

## HOLIDAY ISLAND MARINA LEASE AGREEMENT

This lease agreement is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the HOLIDAY ISLAND SUBURBAN IMPROVEMENT DISTRICT of Carroll County, Arkansas, hereinafter referred to as "Lessor" and \_\_\_\_\_, hereinafter referred to as "Lessee".

### WITNESSETH:

1. Lessor hereby lets, leases and demises to Lessee the property known as the Holiday Island Marina, Holiday Island, Arkansas, generally described as four (4) covered docks containing one hundred and eighty (180) boat slips, of which 171 are annual slips, 8 covered nightly slips, 1 slip for Fire Department use and 4 uncovered nightly slips, one (1) building located on one dock; and the equipment located thereon and adjacent thereto.

TO HAVE AND TO HOLD THE SAME UNTO THE SAID LESSEE FOR AND DURING THE TERM HEREOF, UPON THE TERMS AND CONDITIONS HEREINAFTER EXPRESSED.

2. This lease shall be subject to the master lease (attached as Exhibit "A" hereto) between Holiday Island Suburban Improvement District, 110 Woodsdale Drive, Holiday Island, Arkansas 72631, and the United States, by the Secretary of the Army, under Lease No. \_\_\_\_\_; such Lease having begun on \_\_\_\_\_ and ending \_\_\_\_\_, for a term of twenty (10) years. Pursuant to such, this Lease Agreement is subject to the Lessor obtaining written approval from the U.S. Corps of Engineers' District Engineer for Lessor's execution. All such duties required of Holiday Island Suburban Improvement District as lessee of the master lease shall be applicable to Lessee herein, including but not limited to Paragraph 25, Environmental Protection. Paragraph 32 of the master lease shall not be applicable to the agreement between Lessor and Lessee herein.

3. The term of this lease is for a period of \_\_\_\_\_ years commencing on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

4. a. As rental for said premises, Lessee agrees to pay Lessor and Lessor agrees to accept as rental therefore the sum of One Dollar (\$1.00) per year. Lessor will bill for and collect all boat slip rental payments during the term of this lease. Annual boat slip rental payments shall be due from slip lessees on or before March 1 of each year.

b. Lessor shall remit, on a monthly basis commencing \_\_\_\_\_ an amount equal to 1/12 of thirty-seven and one-half percent (37.5%) of the total annual collections of all timely paid payments by boat slip lessees. The payments contemplated herein shall be made on or before the 20th of each month, commencing \_\_\_\_\_.

c. The total payments to Lessee for any 12 month period shall not exceed Eighty Five Thousand and no/100 Dollars (\$85,000). For example, if the annual boat slip rental payments totaled \$100,000, the monthly payment due Lessee would be \$3,125.00 per month for twelve months with the first payment being due on or before \_\_\_\_\_ ( $\$100,000 \times 37.5\% = \$37,500/12 =$

\$3,125.00). However, if the annual boat slip rental payments totaled \$250,000, the monthly payment would be \$7,083.00 per month, or 1/12 of \$85,000, as the total percentage would exceed \$85,000.

For any payments made by boat slip lessees after the aforementioned due date, Lessor shall deliver to Lessee thirty seven and one half percent (37.5%) of such amounts received within thirty (30) days of receipt. Lessee shall be entitled to all revenue received from the lease of slips to overnight renters.

During the term hereof, Lessee shall provide to Lessor a list of the names and addresses of all individual boat slip renters. Such list shall be updated each time a change occurs regarding identity of slip renters or in the assignment of individual slips, but in any event by January 15 of each year. Said list shall additionally include the name and address of individuals on the "waiting list" for boat slips, if any.

5. In the event that the District receives Corps of Engineer approval for and installs income-producing capital improvements to the marina during the term of this lease, Lessee and Lessor shall negotiate terms and conditions separately as an amendment to this lease, subject to Corps of Engineer and District Board approval.

6. Lessee shall pay all charges for utilities with respect to the leased premises.

7. Lessee shall provide to Lessor and the Corps of Engineers at P.O. Box 867, Little Rock, AR 72203-0867 proof of liability insurance with a minimum combined single limit of \$1,000,000.00. If the Corps of Engineers requires an increase in insurance coverage, Lessee shall provide Lessor with proof of the required increase in coverage. This policy shall provide that the insurance company give to Lessor and the Corps of Engineers at the above addresses at least thirty (30) day notice of any cancellation, non-renewal or change in such insurance.

8. The Lessee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the leased premises. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

9. a. The Lessee shall comply with and enforce all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, improvement district and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee will comply with any and all rules and regulations of the Corps of Engineers.

b. The Lessor, in conjunction and in agreement with the Lessee, may make reasonable rules and regulations for the use and occupancy of the premises. Lessee, its employees and agents agree to abide by and enforce any such overall rules and regulations as established by Lessor for its overall business, and for the owners, visitors and guests of Lessor.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) codes and standards, including, but not limited to NFPA 70, National Electric Code, NFPA 303, Fire Protection Standard for Marina Standards Institute (ANSI), including, but not limited to the National Electrical Safety Code. Upon request by the Corps of Engineers, the Lessor will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

d. The Lessor reserves the right to eject any individual slip holder for repeated violations of posted Corps of Engineers and/or HISID Marina rules and regulations; responsibility for determination of enforcement action rests with the Holiday Island District Manager.

10. a. Without prior written approval of the Lessor, the Lessee shall neither transfer nor assign this lease or a controlling interest therein (including, without limitation, mergers, consolidations, reorganizations, or other business combinations), nor sublet the premises or any part thereof, excepting however the individual slip leases and overnight slip rentals, nor grant any interest, privilege, or license whatsoever in connection with this lease, nor shall this lease be assignable or transferable by process or operation of law including, but not limited to, insolvency proceedings, bankruptcy, or intestacy, or in any other manner whatever.

b. Failure to comply with this condition or the procedures described herein shall constitute a material breach of this lease for which this lease may be revoked immediately by the Lessor.

11. No attempt shall be made by the Lessee, nor any of its sublessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

12. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

13. Payment of any and all taxes imposed by the state or its political subdivisions upon the property or business of the Lessee on the premises is the responsibility of the Lessee. Lessee shall not be responsible for the payment of any real or personal property tax assessed upon the property of Lessor.

14. The rates and prices charged by the Lessee or its sublessees shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The Corps of Engineers District Engineer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. The Lessee shall keep such rates and prices posted at all times in an appropriate and conspicuous place on the premises. The Corps of Engineers District Engineer may require submission of a schedule of the rates and prices at any time.

15. Lessee will adhere to proper annual slip rental and dock charges as specified by Lessor. Any increase in slip rentals shall be at the sole discretion of the Lessor.

16. The minimum Marina hours are set forth in Exhibit "B" to this Agreement, said Exhibit is incorporated herein by reference as if set forth word for word. Lessee may, at its discretion, adjust hours of operation beyond those specified in Exhibit B. Lessee or Lessee's agent shall be on-call and available to the Lessor for emergencies on a 24 hour a day basis.

17. Slip rentals will be assigned on a first come, first served basis.

18. Lessee shall provide, at a minimum, the following services:

- a. regular gasoline;
- b. bait, fishing supplies, fishing licenses;
- c. fish cleaning facilities; and
- d. the equipment set forth on attached Exhibit "C", which may be amended from time to time with the written consent of the parties.

19. Lessee may provide the following services:

- a. sale of food, refreshments, and packaged merchandise;
- b. sale of boats, motors and accessories;
- c. servicing, repairing, maintaining, and caring for privately owned boats and motors;
- d. transportation of passengers by boats for hire; and
- e. rental of that equipment set forth on Exhibit "C".

20. a. The Lessee and/or any sublessees or licensees is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable request by Lessor or by the District Engineer. This lease may be revoked in the event that the Lessee violates any of its terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, as provided for in Paragraph 33 of this agreement.

b. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days, after the same shall become due, then, and in such case, Lessor may elect to revoke this lease by notification in writing to the Lessee.

21. Lessee agrees to keep the leased premises, including the equipment, in a good state of repair and to return the same to Lessor, at the expiration of this lease or any extension thereof, in as good condition as they now are with the exception of reasonable wear and tear. Lessee shall not make any alterations or additions to the premises without the express written consent of the Lessor and Corps of Engineers. Lessee will not permit waste nor permit waste to be done upon the leased premises and shall keep said premises free and clear of debris, contamination, and in a clean condition. Lessee shall not vacate nor abandon the leased premises at any time during the term hereof and if Lessee shall abandon, vacate or surrender the premises or be dispossessed thereof by process of law, or otherwise, any and all personal property belonging to the Lessee and left on the premises shall, at the option of the Lessor, be deemed to be abandoned and become the property of the Lessor.

22. The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

23. Lessee agrees to protect, defend, indemnify and save harmless the Lessor from any and all damages or claims for damages and loss, liability and expense of defending any action on account or any claims for bodily injuries of any kind whatsoever, including death, to any person or persons, while on the leased premises or in any way arising from Lessee's operation which are not of the Lessor's participation or perpetration.

24. a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, may be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the property in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must notify Lessor and obtain approval in writing from the Corps of Engineers before any pesticides or herbicides are applied to the premises.

25. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

26. The Lessee shall maintain, in a manner satisfactory to Lessor and the Corps of Engineers all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessor during the term of, this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected as directed by the Corps of Engineers.

27. The Lessee shall not hunt or trap or allow hunting or trapping on the premises. In the event of animals causing damage or becoming a nuisance on the leased premises or adjacent restrooms, it shall be Lessee's responsibility to hire a professional wildlife removal service, licensed and insured in an amount to be approved by Lessor.

28. Lessee shall reimburse Lessor that portion of Lessor's rental payments to the Corps of Engineers which relate to Lessee's gross receipts of the concession operations and from the slip rental percentage retained by Lessee. This reimbursement shall be made to Lessor by the third (3rd) of the month following the receipt by Lessee of the monies.

29. a. The Lessee shall be responsible for the following items relating to housekeeping, maintenance and repairs:

- (i) Daily housekeeping and maintenance of the leased facilities, including the concession and office facilities, the restroom located in the adjacent parking area, and all boat docks, walkways and slips. Housekeeping is defined as clearing of trash, debris, and walkway hindrances and cleaning as may be necessary to maintain the premises in a sanitary condition. Lessee shall provide all daily maintenance labor for which Lessee is qualified and reasonably capable.
- (ii) Spider/cobweb control and removal: Lessee shall hire the services a licensed and insured exterminator for the purpose of spider and insect control not less than two (2) times per year, and said exterminator shall be approved by the Corps of Engineers. Lessee further agrees to broom down (or other effective removal methods as determined by Lessee) cobwebs on all main walkways (includes overhead beams directly above main walkway, lighting fixtures and walkway railings) during open hours of operation on a regular basis, but no less frequently than once per week. Individual slip holders are responsible for cleaning cobwebs and other debris on the finger walkway adjacent to their slip.
- (iii) Payment of utility charges.
- (iv) Operation of electrical and fuel services at the Marina, excluding however, the provision, repair or replacement of the necessary delivery systems.
- (v) Monitoring of parking lots and notification of the appropriate law enforcement or other authority, if necessary. Lessee shall not be required to engage in any enforcement activity.
- (vi) Snow removal on the leased structures shall be jointly performed between Lessee and Lessor, provided such removal shall not constitute a danger to human life.
- (vii) Safety and security – responsible for addressing hazardous physical conditions on Marina property.
- (viii) Movement of docks with the lake level within the normal pool elevations of 909' to 917'. If the lake moves beyond stated ranges, Lessee and Lessor shall jointly perform any necessary dock movement.

b. The Lessor shall be responsible for the following items relating to maintenance, repairs and improvements:

- (i) Cables and anchors.
- (ii) Styrofoam replacement, protective edging.
- (iii) Provision, repair or replacement of the necessary delivery systems for electrical and fuel services.
- (iv) Modifications, upgrades and improvements to electrical system on the marina.
- (v) Cleaning, maintenance, repairs and improvements of the marina parking areas and grounds outside leased facility, except the restroom, which shall be the responsibility of the Lessee as set forth in subsection (a).

- (vi) Repairs and improvements to the marina structure itself, including access ramp and walkway structures.
- (vii) Major repairs due to unforeseen occurrences, age, condition and obsolescence, and not due to negligence on the part of the Lessee.

30. a. Lessee shall be an independent contractor for the performance of its duties outlined in this Lease. The conduct and control of the business operations under this lease are the sole responsibility of the Lessee. Neither the Lessee nor any of its agents or employees shall be considered an agent or employee of the Lessor for any purpose, and the employees of the Lessee are not entitled to any of the benefits that the Lessor provides for Lessor's employees. Lessee shall be responsible for maintaining agreed-upon hours of operation and shall provide any and all necessary raw materials, supplies and equipment for the conduct of its business. Lessor shall retain no control over Lessee's employees, agents and servants. Lessee shall be responsible to Lessor and shall indemnify Lessor for any and all actions of Lessee's employees, agents, servants or sublessees.

b. Lessor agrees that it shall not designate or authorize any individual commissioner, property owner, citizens committee or other entity, other than legal counsel as may be necessary or desired by Lessor, to interfere with, or in any manner influence, the operations of the Lessee during the term hereof, it being expressly agreed that Lessor shall be represented by the Holiday Island Suburban Improvement District's District Manager or the Board of Commissioners acting as a body, or through legal counsel, and in no other manner.

31. Lessor agrees that during the term hereof, it shall not engage in any competing operation with Lessee, nor shall it permit a competing entity to operate or engage in business on property owned or controlled by Lessor. Nothing herein shall prevent Lessee from consulting with any competitor for advice or other information regarding the performance of Lessee's duties hereunder.

32. In the event of the condemnation, loss or destruction of the facilities, or a substantial portion thereof, by any governmental authority or act of God, or in the event of the loss of use of the facilities, or a substantial portion thereof, due to reduced or high lake levels, to the extent that further operation of all or a portion of the facilities is no longer practicable, either party hereto shall have the right to terminate this agreement upon the giving of thirty (30) days written notice to the other of the conditions causing such termination. Termination under such circumstances shall cause this lease to end and neither party shall have any further liability or responsibility to the other after the date of termination.

33. Time is of the essence in this agreement. Other than failure of Lessee to pay the rentals due, or to provide insurance, as required herein, Lessor will give written notice to Lessee of any alleged violations or deficiencies in Lessee's compliance with the terms and conditions of this agreement. After receipt of such notice, Lessee shall have thirty (30) days within which to correct same. All notices provided for in this paragraph shall be given either in person or by ordinary United States mail of such notification to the Lessee at its address at Holiday Island, Arkansas. If the Lessee fails to take the necessary corrective action to correct any deficiencies or violations within said thirty (30) day period, then and in such event, Lessor shall have the right to terminate the lease upon ten (10) days written notice to Lessee. Lessee waives any and all statutory notices to vacate.

34. This Lease Agreement is intended to be performed in the County of Carroll in the State of Arkansas, and the laws of such State shall govern the validity, construction, enforcement, and interpretation of this Lease Agreement and all other documents or instruments delivered pursuant hereto, unless otherwise expressly specified therein. Any legal action arising from this Lease Agreement or the parties' respective rights or responsibilities relating to the performance of this agreement shall be filed in the Western District of Carroll County, Arkansas.

35. If any provision of this Lease Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Lease Agreement; and the remaining provision of this Lease Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Lease Agreement.

36. This Lease Agreement entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_, contains the entire agreement of the parties thereto and no waivers, modifications or amendments hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

LESSOR:  
Holiday Island Suburban Improvement District

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: District Manager

By: \_\_\_\_\_  
Its: Owner

ATTEST: \_\_\_\_\_  
Secretary, Board of Commissioners



EXHIBIT "A"  
MASTER LEASE

EXHIBIT "B"  
MARINA HOURS

Holiday Island Marina - Minimum Hours of Operation:

From April 1 through Memorial Day weekend: 48 hours per week

From Memorial Day to Labor Day: 72 hours per week

From Labor Day to October 15: 45 hours per week

Months of March, October:

Schedule adjusted annually with approval by District Manager, weather permitting

Lessee has the discretion to establish hours based upon customer needs and requirements; hours of operation are required to be posted.

Marina may close due to severe weather.

EXHIBIT "C"  
EQUIPMENT OF LESSEE

EXHIBIT "D"  
MONTHLY REPORT

EXHIBIT "E"  
CORPS OF ENGINEERS LETTER OF APPROVAL