

LICENSE AGREEMENT
Winona Boathouse Association

THIS LICENSE AGREEMENT (the “Agreement” or “License”) is made this 1st day of July, 2023, by and between the City of Winona, Minnesota, a municipal corporation under the laws of the State of Minnesota (the “Licensor” or “City”), and The Winona Boathouse Association, Inc., a nonprofit corporation under the laws of the State of Minnesota (the “Licensee” or “WBA”); (collectively the “parties”).

RECITALS:

WHEREAS, the Licensor is the owner of certain parcels of real property situated in the City of Winona, County of Winona, and State of Minnesota, described as follows:

Parcel 1: A 15 foot wide strip on the North side of Latsch Island from the Highway 43 right-of-way downstream to the lower top of the Island, including a 15 foot wide strip around the North side of what is referred to as Bath House Slough.

Parcel 2: A 15 foot strip on the South side of Latsch Island from the Highway 43 right-of-way to a point 125 feet downstream of the abandoned railroad bridge.

A depiction of Parcel 1 and Parcel 2 is attached hereto and incorporated herein by reference as Exhibit A; and

WHEREAS, the Licensee desires to use the above-described parcels for mooring boathouses; and

WHEREAS, the Licensor is willing to permit such use, subject to the terms, covenants, and conditions contained herein.

NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

1. Grant of License and Description of Licensed Premises.
 - a. The Licensor is the owner of certain parcels of real property situated in the City of Winona, County of Winona, and State of Minnesota (the “Licensed Premises” or “Premises”) described as follows:

Parcel 1: A 15 foot wide strip on the North side of Latsch Island from the Highway 43 right-of-way downstream to the lower top of the Island, including a 15 foot wide strip around the North side of what is referred to as Bath House Slough.

Parcel 2: A 15 foot strip on the South side of Latsch Island from the Highway 43 right-of-way to a point 125 feet downstream of the abandoned railroad bridge.

- b. In consideration of the payments, promises, conditions, and covenants contained herein, the Licensors hereby grants to the Licensee a terminable, nonexclusive license to use the Licensed Premises, as depicted in Exhibit A, for the limited purposes set forth above and subject to the terms and conditions contained herein, applicable law and City Code.
- c. In no way limiting the Licensors' rights to use Parcel 1 or limit, change, modify or restrict use of Parcel 1, it is in intent of the parties to eventually phase out the use of Parcel 2 as and for boathouse mooring. Licensee with respect to boathouses currently moored to Parcel 2 shall transfer the same to Parcel 1 as space or spaces become(s) available in Parcel 1. Licensee shall not allow any new moorings to Parcel 2 at any time during the term of this Agreement. Licensee shall not allow any new moorings to Parcel 1 at any time during the term of this Agreement until all mooring on Parcel 2 have been transferred to Parcel 1 and no boathouses remain moored to Parcel 2.

2. Term and Termination.

- a. The term of this Agreement shall be for a period of Five (5) years commencing on July 1, 2023, and ending on June 30, 2028, unless sooner terminated as hereafter provided (the "term").
- b. Notwithstanding the foregoing, this Agreement may be terminated: 1) by mutual written agreement of the parties; or 2) upon the destruction, demolition or removal of the improvements to be situated on the Licensed Premises described above; or 3) upon the breach, default or failure of the Licensee to comply with any material term or condition of this Agreement; or 4) upon a showing by Licensors of good and sufficient reasons upon 180 days' notice to the Licensee. For the purposes of this Agreement, "good and sufficient reasons" shall include, but not be limited to, changed circumstances affecting the purpose of this License Agreement, the Permit or for reasons affecting the public interest or public health, safety or welfare.
- c. Before the effective date of any such termination of this License under this Section, Licensee shall remove all of Licensee's improvements and personal property from the Licensed Premises, at Licensee's sole cost and expense, and shall restore the Licensed Premises to its preexisting condition or better pursuant to the standards and requirements set forth in City Code, as amended, and applicable law, unless otherwise directed by the Licensors in writing or such other State or Federal agency having jurisdiction of the same. In the event that Licensee fails to remove the improvements and personal property from the Licensed Premises before the effective termination date of this License, the Licensors or their authorized agents or representatives may perform any work necessary to remove the improvements and personal property from the

Licensed Premises and restore the Licensed Premises to its preexisting condition, and Licensee shall reimburse Licensor for all expenses reasonably incurred by the Licensor in performing such work. The Licensor may take any action Licensor is authorized under law to take to recover such unpaid charges, and failure to timely pay is a material breach and default of the terms and conditions of this Agreement.

3. Conditions Precedent.

- a. Licensor's obtaining a permit (the "Permit") from the State of Minnesota allowing the use of the Premises for a boathouse community, including the right to reconstruct and/or replace any boathouse, but subject to all terms, covenants and conditions contained in such Permit, shall be a condition precedent to Licensor's obligation to perform hereunder.
- b. Payment of the first year's license fee payable hereunder, which shall be paid in advance or at the time of Licensee's execution of this Agreement.

4. Conditions Subsequent.

- a. Licensee shall comply with all terms, covenants, and conditions contained herein, and as contained in the Permit (which is incorporated herein by reference), and shall further comply with all applicable provisions of federal and state laws and regulations and local ordinances.
- b. Licensee shall have primary responsibility for obtaining compliance by its members of all applicable laws, ordinances, and regulations, whether federal, state, or local as well as any contractual obligations, including but not limited to, the Mooring Agreement between Licensee and individual sublicensees/members. Licensee shall not discriminate against any sublicensee or any of its members or anyone seeking to become a sublicensee or member, nor shall Licensee deprive any sublicensee or any of its members or anyone seeking to become a sublicensee or member of those Civil Rights afforded by law.
- c. The form of the Mooring Agreement to be used by Licensee allowing members to moor to the Licensed Premises shall be approved by the Licensor and shall contain such terms and conditions as Licensor deems necessary to ensure compliance by Licensee's members/sublicensees with all applicable laws, ordinances and regulations, whether federal, state, or local and any contractual obligations. This License Agreement shall be attached to every Mooring Agreement and made a part hereof. The form of Mooring Agreement to be used by Licensee with Members is attached hereto as Exhibit B and made a part hereof. Licensee shall execute a Mooring Agreement on the form attached hereto with every new and existing Member/Sublicensee and keep the same current at all times during the term hereof and as otherwise directed by the Licensor or as needed thereafter. The Licensor reserves the right to amend the Mooring Agreement at any time and to require WBA to execute

and have all Members execute such amendments or new Mooring Agreements on the new or amended City form.

- d. Throughout the term hereof the Licensee shall keep an up-to-date list with the names and primary residential addresses of all Members having a Mooring Agreement for a mooring site with Licensee, and Licensee shall also keep an up-to-date map identifying each mooring site corresponding to each Member. The list and map shall be updated by the Licensee annually following yearly Mooring Agreement renewals and a copy thereof shall be provided to the City Parks and Recreation Department by August 1 of each year.
5. Basic Annual License Fee. The basic annual license fee shall be \$14,424.00, payable on or before July 1 of each year of the License Term, except in the first year, Licensee may pay the annual license fee by August 1, 2023.
 6. Additional License Fees.
 - a. Taxes. As an additional license fee hereunder, the Licensee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special or ordinary or extraordinary, of every name, nature, and kind whatsoever including all governmental charges of whatsoever name, nature, and kind which shall be levied, assessed, charged, or imposed or which may become a lien or charge on or against the Premises or any part thereof, during the entire term hereof.
 - b. Improvements made by Licensee. As an additional license fee, the Licensee shall pay all special assessments and levies or charges to be made by any municipal or political subdivision for local improvements and shall pay them in cash as they shall fall due and before they shall become delinquent and as required by the act and proceedings under which any such assessments or levies or charges are made by any such municipal or political subdivision.
 - c. Payment of Utilities. Although Licensor shall have no obligation to provide Licensee with any public improvements, as an additional license fee, the Licensee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the Premises by the Licensor throughout the term hereof and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the Premises and all activities conducted thereon and the Licensor shall have no responsibility of any kind for any thereof.
 7. Use of Premises.
 - a. Licensee agrees and acknowledges that the Licensed Premises and its Latsch Island environs are a natural and scenic wildlife area owned by Licensor exclusively and dedicated to the general public for use by the general public for public park purposes,

and this License and the limited mooring use allowed hereby, is secondary to such primary purpose as public park land with the primary objective of protection and preservation of the same in its natural state. Subject to the foregoing primary use and the other terms, covenants, and conditions contained herein, the Licensee shall be permitted to use the Premises for the following purpose: A boathouse community as allowed by the terms, covenants, and conditions of the Permit limited to mooring boathouses and allowing ingress to and egress from the same. All other unrelated activities including, but not limited to, use of the Premises for storage of nonoperable vehicles or motorcycles shall be prohibited.

- b. Subject to the other terms and provisions contained herein, the Licensee shall be permitted to use the Licensed Premises only for the limited purpose stated herein. During the term of this License, the Licensee shall comply with all applicable laws, regulations, conditions, and covenants affecting the Licensed Premises, whether federal, state, local, or contractual. The Licensee shall not commit or allow to be committed any waste on, damage to, destruction of, or damage to, or nuisance, or any other violation of this Agreement on the Licensed Premises. Should the Licensee commit or allow to be committed any waste on or destruction to the Licensed Premises, and/or cause damage to the Licensed Premises that result in the City incurring costs to repair such damage, then the Licensee shall immediately restore the Licensed Premises to the original condition of the Licensed Premises at the inception of this License Agreement, or, alternatively, pay to the Licensor the cost of repairing or restoring the Licensed Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensor to the Licensee of the amount of such costs. Should the Licensee fail to restore the Licensed Premises to its original condition, the Licensor shall do so and the Licensee shall pay to the Licensor the cost of repairing and restoring the Licensed Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensor to the Licensee of the amount of such costs.

- 8. Licensor's Right of Entry. The Licensee shall allow the Licensor and the agents and employees of the Licensor to enter onto the Premises at all reasonable times for the purpose of inspecting them, determining compliance with the law and this Agreement, or for the purpose of posting any notices without any rebate of the license fee and without any liability to the Licensee for any loss of occupation or quiet enjoyment of the Premises thereby occasioned.
- 9. Assignment or Sublicensing. The Licensee shall have no right to assign its interest in this License Agreement, whether by voluntary act, operation of law, or otherwise, without the prior written consent of the Licensor in each instance. The Licensee may sublicense the Premises to its Members through the use of a City approved Mooring Agreement as referenced above subject, however, to all terms, covenants, and conditions of this Agreement.
- 10. Improvements, Alterations, and Maintenance.

- a. The Licensor makes no warranties as to the condition of the Premises and the Licensee accepts the Premises in an “as is” condition, the Licensee having had the benefit of inspecting the Premises prior to execution of this License Agreement.
- b. The Licensee shall not be permitted to make any improvements or alterations to the Premises without the prior written consent of the Licensor, except, however, the Licensee shall, at Licensee’s expense, immediately make any repairs to the Premises which are needed to cause the Premises to comply with all applicable federal, state, and local laws, regulations, ordinances, and this Agreement, and to maintain the Premises in the same condition they were in at the inception of this License Agreement or as improved by Licensor.
- c. The Licensee shall at all times maintain any allowed improvement(s) situated or to be situated on the Premises in a good and safe condition in compliance with this Agreement.
- d. Prior to the use of the Premises for the permitted purpose herein stated and subject to the Permit, and as a condition to the continued use of the Premises during the term of this Agreement, the Licensee shall present specific plans and specifications for the lawful, proper, and orderly maintenance of the Premises to the City Manager of the Licensor, or his or her designated representative, for his or her review and approval or, if he or she should so determine, that of the Licensor’s City Council. If approved, that fact shall be noted on the plans and specifications submitted which shall then be filed with the City Manager of the Licensor. Plans and specifications shall be sufficiently detailed to show the location, manner, and number of boathouses to be moored to the Premises, measures to be taken by Licensee to assure that the Premises are kept in an orderly and lawful condition, and such other or different information pertaining to maintenance of the Premises as the Licensor may require. Any changes to the initial plans and specifications submitted to and approved by the Licensor shall be presented in the same manner as the initial plans and specifications and shall be subject to all of the terms and conditions herein provided. Licensee’s failure to comply with the covenants and conditions contained in this Agreement and the Permit shall be construed as a default of this License Agreement.
- e. If the Licensor consents in writing to allowing improvements to be made to the Premises, prior to making any allowed improvements, repairs or alterations in excess of \$10,000.00 to the Premises described herein, and/or contracting for any labor and materials to which the provisions of Minnesota Statutes, Section 574.26 apply, the Licensee shall furnish to the Licensor a bond executed by a surety company, approved by Licensor, in the full amount of the contract of the labor and/or materials to be provided and conditioned as provided by the General Statutes of the State of Minnesota. The bond shall be executed by a surety company authorized to do business within the State of Minnesota and having a minimum A.M. Best rating of B+.
- f. During the term of this License, Licensee shall keep the Licensed Premises in a

sanitary condition, remove all trash and obsolete equipment from the Licensed Premises and keep the Licensed Premises free from refuse or other debris at Licensee's expense.

- g. Neither Licensee, nor any member or sublicensee of Licensee, shall make any improvements within the Licensed Premises or any area of Latsch Island without the prior express written Agreement of the City.

11. Insurance and Liability.

- a. Insurance. The Licensee shall, at its expense, maintain in effect commercial general liability insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04 (\$1,500,000 per occurrence). The City of Winona shall be an additional insured and the policies shall provide that Licensee's coverage shall be primary and noncontributory in the event of a loss. The insurance policy and certificate shall not be canceled or its conditions altered in any manner without ten (10) days prior written notice to the City Manager of the City of Winona. The insuring company or the Licensee shall deliver to the City Clerk, certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied. If Licensee fails to give such certificate of insurance to the City within ten days after execution of this Agreement, this License shall be null and void. If Licensee fails to maintain a policy of insurance as required by the City for the term of this Agreement, the City may immediately revoke this License and require the Licensee to restore the Licensed Premises to its preexisting condition or better. The amounts of insurance coverage available to the Licensor shall be the amounts stated herein or the amounts as stated in the Licensee's insurance certificate, whichever is greater.
- b. Waiver and Assumption of Risk. Licensee knows, understands and acknowledges the risks and hazards associated with using the Licensed Premises for the purposes permitted herein and the improvements thereon and hereby assumes any and all risks and hazards associated therewith. Licensee understands and acknowledges that the Licensed Premises and its environs on Latsch Island may require regular maintenance, repairs or other work. Licensee hereby irrevocably waives any and all claims against the Licensor or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Licensee or any person using the Licensee's improvements and hereby irrevocably releases and discharges the Licensor and any of its officials, employees or agents from any and all such claims of liability related in any way to the Licensed Premises, the improvements constructed therein, or the Licensor's maintenance, repair or other work conducted within the Licensed Premises or its environs on Latsch Island by the Licensee or Licensor or any other third party. Licensee is responsible for the cost of restoration and removal of Licensee's improvements made necessary related to Licensor's maintenance, repair or other work conducted within the Licensed Premises or its environs on Latsch Island by the Licensor or Licensor's agent.

- c. Covenant to Indemnify and Hold Harmless. Licensee shall indemnify, protect, save, and hold harmless the City, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages, including expenses, reasonable attorneys' fees, and costs of alternative dispute resolution, which may arise out of or be caused by Licensee or its agents, employees, contractors, members or sublicensees with respect to Licensee's use of the Licensed Premises or its environs on Latsch Island, or performance of this Agreement. Licensee shall defend City against the foregoing, or litigation in connection with the foregoing, at Licensee's expense, with counsel reasonably acceptable to City. The indemnification provision of this Paragraph shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the City. All indemnification obligations shall survive termination, expiration or cancellation of this License.
12. Default. Licensee's failure to pay any amount due hereunder within Thirty (30) days of its due date or Licensee's failure to comply with or perform any other obligation, term, covenant, or condition contained in this License Agreement shall be construed as a default and shall give the Licenser the right to immediately terminate this License Agreement upon Thirty (30) days written notice to Licensee and Licensee's failure to cure the default within Thirty (30) days from the date of receipt of the notice. Termination of the License by Licenser shall not be construed as relieving Licensee of its obligations to pay all amounts due hereunder. In addition to the rights granted to the Licenser herein, the Licenser shall have all other rights and/or remedies provided to the Licenser by law.
13. Attorney's Fees. If any action at law or in equity shall be brought by Licenser to recover any rent or amount due under this License Agreement or for or on account of any breach of this license by Licensee or for the recovery of the possession of the Licensed Premises, Licenser shall be entitled to recover from Licensee reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.
14. Mechanic's Liens And Other Liens. Licensee hereby covenants and agrees that it will not permit or allow any mechanic's or materialman's liens or any other lien whatsoever to be placed on the Licenser's interest in the Licensed Premises during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the Licenser's interest, Licensee shall take all steps necessary to see that it is removed within 30 days of its being filed; provided, however, Licensee may contest any such lien provided Licensee first posts a surety bond, in favor of Licenser, in an amount equal to 125% of the amount of any such lien.
15. Permits, Certificates, And Licenses. Licensee shall acquire and provide at its own cost and keep in force and effect during the term of this License Agreement, all necessary permits, governmental certificates, and licenses, local, state or federal, required for its use of the Licensed Premises. If requested by Licensee, Licenser shall assist in any application

for such permits, certificates, or licenses. Licensee shall be responsible for enforcement of the same with respect to its members/sublicensees. Prior to construction of any improvements on the Licensed Premises approved by the Licensor or the commencement of the license term, whichever occurs first, Licensee shall provide to Licensor copies of all permits, certificates, and/or licenses required by law for conduct of the services to be provided to Licensor. Neither Licensee, nor any member or sublicensee of Licensee, shall make any improvements within the Licensed Premises or any area of Latsch Island without the prior express written Agreement of the City.

16. General Terms.

- a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the parties.
- d. No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the parties.
- e. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Licensee agrees that the Licensor, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Licensee and involve transactions relating to this Agreement. The Licensee agrees to maintain these records for a period of six years from the date of termination of this Agreement.
- f. Governing Law. This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

- g. Data Practices. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- h. No Waiver. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- i. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- j. Entire Agreement. These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
- k. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- l. Survivability. All covenants, indemnities, guarantees, relicenses, representations and warranties by any party or parties, and any undischarged obligations of the Licensor and the Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- m. Compliance with Laws. The Licensee shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which the Licensee is responsible.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

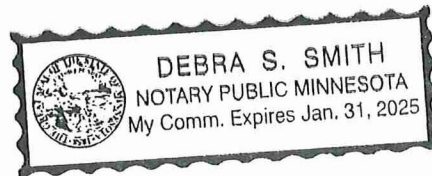
WINONA BOATHOUSE ASSOCIATION, INC.

By: Polly S. Gower
Its: Chair

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

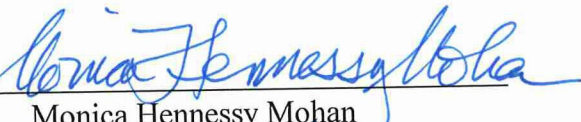
The foregoing was acknowledged before me on June 8, 2023, by Polly S. Gower the Chair of the Winona Boathouse Association, a non-profit corporation under the laws of the State of Minnesota.

Debra S. Smith
Notary Public



CITY OF WINONA

By: 
Chad Ubl
Its: City Manager

By: 
Monica Hennessy Mohan
Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

The foregoing was acknowledged before me on June 9, 2023, by Chad Ubl and Monica Hennessy Mohan, the City Manager and City Clerk of the City of Winona, a municipal corporation under the laws of the State of Minnesota.



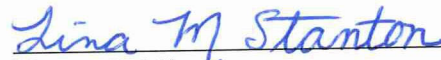
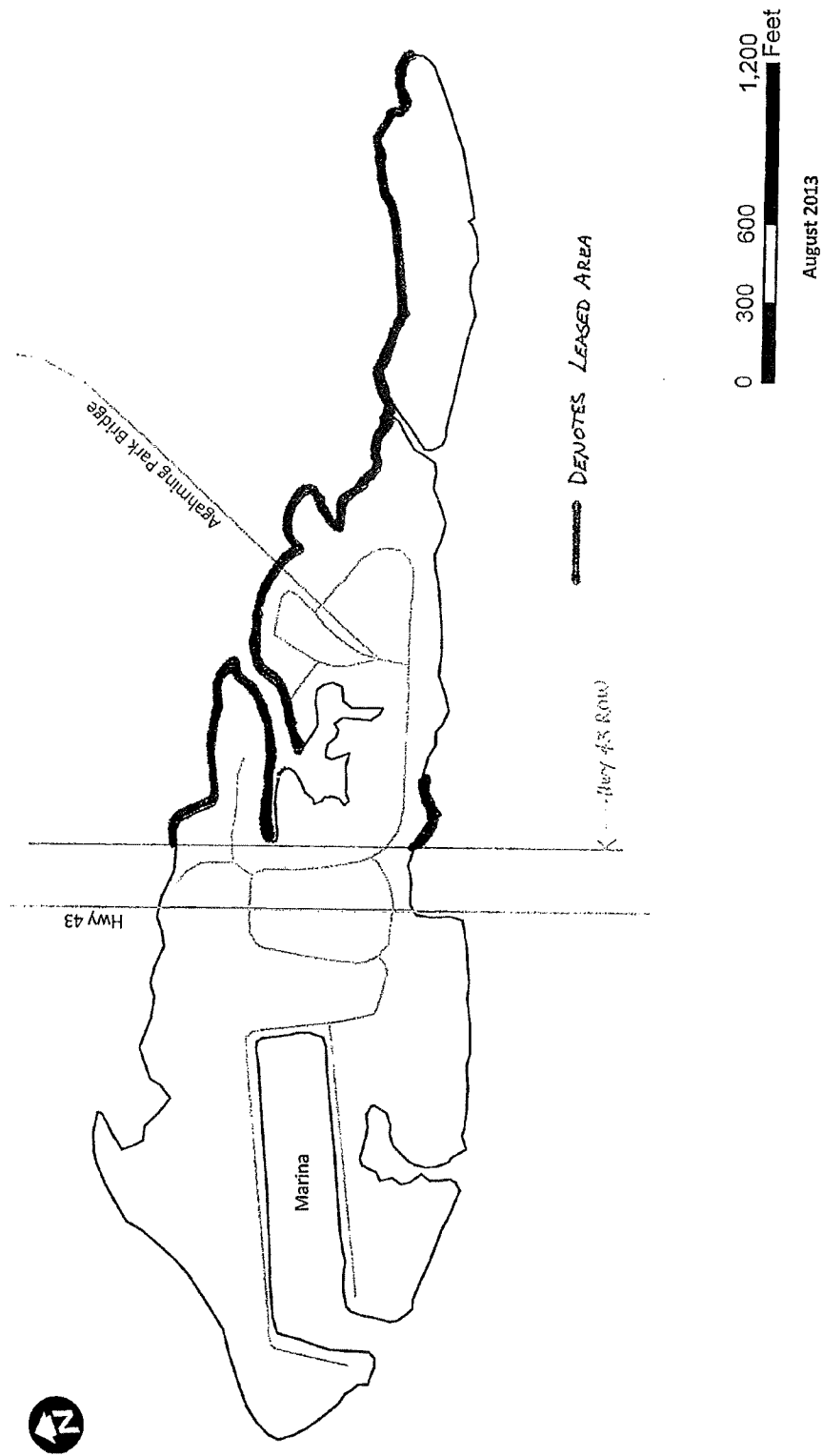

Notary Public

EXHIBIT A

DEPICTION OF LICENSED PREMISES

Latsch Island





Winona Boathouse Association and Mooring Site License Agreement

 License Agreement Area



June 2018

This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted and any assumptions of the legal status of this map is hereby disclaimed. Imagery from 2016