

# Indemnification, Release, and Waiver of Liability Agreement

And

## Permission to Store Equipment/Dumpster

WHEREAS, Freeman and Hasselwander Resort Properties, LLC (“Owner”) is the owner of the concrete road area located at the Southwest termination point of Silver King BLVD at STRAP #0050E 0000 on or about the Tarpon Point Marina property, Cape Coral, Florida (“Premises”), and is willing to permit [REDACTED] to use the Premises for the purpose of placing a [REDACTED] yard dumpster performing work on the Tarpon Point Landings- [REDACTED] Silver King Blvd, unit # [REDACTED] unit who will take full responsibility for the liability and cleanliness of the dumpster located in the same vicinity. The permission given may be revoked at any time and is non-exclusive.

In consideration for being provided permission to access to and use of the Premises, [REDACTED] (Builder) and [REDACTED] (Owner at Tarpon Landings) hereby stipulates and agrees:

**1. Use of Premises.** [REDACTED] (Builder) understands and agrees that it may only use the Premises for the purposes set forth in this Indemnification, Release, and Waiver of Liability and Permission to place a dumpster. This permission to place dumpster terminates upon [REDACTED] completion of work at Tarpon Point Landings or one (1) year from the date of execution of this document, whichever comes first. [REDACTED] (Builder) further agrees that it is responsible for the proper use and care of the Premises and any of Owner’s property thereon, and that Builder will be liable for the replacement cost of any Owner property which is damaged, destroyed or lost. [REDACTED] (Builder) also understands that it is liable for any damage, destruction, and/or loss that its activities may cause to any third party(s) property. [REDACTED] (Builder) understands that the permission provided by the Owner to it to use the Premises may be revoked at any time for any reason by the Owner and if revoked, it must safely remove its property from the Premises without delay.

**2. Assumption of Risk.** [REDACTED] (Builder) understands and acknowledges that the activities that take place on the Premises may be dangerous and may involve risk to [REDACTED] Builder, its officers, employees, and agents and may sustain serious injury, temporary or permanent disability, death, and/or property damage. [REDACTED] (Builder) understands that the Premises is an uncontrolled area in which there is no security present or any other restriction to prevent any person from accessing the stored equipment and property. [REDACTED] (Builder) assumes all of the risk, both known and unknown, that is present. [REDACTED] (Builder) understands the Owner of the Premises does not provide any security services for the area. [REDACTED] (Builder), ITS OFFICERS, EMPLOYEES, AND AGENTS VOLUNTARILY AND FREELY ASSUMES ALL RISKS AND DANGERS THAT MAY OCCUR PURSUANT TO ITS USE OF THE PREMISES, INCLUDING THE RISK OF INJURY, DEATH, OR PROPERTY DAMAGE.

**3. Release from Liability.** [REDACTED] (Builder) hereby agrees, to fully and forever discharge and release Owner and its affiliates, and their respective partners, agents, operators, managers, employees, and representatives (“Released Parties”) from any and all claims it may have or hereinafter have for any injury, temporary or permanent disability, death, damages, liabilities, expenses and/or causes of action, now known or hereinafter known in any jurisdiction in the world, attributable or relating in any manner to entry upon and use of the Premises, whether caused by the negligence of the Owner or any of the Released Parties or by any other reason. [REDACTED] (Builder) acknowledges and agrees that this Release and Waiver of Liability is intended to be, and is, a complete release of any responsibility of the Released Parties for any and all personal injuries, temporary or permanent disability, death, and/or property damage sustained while on or using the Premises.

**4. Covenant Not to Sue.** [REDACTED] (Builder) agrees not to sue the Released Parties or initiate or assist in the prosecution of any claim for damages or cause of action against the Released Parties which [REDACTED] (Builder) may have because of any personal injury, death or property damage it may sustain while on or using the Premises.

**5. Indemnification.** [REDACTED] (Builder) hereby agrees to defend, indemnify and hold harmless Owner and the Released Parties from and against any and all losses, damages, actions, suits, claims, judgments, settlements, awards, interest, penalties, expenses (including reasonable attorneys’ fees) and costs of any kind for any personal injury, loss of life or damage to property sustained by reason of or arising out of [REDACTED] (Builder) use of the Premises or participation in any activities on the Premises.

**6. Responsibility for Property** [REDACTED] (Builder) acknowledges and agrees that it is fully and solely responsible for any of its property and personal belongings that it brings onto the Premises and that Owner will not be responsible for or provide any security for any property and/or personal belongings.

**7. No Representations by Owner.** [REDACTED] (Builder) acknowledges that Owner makes no representation as to the condition of the Premises or the safety of any property, structures, or equipment that may be at the Premises. [REDACTED] (Builder) accepts and shall use the Premises in its “AS IS” condition. [REDACTED] (Builder) understands that the area is not restricted in anyway and that any person or thing at any time may enter onto or around the area with or without permission. [REDACTED] (Builder) acknowledges and agrees that it is not relying upon any representation or statement by the Owner or the Owner’s employees, agents, or representatives regarding this agreement or the Premises, except to the extent such representations are expressly set forth in this agreement.

**8. Governing Law and Venue.** This Release and Waiver of Liability agreement will be governed by and interpreted in accordance with the laws of the State of Florida, without giving effect to the principles of conflicts of law of such state. [REDACTED] (Builder) agrees that any action arising out of this Release and Waiver of Liability agreement must be brought exclusively in any state or federal court located in the County of Lee, Florida.

**9. Waiver.** No waiver of any term or right in this Release and Waiver of Liability agreement shall be effective unless in writing, signed by an authorized representative of the waiving party. The failure of any party to enforce any provision of this agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this agreement thereafter.

**10. Survival.** Any provision of this Release and Waiver of Liability agreement providing for performance by either party after termination of this agreement shall survive such termination and shall continue to be effective and enforceable.

**11. Compliance with Laws.** In the performance of the terms of this Agreement, the parties shall comply with all applicable federal, state, regional and local laws, rules and regulations.

**12. Severability.** If any provision or portion of this Release and Waiver of Liability agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

**13. Required Insurance.** [REDACTED] (Builder) agrees, at its own cost and expense, at all times during this agreement, keep in full force and effect commercial general liability insurance with “personal injury” coverage and contractual liability coverage, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence/\$2,000,000 aggregate per location subject to no deductible. Owner shall be an additional insured on said policy. Definition of insured shall include all partners, officers, directors, employees, agents, and representatives of the named entity. Further, coverage for additional insured shall apply on a primary basis irrespective of any other insurance, whether collectable or not. All insurance policies or duly executed certificates for the same required to be carried by Builder under this agreement, together with satisfactory evidence of payment of the premium thereof, shall be deposited with Owner on the date Builder first places any equipment and/or personal property at said location. All insurance required to be carried by Builder under this agreement shall be in form and content and written by insurers acceptable to Owner in its sole discretion. Additionally, [REDACTED] (Builder) shall afford coverage under the Workers Compensation laws of the State of Florida and Employers Liability coverage subject to a limit of no less than \$100,000 each employee, \$100,000 each accident, and a \$500,000 policy limit. Finally, Builder shall maintain umbrella liability insurance at not less than \$1,000,000 limit providing excess coverage over all limits noted above. This policy shall be written on an occurrence basis. All policies noted above shall be written with insurance companies licensed to do business in the State of Florida and rated no lower than A:10 in the most current edition of A.M. Best’s Casualty Key Rating Guide. All policies shall be endorsed to provide that in the event of cancellation, non-renewal or material modification, Owner shall receive thirty (30) days written notice.

**14. Hazardous Material.** Through the term of this agreement, [REDACTED] (Builder) shall prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in above, to or from the Premises other than in strict compliance with all applicable federal, state, and local laws, rules, regulations and orders. For the purposes of this provision, the term “Hazardous Materials” shall mean and refer

to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste of substances, or which require special handling or treatment, under any applicable local, state, or federal law, rule, regulation or order. Builder shall indemnify, defend, and hold harmless from and against:

- a. any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (herein referred to as "Remedial Work") required by or incurred by Owner or any other person or party in a reasonable belief that such Remedial Work is required by any applicable federal, state, or local law, rule, regulation or order. or by any governmental agency, authority, or political subdivision having jurisdiction over the Premises, and
- b. Any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, or discharge of any Hazardous Materials on, under, in, above, to, or from the Premises. In the event any Remedial Work is so required under any applicable federal, state, or local law, rule, regulation or order, Builder shall promptly perform or cause to be performed such Remedial Work in compliance with such law, rule, regulation, or order. In the event Builder shall fail to commence the Remedial Work in a timely fashion or shall fail to prosecute diligently the Remedial Work to completion, Owner may, but shall not be obligated to, cause the Remedial Work to be performed, and Worthington shall promptly reimburse owner for the cost and expense thereof upon demand.

**15. Entire Agreement; Modification; Binding Effect.** This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the parties, whether written, oral, electronic, or otherwise. No change, modification, amendment, or addition of or to this agreement shall be valid unless in writing and signed by authorized representatives of the parties. This agreement shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of the parties.

I HEREBY ACKNOWLEDGE THAT I HAVE FULLY READ AND UNDERSTAND EACH OF THE ABOVE PROVISIONS. I ACKNOWLEDGE THAT PRIOR TO SIGNING THIS AGREEMENT I HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY TO REVIEW THIS AGREEMENT. I AM AT LEAST EIGHTEEN (18) YEARS OF AGE AND FULLY COMPETENT, AND I EXECUTE THIS AGREEMENT VOLUNTARILY AND FOR ADEQUATE CONSIDERATION INTENDING TO BE FULLY BOUND.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Witness \_\_\_\_\_

Witness \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_