

**AMENDED AND RESTATED
LEASE AGREEMENT
BETWEEN
MARTIN COUNTY
AND
UNITED STATES SAILING CENTER OF MARTIN COUNTY, INC.**

THIS AMENDED AND RESTATED LEASE AGREEMENT is made this ____ day of _____, 20____, by and between **Martin County**, a political subdivision of the State of Florida, having a mailing address of 2401 SE Monterey Road, Stuart, Florida 34996 (“County”), and **United States Sailing Center of Martin County, Inc.**, a non-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 1955 NE Indian River Drive, Jensen Beach, Florida 34957 (“Lessee”).

RECITALS

WHEREAS, the County is authorized pursuant to Section 125.38, Florida Statutes, to lease real property owned by the County to not-for-profit organizations organized for the purposes of promoting community interest and welfare; and

WHEREAS, the Lessee, is a Florida not-for-profit organization organized for the purpose of promoting community interest and welfare and has requested to lease County property for the purpose of operating a sailing center; and

WHEREAS, the parties entered into a Lease Agreement dated April 17, 2000 as amended by the First Amendment to Lease Agreement dated April 20, 2010 for property containing 2,480 sq.ft. of land located in Indian Riverside Park (“IRSP”) (collectively, the “Original Lease”); and

WHEREAS, the Original Lease expires April 16, 2035; and

WHEREAS, the County and Lessee desire to extend the term of and alter the terms under the Original Lease; and

WHEREAS, the County has determined that the property is required for the proposed use; and

WHEREAS, the County has found that the property is not currently needed for County purposes; and

WHEREAS, the County and Lessee, in their mutual interest, further wish to amend and restate the Original Lease as set forth below.

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NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals/Original, Conflicting and Capitalized Terms.** The above recitals are true and correct and hereby restated in their entirety. All of the terms and conditions of the Original Lease are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Original Lease. In the event of a contradiction, modification or inconsistency between the terms of the Original Lease and this Amended and Restated Lease (hereinafter referred to as the "Lease"), the terms of this Lease shall govern. Capitalized terms used in this Lease shall have the same meaning described for them in the Original Lease unless otherwise indicated herein.

2. **Property.** The County is vested with title to the property depicted on Exhibit "A," attached hereto and made a part hereof by this reference, containing approximately, 2.59 acres of land and a two-story building of approximately 3,343 sq. ft., built by Lessee, located in IRSP and known as 1955 NE Indian River Drive, Jensen Beach, Florida 34957 ("Premises").

3. **Demise of Premises.** The County, in consideration of the terms, covenants, conditions and agreements set forth in this Lease to be kept and performed by Lessee, does hereby lease to Lessee and Lessee does hereby lease from the County the Premises, as more particularly described in Exhibit "AA".

4. **Use of Premises.**

(a) The Premises shall be used by Lessee only for the purposes of providing a community sailing program and establishing a Small Boat Olympic Sailing Training Center. Except as specifically permitted by the terms of this Lease, such use shall be consistent with and shall not conflict with the use by the public and County of IRSP of which the Premises are a part. Nothing in this Lease shall be construed as limiting the rights of the public to have access to and use the beach area, roadways, parking areas and walkways located on the Premises in the same manner as the public use areas of IRSP except during regattas and events consistent with the terms of this Lease. Nothing in this Lease shall be construed as granting Lessee the right to have a concession on the Premises, except for the rental of sailboats, non-powered watercraft, and Lessee branded merchandise consistent with the terms of this Lease. Rental of boat storage space is prohibited. Additional concessions may be allowed solely as part of approved regattas and events on the Premises with a County Permit.

(b) Lessee shall furnish the County a list of its officers and directors and notify the County of the names of any new officers and directors at the time appointments are made. Lessee agrees to provide its By-laws to the County. Lessee shall furnish the County with the names and addresses of Lessee's officers or employees who shall have authority to pay Lessee's bills.

(c) Lessee agrees all persons engaged in any use or activity on the Premises shall be at all times, and in all places subject to Lessee's sole discretion, supervision and control and shall not be considered employees, agents or servants of the County.

5. **Term.**

(a) The term of the Original Lease commenced on April 17, 2000. The term of this Lease shall commence on _____ and will expire on April 16, 2060, subject to two (2) options to renew each for a ten (10) year period as described in Paragraph 5(b) (the "Term").

(b) No less than 180 days prior to expiration of this Lease, Lessee must provide the County with written notice of its intention to renew this Lease. Upon receipt of the notice from Lessee, the County will evaluate whether the Lease should be renewed, renewed with amendments, or not renewed subject to approval by the Martin County Board of County Commissioners in a public meeting. Lessee, subject to the County's consent, may renew the Lease for two (2) ten (10) year periods at the end of the initial Term, so long as it is not in violation of any of the terms and conditions of this Lease.

6. **Rent.**

(a) **Lessee's Rent.** As of the date of this Lease, Lessee's annual rent for the Premises shall be One Dollar (\$1.00), which Lessee shall pay to the County.

(b) **Manner of Payment.** All rental payments shall be paid in lawful money of the United States to the County, in care of the County's Real Property Manager at the address set out in Paragraph 25 entitled - "Notices" or such other address as shall be designated from time to time in writing by the County.

(c) **Privilege Tax.** At the time of paying rent, Lessee shall also pay County the privilege tax on Lessee's Rent levied under Section 212.031, Florida Statutes, in the amount that may be required by that law from time to time, the current amount being 5.7%, plus applicable discretionary sales surtax in the current amount of 0.5%, unless otherwise exempt.

(d) **Additional Rent.** All taxes, charges, costs, and expenses that Lessee assumes or agrees to pay under this Lease, together with all interest and penalties that may accrue thereon in the event of the failure of Lessee to pay those items, and all other damages, costs, expenses and sums that the County may suffer or incur, or that may become due, by reason of any default of Lessee or failure by Lessee to comply with the terms and conditions of this Lease, shall be deemed to be additional rent, and, in the event of nonpayment, the County shall have all of the rights and remedies provided by law and under this Lease for failure to pay rent.

7. **Improvements.**

(a) Lessee shall construct improvements on the Premises in accordance with the approved Development Order, attached hereto as Exhibit "B" and incorporated herein by this reference. Lessee may construct additional improvements, demolish and reconstruct improvements, or restore, replace and reconfigure improvements within the Premises at any time during the Term or any extended or renewal term of this Lease. Any permanent improvements shall be consistent with the architectural style and approved master plan for IRSP. Lessee shall provide enhanced landscaping on the Premises in an amount equal to one percent (1%) of the cost of the construction of any improvements constructed or installed by Lessee. Any changes to the existing improvements located on the Premises shall be subject to the County's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall submit

all plans and specifications for such changes to the improvements to the County Administrator, in writing. Lessee's obligation to obtain approval of the plans by the County Administrator is in addition to Lessee's obligation to obtain permits from the County, as necessary.

(b) It shall be Lessee's sole responsibility to obtain all necessary governmental approvals for any improvements to the Premises, including, but not limited to all necessary Martin County development approvals and permits, Martin County Building Department permits and other agency approvals, permits, and applicable submerged land leases, if required. Nothing herein shall be deemed to waive or imply waiver of any County regulation or fee applicable to the review, renovation or development of any improvements to the Premises by Lessee. Nothing herein shall be deemed to make the County a co-applicant with the Lessee for any governmental approval, including County approval. It is expressly understood, and agreed by Lessee, that County shall not be liable to Lessee for any expense or damage incurred by Lessee resulting from the failure of County or other governmental entity to approve any or all necessary governmental approvals or permits required for any improvements to the Premises.

(c) Lessee shall obtain a performance bond or other surety pursuant to Section 255.05, Florida Statutes, and approved by the County, prior to commencement of construction, alteration or demolition of any improvement. Such surety shall ensure payment of all costs and the proper and timely completion of all Lessee's improvements and shall be issued by a provider approved by the County, in an amount equal to One Hundred and Twenty Five Percent (125%) of the total cost of completion of such work with County named as an additional payee in the event Lessee fails to fully perform all the work to complete the improvements in a timely manner and in accordance with all requirements of this Lease.

(d) Any work done on the Premises by Lessee or on Lessee's behalf must be free of liens, done in a good and workmanlike manner and in compliance with all applicable federal, state and local laws and regulations. Lessee will ensure that any liens which do arise as the result of work for which Lessee is responsible to be promptly satisfied by payment or invalidated and released of record through appropriate judicial action. All improvements and structures made by Lessee shall be made and maintained at the expense of the Lessee and without cost or expense to the County.

(e) Any and all permanent improvements, including but not limited to, structures and fixtures shall be the property of the Lessee during the Term of this Lease. Upon termination, revocation or surrender of this Lease, such improvements shall be the property of the County without the necessity for any separately documented bill of sale or further action. Lessee's equipment and personal property on the Premises shall be Lessee's personal property whether or not said items are considered fixtures and attachments to real property under applicable laws, and Lessee shall remove said personal property prior to the termination of this Lease. Lessee's removal of Lessee's personal property shall be done in a manner that will restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted.

8. **Maintenance.**

(a) Throughout the duration of this Lease, Lessee shall, at Lessee's sole cost and expense, keep the inside and outside of the Premises in first class condition and repair,

including but not limited to, structural and nonstructural elements, interior and exterior, roofs, building systems, security and fire protection systems, landscaping, paving, landscaped areas and driveways, utility system and facilities (to the point of connection with public utility lines), fixtures and equipment, irrigation, docks touching the Premises, Lessee signage, and other improvements and do all repairs and alterations required by any laws, ordinances or requirements of public authorities. The County shall have no responsibility for maintenance, repairs, replacements and cleaning of the Premises.

(b) The two-story building on the Premises contains restroom facilities which shall be for the exclusive use of Lessee, its agents and invitees. Lessee shall be responsible for the cleaning, maintenance and repair of said restroom facilities. Lessee shall be responsible for the connection to the County sanitary sewer and water system. Lessee shall be responsible for all charges for utilities used at the Premises.

(c) Lessee shall maintain a service contract with an air conditioning contractor licensed in the State of Florida, and any system servicing the Premises, which firm shall regularly service and inspect the air conditioning unit(s) on the Premises in accordance with the manufacturer's requirements. Lessee shall furnish copies of all maintenance records and service reports to the General Services Department of the County on an annual basis.

(d) Any necessary repair work must be performed within ten (10) days of any written notice by County requiring such repair; provided, however, that such ten (10) day period may be extended in the event of catastrophic occurrence and damage to the Premises. Lessee agrees to make or contract for emergency repairs and provide protective measures necessary to protect the Premises from damage and to prevent injury to persons or loss of life.

(e) At the end of this Lease, Lessee shall deliver the Premises to the County in good repair and condition, reasonable wear and tear accepted, arising from Lessee's permitted use of the Premises as specified herein.

(f) The County shall be solely responsible for repairs and maintenance to the driveway that traverses the Premises connecting it to other areas of IRSP, related curbing, drainage, parking, and sidewalks adjacent to that driveway, and perimeter fences, and which have been or will be installed by the County.

9. **Landscaping and Shoreline Improvements.**

(a) Lessee shall install landscaping improvements on the Premises in accordance with the approved Landscaping Plan, attached hereto as Exhibit "C" and incorporated herein by this reference.

(b) Lessee and County shall jointly construct a shoreline stabilization project along the southern shoreline of the Premises, generally as depicted in Exhibit "C-1" attached hereto and incorporated herein by this reference. Exhibit "C-1" is currently a conceptual plan which may be modified for approval of required permitting. The plan that is approved for permitting shall be considered the final approved Shoreline Stabilization Plan, which shall replace the conceptual plan attached hereto and become Exhibit "C-1" upon the issuance of the required permits without

further action by the parties. The cooperation between Lessee and County for construction of the shoreline stabilization project is set forth in a separate agreement, an executed copy of which will be attached to this Lease.

(c) Lessee shall install landscaping improvements to the boat ramp area north of and adjacent to the Premises including the planting of mangroves at the northeast corner of the boat ramp area, as shown on Exhibit "C-2" attached hereto and incorporated herein by this reference. Lessee shall submit to the County a proposed planting plan within ninety (90) days after execution of this Lease. Following approval by the County, Lessee is responsible for obtaining all required permits. Within ninety (90) days after approval of the planting plan by the County, the Lessee shall complete installation of the approved landscaping improvements. The approved planting plan shall replace the location Exhibit "C-2" upon issuance of the required permits without further action by the parties.

(d) Lessee shall be solely responsible for the installation, maintenance, and re-installation of all required landscaping improvements as shown in Exhibits "C" and "C-2". Lessee shall be solely responsible for the maintenance and re-installation of all required landscaping improvements as shown in Exhibit "C-1". Landscaping improvements must be maintained in accordance with the associated Exhibit, "C", "C-1" or "C-2" and with the approved Development Order, Exhibit "B".

10. **Shared Parking Facilities.**

(a) Automobile and truck parking shall be limited to parking spaces located on the Premises as provided in the approved Development Order, Exhibit "B". Said spaces shall not be used for boat trailer parking or boat storage. Lessee may allow overflow parking on the grass area of the Premises immediately to the right of the entrance and eastward to the roundabout. Lessee shall post signs prohibiting parking and shall at no time allow parking on the grass area of the Premises eastward of the roundabout. Notwithstanding the remainder of this paragraph, parking of no more than four (4) vehicles is permitted on the existing gravel parking area eastward of the roundabout; parking of boats and boat trailers in this area is prohibited. The parking areas on the Premises shall not be expanded past what is shown on the approved Development Order, Exhibit "B" and within the areas depicted in Exhibit "D" attached hereto and incorporated herein by this reference.

(b) During regattas or other events which meet the requirements of Article 12 of this Lease, Lessee may:

(i) restrict access to the Premises to event related parking and access;

(iii) for regattas with a County Permit from the Parks and Recreation Department, allow automobile, truck and boat trailer parking in the parking lot in IRSP located north of the Mansion at Tuckahoe on the east side of the roadway once said parking lot has been constructed. Construction of this parking lot is a joint project between Lessee and County, the details of which are set forth in a separate agreement, an executed copy of which will be attached to this Lease. Parking in this area is limited to the parking lot constructed in accordance with the agreement between the parties. Following any use of this area by Lessee or Lessee's invitees,

Lessee is solely responsible for returning this area to the condition it was in prior to such use; and

(iv) for regattas with a County Permit from the Parks and Recreation Department, allow boat and trailer parking in the boat ramp parking area located adjacent to and immediately north of the Premises, as shown in Exhibit "D-1". Use of this parking area must be specifically noted in the County Permit issued for the regatta and the Lessee is solely responsible for closing the boat ramp and providing personnel and signage approved by the County to inform the public prior to and during the regatta and to redirect non-regatta traffic from use of the boat ramp. Parking in this area is limited to the defined parking spaces. Following any use of this area by Lessee or Lessee's invitees, Lessee is solely responsible for returning this area to the condition it was in prior to such use.

(v) for regattas with a County Permit from the Parks and Recreation Department, where the Lessee utilizes the boat ramp parking area as shown on Exhibit "D-1", the County grants the Lessee a limited access easement to allow access from the Premises to the boat ramp parking area as shown in Exhibit "D-1". This limited access easement is to be used by Lessee solely to facilitate ingress and egress between the Premises and the boat ramp parking area as stated herein. The Lessee is solely responsible for managing the flow of traffic through the easement, and for returning this area to the condition it was in prior to such use.

Lessee shall be responsible to repair any damage to the Premises caused by said parking. In no event shall vehicles be parked in such a manner as to block or restrict the free flow of public pedestrian and vehicular traffic on the roadway and sidewalks off the Premises.

(c) Unless specifically authorized by the County on an event by event basis, Lessee, its agents and invitees, shall not park automobiles, trucks and/or boat trailers, or store boats, on the boat ramp facility that is located adjacent to and immediately north of the Premises. In the event Lessee, or its agents or invitees, engages in such unauthorized parking or storage, Lessee shall immediately cause the unauthorized vehicles, trailers, or boats to be removed from the boat ramp facility. If such unauthorized vehicles, trailers or boats are not removed within forty-eight (48) hours of County's written notice (which notice may include fax or email) the County shall have the right to remove such property, or contract for such removal, and invoice Lessee for all costs of such removal. Lessee agrees to pay such invoice within thirty (30) days after receipt of said invoice. Failure to pay as required herein shall constitute a default of this Lease.

11. **Boat Storage**. Lessee's storage of boats on the Premises will at all times be consistent with and not exceed storage location and availability as depicted on Exhibit "E", attached hereto and incorporated herein by this reference, consistent with the approved Development Order, Exhibit "B". Lessee may store small non-powered watercraft ("small" as used herein shall mean not more than nineteen (19) feet in length) and related equipment on the ground floor of the existing two-story building on the Premises. Lessee may store up to forty (40) non-powered watercraft no greater than fifteen (15) feet long along the northern shoreline of the Premises. Lessee may store up to sixty (60) non-powered watercraft no greater than fifteen (15)

feet long on racks located northerly of and immediately adjacent to the existing two-story building on the Premises. Lessee may store motorized watercraft used solely as safety powerboats and no greater than twenty-two (22) feet long on the Premises; however, any such motorized watercraft must be launched and retrieved using an off-site boat ramp facility. In the event that the storage area on the ground floor of the said two-story building, and the shoreline of the Premises, and in the said racks are at capacity, the Lessee shall, at Lessee's expense, use off-site storage facilities located by Lessee. In no event shall Lessee park or allow to be parked boats along the shoreline of the Premises so as to cause damage to mangroves or other protected vegetation either above or below the waterline. Storage of boats on the Premises is limited to Lessee owned watercraft. In the event the boat ramp facility located adjacent to and immediately north of the Premises is used for launching or retrieving watercraft, the trailers must be parked on the Premises and not at the boat ramp facility.

12. **Regattas and Events.**

(a) Lessee must attend and participate in the monthly Park Partners Meetings to discuss and coordinate event schedules to ensure all regattas and events do not create conflict with other permitted events. All regattas and events need to be coordinated during the monthly Park Partners Meetings and put on the master calendar for IRSP to ensure conflicts do not exist. Lessee acknowledges and agrees that all regattas and events shall be operated consistent with the requirements set out in the County's Permit Addendum, incorporated herein and as may be amended from time to time.

(b) Lessee may conduct regattas of up to forty (40) sailboats or less at the Premises without a County Permit if there are no vendors and parking for the event is completely contained on the Premises.

(c) Lessee may utilize the grassy area directly south of the boat ramps and adjacent to the Premises, as shown in Exhibit "F" for small boat staging during regattas, in accordance with the event site plan provided by Lessee as part of the County Permit from the Parks and Recreation Department. Following any use of this area by Lessee or Lessee's invitees, Lessee is solely responsible for returning this area to the condition it was in prior to such use.

(d) Lessee may allow outside vendors to sell related clothing, equipment, and sailboat parts only as part of an event or regatta with a County Permit from the Parks and Recreation Department.

(e) Lessee may conduct regattas of greater than forty (40) sailboats at the Premises up to eight (8) times per calendar year with a County Permit from the Parks and Recreation Department for each such regatta. Such regattas may include vendors and utilize parking and small boat staging off Premises as specified in the County Permit consistent with Article 10 of this Lease.

13. **Scholarship Programs.** Lessee agrees to coordinate with the County to administer and implement a scholarship program to provide greater public access to Lessee's Summer Recreation Junior Sailing Program and Community Sailing Program. Lessee agrees to offer forty (40) or one third (1/3) of the total spaces, whichever is smaller, as no fee scholarships per year, to

such programs.

(a) **Summer Recreation Junior Sailing Program**. Lessee agrees to provide on an annual basis a basic introductory sailing program for children ages 5-17 with limited or no prior sailing experience. This shall be a ten (10) week program managed by the Lessee and operated from 9:00 a.m. - 4:00 p.m., Monday through Friday during the summer.

(i) Objectives:

a. Students to demonstrate familiarity with sailing nomenclature and terminology.

b. Students ability to rig and unrig pram of similar sailboat

c. Safety afloat including proper use of personal floatation device and self-rescue skills.

d. Basic dingy handling, understanding of the points of sail, tacking, jibing, docking and mooring.

(ii) Lessee will determine if participants are eligible for scholarships. The County will review and approve scholarship criteria.

(iii) Lessee will provide the sail craft, personal floatation device and instructor(s).

(b) **Community Sailing Program**. Lessee agrees to provide a community instructional sailing program for all ages. The program shall be in accordance with U.S. Sailing guidelines. This program shall be open year round from 10:00 a.m. - 6:00 p.m. Wednesday through Sunday. During the Summer Recreation Junior Sailing Program the hours of operation are extended to include Mondays and Tuesdays.

(i) Objectives:

a. Ability to demonstrate familiarity with sailing nomenclature and terminology.

b. Ability to rig and unrig pram of similar sailboat.

c. Safety afloat including proper use of personal floatation device and self-rescue skills.

d. Basic dingy handling, understanding of the points of sail, tacking, jibing, docking and mooring.

(ii) Lessee will determine if participants are eligible for the community program. The County will review and approve the eligibility criteria.

(c) Fees for programs available to the general public will be on a scale similar

to other recreational programs offered by the County and other public sailing programs in South Florida. Fees shall be reviewed by the County on an annual basis to ensure rates are comparable for comparable programs.

14. **Compliance with Laws.** Lessee shall, at Lessee's sole cost and expense, comply with all federal, state, and local laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances.

15. **Indemnification/Insurance/Casualty.** Lessee shall procure and maintain in force at its expense during the Term of this Lease the following:

(a) Commercial general liability insurance adequate to protect the County against liability for any and all damage claims in a minimum amount of One Million and no/100 Dollars (\$1,000,000.00) per claim for bodily injury and property damage and an aggregate amount of Two Million and No/100 Dollars (\$2,000,000.00). A certificate of insurance evidencing such insurance and listing the County as an additional insured shall be provided to the County prior to utilization of the Premises and will be provided annually thirty (30) days prior to the anniversary date of this Lease. Such policy shall be non-cancelable with respect to the County except upon thirty (30) days prior written notice to the County, and a substitute policy meeting the requirements of this Lease shall be provided prior to the effective date of any such cancellation. The insurer will provide notice to County and Lessee ten (10) days prior to cancelation of the policy in the event of cancelation for non-payment of premium. A waiver of subrogation must be provided.

(b) Applicable worker's compensation insurance for all its employees employed in connection with any business operated under this Lease. Such insurance shall fully comply with the Workers Compensation Law, Chapter 440, Florida Statutes. The workers compensation insurance policy required by this Lease shall also include Employers Liability. Lessee shall provide proof of worker's compensation insurance as required by law, if applicable and a waiver of subrogation must be provided.

(c) Property insurance coverage including Building Ordinance & Law coverage, fixtures, equipment, tenant improvements and betterments. Lessee is responsible for insuring its own personal property as well as property of others held in Lessee's care, custody and control. Peril coverage equivalent to ISO special cause of loss form including perils of fire, windstorm/hail, earth movement, theft, malicious mischief, sprinkler leakage, extended coverage, vandalism and extended hazards coverage insurance in an amount of not less than one hundred percent (100%) of the replacement value of any improvements and betterments located on the Premises in accordance with normally accepted standards in the insurance industry in the event of a fire or other casualty and such policy shall name the County as additional named insured and as loss payee. Such policy shall be non-cancelable with respect to the County except upon thirty (30) days prior written notice to the County, and a substitute policy meeting the requirements of this Lease shall be provided prior to the effective date of any such cancellation. The insurer will provide notice to County and Lessee ten (10) days prior to cancelation of the policy in the event of cancelation for non-payment of premium. A waiver of subrogation will be provided.

(d) Adequate flood insurance from a provider approved by the County, in an amount which would be sufficient to cover all damages to the real property, fixtures and structures upon the Premises, in an amount equal to the full replacement cost thereof.

(e) Watercraft liability protection and indemnity coverage for vessels including bodily injury/property damage liability resulting from operations and use of boats in a minimum amount of One Million and no/100 Dollars (\$1,000,000.00) per claim and an aggregate amount of Two Million and No/100 Dollars (\$2,000,000.00). Coverage should extend to physical damage to piers, wharves, and similar structures along waterways, as well as liability for injury to passengers, crew members, persons on other boats, etc, including Jones Act coverage, as applicable. Lessee shall also ensure that each watercraft participating in an event or regatta on the Premises has watercraft liability coverage.

(f) The County shall not be liable for any damage or liability of any kind or for any injury to or death of any persons or damage to any property on or about the Premises from any cause whatsoever, except in the instance of the County's negligence or willful misconduct.

(g) For the sum of ten dollars (\$10.00) consideration, receipt of which is hereby acknowledged, Lessee shall indemnify the County, its officers, employees, and agents, against all claims, liabilities, loss or damage whatsoever on account of any loss, injury, death or damage arising from the Lessee's use of the Premises. Lessee hereby waives all claims against the County, its officers, employees, and agents, for damages to the buildings and improvements that are now on or hereinafter placed or built on the Premises and to the property of Lessee in, on or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time, except those caused by the negligent act or omission of the County, its officers, employees, and agents. Lessee agrees to hold the County harmless from and against any and all claims, lawsuits, judgments, or similar causes of action, for any injuries to persons or property arising out of the activities conducted by Lessee on the property described herein. Further, Lessee agrees to defend and hold the County harmless against any and all such claims and suits as described above at Lessee's sole cost and expense, including attorney's fees and court costs at every level including on appeal, with no cost and expense to be incurred by the County. Lessee agrees to include the County in any and all Release and Waiver of Liability forms signed by participants and spectators.

(h) Lessee's sole right of recovery shall be against its insurers for losses or damage to stock, furniture and fixtures, equipment, improvements and betterment.

16. **Damage to or Destruction of Premises.**

(a) In the event that structural or permanent portions of the Premises shall be partially damaged by fire or other casualty, the Lessee shall give immediate notice thereof to the County and Lessee shall repair same to the extent of insurance proceeds, unless County determines that the damage is so extensive that the repair or rebuilding is not feasible. Lessee's insurance shall include a provision allowing proceeds to be used to build elsewhere. In the event of the Premises being damaged to such an extent as to render it necessary in the sole judgment of the County to not rebuild same, then, at the option of the County and upon notice to Lessee, this Lease

shall cease and terminate.

(b) The Lessee's obligations to rebuild or repair under this Section shall include restoring the Premises to substantially the condition that existed prior to the casualty, including but not limited to the structural or permanent portions of the Premises and building signs, fixtures, furnishings, equipment, improvements and other items in or about the Premises in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

17. **Non-Discrimination.** The LESSEE for itself, and its permitted successors in interest, as a part of the consideration for this Lease, does hereby covenant and agree that:

(a) No person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises or the programs offered by Lessee on the Premises on the basis of age, sex, physical handicap or other disability, race, color, national origin, religion or ancestry; and

(b) The Lessee shall not discriminate against any employee or applicant for employment in connection with the Premises and the leasehold estate granted hereunder with respect to hiring, tenure, terms, conditions or privileges or employment, or any matter directly or indirectly related to employment on the basis of age, sex, physical handicap or other disability, race, color, religion, national origin or ancestry; and

(c) The Lessee's facilities and programs, including the Premises, shall from time to time and at all times comply with the Americans with Disabilities Act ("ADA"). Upon the signing of this Lease and as amended from time to time, Lessee shall provide the County with an ADA compliance plan in conformance with ADA requirements for its use of the Premises and for its regattas. Prior to any event held by the Lessee on the Premises or in IRSP for which an ADA compliance plan has not been previously provided, the Lessee shall provide the County with an ADA compliance plan in conformance with ADA requirements.

18. **Control.** The term "control" as used herein shall mean the rights and obligations of Lessee as to the occupancy, use, maintenance and repair of the Premises. The officers of Lessee, as amended from time to time, are to be considered "authorized persons" for the purposes of issuing a trespass warning on the Premises. The Premises shall be under the control of the Lessee, except for the paved roadways, paved parking areas, paved walkways and signs installed by the County that are, and from time to time will be, located on the Premises, all of which will be open to the public and maintained by the County. Lessee shall have no right to close, alter or remove said paved roadways, paved parking, paved walkways and signs installed by the County without the express written consent of the County which may be withheld in the County's sole discretion. The County retains the unlimited right, in its sole discretion, to construct and/or install additional improvements on the Premises. The County shall have the right at any time to remove any and all improvements installed by the County on the Premises. Lessee may restrict use of the paved roadways and parking areas consistent with Article 10 of this Lease.

19. **Utilities and Taxes.**

(a) Lessee shall have sole responsibility for the cost of installation, connection

and usage of any water services, electricity, telephone, cable, internet, and wireless communication, solid waste and sewerage services to the Premises throughout the Term of this Lease. Lessee shall have sole responsibility for ensuring that any separate meters and/or submeters and bills are used for all utilities.

(b) Lessee shall make all repairs, replacements and alterations necessary to maintain in good condition all lines, apparatus, ducts, and equipment relating to utilities at all times during this Lease.

(c) Lessee is required to pay all taxes lawfully levied against the Premises during the Term of this Lease, if any.

20. **Default; Termination.**

(a) The County shall have the right to terminate this Lease upon the occurrence of any of the following, hereinafter referred to as "Event of Default":

- (i) institution of proceedings in voluntary bankruptcy by Lessee;
- (ii) institution of proceedings in involuntary bankruptcy against Lessee if such proceedings continue for a period of ninety (90) days and are not dismissed;
- (iii) assignment of this Lease for the benefit of creditors;
- (iv) failure to operate the Premises continuously, actively and in good faith consistent with the purposes stated in this Lease;
- (v) failure to comply with the terms and conditions of this Lease;
- (vi) failure to obtain or comply with the terms of a County Permit required by this Lease;
- (vii) failure to enter into or comply with the separate agreement for the shoreline stabilization project;
- (viii) failure to comply with the separate agreement for the shared parking facility in IRSP, north of the Mansion at Tuckahoe and east of the roadway once the agreement is entered into;
- (ix) abandonment by Lessee of the Premises or discontinuation of operations identified in this Lease at the Premises for more than thirty (30) days; charging for use of the Premises; default, non-performance or other non-compliance with any covenant, requirement or other provision of any nature whatsoever under this Lease; or
- (x) violation of any federal, state or local law.

(b) Upon the occurrence of an Event of Default, the County shall send a written notice to Lessee, in the manner set forth in Article 25 of this Lease, setting forth the Event of Default in specific detail and the date this Lease shall terminate in the event Lessee does not cure the default.

(c) Within thirty (30) days following receipt of a default notice, Lessee shall have cured the default to the reasonable satisfaction of the County.

(d) In the event Lessee fails to cure the Event of Default within thirty (30) days, this Lease shall be deemed to be terminated and Lessee will turn over the Premises with no further action by the County. In no event, however, shall such termination relieve Lessee of its obligation to pay any and all remaining rent due and owing to the County for the period up to and including the date of termination or to provide any and all remaining reports to the County for such period.

(e) Except as otherwise provided in this Lease, neither party shall be deemed in default or in breach of this Lease to the extent it shall be unable to perform due to an event of *Force Majeure*. For the purpose of this Lease, *Force Majeure* shall mean and include any act of God, accident, fire, lockout, strike or other labor dispute, riot or civil commotion, act of a public enemy, failure of transportation facilities, enactment, rule, order, or act of government or governmental instrumentality (whether domestic or international and whether federal, state or local, or the international equivalent thereof), failure of technical facilities, or any other cause of any nature whatsoever beyond the control of either party which was not avoidable in the exercise of reasonable care and foresight.

21. **Lessee Obligations.**

(a) Lessee agrees to operate the Premises open to the public for the above described permitted use a minimum of five (5) days per week with minimum hours of 10 a.m. to 4 p.m. Hours of operation shall be posted on or around the entrance.

(b) Lessee shall engage a qualified experienced facility manager for its operations who shall be physically available during reasonable operating hours. The qualifications for such manager shall be submitted to the County upon request. Lessee agrees a designated assistant manager shall be available when the manager is not on duty or available.

(c) Lessee shall provide suitable trash containers and separate recycling containers. Should Lessee not meet this requirement, Lessee agrees to secure a contracted waste collection service.

(d) Lessee shall provide and maintain an active website listing, at a minimum, a copy of its schedule of activities to be held on the Premises, a listing of its officers/directors and general contact information.

(e) Lessee shall advertise annually in a newspaper of general circulation within Martin County and on its website for membership recruitment and once for each event during the Term of this Lease. The Lessee agrees to establish a schedule of reasonable fees for its uses including membership fee and other use fees for members and non-members and agrees to maintain adequate records and internal controls to ensure that fees collected are used by the Lessee

for the operation of the Premises as permitted by this Lease, including but not limited to employee salaries and building maintenance. The Lessee agrees to submit its schedule of fees to the County for its review on or before September 1 of each year. The Lessee and the County agree that, in the event that the County does not approve the Lessee's fee schedule, the County's determination of reasonable fees shall be the final determination. If the County fails to act within thirty (30) days, upon Lessee's request for approval of the fee schedule, such schedule shall be deemed approved for that fiscal year.

(f) Lessee acknowledges and agrees that it is prohibited from possessing, dispensing, selling, or giving away any cigarettes or tobacco products of any nature whatsoever from, in, around or in connection with the Premises. Alcoholic beverages may be sold, dispensed, given away, and consumed in the Premises during events in compliance with Martin County and State of Florida laws, rules and regulations.

(g) Lessee shall annually ensure that all of its volunteers and employees have passed a Level 2 background screening at the expense of Lessee and shall submit to the County a signed attestation attesting to compliance with the provisions of Chapter 435, Florida Statutes. Volunteers who assist on an intermittent basis for less than ten (10) hours a month and are always within the line of sight of a background screened individual or who assist on an intermittent basis and have no interaction or possibility of interaction with children may be exempted from the background screening requirement and will be included in the attestation as exempt. Lessee shall also ensure that none of its volunteers and employees are a sexual predator/sexual offender. Information received from these background screenings will be used to determine if Lessee is in compliance.

22. **Quiet Enjoyment.** The County hereby covenants that Lessee shall have quiet and peaceful enjoyment of the Premises throughout the Term of this Lease as long as Lessee is not in default hereunder. The County and its agents, upon reasonable written notice (except in case of emergency), may make periodic inspections of the Premises to determine whether Lessee is operating in compliance with the terms and conditions of this Lease. Lessee shall be required to make any and all changes required by the County which are reasonably necessary to ensure compliance with the terms and conditions of this Lease and/or any applicable law(s) or regulation(s).

23. **Hazardous Substances.** Lessee acknowledges and agrees that it has been informed of the possible presence of pathogens, asbestos or any other potentially hazardous substances that may be present in, on or about the Premises. To the extent that pathogens, asbestos or any other potentially hazardous substances may exist in, on or about the Premises, then Lessee shall have the obligation to properly remove and dispose of such pathogens, asbestos or any other potentially hazardous substances at Lessee's sole cost and expense and shall indemnify and hold the County harmless from any liability or damage incurred by Lessee in connection with the presence of any pathogens, asbestos or any other potentially hazardous substances existing on the Premises. As used herein, the term "hazardous substance" means: (a) any "hazardous substance" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, as well as any regulations promulgated thereunder; and (b) any "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended from time to time, as well as any regulations promulgated thereunder.

24. **Prohibition on Assignment and Encumbrances.**

(a) Lessee shall not mortgage, pledge, or encumber this Lease, in whole or in part, or the leasehold estate granted under this Lease, to any other person, firm or entity. Any attempted mortgage, pledge, or encumbrance of this Lease, or the leasehold estate granted under this Lease, shall be void and may, at the sole option of the County, be deemed an event of default under this Lease. This covenant shall be binding on the successors in interest, assignees and sublessees of Lessee.

(b) Lessee shall not assign this Lease or sublet the Premises to any other party without the prior express written approval of the County. Any attempt to assign this Lease or sublet the Premises without the prior express written approval of the County will constitute an automatic termination of this Lease. This covenant shall be binding on the successors in interest, assignees and sublessees of Lessee.

(c) Lessee shall not pledge the County's credit or make the County a guarantor or surety for any contract debt, obligation, judgment, lien or any form of indebtedness. Lessee warrants and represents that it has no obligation or indebtedness which would impair its ability to fulfill the terms of this Lease.

25. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be deemed effective upon personal delivery, or three (3) days after being deposited in the U.S. Mail, registered or certified, and postage prepaid, or one (1) day after being deposited with a recognized overnight delivery service or electronic transmission. Such notices shall be addressed to the party at the addresses shown below, or at such other address or addresses as either party shall designate to the other in writing in accordance with this paragraph:

As to the County: Martin County
 ATTN: County Administrator
 2401 SE Monterey Road
 Stuart, Florida 34996
 Phone: 772-288-5400

With a Copy to: Martin County
 ATTN: Real Property Manager
 2401 SE Monterey Road
 Stuart, Florida 34996
 Phone: 772-288-5400
 e-mail: real_property@martin.fl.us

As to Lessee: United States Sailing Center of Martin County, Inc.
 1955 NE Indian River Drive
 Jensen Beach, FL 34957
 ATTN: Alan Jenkinson
 Phone: 772-334-8085
 e-mail: alan@usscmc.org

26. **Miscellaneous.**

(a) If any provision of this Lease shall be determined to be unenforceable or invalid, the same shall be struck from this Lease and the balance of this Lease shall not be affected thereby and shall be valid and enforced to the fullest extent permitted by law.

(b) The captions contained herein are for convenience and reference only and shall not be deemed a part of this Lease.

(c) This Lease shall be construed and governed in accordance with Florida law. The parties to this Lease have participated fully in the negotiation and preparation in this Lease and, accordingly, this Lease shall not be more strictly construed against one of the parties to this Lease.

(d) In the event of a dispute regarding this Lease, venue shall be in the appropriate Court in and for Martin County, Florida.

(e) The County shall not be deemed, by virtue of this Lease or any action taken hereunder, to have become a partner (or) joint venture with Lessee.

(f) This Lease may not be changed or modified except by an agreement in writing signed by the parties.

(g) This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(h) All prior and contemporaneous oral and written representations and communications between the parties are superseded by and merged into this Lease, and do not form the basis of any bargain which differs from the express provisions hereof.

(i) The rights and remedies with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies available to either party in law or equity.

(j) In connection with any litigation (including all appeals there from) arising out of this Lease, the parties expressly agree that each party will bear its own attorney's fees and court costs incurred in connection with this Lease. Further, the parties expressly and specifically waive the right to a jury trial in any way connected with this Lease.

(k) Nothing contained in this Lease shall be deemed to create or be construed as creating in Lessee any ownership interest in or to the Premises.

27. **Records.**

(a) Lessee agrees to keep books, accounts and records that reflect all revenues and expenditures received in connection with the management and operation of the Premises. The books, accounts and records shall be maintained in accordance with generally accepted accounting

principles at Lessee's principal place of business. Lessee shall make the books, accounts and records required to be maintained hereunder available to the County for examination or audit during normal business hours, upon five (5) days' written notice. In addition, Lessee shall provide the County with a copy of its annual audit and other financial statements relating to Lessee's occupancy and use of the Premises.

(b) Lessee must provide public access to all records concerning this Lease according to applicable Florida laws including Chapter 119, Florida Statutes. If Lessee asserts any exemptions to Florida's public record laws, Lessee has the burden of establishing and defending the exemption.

28. **RADON GAS:** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

29. **No Waiver.** There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other party.

30. **Mediation.** In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Martin County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ATTEST:

COUNTY:
**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

CAROLYN TIMMANN, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER

HAROLD E. JENKINS II, CHAIRMAN

APPROVED AS TO FORM & LEGAL
SUFFICIENCY:

SARAH W. WOODS, COUNTY ATTORNEY

ATTEST:

LESSEE:
**UNITED STATES SAILING CENTER OF
MARTIN COUNTY, INC.**

DAVE OTTAVIANI, SECRETARY

CHARLIE MacNIDER, PRESIDENT

EXHIBIT "AA"
PREMISES

EXHIBIT "B"
DEVELOPMENT ORDER

EXHIBIT "C"
LANDSCAPING PLAN

EXHIBIT “C-1”

SHORELINE STABILIZATION PLAN

EXHIBIT “C-2”

OFF-SITE LANDSCAPING IMPROVEMENTS

EXHIBIT "D"
ON PREMISES GRASSY AREA PARKING

EXHIBIT "D-1"

OFF PREMISES BOAT RAMP PARKING AREA

EXHIBIT "E"
ON PREMISES BOAT STORAGE AREAS

EXHIBIT "F"

OFF PREMISES GRASSY AREA FOR BOAT STAGING