

Revised and Re-stated 1997 Indemnification Agreement

This ("Agreement") is entered into this 29 day of November, 2022 by and between Bonita Beach Club Association, Inc., a Florida not for profit corporation, ("Condominium Association") and B B C Club Boat Slips, Inc., a Florida not for profit corporation, ("Boating Association"), with the parties being collectively hereinafter referred to as the "Parties".

Whereas, the Condominium Association was built in or around 1977 without dock facilities and through its Board allowed the dock facility and boat slips to be built in 1981 by individual unit owners, through a separate corporate entity, the Boating Association, which was created for the purpose of construction, owning, and maintaining the dock facility; and

Whereas, the Condominium Association and the Boating Association have cooperated and co-existed since that time, and desire to continue to cooperate to ensure that the dock facilities are continually used and operated in a harmonious way; and

Whereas, in furtherance thereof, the Condominium Association and the Boating Association entered into that certain Indemnification Agreement dated August 25, 1997 (hereinafter "1997 Indemnification Agreement"); and

Whereas, the Parties intend, by this Agreement, to repeal, amend, and restate in its entirety the 1997 Indemnification Agreement; and

Whereas, the "Submerged land Lease Agreement" which was appended as an exhibit to the 1997 Indemnification Agreement, included a Sovereignty Submerged Lands Lease effective May 10, 1996, and expired May 10, 2001, recorded at O.R. Book 2879, Page 3994, Public Records of Lee County, Florida; and

Whereas, the Condominium Association obtained a Sovereignty Submerged Lands Lease Renewal and Modification to Increase Square Footage from the State of Florida with an effective date of February 10, 2009 and expiring on May 10, 2011, was recorded on April 9, 2009 as Instrument Number 2009000093817, Public Records of Lee County, Florida; and

Whereas, the Condominium Association obtained a Sovereignty Submerged Lands Lease Renewal and Modification to Accurately Reflect Structures from the State of Florida with an effective date of May 19, 2011 and expiring May 10, 2016, and was recorded on July 10, 2012 as Instrument Number 2012000150750, Public Records of Lee County, Florida; and

Whereas, the Condominium Association obtained a modification to the Sovereignty Submerged Lands Lease Modification to Re-Configure Lease Area and Extend Term Per HB 999 ("Lease") from the State of Florida with an effective date of February 18, 2014 and which expired on May 10, 2021; and

Whereas, the Condominium Association obtained a Sovereignty Submerged Lands Lease Renewal from the State of Florida with an effective date of May 10, 2021 and expiring May 10, 2026; and

Whereas, as of the effective date of this Agreement, the Condominium Association is a party to certain agreements with the State of Florida pertaining to the boating facility including that certain Proprietary Deed of Conservation Easement ("Deed") recorded at O.R. Book 2814,

Page 3058, Public Records of Lee County, Florida, and that certain Sovereign Submerged Lands Easement ("Easement") recorded at O.R. Book 2879, Page 3987, Public Records of Lee County, Florida, which expired on May 10, 2021, and was subsequently renewed via the Sovereignty Submerged Lands Easement Renewal for an additional ten year term, which will expire on May 10, 2031; and

Whereas the Condominium Association, the Boating Association and individual boat slip owners were all co-defendants in a civil action, brought by a unit owner, and titled "Roger Young and Pam Young, Plaintiff v. Bonita Beach Club Association, Inc., et al., Defendants, filed as Case No. 15-CA-3271 in the Circuit Court for the Twentieth Judicial Circuit in and for Lee County, Florida ("Young Litigation"); and

Whereas the Condominium Association and the Boating Association were the prevailing parties in the above referenced civil action; and

Whereas, the Boating Association is responsible pursuant to the 1997 Indemnification Agreement to undertake all actions, at the sole cost and expense of the Boating Association, as are necessary to resolve any issues or violations with the Florida Department of Environmental Protection, including alleged violations of Florida state laws or regulations; and

Whereas, the Boating Association provides various Boating Association information to the Condominium Association as a result of the Condominium Association obtaining the Lease from the State of Florida; and

Whereas, the Boating Association complies with and acknowledges that the use rights in the submerged land are subject to the provisions of the Easement and Lease from the State of Florida; and

Whereas, the parties intend, by this Agreement, to repeal, amend and restate in its entirety, the 1997 Indemnification Agreement to confirm the respective obligations of the Boating Association and the Condominium Association, including but not limited to the obligation of the Boating Association to pay all costs, expenses, fees, charges, rents and the like incurred by the Condominium Association and related solely to the Boating Association as provided in the 1997 Indemnification Agreement, and likewise, to confirm the obligation of the Condominium Association to continue to facilitate the use and enjoyment of the dock facilities by the Boating Association, including but not limited to ensuring the ongoing and timely Lease and Easement renewals and the Condominium Association's cooperation and accommodation to the Boating Association and their contractors for dredging and repair and maintenance of the docking facilities; and

Whereas, the Condominium Association and the Boating Association are mutually desirous of entering into this Agreement for the purpose of repealing, amending and restating the 1997 Indemnification Agreement in order to more formally outline the respective rights and obligations of the parties hereto, in order to reduce ambiguity and promote harmony amongst the members of both parties; to preserve their benefit under the Lease and Easement granted by the State of Florida, and to allow both parties to have the peace of mind that will be afforded by having a detailed agreement which will protect both parties reasonable expectations and legitimate interests, and upon which both parties and their respective members, now and in the future, will be able to rely.

NOW, THEREFORE, in consideration of the mutual undertakings herein, the sufficiency of which are hereby acknowledged as proper legal consideration, it is reiterated and agreed as follows;

1. **Recitals:** The recitals above are hereby incorporated into this Agreement.
2. **Boating Association is responsible for all docking facility related expenses:** The Boating Association shall be responsible for and pay directly, or reimburse the Condominium Association, as soon as is reasonably practicable, for all direct costs, expenses, fees, charges, rents and the like, of every kind and nature whatsoever, including without limitation the Lease and Easement payments due to the State of Florida under the existing and all future submerged land Lease(s) and Easement(s), and any and all other costs, expenses, fees, charges, rents and the like of every kind and nature whatsoever in any way associated with the Lease, Easement or any other documents or agreements which the Condominium Association has or will be required to enter into which enable, assist, or in any way facilitate the Boating Association in the permitting, repair, construction, operation or maintenance of the docking facility.
3. **Lease and Easement with State of Florida:** The Condominium Association and the Boating Association agree that it would be in the best interests of both the Condominium Association and the Boating Association to effectuate an assignment of the Lease and the Easement with the State of Florida from the Condominium Association to the Boating Association. Towards that end, the Condominium Association hereby agrees that it will cooperate in efforts to do so including but not limited to, granting to the Boating Association an Easement. This easement over the riparian lands of the Condominium Association will be provided to the Boating Association for the purpose of satisfying the upland property interest required by the Florida Department of Environmental Protection as the administrative agency with respect to the Lease and the Easement the transfer of which approval will be sought from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the "Board of Trustees"), or its designee, but in no event shall the interest created, or the intention of satisfying those requirements exceed rights specifically provided in or resulting from the Easement or otherwise existing in favor of the Boating Association or its members. Notwithstanding the creation of the Easement, the Boating Association shall ensure that the Condominium Association Members, and their guests, licensees and invitees, shall have full, unimpeded access to the portion of the docking facility which the Boating Association has previously maintained as the so called "fishing pier" portion of the docking facility, as stated in the Young Litigation order, and to all portions of the easement property leading to same, subject to any restrictions or limitation thereon required by the Florida Department of Environmental Projection in order to effectuate the assignment and transfer of the Lease and Easement.

Until such time as the State of Florida approves the assignment and transfer of the Lease and the Easement with the State of Florida from the Condominium Association to the Boating Association, or in the event that no such assignment is made, the Condominium Association shall continue to use its best efforts to ensure that the Lease and the Easement shall remain in full force and effect and shall be renewed as each term expires, for so long as the Boating Association shall desire. The Boating Association shall cooperate

with the Condominium Association in all aspects of this endeavor, including but not limited to providing any information in its possession, or ability to obtain, which is required to be furnished to the state as part of the Lease/Easement renewals. The Condominium Association shall execute any required documents from the State of Florida, or other applicable governmental entity, pertaining to said Lease and/or the Easement as soon as possible, and in any event, within the time allotted by the State of Florida, or other applicable governmental entity. Any and all costs for the preparation of the required documents shall be paid by the Boating Association. No usage or administrative fee to either party shall be allowed under this Agreement. To ensure timely renewal and required payment, the Condominium Association shall forward all notices it receives from any governmental entity related to the Lease or Easement to the Boating Association within 10 days of its receipt of same.

4. **Indemnification:** The Boating Association agrees to indemnify, protect, defend and hold harmless the Condominium Association, its representatives, officers, directors, and employees from and against any and all claims, actions, liabilities, losses, damages, costs, expenses, and the like, including but not limited to, court costs, reasonable attorney's fees, fines, rental payments, fees, inspection reports, bodily injury, property damage, or any and all costs associated with specific actions required or requested by the State of Florida or other governmental agencies or any action, which directly arises out of or is in any way connected with, or incidental to, the boat docks or slips, the Lease, the Deed, the Easement, or any other documents or agreements executed in connection with or in any way pertaining to the construction, repair, maintenance, permitting, existence, or operation of the boat docks and boat slips. Notwithstanding anything to the contrary hereinbefore or hereinafter stated in this Agreement, any damages resulting from the acts, omissions, or negligence of the Condominium Association, and/or its members (excluding Boating Association Members) or agents shall be specifically excluded from any indemnity provided by the Boating Association.

5. **Boating Association Insurance:** In order to ensure its financial obligations herein, the Boating Association shall maintain, with an insurance company or companies lawfully authorized to do business in the State of Florida such insurance as will protect the Boating Association and the Condominium Association from claims or liabilities which may arise out of, or result from the Boating Association's operations and for which the Boating Association or Condominium Association may become legally liable. The Boating Association hereby agrees to maintain the coverages outlined below. Due to the financial impracticality of obtaining same, said coverages exclude surge, wind, and flood coverage, see however the Account established in section 7 (b) below which is meant to take the place of said surge, wind, and flood coverage:
 - a. Comprehensive General Liability in the minimum limit amount of not less than \$1,000,000.00 per occurrence, and naming the Condominium Association as an additional, non-contributory insured, and with a waiver of subrogation.
 - b. Property Insurance Coverage in the minimum amount of not less than \$272,840.00 per occurrence.

- c. The Boating Association shall provide written notice to the Condominium Association no less than 30 days prior to the Boating Association's cancellation, non-renewal or material change to any of the above referenced policies.
6. **Condominium Association Insurance:** The Condominium Association shall also name the Boating Association as additional, non-contributory insured on their Comprehensive General Liability Policy and their Excess or Umbrella Policy, along with waivers of subrogation on each.
7. **Accounts to Secure Performance:**
 - a. The Boating Association will create and maintain an account(s) in the amount of \$20,000.00, in the joint names of the parties. Said account shall consist of the \$10,000.00 currently held in a Certificate of Deposit (maturing September 3, 2022) in the joint names of the parties, plus an additional \$10,000.00 that will be deposited, in a savings or similar account, within 60 days of the full execution of this Agreement. Any withdrawal(s) will require the signatures of an Officer of both parties, along with the written approval of each of their respective Boards. In the event that either party refuses to sign for the legitimate withdrawal of funds, then that party shall be liable to the other party for their reasonable costs and attorney fees incurred in collecting same. This account shall stand as security for the Boating Association's full and faithful performance of its obligations hereunder; and will further serve as security for the faithful performance of the indemnification, hold harmless and other obligations imposed on and undertaken by Boating Association in accordance with this Agreement, and the Boating Association further authorizes the Condominium Association to resort to said account, in addition to all other remedies afforded it in law or equity, in the event of a default of any of the financial obligations owed the Condominium Association. In the event that the Condominium Association shall need to resort to this account, the Boating Association shall replenish same to the \$20,000.00 amount in or within 45 days. The Boating Association shall provide evidence of said account to the Condominium Association within 20 days of such written request for same which shall be made no more frequently than once per year.
 - b. In lieu of wind and flood coverage in the Boating Association's property insurance, and subject to the provisions below, the Boating Association will maintain, in full force and effect, another account in the amount of \$51,000.00 in the joint names of the parties. Any withdrawal(s) will require the signatures of an Officer of both the Condominium Association and the Boating Association, along with the written approval of both of their respective Boards. The Boating Association agrees that these funds will be deposited into an account at a bank mutually agreed upon by and between the Treasurers of both the Boating Association and the Condominium Association who together shall have complete discretion in selecting the best account in which to deposit the funds in order to achieve the highest yields. The Treasurers will take into consideration the annual APY as well as any maintenance fees which may be applicable and which would offset the interest earned. The Boating Association Treasurer and the Condominium Association Treasurer may review this

account annually, or as they deem appropriate, towards the goal of maintaining these funds in an account at a bank with a competitive yield. If at any time maintenance fees are incurred on this account, they shall be withdrawn from the interest earned on this account, with no further additions required. The Boating Association and the Condominium Association agree that the interest that accrues in this account shall remain in this account for the purposes stated in this paragraph. This account, shall stand solely as security for the Condominium Association's obligations under the current, and any future, Lease(s) it enters into with the State of Florida. It is expressly understood by and between the parties that the extent of the obligation for which this account shall stand as security for is the removal of the docking facility, including the docking structure and equipment, and the restoration of the leased property to its natural state in the event of a major casualty wherein the docking facility is destroyed and then only in the event that the Boating Association is unwilling, in its sole discretion, or unable to rebuild the docking facility. In this event, and in this event only, it is agreed that these funds will be used to satisfy the Condominium Association's full and faithful performance of its obligation under the current and any future Lease it enters into with the State of Florida to remove the docking facility and restore the leased property to its natural state, and for no other purpose. In the event that either party refuses to sign for the legitimate withdrawal of funds, then that party shall be liable to the other party for their reasonable costs and attorney fees incurred in collecting same.

If the funds in this account are not enough to satisfy the Condominium Association's full and faithful performance of its obligation under the current and any future Leases it enters into with the State of Florida to remove the docking facility and to restore the leased property to its natural state then the Condominium Association shall provide written notice to the Boating Association of the balance of the amount incurred in fulfilling its obligations, along with a copy of the invoice(s). If the Boating Association fails or refuses to pay the unpaid balance within thirty (30) days of receipt of the written notice, the Condominium Association may pursue the Boating Association for such amounts, including reasonable costs and attorney's fees incurred in collecting the same. The Boating Association shall provide evidence of said account to the Condominium Association within 20 days of such written request for same which shall be made no more frequently than once per year.

This Account and these funds shall be required as security only for so long as the Condominium Association has liability under the current and any renewal(s) of the Lease and the Easement with the State of Florida. If and when the Boating Association is able to get the Lease and the Easement assigned to it so that the Condominium Association no longer has any liability thereunder, then the Boating Association shall no longer be required to maintain property insurance coverage and this fund shall be released back to the Boating Association without any further instructions. It is expressly understood and agreed by and between the parties hereto that this security is in lieu of surge, wind, and flood coverage in the Boating Association's property insurance. In no event shall these funds be used in the event of the Condominium Association's neglect or willful refusal to assign the Lease or Easement to the

Boating Association, or in the event of the Condominium Association's neglect or willful refusal, prior to said assignment and without court authorization, to renew the Lease or Easement. In the event that the Lease and Easement remain in the Condominium Association's name, and the Boating Association elects to purchase surge, wind and flood coverage, this Account shall be released back to the Boating Association without any further instructions.

8. **Dredging and Construction**: The Boating Association shall provide written notice to the Condominium Association as soon as they begin to formally discuss the need to dredge or engage in any major construction project involving the active usage of the common areas of the Condominium Association. The Boating Association shall endeavor to give the Condominium Association as much notice as possible, but in no event less than 60 days prior to the start of any such dredge or construction project, except in the case of an urgent need or safety concern. Major construction shall mean any construction that will exceed five business days from November 1 through the Monday after Easter, or fifteen business days from the Monday after Easter through October 31, unless otherwise approved by the Condominium Association Board on a case-by-case basis. Said contractors shall follow the Condominium Association rules for the BBC community relative to contractors and construction. This provision applies solely to the Boating Association and not to individual boat slip owners doing work or maintenance on their individual slip(s). The Boating Association agrees to keep the Condominium Association reasonably and seasonably informed as they are updated on the Contractor's scheduling. The Condominium Association shall fully cooperate with and assist the Boating Association in the permitting and performance of routine dredging and repairs and maintenance of the docking facility required to keep the boat slips and docks safe and operable. This cooperation shall be deemed to include, but shall not be limited to providing access to the premises and parking. Toward that end, the Condominium Association agrees that it will execute any required documents from the applicable governmental entity or contractor pertaining to said dredging or major construction project within 10 days of receipt of same. The Boating Association agrees that it will use the hydraulic dredging method, or a less intrusive method for dredging that is permitted by the State of Florida or any local, state or federal regulatory agency, in an effort to ensure the least amount of disruption to the Condominium Association. The dredging, including all permitting fees, shall be at the sole cost and expense of the Boating Association. If employing the hydraulic dredging method, the Boating Association will use its best efforts to ensure that the dredging operation occurs at a time of year (beginning the Monday after Easter thru October 31, or as otherwise permitted by the State of Florida or any local, state or federal regulatory agency, unless otherwise approved by the Condominium Association Board on a case by case basis) so as to be the least disruptive to the community, and in no event shall start dredging prior to 8:00 AM or continue after 5:00 PM, or occur on the weekends or major Federal Holidays (specifically New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, Christmas). If using an alternative, less intrusive method of dredging, namely, piping the sand directly into the Gulf of Mexico, then it is understood and agreed that the time restriction in this paragraph shall not apply as such method cannot occur during turtle season, so it will necessarily have to occur between November 1 and April 30, or as otherwise permitted by the State of Florida or any local, state or federal regulatory agency. Similarly, the Boating Association will ensure that no major

construction project will begin prior to 8:00 AM or continue after 5:00 PM or occur on the weekends or major Federal Holidays (specifically New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, Christmas) Additionally, except in the case of emergency, the Boating Association shall use its best efforts to ensure that any major construction shall be limited to the same time frame as all BBC Condo owners are limited to performing major construction. The Boating Association shall reimburse the Condominium Association for any costs of repair for any physical damage incurred by the Condominium Association to its common areas as a direct result of the dredging or construction activity performed by the Boating Association. No dredging fee or nuisance fee shall be paid to the Condominium Association.

In the event that a proposed Boating Association project would negatively impact a major project which the Condominium Association already has underway or is actively planning on beginning within 60 days following their receipt of written notice from the Boating Association, the parties shall work together to come up with a reasonable plan and timeline for each that will meet the needs of both the Condominium Association and the Boating Association. If they are unable to reach an agreement, then they agree that they will share equally the cost of an independent Arbitrator whose decision will be based upon the spirit and intent of this agreement and shall be final.

9. **Boating Association Membership:** With the exception of the Boating Association, the Membership in the Boating Association shall require ownership of both a condominium in the Condominium Association and a boat slip in the Boating Association. A certificate issued by the Boating Association designating the slip number will grant ownership of the use rights to said boat slip. When a unit owner in the Condominium Association, who also owns a boat slip, sells their condominium, and the sale does not include the boat slip, that owner can no longer be a member of the Boating Association or have any use of their boat slip. However, the slip owner will continue to be responsible for all dues, assessments, and other expenses related to their slip until it is sold. Boat slips shall only be sold to unit owners in the Condominium Association or the Boating Association. Sale of a boat slip owner's condominium does not result in the forfeiture of their slip, but it does mean that they are unable to use it as they have no right to be on the Condominium Association property. They may however, continue to own same, provided they remain current with all dues, assessments, and other expenses related to their slip, until they are able to sell it to another unit owner in the Condominium Association, and provided further that they maintain ownership pursuant to the Boating Association's Bylaws, Rules and Regulations and User Agreements as they now exist, and as they may be amended in the future.
10. **Payments to the State for Lease and Easement Fees:** As previously provided, the Boating Association will be responsible for any fees, taxes, and other related expenses incurred in connection with the Lease or Easement associated with the use of the property by the Boating Association. Inasmuch as the fees are currently billed directly to the Condominium Association as lessee under the Lease and grantee under the Easement, the Condominium Association agrees that upon receipt of said invoices, they will forward a copy of same to the Boating Association and the Boating Association agrees to pay

same in or within 10 days of receipt of same from the Condominium Association. It is the intent of all parties not to allow any lapse of the Lease or Easement with the State of Florida.

11. **Maintenance of Records:** The Boating Association will be responsible for any sales tax reporting and record keeping as required under the Lease. The Boating Association agrees to fully cooperate with Condominium Association in such reporting and record keeping by providing Condominium Association with all information concerning any transfers of any boat dock or slip within ten (10) business-days of submitting said document to the State of Florida. The Boating Association, to ensure full compliance with the State of Florida for so long as the Condominium Association remains a party to the Lease, shall provide the Condominium Association or the State of Florida with accounting records as required in the Lease.
12. **Boating Association Contractors:** The Boating Association shall contract with its own contractors, when necessary, for any maintenance for the docking facility. Said contractors shall follow the Condominium Association rules for the BBC community relative to contractors. The Condominium Association acknowledges that the boat slip owners are part of the BBC community and agrees that it will provide all reasonable accommodations, including access to the property and parking, for the Boating Association contractors as they do for Condominium Association contractors and Condominium Association unit owners contractors. The Boating Association shall notify the Condominium Association as soon as they begin to formally discuss the need for any major construction (excluding any emergency repairs), involving the active usage of the common area of the Condominium Association, in an effort to give the Condominium Association as much notice as possible, but in no event less than 60 days. The Boating Association will obtain and provide the Condominium Association with a copy of the contractor's business license (if required for the services being rendered by the contractor) and a copy of the contractor's Insurance documentation prior to the work commencing.
13. **Mangroves:** The Condominium Association shall notify the Boating Association in or within 30 days of scheduling its routine pruning of the mangroves. In the event the mangrove trees affect the boat docks, by hanging over the boat dock walkways, the Boating Association shall provide notice to the Condominium Association within 10 days of their desire to have that area pruned in which event the Condominium Association will ask their pruning contractor to give them a separate price for pruning so much of the mangroves as hangs over the docks and provide same to the Boating Association who shall pay said costs directly to the contractor.
14. **Electric and Water:** The Boating Association has its own electric and water meters and shall be liable to pay for the electricity and water supplied to the docking facility directly to the vendor.
15. **Boating Association:**

- a. The Boating Association shall provide a list of its current Boat Slip Owners and their contact information within 15 days of a request for same by the Condominium Association.
 - b. The Boating Association shall not permit any boat slips or docks to be rented to non-owners of the Condominium Association.
 - c. The Boating Association shall prohibit any commercial enterprise from any boat slip or docks, including, but not limited to, a fishing operation, a chartering operation, or a cruising operation.
16. **Fishing/Observation Pier:** The Fishing/Observation Pier is for the use and enjoyment of all members of the Condominium Association, their guests, and renters. All repairs and maintenance of the Fishing/Observation Pier shall be the responsibility of the Boating Association. As such, the Boating Association reserves the right to suspend or revoke the privileges of any member of the Condominium Association, who themselves or their renter, guest or invitee fails to abide by the Rules and Regulations of the Boating Association and/or causes damage, or creates a nuisance on the Fishing/Observation Pier. The Boating Association shall have discretion in this regard.

Each member of the Condominium Association, and their renters, guests, agents, invitees or licensees, as a condition of invitation to the premises of the docking facility owned by the Boating Association, assumes the sole responsibility for him or herself and his or her guests or invitees and all of their property. The Boating Association shall not be responsible for any loss or damage to any private property used or stored in or on the docking facility. To the extent not prohibited by law, any member of the Condominium Association, or their renters, guests, agents, invitees or licensees, or any other person who, in any manner, makes use of or accepts the use of the docking facility and any apparatus, appliance, facility, privilege, or service whatsoever owned, leased or operated by the Boating Association, or other activity operated, organized, arranged, or sponsored by the Boating Association which use shall include, but not be limited to use of the fishing/observation pier, shall do so at his or her own risk, and shall hold the Boating Association and their respective Officers and Directors, representatives, and agents (collectively, the "Boating Association") harmless from any and all resulting loss, cost, claim, injury, damage or liability sustained or incurred by him, her or it, and/or from any negligent, act, or omission of the Boating Association.

Each member of the Condominium Association, and their renters, guests, agents, invitees or licensees, as a condition of invitation to the premises of the docking facility shall comply with all federal, state, and local laws and regulations. Members of the Condominium Association shall be responsible for all fees and fines assessed against the Boating Association, and for any other damages incurred by the Boating Association, due to the Member of the Condominium Association, or their guests, and/or renter's violation of any such laws or regulations.

17. **Entire Agreement:** This Agreement contains the entire contract between the Parties. This Agreement may only be changed or modified with the affirmative vote of 66% of

the 198 Condominium Association Members (one vote per owner of each unit for a total of 198 possible votes) at a Special Member's Meeting, duly called and noticed, **AND**, the Affirmative vote of 66% of the 34 Boat Slips (one vote per owner of each slip for a total of 34 possible votes).

18. **Impossibility of Performance:** Notwithstanding the provisions of Section 17, the Parties agree that in the event that there is a change of circumstances which is outside of either parties' control, and which would make the continued performance of any provision of this agreement impossible or impracticable to perform, then that provision may be Amended by a majority vote of both parties Board of Directors. It is understood and agreed that this provision is meant solely to address changes of circumstances which would make a provision of this Agreement impracticable or impossible to perform. In this event, this Agreement may be amended, as narrowly as possible, so as to prevent a default. The parties expressly agree that any such Amendment will be crafted to, as closely as possible, effectuate and conform to the intent of this agreement.
19. **Florida Contract/Breach:** This Agreement shall be interpreted under Florida law. The Parties agree to provide a written notice of default, with a 15-business day right to cure, prior to taking any legal action. If there is a breach of this Agreement, and litigation is required to enforce its terms, the prevailing party in the litigation shall be entitled to recover their costs and reasonable attorney's fees from the other party, including any costs and reasonable attorney's fees incurred in collecting said attorney's fees. ALL PARTIES WAIVE THEIR RIGHT TO A TRIAL BY JURY.

Notwithstanding anything to the contrary herein contained, neither party shall have any authority to pass on to the other party any legal fees it incurs, without the prior written consent of the Party to which the legal fees are to be passed on, except as allowed by a court of competent jurisdiction.

20. **Assignment/Waiver:** This Agreement may be assigned only with the written consent of both Parties. The waiver by any party of a breach of any provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any subsequent breach by any party.
21. **Notice to Parties:** Any and all notices required or permitted to be given hereunder shall be served by the parties hereto, in writing, and shall be deemed served, if by personal delivery, on the date the same is actually received by the addressee thereof or the registered agent of said association; or, if by mail, on the third business day after the same is deposited with the United States Postal Service (or its successor), postage fully prepaid, addressed as hereinafter set forth; or, if by overnight messenger service (i.e. Federal Express) on the date of delivery by such overnight messenger service to the address as hereinafter set forth. Any notices sent by text or phone or email will not be deemed effective unless such notice is accepted, as served, in writing by the receiving party, but may be used for courtesy purposes. Notices by mail and by overnight messenger service shall be addressed as follows or to such other address as the party entitled to receive such notice may, from time-to-time hereafter, designate in writing by giving written notice pursuant hereto:

If to the Condominium Association:

BONITA BEACH CLUB ASSOCIATION, INC.
C/O FirstService Residential, Inc.
2950 North 28th Terrace
Hollywood, Florida 33020
(or the subsequent registered agent of record as
indicated in the Florida Secretary of State, Division
of Corporation's records)

With a copy to:

BONITA BEACH CLUB ASSOCIATION, INC.
C/O Harlan Stueven, President (or his duly elected
successor as indicated in the Florida Secretary of
State, Division of Corporation's records)
25730 Hickory Blvd., Unit 732
Bonita Springs, Florida 34134

If to the Boating Association:

BBC CLUB BOAT SLIPS, INC.
C/O Hamilton Mikes, P.A.
3301 Bonita Beach Road, Suite 200
Bonita Springs, Florida 34134
(or any subsequent registered agent of record as
indicated in the Florida Secretary of State, Division
of Corporation's records)

With a copy to:

BBC CLUB BOAT SLIPS, INC.
C/O Donna Luke, President (or her duly elected
successor as indicated on the Florida Secretary of
State, Division of Corporation's records)
29 Pebble Brook Drive
Middleboro, Massachusetts 02346

22. **Counterparts & Digital Execution:** This Agreement may be executed in counterparts (each of which shall be deemed an original but all of which together shall constitute one and the same Agreement) and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. In the event that any signature is delivered : (i) by electronic signature pursuant to Electronic Signatures In Global and National Commerce Act ("E-SIGN") or The Uniform Electronic Transactions Act ("UETA"), or similar laws, regulations, or orders of such signature (including, without limitation, through software programs such as DocuSign); (ii) by e-mail delivery of a ".pdf" format data file, "JPEG" file, or similar imaging format; or (iii) through any other electronic transmission, then, in each case, each party acknowledges and agrees that such electronic signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such were an original thereof. All signatory parties to this Agreement waive any right to claim that such respective electronic signature does not create a valid and binding contract memorializing the parties' intents through such Agreement's terms and

conditions. This Agreement shall be deemed to have been executed and entered into in Lee County, Florida.

23. **Warranties and Representations:** The Parties agree that this Agreement, and all of its terms and provisions, are the product of the parties' combined efforts, and that this Agreement shall not be construed in favor of one party and against a second party on the basis that the second party drafted this Agreement. Neither entry into this Agreement nor the consummation of the transaction contemplated hereby shall constitute a default under any other existing agreement to which either Association is a party to, legally or beneficially. Both parties warrant, that all terms, conditions, representations and warranties contained in this Agreement are agreed in accordance with their rules, bylaws, and declarations, and shall be binding upon and inure to the benefit of the parties hereto and their future members of the board, owners, legal representatives, successors and permitted assigns, as though in each case named herein.

24. **Term of this Agreement:** The term of this Agreement shall run until the earlier of:

- a. Such time as the Boating Association no longer desires to use the waterways as a boat docking facility; or
- b. The right to use the waterways as a boat docking facility is prohibited by law, as determined by a court of competent jurisdiction, or such other regulatory agency, and after exhaustion of all appellate remedies.

25. **Bankruptcy:** The Boating Association and the Condominium Association acknowledge and agree that the Boating Association has been making payments to compensate the Condominium Association for any and all costs, expenses, fees, charges, rents and the like, of every kind and nature, including, without limitation, the rental payments due to the State of Florida and any and all other costs in any way associated with the Lease or any other document or agreement in order to allow the Boating Association to operate and maintain the dock facility pursuant to an Indemnification Agreement for decades and that therefore any payment to the Condominium Association shall be deemed to be made in the ordinary course of business and shall not be deemed an insider payment. In the event that the Boating Association is ever forced to file for bankruptcy protection, the Boating Association shall make all required payments to the Condominium Association under this Agreement no less than 90 days prior to filing for bankruptcy protection. Any monies then being held in the Accounts required pursuant to Section 7 (a) and (b) of this Agreement shall be used to resolve any obligation to the Condominium Association prior to the filing of bankruptcy. If there is a dispute between the Condominium Association and the Boating Association in relation to the funds in the Accounts required pursuant to Section 7 (a) and (b) of this Agreement, the Boating Association acknowledges and agrees that it shall not file for bankruptcy protection until 90 days after the date the dispute is settled or resolved and any funds are distributed pursuant to the mutual agreement by the Parties, the settlement agreement, or a judgment, whichever the case may be.

26. **Titles and Severability:** The section titles used herein are not to be considered a substantive part of this Agreement, but merely descriptive aids to identify the section to which they refer. Use of the masculine gender includes the feminine and neuter, and vice

versa, where necessary to impart contextual continuity. The word "including" shall mean "including without limitation." If any section or provision herein is held invalid by a court of competent jurisdiction, all other sections or severable provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect. This Agreement shall be deemed as the full and final agreement between the parties and will replace the entire 1997 Indemnification Agreement, unless a court of competent jurisdiction shall deem this entire Agreement or any of its fundamental provisions to be invalid, in which case the 1997 Indemnification Agreement shall be immediately reinstated and shall be deemed to be in full force and effect.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto as their respective free, voluntary and duly authorized acts for the purposes set forth herein effective as of the day and year first above written.

Witness 
Signature
Steve C Bates
Print Name

Bonita Beach Club Association, Inc.

By: 
Print Name: Harlan Stueven
Its: President and Director

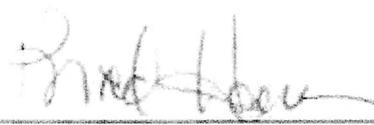
Witness 
Signature
Kim Dalton
Print Name

Bonita Beach Club Association, Inc.

By: 
Print Name: Steve Dalton
Its: Treasurer and Director

Witness 
Signature
Steve C Bates
Print Name

Bonita Beach Club Association, Inc.

By: 
Print Name: Brad Hanson
Its: Director

Witness

Stephen Luke
Signature

Stephen Luke
Print Name

B B C Club Boat Slips, Inc.

By: Donna Luke

Print Name: Donna Luke

Its: President and Director

Witness

Lorane Morisseau
Signature

Lorane Morisseau
Print Name

B B C Club Boat Slips, Inc.

By: Brian Morisseau

Print Name: Brian Morisseau

Its: Secretary and Director