

**COMMERCIAL**  
**MARINA BERTH RENTAL CONTRACT**

BETWEEN

**CITY OF COLD LAKE**  
(herein called the "City")

OF THE FIRST PART

and

**WICKED WATERSPORTS RENTALS INC.**  
(herein called the "Renter")

OF THE SECOND PART

**WHEREAS** the Renter has requested a letter of written permission from the City in accordance with section 7.9 of City of Cold Lake Bylaw 539-PL-14 for the operation of a watersport rental business in the municipal area of Kinosoo Beach from May 2020 through September 2020;

**WHEREAS** as a part of the operation of the Renter's proposed watersport rental business, the Renter would like to rent a marina berth to park a pontoon boat which would be used to offer site seeing boating charters on the lake (the "Commercial Use");

**WHEREAS** the City is willing to allow the Renter use of a marina berth located at 802 Lakeshore Drive, Cold Lake in the Cold Lake marina for the Commercial Use subject to the terms and conditions of this Agreement;

**WHEREAS** the Renter wishes to use a marina berth on the terms herein set forth;

**NOW THEREFORE** this agreement witnesseth that in consideration of the covenants, conditions and stipulations herein contained, the parties hereto covenant and agree with each other as follows:

**CONDITION PRECEDENT**

1. The obligations of the parties hereunder are conditional upon the Renter receiving and maintaining a letter of permission from the City to operate a watersport rental business on Kinosoo Beach, and continuing to operate such watersport rental business on Kinosoo Beach. If this condition is not fulfilled, this agreement shall cease and no party shall have any claim against any other party for costs, damages, compensation, or otherwise in respect of it.

**USE OF RENTAL SPACE**

2. The City hereby allows the Renter access to, and use of a designated berth located at Pier: [REDACTED] Slip: [REDACTED] (the "Rental Space") within the Cold Lake Marina for the Commercial Use.

3. The City permits the Renter to use the Rental Space to park a vessel, of the following specifications, subject to the terms of this Agreement:

Vessel Name (if applicable):

Make/Model:

Year:

Color:

HIN #:

Beam:

Total Length: (including all spars, brackets, swim grids, motors and other extensions)

Vessel Owner: RAY COWELL / WICKED WATERSPORT RENTALS INC.

Insurance Co. and Policy #:

4. The Rental Space is being rented for Commercial Use. The vessel being parked in the Rental Space must be used for a tourism water based business and indirect connection with the condition precedent in Section 1 (one).
5. The Renter may begin using the Rental Space no earlier than 5:00 p.m. on May 15, 2020. The vessel must be removed from the Rental Space no later than 5:00 p.m. on October 19, 2020 failing which a surcharge of \$300.00 will be imposed.
6. This is not a bailment agreement. Neither the City nor its Contractors are under any obligation to take possession of, or undertake any duty to take care of, the vessel parked at the Rental Space.
7. The City shall retain control of, and access to, the Rental Space provided that the City will not unreasonably interfere with the Renter's use. The City and its agents shall have the right to enter the Rental Space:
- 7.1. To inspect it, if it reasonably appears that the Rental Space is being used for any purpose which is prohibited,
  - 7.2. If any emergency arises which necessitates access to the Rental Space, or
  - 7.3. If the City or its agents must make alterations, repairs, or improvements to the Rental Space as the City may deem necessary or desirable.

#### TERM

8. This Agreement shall commence upon full execution and continue until the close of the Marina in the fall of 2020. There shall be one (1) automatic renewal for the boating season in 2021, subject to the fulfillment of the condition precedent in section 1 of this Agreement.

#### USER FEE

9. The Renter shall pay an annual fee as per the Recreation User Fee Policy 197-RC-16 which



includes the Slip Fee per foot, the Annual Maintenance Fee and GST (the "Rent"). The User Fee for the 2020/2021 boating season shall be due upon execution of this Agreement. The User Fee for 2021/2022 boating season shall be due by 4:30 PM on April 1st (the "Due Date").

10. In the event of N.S.F., dishonored or returned cheques, the Renter agrees to pay the City a \$25.00 late charge in addition to any other late penalty charges authorized under City policies or bylaws.

### **CITY RESPONSIBILITIES**

11. The City shall:

- 11.1. Provide the Renter access to, and use of, the Rental Space during the Term;
- 11.2. Post the City's Rules and Regulations in plain view in a conspicuous area;
- 11.3. Maintain an emergency telephone and first aid equipment according to City policy;
- 11.4. Maintain copies of all reports of the existence of a hazardous condition for a period of at least seven (7) years.

### **RENTER RESPONSIBILITIES**

12. **The Renter must**, at all times:

- 12.1. Comply with all requirements of the Cold Lake Policy No. 141-RC-12, Cold Lake Marina Operations and Allocation Policy (which includes the Facility Rules and Regulations), attached as *Appendix "A"* to this Agreement. Please note that section 4.2.3, section 6.0, section 7, and section 9 of Cold Lake Policy No. 141-RC-12 do not apply to commercial berth rentals;
- 12.2. Use the Rental Space in a careful, safe, proper and lawful manner;
- 12.3. Obey all laws, bylaws, regulations, and policies of the City;
- 12.4. Promptly report the existence of any hazardous condition to the City.

13. **The Renter must not**, at any time:

- 13.1. Use the Rental Space for any reason other than parking the vessel described in section 2 of this Agreement;
- 13.2. Have any illegal substances within the Rental Space;
- 13.3. Undertake, or permit any invitees to undertake, any illegal activity within the Rental Space;
- 13.4. Conduct any business within the Rental Space, with the exception of a pontoon charter service which is an approved use of the Rental Space, without prior written approval of the City;
- 13.5. Do anything that may cause damage to City property or any other renter's property.

14. **The Renter is responsible for their invited guests** and must ensure all guests and visitors conduct themselves in an orderly and reasonable manner so as not to damage the Rental Space or disturb the operational duties of the City, its employees or the public. Individuals found

deliberately damaging City property may be reported to the police and be required to pay for repairs, and be suspended from further use of the Rental Space.

**15. The Renter is responsible to inspect and maintain the condition of the Rental Space including:**

- 15.1. Accepting the Rental Space in its "as is" condition at the beginning of the Term. The Renter acknowledges that the City has made no representations or warranties expressed or implied of any nature whatsoever in connection with the condition of the Rental Space.
- 15.2. Maintain the Rental Space throughout the Term in as good condition and repair as at the beginning of the Term, normal wear and tear excepted.
- 15.3. If in the sole opinion of the City, the Rental Space has been damaged or dirtied beyond reasonable wear and tear, the damage shall be repaired or replaced by the City at the sole cost and expense of the Renter. Full payment for all of the City's actual costs related to the damage must be paid by the Renter within thirty (30) days of receipt of the City's invoice.

**16. Certificate of Insurance:** The Renter shall provide the City with a certificate of insurance for insurance coverage during the full term of the Agreement with the following requirements:

- 16.1. Minimum \$2 million comprehensive general liability coverage;
- 16.2. Sufficient coverage for the vessel;
- 16.3. listing the City of Cold Lake as an additional insured;
- 16.4. Thirty (30) days notice requirement to the City if the insurance coverage materially changes or is cancelled.

**17. Commercial License and Business License:** The Renter shall provide the City with confirmation of a current Commercial Boating License and a current Business License valid during the full term of the Agreement.

**18. Sale of Business.** The Renter is responsible to notify the City of any intent to sell the business and provide legal documents upon execution of the sale. Transfer of the contract will not be unreasonably withheld or refused by the City.

**NOTICE**

**19. Any notice to be given by the parties hereto will be in writing and will either be delivered personally or mailed by prepaid registered mail as follows:**

- 19.1. City of Cold Lake 5513 – 48 Ave, Cold Lake, AB T9M 1A1  
Attention: Kevin Nagoya, CAO
- 19.2. Wicked Watersports Rentals Inc. [REDACTED]  
Attention: Raymond J Cowell

**20. Notice given in any such manner will be deemed to have been received by the party on the day of delivery or upon the seventh (7th) day after the day of mailing. Any party may change its address for service from time to time upon written notice to that effect.**



## **DEFAULT & TERMINATION**

21. The City may terminate this Agreement by providing five (5) days written notice, requiring the Renter to immediately vacate and remove all property from the Rental Space, if the City is of the opinion that any of the following have occurred:
  - 21.1. The Renter is in default of any of the terms or conditions of this Agreement,
  - 21.2. The Renter has undertaken or permitted any activity within the Rental Space which may be a nuisance, cause damage, or is outside of the permitted activities.
22. This Agreement shall terminate immediately in the following circumstances:
  - 22.1. The Renter is no longer operating Wicked Watersport Rentals Inc. on Kinosoo Beach;
  - 22.2. The Renter's permission to operate Wicked Watersport Rentals Inc. on Kinosoo Beach has been withdrawn by the City.
23. This Agreement may be terminated by either party at any time, without cause, by giving the other party thirty (30) days written notice.
24. If the Renter fails to perform any of its obligations under this Agreement, the City has the right to take such action as is reasonably necessary in the sole discretion of the City to perform such obligations. In such an event, the Renter will be responsible for the payment of all City costs.
25. Should this Agreement be terminated in accordance with section 20 or 21 of this Agreement, the Renter shall not be eligible to receive any reimbursement for rental fees already paid.

## **RELEASE OF LIABILITY, INDEMNITY**

26. The Renter hereby waives and releases the City from any liability for damage or loss to any persons or property which occurs in connection with the Rental Space, the building and its grounds. The City shall not be liable to the Renter for any damages to or loss of personal property due to fire, flood, water leaks, rain, mildew, mold, hail ice, snow, smoke, lightning, wind, storms, tornados, explosions, acts of God, insects, rodents or interruptions of utilities.
27. Storage of any and all property within the Rental Space shall be at the Renter's sole risk. The City shall not be liable for any damages arising from any action or neglect.
28. The Renter will at all times indemnify and save harmless the City from and against any and all actions, claims, demands, suits, proceedings, damages, costs (including without restriction legal costs on a solicitor and his own client full indemnity basis) and expenses whatsoever that may be brought, made or incurred by or against the City by reason of, arising out of, or in any way related to, the use of the Rental Space by the Renter and/or its invitees.
29. The Renter hereby acknowledges that the Rent payable to the City does not include the cost of

security measures and that the City shall have no obligation whatsoever to provide security. Any security provided by the City shall not be treated as a guarantee against crime or a reduction in the risk of crime.

#### **NON-ASSIGNMENT**

30. The Renter may not assign or sublet this Agreement.

#### **NON-WAIVER**

31. The failure of the parties to insist upon or to enforce strict performance of any of the terms of this Agreement shall not be construed as a waiver of their rights to assert or rely upon such terms subsequently.

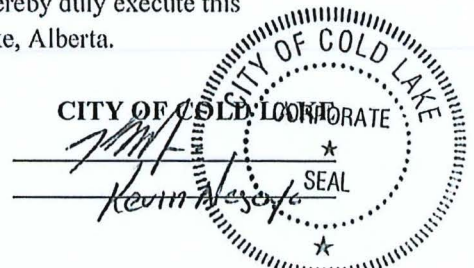
#### **ENTIRE AGREEMENT**

32. This Agreement contains the entire Agreement and understanding between the parties and supersedes all prior representations and discussions pertaining to all matters directly or indirectly covered in this Agreement. There are no conditions, warranties, representations, understandings, or agreements of any nature other than as set out in this Agreement. This Agreement may only be amended by a subsequent written instrument signed by both parties.

#### **ACKNOWLEDGEMENT**

33. Each of the parties agree that it fully understands the terms of this Agreement and accepts the provisions of this Agreement voluntarily, acting wholly upon its own judgement, belief, and knowledge and that it has not been influenced into entering into this Agreement by any act, statement, or representations of any party to this Agreement. By executing this Agreement, the Renter acknowledges that it has taken as much time and independent advice as thought necessary to consider matters before entering into this Agreement.

IN WITNESS WHEREOF the parties herein under proper authorization, hereby duly execute this Agreement this 31 day of MAY, 2020 at Cold Lake, Alberta.



**WICKED WATERSPORTS RENTALS INC.**

RAY COWELL  
[Signature]