public Improvements).** Tenant's release and agreement to defend, indemnify, and hold the Released Parties harmless provided for herein shall also include any claim for damage suffered by Town. In addition, Tenant waives and releases all claims of any kind or nature whatsoever against the Released Parties for damages that Tenant may suffer by reason of the repair, improvement, construction, reconstruction, operation and/or maintenance of the Boathouse, whether presently in place or that may in the future be constructed or installed, including but not limited to: any water and/or sewer mains, lines, pipes, and other facilities or structures; storm water structures, pipes, and other facilities; and electric lines, conduit, vaults, transformers, and other facilities or structures. Said release includes but is not limited to any damage due to failure of any such public improvement or utility or installation, natural causes, waterway condition and maintenance, stormwater or other discharge, and from any other cause of whatsoever kind or nature.
- (e) **Intent and Effect.** It is the intent and effect of the provisions contained in this Section 21, and a condition in consideration for granting of this Lease, that Tenant's release and indemnification shall be and include a full, total, and comprehensive release and indemnification of the Released Parties against any kind or nature of claim whatsoever that is or may be asserted by reason of or as a consequence of the Town having granted permission to the Tenant to occupy, use, and maintain the Boathouse or make any repair, improvement or replacement. The provisions of this Section are provided as additional separate consideration and material inducement for grant of the Lease hereunder and the Lease would not have been entered into by the Town absent the giving of such additional consideration by Tenant. Tenant's defense, release, and indemnification obligations shall survive the termination of this Lease.
- (f) **Sovereign Immunity.** Nothing in this Lease shall be construed as a waiver of sovereign immunity by the Town whether by contract or under any law or regulation. Failure of Tenant to promptly provide the defense or indemnification required herein is a material breach of this Lease which can result in immediate termination notwithstanding any other provision herein.

22. **Insurance.**

- (a) **Comprehensive Liability Coverage.** At all times during the Term of this Lease, Tenant shall procure and maintain comprehensive liability coverage for any and all claims for damage and destruction of property and injury and death to persons as a result of or arising out of the condition, occupancy, use, operation, or maintenance of the Boathouse and any other improvements, structures, installations, and equipment in connection therewith or located thereon, whether or not authorized hereunder in the minimum amount of \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate. Such insurance must include the Town as an additional insured. Tenant's insurance in all instances shall be primary and any insurance that may be maintained by the Town shall not be contributory. Before the Effective Date, Tenant shall provide proof of such insurance to the Town. If Tenant fails to

obtain the insurance or the policy is cancelled, the Town may obtain the insurance and Tenant shall reimburse the Town for the cost on written demand.

- (b) **Tenant's Failure to Maintain Liability Insurance.** Failure of Tenant to maintain comprehensive liability insurance coverage will be deemed detrimental to the public interest, an increased and unnecessary risk to the public and the Town, and a material breach of this Lease which may result in immediate termination of this Lease, notwithstanding any other provision herein, and Tenant being liable pursuant to the indemnification provisions of this Lease for the full amount of all claims and losses incurred as a result of Tenant failing to maintain adequate insurance coverage.
- (c) **Property Coverage.** The Town shall provide property coverage for the Boathouse in an amount equal to the full insurable value thereof. Property insurance coverage shall be adequate, as a minimum, for prompt restoration of the Boathouse to a condition which is in compliance with applicable statutes, regulations, rules and ordinances of the Town.
- (d) **Modification of Insurance Requirements.** Recognizing the length and continuing nature of this Lease, the Town shall have the right to periodically review the adequacy of the required insurance, its form and type, and the amount of coverage and, notwithstanding any other term or condition of this Lease, unilaterally modify the insurance requirements of this Section by written notice of such amendment to Tenant. Such modifications shall be as found reasonably necessary in the sole discretion of the Town. Factors which may be considered by the Town include, but are not limited to, changes in generally accepted insurance industry standards and practices, changes in risk exposure, measurable changes in local and national economic indicators, and changes in Town policies and procedures.

23. **Enforcement of Provisions; Waiver.** Any term or condition of this Lease may be waived by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Lease, in any one or more instances, shall not invalidate this Lease, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Lease. Except as otherwise provided herein, the failure of a party to assert any of its rights under this Lease or otherwise shall not constitute a waiver of such rights. A waiver by a party shall not invalidate this Lease, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

24. **Town Agent.** Except as otherwise provided herein, the Town Manager or his designee (collective referred to herein as the "Town Manager") shall be the Town's agent and shall administer this Lease on behalf of the Town, including but not limited to: providing notices to Tenant; enforcing the terms of this Lease; and exercising any right of the Town hereunder on its behalf.

25. **No Joint Venture or Agency.** Nothing in this Lease or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the parties. Neither party is nor shall be deemed the agent or representative of the other party in any instance whatsoever.

26. **Third-Party Beneficiaries.** The terms and provisions of this Lease are intended solely for the benefit of the parties, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

27. **Entire Agreement; Captions.** This Lease and its exhibits and attachments set forth all the promises, agreements, conditions, and understandings, either oral or written, between the parties. The captions, paragraphs, sections, or letters appearing in this Lease are inserted only as a matter of convenience and in no way affect, define, limit, expand, construe, or describe the scope or intent of the sections and paragraphs hereof.
28. **Amendments.** Except to the extent otherwise provided herein, no subsequent alteration, amendment, change, or addition to this Lease or any exhibit or attachment hereto shall be binding on the Town or Tenant unless in writing and signed by them and made a part of this Lease. Any and all amendments to this Lease and any exhibit or attachment hereto shall require approval of the Town Council and must comply with all ordinances, rules, regulations, and statutes in existence at the time of the execution of the modification or amendment.
29. **Severability.** If any provision of this Lease is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any party under this Lease will not be materially and adversely affected thereby, such provision shall be fully severable; this Lease will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this Lease will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the parties shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this Lease a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible.
30. **The Town's Remedies Cumulative.** All rights and remedies of the Town herein enumerated are cumulative. In the event of any breach by the Tenant of any of the covenants or provisions of this Lease, then, regardless of whether the Term has commenced, this Lease has been terminated, or the Town has recovered possession of the Boathouse, the Town shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, and mention in this Lease of any particular remedy shall not preclude the Town from any other remedy at law or in equity.
31. **Governing Law; Venue; Waiver of Jury Trial.** This Lease shall be governed by and construed in accordance with the laws of the state of Florida as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies. Venue for resolution of any dispute arising from or under this Lease or its performance shall be in Orange County, Florida and all actions and proceedings arising from or under this Lease or Tenant's occupation, use, maintenance, or repair of the Boathouse or otherwise related to the subject matter of this Lease shall be in the court of the state of Florida in Orange County, Florida, which court shall have exclusive jurisdiction for such purpose. Each of the parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Lease or Tenant's occupancy, use, maintenance, or repair of the Boathouse or otherwise related to the subject matter of this Lease. This provision is a material inducement for the parties hereto to enter into this Lease, and shall survive the termination of this Lease.
32. **Attorneys' Fees.** Except as otherwise provided in this Lease, in the event there arises between the parties any dispute or litigation, each party shall be responsible for its own attorneys' fees, experts' fees, and costs.
33. **Attachments.** All attachments are incorporated herein and made a part of this Lease for all purposes. Any term that is not defined in any schedule or attachments shall have the meaning ascribed to it in this Lease.
34. **Recording.** This Lease will be recorded in the official records of Orange County, Florida, which recording shall be at Tenant's expense. Tenant shall promptly reimburse the Town for the cost of recording and any administrative fees to cover such expense.

35. **Statutory Notice Requirement.** Tenant hereby acknowledges receipt of the following notice as required by Section 404.056 of Florida Statutes:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date in the introductory clause and hereby warrant and represent that they are duly authorized to execute this Lease and bind their respective party.

WITNESSES:
[Two Required]

Tenant:

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by _____, who is personally known to me, or produced _____ as identification.

Notary Public Signature

[AFFIX NOTARY SEAL]

Print Notary Name: _____

My commission expires: _____

WITNESSES:

[Two Required]

Tenant:

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20__, by _____, who is personally known to me, or produced _____ as identification.

[AFFIX NOTARY SEAL]

Notary Public Signature

Print Notary Name: _____

My commission expires: _____

ATTEST:

Town of Windermere:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

By: _____
Jim O'Brien
Town of Windermere Mayor

(SEAL)

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by **Mayor Jim O'Brien**, who is personally known to me, or produced _____ as identification.

Notary Public Signature

[AFFIX NOTARY SEAL]

Print Notary Name: _____

My commission expires: _____

Exhibit A
Depiction of the Boathouse and Slip

LIAISON REPORT



LIAISON: Mandy David

LIAISON ASSIGNMENT: Parks and Recs

DATE: 11/11/21

UPDATE:

Run among the Lakes great turn out

Halloween great turn out

Pet fest- March 5,2022- Saturday -

Tennis:

- Need gates painted - will rust if we don't

- Locks done on the doors

- Signs done

- Resurfacing is in process- Main Street courts

- Windshield screens for downtown tennis courts? Logo?

- Tight bar on the tennis court fence on WRC

Parks:

WRC

- Ant control

- Fence - costs and looks

- Playground installation - sometime

- Paint the swings

- Pickle ball - looking into noise control. - Do a survey for research (Tonya suggestion)

New Business:

Art for the town offices- proposal from Stephan Withers