

MOORING SITE LICENSE AGREEMENT
WINONA BOATHOUSE ASSOCIATION, INC.
WINONA, MINNESOTA 55987

THIS AGREEMENT ("Agreement") is made as of _____, 20____, between the Winona Boathouse Association, Inc., a non-profit corporation under the laws of the State of Minnesota, ("WBA") and _____, individual(s), ("Member" or "Sublicensee"); (collectively the "parties").

IT IS AGREED by and between the parties as follows:

1. AUTHORITY. WBA has entered into a License Agreement, dated _____, 2023, with the City of Winona, Minnesota, (the "City") which permits WBA and its Members to moor boathouses adjacent to Latsch Island in the City of Winona, Minnesota within the Licensed Premises contained therein (the "City/WBA License Agreement"). The City/WBA License Agreement is conditional, terminable and nonexclusive and is further dependent upon an ongoing and continuing Public Waters Work Permit issued by the Minnesota Department of Natural Resources. This Agreement is subordinate to the City/WBA License Agreement. The City/WBA License Agreement is incorporated herein and made a part hereof by reference. In the event of any inconsistency or conflict between the terms contained herein and the City/WBA License Agreement, the terms and conditions of the City/WBA License Agreement shall govern.
2. PREMISES. WBA, in consideration of the payments, covenants and conditions contained herein, does hereby grant to Member a terminable, non-exclusive license for the purpose of mooring a boathouse at MOORING SITE NO. _____ (the "Licensed Premises"). The Licensed Premises includes a mooring space and fifteen (15) feet of parallel shoreline only. WBA does not guarantee that the dimensions of the mooring space will not change. WBA does not guarantee exclusive use of any configuration of any space on the waterway or Latsch Island.
3. USE OF PREMISES. Member agrees and acknowledges that the Licensed Premises and its Latsch Island environs are a park owned by the City exclusively and dedicated to the general public for use by the general public for public park purposes, and this Agreement 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 Member shall be permitted to use the Licensed Premises only for the purpose stated herein: mooring a boathouse and allowing ingress to and egress from the same. All other unrelated activities and uses in the Licensed Premises its Latsch Island environs are prohibited, except as otherwise allowed by law (including maintaining two small dog shelters and having one neat woodpile). Member shall not make any improvements within the Licensed Premises or any area of Latsch Island without the prior express written Agreement of the City.

4. TERM AND TERMINATION. The term of this Agreement shall be July 1 through June 30. This Agreement shall automatically renew for successive one year terms provided: 1) the City/WBA License Agreement has not been terminated; 2) Member is current on the payment of the mooring fees; and 3) Member is in compliance with and not in violation of any of the terms and conditions contained herein. 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 Member to comply with any term or condition of this Agreement; or 4) by Member giving WBA written notice of intent to terminate, mailed to WBA at "WBA c/o Rick Carlson CPA, 902 East Second Street, Suite 202, Winona, MN 55987" at least 30 days prior to the last day of the then current rental season; 5) upon the date of death of a Member who is the sole party to this Agreement without a successor in interest as provided in a will or other valid testamentary instrument; or 6) upon a showing by WBA of good and sufficient reasons upon 60 days' notice to the Member. For the purposes of this Agreement, "good and sufficient reasons" shall include, but not be limited to, changed circumstances affecting the purpose of this Agreement, the Permit or for reasons affecting the public interest or public health, safety or welfare.

Before the effective date of any such termination of this Agreement under this Section, Member shall remove all of Member's improvements and personal property from the Licensed Premises, at Member'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, unless otherwise directed by WBA or the City in writing. In the event that Member fails to remove the improvements and personal property from the Licensed Premises before the effective termination date of this Agreement, WBA or the City, 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 Member shall reimburse WBA and/or City for all expenses reasonably incurred by WBA or the City in performing such work, including but not limited to reasonable attorney's fees. WBA or the City may take any action WBA or City is authorized under law to take to recover such unpaid charges, including but not limited to reasonable attorney's fees.

5. TRANSFERABILITY. This Agreement shall be transferable by Member with the prior written consent of the WBA. Corporations, limited liability companies, partnerships, or similar legal entities, shall not be eligible to enter into this Agreement.
6. MOORING FEE. Member shall pay the mooring fee in full by June 1 of each calendar year. If Member is late in paying his or her mooring fee, a late fee of \$10.00 will be charged to Member. If Member is 30 days or more late in paying fees to WBA, a late fee of \$25.00 per month will be added. Failure to pay the mooring fee in full and on time may result in a termination of this Agreement as provided herein.
7. PROHIBITED CONDUCT. Unlawful or disorderly conduct, or conduct which

constitutes a nuisance (including, but not limited to, storage of: inoperable vehicles or motorcycles; boats or trailers; equipment; any other personal property; or trash) by the Member or others on the Licensed Premises or within its Latsch Island environs is prohibited and may be cause for termination of this Agreement. Member agrees to comply with all WBA Rules and any amendments thereto. Member hereby acknowledges receipt of a copy of the current WBA Rules. Additionally, Member shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations, as well as any contractual obligations of WBA, now in effect or hereinafter adopted pertaining to this Agreement, the Licensed Premises or its Latsch Island environs.

8. DISPUTE RESOLUTION. Member is hereby notified that WBA does not arbitrate any damages, altercations or differences between Members.
9. IMPROVEMENTS, ALTERATIONS AND MAINTENANCE
 - a. WBA makes no warranties as to the condition of the Licensed Premises or its Latsch Island environs, and Member accepts the Licensed Premises in an “as is” condition, the Member having had the benefit of inspecting the Licensed Premises prior to execution of this Agreement.
 - b. Member shall not be permitted to make any improvements or alterations to the Licensed Premises or its Latsch Island environs without the prior written consent of WBA and the City, except, however, Member shall, at Member’s expense, immediately make any repairs to the Licensed Premises which are needed to cause the Licensed Premises to comply with all applicable federal, state, and local laws, regulations, ordinances, and this Agreement, and to maintain the Licensed Premises or its Latsch Island environs in the same condition they were in at the inception of this Agreement or as improved by WBA or the City.
 - c. Member shall at all times maintain the Licensed Premises and any allowed improvement(s) situated or to be situated on the Licensed Premises or its Latsch Island environs in a good and safe condition in compliance with this Agreement.
 - d. Prior to the use of the Licensed Premises for the permitted purpose herein stated and subject to the Permit, and as a condition to the continued use of the Licensed Premises during the term of this Agreement, Member shall present specific plans and specifications for any improvements or alterations to the Licensed Premises or its Latsch Island environs to WBA and the Winona City Manager, or his or her designated representative, for his or her review and approval. If approved, that fact shall be noted on the plans and specifications submitted which shall then be filed with WBA and the Winona City Manager. Plans and specifications shall be sufficiently detailed to show the location, dimensions, design and materials for any improvements or alterations to the Licensed Premises or its Latsch Island environs and such other or different information as WBA or the City may require. Any changes to the initial plans and specifications submitted to and approved by WBA

and the City 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. Member's failure to comply with the covenants and conditions contained in this Agreement and the Permit shall be construed as a default of this Agreement.

- e. If the WBA and the City consent in writing following review and approval of plans and specifications for the same as provided herein, allowing improvements to be made to the Licensed Premises or its Latsch Island environs, prior to making any allowed improvements, repairs or alterations in excess of \$10,000.00 to the Licensed Premises or its Latsch Island environs described herein, and/or contracting for any labor and materials to which the provisions of Minnesota Statutes Section 574.26 apply, the Member shall furnish to WBA and the City a bond executed by a surety company, approved by WBA and the City 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 Agreement, Member shall keep the Licensed Premises in a sanitary condition. Member shall remove all trash, obsolete equipment and inoperable vehicles from the Licensed Premises and keep the Licensed Premises free from refuse or other debris.
- g. Neither Member, nor any contractor hired by Member, shall make any improvements within the Licensed Premises or any area of Latsch Island without the prior express written Agreement of WBA and the City.

10. INSURANCE AND LIABILITY.

- a. **Insurance.** The Member is strongly encouraged, at Member's expense, to maintain in effect general liability insurance and personal property insurance covering their personal property and liability for the uses granted by this Agreement.
- b. **Waiver and Assumption of Risk.** Member knows, understands and acknowledges the risks and hazards associated with using the Licensed Premises and its Latsch Island environs for the purposes permitted herein and the improvements thereon and hereby assumes any and all risks and hazards associated therewith. Member understands and acknowledges that the Licensed Premises and its environs on Latsch Island may require regular maintenance, repairs or other work. Member hereby irrevocably waives any and all claims against the WBA or the City or any of their officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Member or any person using the Member's improvements and hereby irrevocably releases and discharges

WBA and the City and any of their 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 WBA's or City's maintenance, repair or other work conducted within the Licensed Premises or its environs on Latsch Island by WBA or the City or any other third party. Member is responsible for the cost of restoration and removal of Member's improvements made necessary related to WBA's or the City's maintenance, repair or other work conducted within the Licensed Premises or its environs on Latsch Island by the WBA's or the City's personnel or agents.

- c. **Covenant to Indemnify and Hold Harmless.** Member shall indemnify, protect, save, and hold harmless WBA and City, and its respective officers, directors, employees 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 Member or his/her agents, employees, contractors, or invitees with respect to Member's use of the Licensed Premises or its environs on Latsch Island, or performance of this Agreement. Member shall defend WBA and the City against the foregoing, or litigation in connection with the foregoing, at Member's expense, with counsel reasonably acceptable to WBA and the 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 WBA or the City. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.
11. **UTILITIES.** Member is responsible for payment of all utilities furnished to the Licensed Premises for the term of this Agreement. Non-payment of utilities shall be an event of default.
12. **PUBLIC RECREATIONAL USE.** The Member agrees and understands that the public land licensed herein shall be open to the public for recreational purposes, not inconsistent with this Agreement.
13. **DEFAULT.** Member's failure to pay any amount(s) due hereunder within Thirty (30) days of its due date or Member's failure to comply with or perform any other obligation, term, covenant, or condition contained in this Agreement shall be construed as a default and shall give WBA the right to immediately terminate this Agreement upon Thirty (30) days written notice to Member and Member's failure to cure the default within Thirty (30) days from the date of mailing of the notice, regardless of whether Member receives the notice. Termination of this Agreement by WBA shall not be construed as relieving Member of his/her/their obligations to pay all amounts due hereunder. Any terminated Member must remove any and all of the Member's improvements and personal property from the Licensed Premises at the Member'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, unless otherwise directed by WBA or the

City in writing. Should the terminated member fail to do so, the WBA may remove, dispose or store the terminated Member's property. The terminated Member shall be responsible for the WBA or the City's cost of removing, disposing or storing the terminated Member's property. The WBA and the City shall not be responsible for any damage to the terminated Member's property, regardless of fault. WBA shall have a lien against any of Member's property now or at any time located at the WBA's mooring spot for any unpaid sums owed by Member under the terms of this agreement and for the amount of any damages caused to the WBA by Member or Member's agents, family members, or guests. In addition to the rights granted to WBA herein, WBA shall have all other rights and/or remedies provided to WBA by law.

14. ATTORNEY'S FEES. Member shall be obligated to WBA for any reasonable attorney's fees incurred by WBA in enforcing this Agreement.
15. 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.
16. 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.
17. 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.
18. SURVIVABILITY. All covenants, indemnities, guarantees, releases, representations and warranties by any party, and any undischarged obligations of Member arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
19. NO WARRANTIES. WBA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE LICENSED PREMISES, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

IN WITNESS WHEREOF, the parties have hereunto executed this document the day and year first above written.

WINONA BOATHOUSE ASSOCIATION INC.

By: _____ Its: _____

MOORING SITE NO. _____

MEMBER:

Signature of Licensee
Name: _____
Address: _____

Phone: _____
Email: _____
Date: _____

MEMBER:

Signature of Licensee
Name: _____
Address: _____

Phone: _____
Email: _____
Date: _____