

ISLAND MARINA BOAT SLIP OWNERS ASSOCIATION, INC.

Dockage\_Agreement\_2005d

**DOCKAGE AGREEMENT**

Revised 11/23/10

This agreement (the "Dockage Agreement") is entered into by and between The Island Marina Boat Slip Owners Association (the "Association") and the undersigned vessel owner ("Vessel Owner") and/or Slip Owner ("Slip Owner"). The Vessel Owner and the Slip Owner may be the same person or entity.

**PRINT ALL INFORMATION**

Vessel Owner's Name: _____	Slip Owner's Name: _____
Vessel Owner's Phone #: _____	Slip Owner's Phone #: _____
Street Address: _____	Street Address: _____
City, State & Zip: _____	City, State & Zip: _____
Vessel Name: _____ Vessel Mfr: _____	Vessel Model: _____ Reg.#/Documentation: _____
Registration Length: _____ Tip to Tip Length: _____	Beam (Width): _____ Draft (Depth): _____
Slip # _____ Liability Insurance Provider: _____	Insurance Amount: _____ Interested Party: _____

For and in consideration of the fees stipulated herein and the promises and covenants, the parties agree as follows:

1. Subject to the terms hereof and for only the purposes set forth herein, the Association grants to Vessel Owner a license to use the Dock Space identified herein. Every Vessel Owner whose vessel is moored in a slip at Island Marina must enter into a Dockage Agreement. The parties affirm that this Agreement creates only a license for the use of a Dock Space with Association as Licenser and the Vessel Owner as Licensee. This license confers no interest whatsoever in real or personal property.
2. The license granted hereby shall be for the term of the Agreement entered into between the Vessel Owner and the Slip Owner, provided however that the Association may revoke the license upon failure of the Vessel or Slip Owner to abide by the terms of this Dockage Agreement or terms of other documents incorporated herein by reference.
3. As used herein, the term "Dock Space" means the water column extending from the surface, to one inch above the bottom of the adjacent dock as identified by the Slip # shown above. The license also includes use of the main perimeter docks, parking area, and access ways for access to the Dock Space.
4. The Rules and Regulations of Island Marina will be observed by the Vessel or Slip Owner, their guests, agents and employees. The Rules and Regulations for Island Marina are attached to this Dockage Agreement and are incorporated by reference. A violation of the Rules and Regulations shall constitute a violation of this Dockage Agreement. The Association reserves the right to alter, amend and modify the Rules and Regulations by posting of a notice in the Harbormaster Office. A breach of any of the requirements of this Dockage Agreement or a violation of the Rules and Regulations shall constitute a Default. In the event of a Default, this Dockage Agreement and the license granted hereby shall at the Association's option, terminate immediately, and the Association may remove the vessel from the Dock Space at the Vessel Owner's expense and retake possession of the Dock Space or take any other remedial action permitted by this Dockage Agreement, the laws of the State of Florida or Federal Law.
5. No alterations or modifications to any part of the premises may be made by the Vessel Owner or the Slip Owner. Use of the Dock Space is the personal privilege of the Vessel Owner and is not assignable. Any attempt to assign, or assignment of, this Dockage Agreement is void. Any vessel remaining at Island Marina after its license has been revoked or after the expiration of this Dockage Agreement shall be deemed to be trespassing and the Association may take any and all actions permitted by law to remedy the trespass.
6. Vessel and/or Slip Owner acknowledge that the Association has disclosed the vessel size limitations for the *Permitted Slip Space referred to as Dock Space* which was established by the regulatory agencies, including the size limitations for the Dock Space subject to this Dockage Agreement. Vessel and/or Slip Owner acknowledges its understanding of the vessel size limitation relating to the Dock Space assigned for the mooring of Owner's vessel and verifies that its vessel complies with the vessel size limitation established for that Dock Space.
7. Use of the Marina and Dock space is at the sole risk of the Vessel Owner. Vessel and/or Slip Owner agree to be responsible to, indemnify and hold harmless the Association for any loss, damage, fine, legal action, violation of regulatory or proprietary approvals, laws or regulations or claim occasioned by the Vessel Owner's use of Dock Space or the Marina or by the presence of the Vessel Owner's vessel at the Marina, **WHETHER OR NOT ANY LOSS, DAMAGE, FINE, LEGAL ACTION, VIOLATION OF REGULATORY OR PROPRIETARY APPROVALS, LAWS OR REGULATIONS OR CLAIM IS THE RESULT OF THE NEGLIGENCE OF THE ASSOCIATION OR ITS EMPLOYEES.**

8. Due to the rapid shoaling experienced in the Wiggins Pass inlet, Collier County has conducted an inlet management study to establish, among other things, reasonable boat draft criteria to protect the safety of boaters, as well as natural resources in the Wiggins Pass basin. The Wiggins Pass Inlet Management Plan, if adopted by the Collier County Board of County Commissioners, will, among other things, provide for and adopt a three foot draft vessel as the planning and design standard of the maintenance dredging of the Wiggins Pass inlet and the Wiggins Pass basin and maintain navigable depths for vessels with drafts of three feet or less in the channels east of the Wiggins Pass inlet.

The Vessel and/or Slip Owner acknowledge that they have read the above statement and understand that the vessel draft used as the design standard for the maintenance dredging of Wiggins Pass is three feet. The Vessel Owner further acknowledges the availability of a document at the Marina Office, reflecting the navigational channel from the Marina to Wiggins Pass. Vessel Owner acknowledges the Association is not the author of such navigational documents and the Association makes no representations or warranties of the accuracy thereof. Vessel Owner and its guests, agents, crew, employees and/or invites may not rely on any oral representations or warranty made by or on behalf of the Association. Vessel Owner shall hold harmless and shall indemnify the Association and the Association's officers, employees and agent from all actions, in contract and tort, brought against the Association and/or the Association's officers, employees and/or agents arising from any navigational documents obtained by the Vessel Owner, from whatever source, the accuracy of which are not warranted as set forth herein.

9. The Vessel and/or Slip Owner acknowledge that they have been informed of the fire fighting, first aid and security service provisions and/or equipment available at Island Marina and hereby acknowledge same as being sufficient, reasonable and adequate, and hereby agrees to, and does by these presents, hold harmless, indemnify and release the Association from all liability, loss or damage to persons, including death, and/or property arising out of fire, or other casualty, theft and/or vandalism at Island Marina, regardless of whether the failure to have other or additional such services, provisions and/or equipment shall in any manner constitute negligence.

10. Vessel Owner recognizes and agrees that the Slip Owner *and Association* may take any action available at law or in equity and/or may place upon Vessel Owner's vessel, its contents or equipment, any liens of whatever nature available under law to the Slip Owner for non-payment of dockage fees, supplies, or services furnished to the Vessel Owner. In any such action, any bond posted pursuant to law releasing the vessel to Vessel Owner shall include an amount sufficient to cover the *Association's and Slip Owner's* reasonable fees and costs, including attorney's fees, provided the Vessel Owner may have the lesser amount of any bond posted increased to insure the posted amount adequately covers all amounts claimed, including interest, costs, and attorney's fees. Vessel Owner agrees to the Slip Owners use, if necessary, of any procedures under admiralty law including but not limited to proceeding Supplemental Admiralty Rule "C" and further agrees to waive notice and hearing and challenge thereto.

11. The license granted hereby shall entitle the Vessel Owner and his/her/its' crew and invitees to utilize all Marina facilities. The fee for this entitlement shall be established solely between the Slip owner and the Vessel Owner. The Association shall collect all fees generated on behalf of the Vessel Owner from the Slip owner and the Slip owner shall ultimately be responsible for the Vessel Owner's compliance with the terms of all applicable Rules and Regulations including the terms of this Dockage Agreement.

12. All charges for the facilities of the Marina, or for provisions or services for the vessel are due and payable upon rendition of the service or receipt of the provisions. Use of any facilities at the Marina by the Vessel Owner, his agents and/or guests shall be charged to the Slip Owner named herein and said charges are deemed to constitute services rendered to said slip and, therefore, constitute a maritime lien against the slip. The Association may proceed against the Slip Owner for non-payment and the Slip Owner may proceed against the Vessel Owner for non-payment.

13. In the event of a hurricane or tropical storm warning, the Yacht Basin may be cleared of all vessels. The Marina Manager (Harbormaster) shall determine when this will be necessary. It is the responsibility of the Vessel Owner, prior to evacuation time, to make arrangements for a safe anchorage for their vessel. Unattended vessels may be towed to another anchorage at the Vessel Owner's expense and risk. Undertaking to move or evacuate vessels under these circumstances shall not be deemed an assumption of responsibility for safety, security and care of the Vessel Owner's vessel by the Association, nor shall the Association be deemed a bailee of the Vessel Owner's vessel.

14. It is understood and agreed that this Dockage Agreement does not constitute bailment. Vessel Owner retains and has the exclusive care, custody, control and access to the vessel and its contents at all times.

15. No modifications to this Dockage Agreement shall be enforceable unless in writing and signed by an authorized agent of the Association.

16. The Association's failure to require strict performance under this Dockage Agreement, or waiver of any condition shall not be deemed a future waiver of any condition or any of its rights under this Dockage Agreement and shall not in any respect be deemed a continuing waiver.
17. The individual executing this Dockage Agreement warrants and represents his/her authority to obligate the Slip Owner and/or Vessel Owner and vessel to the terms of this Dockage Agreement. The Association may in its sole discretion require proof of such authority.
18. In the event any portion of this Dockage Agreement shall be deemed to be in violation of any law of the State of Florida, said portion and said portion only shall be deemed null and void. The remainder of the Dockage Agreement shall remain in full force and effect. This Dockage Agreement shall be interpreted in accordance with the laws of the State of Florida and any action brought to enforce this Dockage Agreement shall be in the FLORIDA COURTS.
19. The Vessel and/or the Slip Owner, both jointly and severally, shall pay all costs, including reasonable attorneys' fees incurred by the Association, in non-judicial proceedings or judicial proceedings and appeals there from to enforce any and all provisions of this Dockage Agreement and effect collection of any sums due the Association. In the event the Association sues or is sued in tort or contract, or otherwise, in any action arising out of or in relation to this Dockage Agreement and Association is the prevailing party by means of judgment, dismissal or otherwise, whether or not such actions presented a justifiable issue of law of fact, or whether or not the Association was Plaintiff or Defendant in said action, the Association shall recover its costs and expenses directly incurred because of any said action, including its reasonable attorneys' fees, whether taxable or not, from the other party.
20. Charges for electricity shall be billed according to the formula adopted and approved by the Board of Directors.
21. The statute of limitations for enforcement of either party's rights under this Dockage Agreement shall be the applicable statutes of limitations of the State of Florida and any laches defense raised by either party shall be constructed to always be within the period of the said applicable statutes of limitations.
22. The Slip Owner and/or Vessel Owner, as the case may be, hereby acknowledge and confirm their understanding of and agreement to the following:
- A. Neither this Dockage Agreement, or any Certificate of Ownership in favor of the Slip Owner, or the use of the term "Slip Owner" or equivalent in this or any other document confer any ownership whatsoever to the land on which the Dock Space is located or to the Dock Space itself. The Dock Space for most, if not all portions of the Marina, exists on property leased from the Trustees of the Internal Improvement Trust Fund of the State of Florida pursuant to a Sovereignty Submerged Land Lease. The rights enjoyed by the Vessel Owner and Slip Owner are limited to use of the Dock Space in accordance with the terms of this Dockage Agreement and all applicable laws, rules and regulations, of the State of Florida, the provisions of the Declaration, and the terms and conditions of the Sovereignty Submerged Land Lease as it exists, from time to time.
  - B. Any assignment, conveyance or other transfer of the right to use the Dock Space, rental, leasing, licensing, sublicensing, subletting or other grant of permission to use the Dock Space whether temporarily, or otherwise, requires prior written approval from the Association. Approval will only be granted in accordance with: (i) the terms of this Dockage Agreement; (ii) the terms and conditions of applicable laws, regulations, permits and the Sovereignty Submerged Land Lease; (iii) rules and regulations adopted by the Association; (iv) submission to the Association and its committee for prior written approval of all documentation pertaining thereto; and (v) the remittance and payment to the Association, for further remittance to the State of Florida, of any and all applicable and required rent payments due the State of Florida by virtue of the terms and conditions of the Sovereignty Submerged Land Lease and applicable rules and regulations of the State of Florida pertaining thereto. State regulations currently require the payment of 6% of any and all consideration paid therefore to the State of Florida as well as applicable sales tax in respect to the consideration so paid. The Association will retain such funds and remit them accordingly to the State of Florida Department of Environmental Protection and/or the State of Florida Department of Revenue.

- C. The Sovereignty Submerged Land Lease has a term to it, there is no right to require that it be renewed, and no legal right to be assured that the State of Florida will renew, extend it, modify it, or grant a new lease in the future. Upon its expiration whether by maturity of its terms or otherwise, any right or ability of the Vessel Owner or Slip Owner to make use of the Dock Space will cease and terminate forthwith and any vessels or improvements located therein must be removed forthwith.
- D. Any terms and conditions of the Sovereignty Submerged Land Lease, as it may in the future be renewed, extended or modified and/or applicable rules, regulations or laws of the State of Florida shall prevail and control over anything in this Dockage Agreement or in the Declaration to the contrary relative to the Dock Space.
- E. The term "Dock Space" as used in this Dockage Agreement means the "Boat Slip" as defined in the Declaration and Permitted Slip Space as referred to by the Sovereignty Submerged Land Lease.
- F. The terms and conditions of the Sovereignty Submerged Land Lease include, among other things, a special lease condition, 31D, that prohibits more than a maximum of 21 of the 79 Boat Slips or Dock Spaces within the Marina at any given time from being used or occupied by owners of residential condominium units in the upland Marina Bay Club of Naples, a condominium, in which the Marina is a unit. Accordingly, the Association will further regulate (and has the right to do so) approvals of any transfers, leases, assignments, conveyances, licenses, sublicenses or subleases to prohibit any of the foregoing that would result in more than the owners of twenty-one (21) residential units within the Marina Bay Club from having the right to use or occupy Boat Slips or Dock Space at any one time. Furthermore, to the extent a Dock Space is occupied by a vessel whose Vessel Owner does not own a residential condominium at the time of occupancy, but whose Vessel Owner subsequently acquires ownership of an upland residential condominium unit such that the twenty-one (21) permitted Dock Spaces are exceeded, the Association reserves the right to require immediate removal of any such vessel from the Dock Space and the Marina.
- G. The provisions hereof relative to transfer and assignment shall prevail over the provisions of Section 11 of the Declaration and shall permit the Association to disapprove any conveyance, leases, license, assignment, sublease, sublicense or other transfers of the right to use the Dock Space except in conformity herewith without the exercise of the purchase rights provided for in section 11 of the Declaration.
- H. The term "Declaration" refers to the Declaration of Covenants and Restrictions Island Marina dated March 5, 1996, recorded in Official Records Book 2163, at Page 1, of the Public Records of Collier County, Florida.
- I. The Slip Owner consents to and approves in advance, any future amendments to the Declaration, the Articles of Incorporation, or Bylaws of the Association for the purpose of imposing or including any and all of the foregoing requirements (or the substance thereof) therein so as to ensure compliance with applicable requirements as herein set forth imposed by the terms of the Sovereignty Submerged Land Lease and/or rules, regulations and laws of the State of Florida and hereby grants to the Secretary of the Association an irrevocable proxy, that is coupled with an interest, for the purpose of casting the vote of the Slip Owner to approve any such amendments
- J. Any instrument transferring or assigning this Dockage Agreement and/or the right to make use of the Dock Space whether described, construed, or intended as an assignment, conveyance, bill of sale, license, lease, sublicense, sublease or other equivalent term or concept shall contain within its provisions describing and replicating the terms and conditions of this section 22, or the substance thereof, so that the transferee, licensee, lessee, sublicense, sub lessee, or other assignee is made aware of the requirements applicable thereto and is further obliged to impose such conditions and terms and set them forth in any further instrument of transfer, leasing, licensing, sublicensing, subleasing or other assignment.

**DOCKAGE AGREEMENT**

- K. Compliance with the Marina Operation and Management Plan (MOMP) is a requirement of tenancy will be enforced along with the requirements of a Clean Marina Designation for the vessels and parties maintaining vessels.**
- L. No Live-a-boards are allowed. Overnight stays on vessels are limited to the provisions of the lease with no live-a-boards. Overnight stays are limited to four (4) consecutive days with a total of eight (8) within a 30 day period. Discharge to surface waters from the use of Type I or type II marine Sanitation Device (MSD) by any vessel while moored at the Marina is prohibited. The facility inspects each live-a-board vessel to assure the holding tank is plumbed to accept all sewage and records results into the Holding tank Inspection Log. The facility inspects the waste seacock seals of each live-a-board vessel a minimum of one time every 30 days to assure that the seacocks remain closed and document the results in the Waste Seacock Log.**

The Parties have executed this Dockage Agreement effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**The Undersigned hereby acknowledges [check one]:**

\_\_\_\_\_ He is the Owner of the vessel described to in this Agreement.

\_\_\_\_\_ He is authorized by the Owner of the vessel to execute this Agreement and bind the Owner and vessel to the terms hereto.

**ISLAND MARINA BOAT SLIP OWNERS ASSOCIATION INC.,**

\_\_\_\_\_  
PRINT NAME OF VESSEL OWNER / FOR VESSEL OWNER

\_\_\_\_\_  
PRINT NAME OF DIRECTOR

\_\_\_\_\_  
SIGNATURE OF VESSEL OWNER / FOR VESSEL OWNER

\_\_\_\_\_  
SIGNATURE OF DIRECTOR

**IN ADDITION TO THIS DOCKAGE AGREEMENT YOU ARE BEING PROVIDED A COPY OF THE RULES AND REGULATIONS AND THE MOORING RULES OF ISLAND MARINA. THE RULES AND REGULATIONS ARE CONSIDERED A PART OF THIS DOCKAGE AGREEMENT. THE MOORING RULES ARE EMBEDDED IN AND ARE CONSIDERED A PART OF THE RULES AND REGULATIONS.**

**This DOCKAGE AGREEMENT identified as "Dockage\_Agreement\_2005d" was revised per DEP Consent Order Review comments on 11/10/2010 for paragraph 36M addition and approved by the IMBSOA's Board of Directors at a Special E-mail Board Meeting on November 23, 2010.**