

CITY OF FORT PIERCE

Florida



CITY MARINA • 1 AVENUE A • FT. PIERCE, FLORIDA 34950 • TEL. (561) 464-1245 • FAX (561) 464-2589

NAME _____ HOME PHONE _____
DRIVERS LICENSE NO. _____ BUSINESS PHONE _____
ADDRESS _____ CITY _____ STATE _____ ZIP _____
EMERGENCY CARETAKER _____ PHONE _____ LEASE DATE _____
OTHER AUTHORIZED USERS _____ DEPARTURE DATE _____
BOAT INSURANCE CO. _____ POLICY NO. _____ EXPIRATION DATE _____
SLIP NO. _____ VESSEL NAME _____ MANUFACTURER _____ LOA _____
FLORIDA DOC # _____ BEAM _____ DRAFT _____ SAIL _____ POWER _____ GAS _____ DIESEL _____
DOCKAGE FEE: ANNUAL _____ SEASONAL _____ MONTHLY _____ ELECTRIC METERED _____ FLAT FEE _____
CABLE _____ UTILITY _____ LIVE ABOARD _____ DEPOSIT _____ SALES TAX _____ TOTAL _____

LICENSE AGREEMENT

1. **LICENSE.** Marina hereby grants a license to Owner and Boat for use the use of the wet slip designed above (the "Slip") located at the Marina for the boat described above, including all rigs, engines, appurtenances and contents (the "Boat"). This Agreement confers no leasehold interest. Marina reserves the right to change the Slip assignment or move the Boat for normal marina operations or repairs or for special events.

2. **TERM.** The term of this Agreement shall begin on the Commencement Date and continue on a month to month or day to day basis, whichever is indicated above. If this Agreement is month-to-month, either party may terminate this Agreement by giving the other party written notice at least fourteen (14) days prior to the end of the month.

3. **PAYMENT OF DOCKAGE FEES AND OTHER CHARGES.**

A. **Month-to-Month:** The Dockage Fee is payable in advance and all other charges will be billed in arrears. Boat Owner will be sent a monthly statement setting forth the Dockage Fee and any other charges. Any amounts appearing on the monthly statement are due by the 1st of the month and if not paid by the 10th will incur finance charges of the lesser of 1-1/2% per month (annual percentage rate of 18%), or the maximum allowable under Florida or Federal law on the unpaid balance. If Boat Owner leaves in the middle of a month, no refund of prepaid Dockage Fees will be made. All charges must be paid in full before Boat Owner may leave the Marina. Non-receipt of billing statements does not relieve Boat Owner of the obligations to pay all charges due. Marina may change the fees or change the other provisions of the Agreement by written notice to Boat Owner given at least 30 days before the beginning of any month in which the change is effective. A \$20.00 charge, or in such an amount as authorized by law, shall be incurred for each returned check.

B. **Day-to-Day:** Boat Owners may choose one of the following three methods of paying the Dockage Fee and other charges: (1) Pay in advance for entire stay; (2) Pay at the Marina office each Friday for the expected charges for the next week; or (3) Authorize the Marina to use Boat Owner's credit card for payment for charges for the next week using a signature on file. A written breakdown will be provided for all charges.

If Boat Owner has an outstanding balance that is more than 90 days past due, Marina may charge double the above listed Dockage Fee beginning on the 91st day. If Boat Owner has an outstanding balance that is more than six months past due, then Marina shall be entitled to proceed with the sale of the Boat within the provisions of F.S. 328.17 after providing a notice of nonjudicial sale to the Boat Owner at the address provided in this Agreement at least 30 days prior to any sale. This provision is in addition to and not a limitation of Marina's rights under state or federal maritime law. All charges are subject to applicable taxes.

4. **SECURITY DEPOSIT:** Before the Boat may be docked, Boat Owner shall pay to Marina a security deposit to secure the performance of all of Boat Owner's obligations under this Agreement, which shall not be in lieu of any Dockage Fee. The security deposit (without interest) shall be refundable to Boat Owner within 60 days of termination of this Agreement, provided all the obligations of Boat Owner under this Agreement are satisfied. Marina may commingle the security deposit with other funds held by Marina. If Boat Owner incurs charges in excess of the security deposit any excess is due and is payable upon demand by Marina and Marina will have the right to require an additional deposit. Boat Owner's failure to post all additional deposit is a default under (his Agreement which entitles Marina to immediately terminate this Agreement.

5. **USE OF SLIP AUTHORITY:** Boat Owner may use the Slip only to moor or store the Boat, and for no other purpose. Marina reserves the right to exclusive control over the use of the dock space. If Boat Owner sells the Boat and wants to use the Slip for another boat, Boat Owner must first get permission from and register the new boat with Marina. Boat Owner represents that Boat Owner has an ownership interest in the boat and/or Boat Owner is fully authorized to bind all owners of the Boat to the terms and conditions of this Agreement. If an agent of Boat Owner, including a Captain, is signing this Agreement said person represents that he has the authority to bind the Boat Owner. If Boat Owner removes the Boat from the Marina for extended periods (normally more than three days), for any reason, including repairs to the Boat, Boat Owner shall notify Marina. Marina may use the Slip when not in use by Boat Owner without reduction of the Dockage Fee or payment of other compensation to Boat Owner. Marina shall have the right to change slip or berth assignments for the purpose of safety, better utilization of docking space or other purposes beneficial to Marina, within the discretion of the Marina Manager. Marina further reserves the right to vacate the floating docks periodically for the purpose of holding an in-water boat show. The sponsor of the boat show will make the arrangements for relocation in conjunction with the Marina Manager, and Boat Owner will bear no expense for this relocation.

6. **LAW, RULES AND REGULATIONS.** Boat Owner shall comply with the Marina Rules. The Marina may change the Marina Rules by posting new ones or otherwise notifying Boat Owner of the change. In using the Marina, Boat Owner shall comply with all applicable laws, ordinances, resolutions, rules and regulations of federal, state and local entities including U.S. Coast Guard regulations.

7. **TRANSFERS AND ASSIGNMENTS.** This Agreement and Boat Owner's rights hereunder are the personal privilege of Boat Owner and are not assignable and may not be sublet. Any attempt to assign or sublet is a default under this Agreement, is void and entitles Marina to immediately terminate this Agreement.

8. **INSURANCE; SUBCONTRACTORS.** Boat Owner, at Boat Owner's sole cost and expense, shall at all times during the term of this Agreement maintain with an insurance company acceptable to marina a public liability policy with limits of not less than \$300,000 per occurrence, naming Marina as an additional insured, with waiver of subrogation in favor of marina. Boat Owner shall provide marina with a copy of the insurance policy evidencing coverage upon execution of this Agreement, and (ii) no later than 30 days prior to expiration of a policy, evidence of the renewal of the policy. All policies of insurance shall require 30 days advance notice by the insurance company to marina of any amendment of cancellation. Additionally, any contractors employed by Boat Owner shall register at the Marina office prior to beginning work, provide insurance naming Marina as additional insured substantially in compliance with the terms set forth herein with limits of not less than \$500,000 per occurrence and comply with all laws.

9. **CARE OF SLIP; MAINTENANCE.** Boat Owner shall keep and maintain the Slip in a clean and sanitary condition at all times, and in accordance with the Marina rules. Upon termination of this Agreement, Boat Owner shall surrender the Slip in good order and repair other than normal wear and tear resulting from ordinary use. Boat Owner shall not alter the Slip, dock area or utilities services. Boat Owner shall not install or place any personal property, dinghies, small boats, equipment, boxes or lockers of any type on the Slip, without the permission of Marina. Boat Owner shall further maintain throughout the term of this License Agreement, current documentation or a state registration, and shall further maintain the boat in a safe and presentable condition, and keep all docks adjacent to his assigned slip or berth clean and passable.

10. **UTILITIES AND FEES.** Boat Owner's request, and subject to the payment of utility fees as specified above, marina shall make available to Boat Owner at the Slip electrical power, water, cable television and such other utility services then available to licensees at the Marina generally. Marina does not warrant the availability of utility services, and shall not be responsible for any damage or injury due to the interruption or unavailability of utility services. Without limiting the foregoing, Boat Owner acknowledges that water service may be discontinued during inclement weather. In addition, marina does not warrant that the utility services will be compatible with the utility service requirements of the Boat (including electrical interconnection requirements or the effect of electrolytic action). Utility fees shall be included in the monthly invoice and shall be payable with the monthly payment of Dockage Fee.

11. **ACCESS TO BOAT.** Marina shall have the right from time to time to board the Boat when moored at the Slip to determine if the Boat is in compliance with the terms of this Agreement. Upon request, Boat Owner agrees to deposit with the Marina Manager a key or keys which allows access to operation of the Boat. Said key or keys shall be utilized by Marina personnel only in the event of an emergency as otherwise directed by Boat Owner.

12. **NO WARRANTIES.** Marina makes no warranties, express or implied, as to the condition of the Slip or the Marina (including floats, walkways, gangways, ramps, gear and related items) or the suitability of the Slip and the Marina for Boat Owner's intended purposes. Boat Owner acknowledges that Boat Owner has had an opportunity to inspect the Marina and the Slip prior to acknowledges that Boat Owner has had an opportunity to inspect the Marina and the Slip prior to execution of this Agreement and agrees to accept the Marina and the Slip in their current condition.

13. **HOLDING OVER.** If the Boat remains at the Slip following termination of this Agreement, and without otherwise limiting the rights of the Marina, hereunder, Boat Owner shall be deemed to be occupying the Slip for purposes of transient moorage and shall pay Marina the then applicable daily rate of transient moorage for each day the Boat continues to be moored at the slip. Marina may, at its sole discretion, chain the Boat or Slip and/or exclude Boat Owner from access to the Marina.

14. **EMERGENCIES, HURRICANES OR OTHER ACTS OF GOD.** Marina expects Boat Owner to have made suitable arrangements for safe, sheltered anchorage during tropical storms or hurricanes, and Boat Owner warrants such arrangements have or will be made. Boat Owner may not assume that the Marina will be safe, sheltered anchorage during tropical storms or hurricanes. In the event of an impending tropical storm or hurricane or other emergency, Marina, in its sole discretion, is authorized to do whatever Marina deems appropriate and reserves the right to move unattended vessels at the Boat Owner's risk and expense. **UNDERTAKING TO MOVE VESSELS SHALL NOT BE DEEMED AN ASSUMPTION OR RESPONSIBILITY FOR THE SAFETY, SECURITY AND CARE OF BOAT BY MARINA, NOR SHALL MARINA BE DEEMED A BAILEE OF THE BOAT OWNER.**

15. **DEFAULT, REMEDIES.** This Agreement specifies certain breaches by Boat Owner that are so serious that Marina has reserved the right to immediately declare Boat Owner in default and terminate this Agreement or seek other remedies without the notice periods specified below. In all other cases, if Boat Owner breaches this Agreement and such breach continues for five days after Marina has given written notice of the breach to Boat Owner, Boat Owner shall be in default. Upon default, Marina may exercise any and all remedies available hereunder or at law. If Boat Owner is in default, marina may elect to terminate this Agreement by giving five days' written notice to Boat Owner. Upon termination, Boat Owner shall pay all sums due marina and then remove the Boat from the Marina. Should Boat Owner fail to timely pay all sums due and then remove the boat from the Marina as required, then the Boat shall incur a per diem moorage fee at the applicable daily rate for transient moorage. In the event of Boat Owner's default or termination of this Agreement, marina may, by notice to Boat Owner, suspend the right of Boat Owner to obtain access to the Marina, to use the Slip and the Boat without the necessity of the initiation of any proceedings.

16. **CUMULATIVE REMEDIES, NO WAIVER.** Marina's rights and remedies hereunder are cumulative in nature, and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available in law. No waiver or forbearance of a breach of this Agreement shall be construed as a waiver or forbearance of any other subsequent breach, and the acceptance of any performance hereunder, or the payment of any amounts after the same has become due or at a time when any other default exists shall not constitute a waiver of the right to demand payment of all other amounts owed or a waiver of any other default then or thereafter existing.

17. **ASSUMPTION OR RISK; DISCLAIMER OF LIABILITY; INDEMNITY.** The Slip and the Marina are to be used at the sole risk of Boat Owner and Boat and Boat Owner and Boat hereby assume such risk. Marina assumes no responsibility for and shall not be liable for the care, protection and security of the Boat. Boat Owner, for himself, for the Boat and for Boat Owner's Agents (as defined in Section 19) hereby releases Marina from any and all liability for loss, death, damage or injury (collectively "Injury") to any person or property arising out of or in connection with the condition or use of the Boat or the condition use of the Marina or its services whether such injury is caused by or through the acts or omissions of the Marina or by any other cause whatsoever, including Marina's negligence, except Marina's gross negligence or willful misconduct. Boat Owner and Boat shall indemnify and hold harmless the marina from any claims, suits, actions, damages, liability or expense (including attorneys' fees) in connection with any Injury (unless due to the willful misconduct or gross negligence of Marina) or arising from Boat Owner's breach of this Agreement. Marina is not to be considered under this Agreement as an insurer of Boat Owner's Property and Boat Owner shall secure such insurance as boat Owner desires. Boat Owner is advised to remove all items not permanently attached to the Boat while the Boat is in the Marina. Under no circumstances shall the Marina be liable for indirect, consequential, special or exemplary damages, whether in contract or tort (including strict liability and negligence) with respect to Boat Owner's use of the Marina. Boat Owner and Boat Owner's insurers agree to waive any right to petition for exoneration from or limitation of liability under the laws of the United States in the event the Boat is involved in any casualty resulting in personal injury, death or property damage while docked at the Marina or in connection with this Agreement.

18. **BOAT OWNER'S RESPONSIBILITY FOR DAMAGE AND THE ENVIRONMENT.** Boat Owner and Boat shall be responsible for and shall promptly, upon demand, pay Marina for any damage caused to the Marina by Boat Owner, the boat or Boat Owner's Agents. Boat Owner shall, in and around the Marina, comply with all laws rules and regulations concerning the protection of the environment and pay Marina for any damage, expense or liability incurred by Marina due to Boat Owner's or Boat Owner's Agent's failure to comply with such laws and regulations or due to any pollution created by, caused by, or contributed to by Boat Owner. Boat Owner shall not release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances, including oil, gasoline or untreated sewage ("Hazardous Substances") into the water or land of the Marina. The costs for which Boat Owner and Boat may be responsible include, but are not limited to, the costs of booms, absorbent pads, disposal of the Hazardous Substance, clean up oversight by governmental agencies and Marina personnel and any legal fees incurred in defense of any violations. Boat Owner shall be responsible for reporting and cleaning up any such release. Boat Owner shall report any release to the Marina Manager and shall keep Marina informed on a daily basis of Boat Owner's actions with respect to any clean up. If Marina is not satisfied, in Marina's sole discretion, with Boat Owner's actions in reporting and cleaning up a release, Marina may take any action it deems appropriate regarding the release, at Boat Owner's expense. This provision is in addition to, and not in lieu of, the indemnity provision set forth in this Agreement.

19. **CONDUCT.** The conduct at the Marina of Boat Owner, any member of Boat Owner's family, and any of Boat Owner's employees, licensees, agents or guests (herein individually referred to as "Boat Owner's Agent") shall be the sole responsibility of Boat Owner or Boat Owner's Agent that might disturb or cause harm to any person, damage property, be a nuisance or harm the reputation of the Marina (including use of drugs or becoming intoxicated by alcohol) shall, at the option of Marina, be cause for immediate termination of this Agreement by Marina. Intoxication shall be presumed if (i) Marina shall require the assistance of the Sheriff or other law enforcement agency to deal with Boat Owner or Boat Owner's Agent, (ii) Boat Owner or Boat Owner's engages in the physical assault of another person or that person's property or (iii) one or more users of the Marina files a written complaint with Marina concerning the intoxication of Boat Owner or Boat Owner's Agent. Intoxication by Boat Owner or Boat Owner's Agent shall be deemed a nuisance.

20. **SECURITY SERVICE.** Boat Owner acknowledges that the security service provided by Marina is a courtesy only, and Marina bears no liability or responsibility in the event that Boat Owner's or the Boat security is breached.

21. **NOTICES AND ADDRESSES.** Any notice hereunder shall be in writing and shall be deemed to be given if and when it is personally delivered to the other party or three days after it is deposited in the mail, addressed to the other party at the addresses set forth in this Agreement. Boat Owner is responsible for informing Marina of Boat Owner's most current address and phone number. Within ten days following the date of any change in Boat Owner's business or residence address or telephone number, Boat Owner shall provide Marina, in writing, notification of the new address or telephone number if Boat Owner changes Boat Owner's address or telephone number without providing the new address and telephone number to Marina and it becomes necessary for Marina to serve any notices to Boat Owner or in the event of litigation, copies of any notices or pleadings may be delivered to the last address given by Boat Owner to Marina. Because it may be necessary for Marina to reach Boat Owner in the event of an emergency, a post office box is not considered an acceptable address.

22. **CREDIT APPLICATION.** This Agreement is being entered into by Marina subject to a credit application being completed by Boat Owner and approved by Marina. If Boat Owner fails to meet Marina's credit requirements, this Agreement may be terminated by Marina.

23. **JOINT AND SEVERAL LIABILITY.** The obligations of the Boat and each person executing this Agreement as Boat Owner, are joint and several, and any act or signature of, or notice or refund to any one or more of them with respect to this License shall be fully binding upon each of them.

24. **ATTORNEYS' FEES.** If either party defaults under this Agreement, the other party shall be entitled to recover any costs incurred, including attorneys' fees in enforcing or protecting its rights, whether or not suit is filed.

25. **CHOICE OF LAW.** This Agreement shall be governed by the laws of Florida.

26. **SEVERABILITY.** If any provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, this shall not affect any other provisions and this Agreement shall be construed as if such provision had never been contained in this Agreement.

27. **LIEN ON BOAT.** Boat Owner agrees and acknowledges that Marina shall have a lien upon the Boat, together with its appurtenances, equipment, and contents, for all unpaid sums due, or to become due, under this Agreement, whether for rent and other services and merchandise purchased from Marina, and for any damage caused or contributed to by the Boat or Boat Owner to any property of the Marina. Boat Owner agrees and authorizes Marina to enforce such lien by any and all remedies available to Marina under applicable law, including nonjudicial sale in accordance with Florida Statute §371.84 and §328.17, and Boat Owner agrees to pay all legal fees and costs incurred by Marina in such enforcement, whether at the trial or appellate levels. Marina shall also have the right to move any delinquent Boat to accommodate another boat.

28. **ENTIRE AGREEMENT.** This Agreement is the entire agreement between the parties and supersedes all prior agreements. No modifications or amendments to this Agreement are valid unless in writing and signed by Marina Manager and lessor. The lessor has received a copy of the FPCM rules and regulations and has agreed to abide by them.

Agent for Fort Pierce City Marina

Date

Agent/Owner of Vessel

Date