

## MARINA MANAGEMENT AGREEMENT

**THIS MARINA MANAGEMENT AGREEMENT** (hereinafter the "Agreement") made an entered into this 2<sup>nd</sup> day of December, 2014 by and between Mobius Marine, Inc., a Florida Corporation whose address is 101 Tolstoy Lane, St. Augustine, FL 32080 ("Mobius") and the Town of Marineland, Florida, a Municipal Corporation whose address is 9507 Oceanshore Boulevard, St. Augustine, FL 32080 (the "Town"), collectively the "Parties."

**WHEREAS**, the Town owns the Marineland Marina (the "Marina"). and

**WHEREAS**, it is the intention of the Town that the wet slips at the Marina be available to the general public for use as temporary boat storage facilities and that the other buildings at the Marina be leased for communal and retail activity; and

**WHEREAS**, the Town desires Mobius to manage the Marina and Mobius desires to manage the Marina in accordance with the terms and conditions of this Agreement as hereinafter set forth; and

**WHEREAS**, in retaining Mobius, the Town desires its municipal marina to be vibrant, successful, and fiscally self-supporting by generating sufficient revenues to fund all fixed and variable costs; and

**WHEREAS**, the Town finds that this Agreement serves both a public purpose and a municipal purpose.

**NOW, THEREFORE**, in consideration for the mutual covenants herein contained, Mobius and the Town agree as follows:

### **I. COMPONENTS.**

This Agreement shall include the following documents which are incorporated herein by reference:

- i. Exhibit 1: Documents governing the operation of the Marineland Marina
  - o Mobius Marine, Inc. Statement of Qualifications
  - o Marina Operating Area
  - o Centex/Pulte Lease Agreement, as amended
- ii. Exhibit 2: Submerged Land Lease
- iii. Exhibit 3: Mobius Marine, Inc. Personnel Roster
- iv. Exhibit 4: Mobius Marine, Inc. 2015 Budget Pro Forma

In the event of a conflict between the terms of this Agreement and above-referenced documents, the terms of this Agreement shall prevail, and the terms of the remaining documents shall be given preference in their above-listed order.

## **II. MANAGEMENT OF MARINELAND MARINA.**

### **A. Term of Agreement.**

The Town hereby engages Mobius to manage the Marina and Mobius hereby agrees to manage the Marina for a an initial term of ten (10) years beginning on December 2, 2014, and ending on December 2, 2024 with an option to renew for two (2) additional ten (10) year periods upon mutual agreement of both Parties. Either party may terminate this Agreement, with cause, as specifically described in Article V herein.

Mobius has made substantial investments of its time and resources establishing the Marina as a true example of Marineland's role as an environmentally sensitive community. Mobius Marine's business model seeks to promote environmental stewardship and public education of the resources in and around Marineland. The Company's identity is firmly centered on Marineland, and Mobius Marine has modeled all of its efforts on promoting the Marineland vision and using sustainable practices that bring credit to Marineland.

This contract shall be binding on the Town of Marineland and its successors and assigns, whether governmental or private, and may not be canceled or modified without the consent of Mobius except as provided in Article V.

### **B. Compensation.**

#### **1. Distribution of Net Proceeds.**

Mobius agrees to operate and maintain the Marina and associated property on a negotiated fixed fee and variable fee basis. Throughout the term of this Agreement, Mobius shall receive an allocation of 0% of the net proceeds of Marina operations and the Town shall receive an allocation of 0% of the net proceeds with an annual cap of \$18,000. Should the total net proceeds exceed \$30,000 and the Town has received \$18,000 the remaining proceeds are allocated to Mobius; provided, however, that the Town shall only be entitled to these proceeds when the Marina's running net income is at a profit (hereinafter referred to as a "Payment Year"). For the purposes of this Agreement, "running net income" shall mean the total net income of Marina operations, calculated from October 2013 to current. The Town shall, to the greatest extent possible, reserve its share of the proceeds granted under this subsection for future improvements or maintenance projects at the Marina.

#### **2. Remittance of Proceeds to the Town**

All revenues from Marina operations shall be deposited into the bank account of Mobius and receipts will be accounted for by Mobius personnel. When funds are due to the Town in accordance with Subsection II(B)(1) above, Mobius shall remit payments to the Town by company check, bank check, money order, or electronic funds transfer. Payments to the Town, when applicable, shall be due no later than the thirtieth (30<sup>th</sup>) day of the month following the end of each fiscal year (Payment Year).

**3. Dockmaster's Salary.**

The Dockmaster's pay shall be granted by the Town at the rate of \$48,000 per year, or \$4,000 per month, and shall be deducted from the Marina's gross income for the purposes of calculating the Marina's net proceeds and running net income.

**4. Provision for Dockmaster's Recovery of Deferred Salary.**

The Parties acknowledge that since October 2013 the Dockmaster, who is also the proprietor of Mobius, has voluntarily accepted less salary than the above-stated guaranteed annual salary rate. To recognize the contributions of the Dockmaster and the investment of the Dockmaster's personal, financial, and labor equity in the development of the Marina and its continued operational success, the Town intends to make the Dockmaster financially whole for these efforts. In so doing, the Town finds that since October 2013, the Dockmaster has voluntarily accepted a gross total of \$17,578 less than the guaranteed annual salary of \$48,000 per year (hereinafter referred to as the "Dockmaster's Deferred Salary"). The Town hereby agrees to allow the Dockmaster to temporarily draw an augmented salary that will not effect the net income, using an accrual method for Dockmaster's Deferred Salary. This authorization shall begin on the date of execution of this Agreement and shall terminate at such time as the Dockmaster's Deferred Salary has been fully remunerated as described herein. Upon the full and satisfactory collection of the Dockmaster's Deferred Salary, the Dockmaster shall make it known to the Town and the Dockmaster's salary shall revert to the amounts described in Subsection II(B)(3) above, and insofar as the Dockmaster's Deferred Salary has been fully remunerated, Mobius agrees to release the Town from all liability for any other claims for deferred or uncollected salary as provided in this or any preceding Agreement.

**C. Hours of Operation.**

The Marina shall be required to operate seven (7) days a week during those hours approved by the Town. Mobius shall ensure that sufficient staff will be available to provide outstanding service to the Marina's customers and to the general public at all times during the approved hours of operation. The Town may require change in hours of operation if, in the reasonable discretion of the Town, such a change is desirable for providing the best service to the public. In the event of a change in the

Marina's hours of operation, Mobius shall present a revised annual Marina budget for the Town's approval.

**D. Relationship of Parties.**

In the performance of its duties under this Agreement, Mobius shall occupy the position of an independent contractor with respect to the Town. Nothing contained herein shall be construed as to make the Parties partners; nor, except as expressly otherwise provided for herein, construed as to make Mobius an agent or employee of the Town.

**E. Independent Contractor Status and Compliance with the Immigration Reform and Control Act of 1986.**

Mobius is and shall remain an independent contractor and is neither agent, employee, partner nor joint venturer of the Town, except as otherwise provided for herein. Mobius acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 USC Section 1324 et seq. and regulations relating thereto as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement at the discretion of the Town.

**III. AUTHORITY AND OBLIGATIONS – MOBIUS MARINE, INC.**

**A. General Authority.**

Mobius hereby agrees to provide the Town with Marina Management services as specifically outlined in this Agreement and all subsequent official documents that form the contract documents for this Agreement, subject to budget and Town policy restrictions and procedures stated or referenced herein. Mobius shall have the authority to fully and completely supervise and direct the operations of the Marina and matters associated or related to the operation of the Marina, including boat slip rentals, convenience store sales, and supervision of all leases of space except the existing Ripple Effect contract, at the Marina. The Town shall execute such documents as Mobius, in its reasonable judgment, deems necessary or advisable for Mobius to carry out its management of the Marina. Such authority shall include authority to direct the matters specified below, which are not in limitation of the foregoing.

**B. Renting of the Marina.**

Mobius shall use its reasonable discretion to establish the terms and conditions of occupancy of boat slips in the Marina. The Town shall set the rates for the boat slip rentals based recommendations to be made by Mobius from time to time. Mobius is hereby authorized to assist the Town in entering into rental agreements with boat slip tenants and to collect rent from such tenants. The form of rental agreement shall be prepared, reviewed, as appropriate by Mobius and recommended to the Town for acceptance. This agreement shall not affect any of the existing leases currently in

effect for the Marina.

**C. Reservations.**

Mobius shall develop an operations plan relating to reservations policy, including reservations, software, prepaying requirements and cancellation policies. Any approval of or changes to the reservations policy must be approved by the Town Commission.

**D. Marketing and Advertising.**

Mobius shall recommend for the Town's approval a strategy for directing marketing activities relating to the Marina, which shall be subject to authorized budget appropriations and restrictions in accordance with Section III(G) below. With the Town's approval, Mobius shall advertise in such media and to the extent Mobius deems necessary and consistent with the Town's adopted marketing strategy. All advertising of the Marina, including signs, shall primarily identify the Marina as the "Town of Marineland Marina," and shall display its official logo where appropriate. Such advertising may also include the business name and/or logo of Mobius, at Mobius' discretion; provided, however, that the Marina name and logo are displayed primarily and prominently on all advertising. All advertising and marketing costs shall be paid directly by Mobius, subject to the approved marina budget as described in Section III(G) below or any subsequent approvals. Mobius shall at all times abide by the Town's Land Development Regulations regarding signage, as such regulations currently exist and as may be modified in the future.

**E. Repair, Maintenance and Improvements.**

Mobius shall be operationally and financially responsible for all decisions concerning the acquisition of non-capital furniture, fixtures and supplies at the Marina, and the purchase, lease or other acquisition of the same. Mobius shall make and execute, or supervise and have control over the making and executing of, all decisions concerning the routine day-to-day maintenance, repair and landscaping of the Marina. Mobius shall negotiate and supervise any maintenance, repair, and landscaping contracts or arrangements related to the Marina which are consistent with the Marina budget approved by the Town in accordance with Section III(G) below and which Mobius, in its reasonable discretion, deems necessary or appropriate.

In the event that it is necessary for Mobius to pay for minor or major capital repairs on an emergency basis, Mobius shall obtain prior approval from the Town Mayor to perform such repairs, in accordance with the provisions of the Town's Purchasing Policies and Procedures, and the Town shall subsequently reimburse Mobius for the costs thereof.

For any repairs or improvements managed by Mobius as an agent of the Town and using the Town's or any other governmental or quasi-governmental agency's funds, Mobius agrees to follow and comply with the Town's Purchasing Policies and

Procedures.

**F. Personnel.**

Mobius shall select, hire, discharge and supervise all labor and employees which it deems necessary or advisable for the operation and maintenance of the Marina. Mobius may hire the types and number of personnel as Mobius, in its reasonable discretion, deems appropriate for operation and management of the Marina, subject to the provisions of Section III(G) below. Mobius shall have the exclusive authority for the supervision of all employees; for the determination of employee compensation, including any incentives, bonuses and benefits; and for the establishment of its policies and procedures relating to employment. Mobius agrees to comply with the provisions of any grant agreement.

Mobius shall pay for all costs of on-site employees (including without limitation payroll taxes, insurance, 401-K plan contributions and all other employee fringe or other benefits), as specified in Section III(G) below. The cost of Marina personnel is the sole responsibility of Mobius.

Mobius' employees in contact with the Marina's customers and the general public shall perform their duties in an efficient and courteous manner. Mobius shall ensure that all its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. In the event of the failure of an employee to do so, the Town may demand his or her removal from duties on the Marina property, and Mobius shall make all reasonable efforts to comply with this demand in a timely and expeditious fashion.

Mobius shall provide the Town with the name and telephone number of a management person who will be on call at all times for emergencies or other matters related to the operations under this Agreement.

At the conclusion of this Agreement, Town agrees to use its best efforts to rehire the employees listed on Exhibit 3, "Mobius Marine, Inc. Personnel Roster," with credit for previous Town length of service and seniority, in a manner consistent with state and federal employment laws and regulations and the Town's personnel policies and procedures.

**G. Budget.**

Mobius' 2014 Marina Budget Pro Forma is attached hereto as Exhibit 4. Each year, in conjunction with the Town's budget preparation process, Mobius shall develop a budget for the operation of the Marina, which shall be reviewed and approved by the Town. Mobius shall operate the Marina in accordance with the approved budget; provided, however, that Mobius may at any time propose an amendment to the Marina budget, which shall require review and approval by the Town.

The annual Marina budget shall include, but not be limited to, all of the proposed

revenue sources and expenditures for the Marina, together with detailed written justification to support the proposed sources and projections. In addition, the annual Marina budget shall include:

- i. Personnel Costs. An organizational chart listing all of the full and part-time employees retained by Mobius for the budget year, their positions with titles, number in each position, proposed pay ranges, and benefit costs for each position.
- ii. Marketing and Advertising Costs. Mobius shall provide a comprehensive marketing and advertising budget, which shall list the proposed specific expenditures to support the proposed plan.
- iii. Maintenance, Repair, and Landscaping Costs. Mobius shall provide an estimate of maintenance, repair, and landscaping expenses, consistent with the provisions of Section III(E) above.
- iv. Overhead Costs. Mobius shall provide a detailed list and projected cost for each expenditure.

**H. Agreements.**

Mobius shall have the authority to negotiate and shall recommend to the Town such agreements which Mobius deems necessary or advisable for the furnishing of utilities, services, concessions and supplies, for the maintenance, repair and operation of the Marina and such other agreements which may benefit the Marina or be incidental to the matters for which Mobius is responsible hereunder.

**I. Regulations and Permits.**

Mobius shall observe, obey and comply with all rules and regulations adopted by the Town and all laws, ordinances, and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to the operations under this Agreement. Failure to do so shall constitute a breach of this Agreement. Mobius shall procure all required permits, licenses and approvals, on behalf of the Town, for the operation and performance under this Agreement. All permit or regulatory fees or costs shall be paid directly by Mobius, in accordance with the approved Marina budget or any subsequent approvals entered into by the Parties.

Mobius shall make all reasonable efforts to maintain the designation of the Marina as a “Clean Marina” by the Florida Department of Environmental Protection, and shall pursue any other such designations as agreed upon with the Town.

**J. Maintenance of Records.**

Mobius shall establish, supervise, direct and maintain the operation of a system of record keeping and bookkeeping with respect to all receipts and disbursements in connection with the management of the Marina. All books, records and accounts shall be maintained by Mobius at the Town’s Marina in accordance with Chapter

119, Florida Statutes. The Town acknowledges that any budgets or projections prepared by Mobius for the Town are only estimates of revenues and expenses; that the initial budgets and projections prepared by Mobius will be based in part on information provided by Town; that any projections prepared by Mobius are subject to, and may be affected by, changes in financial, economic, competitive and other conditions and circumstances beyond Mobius' control; and that such projections and budgets are not to be construed as a guarantee by Mobius of the actual results to be obtained from operations. Town acknowledges that Mobius makes no representations or warranties as to the results to be obtained from operations. Town acknowledges that Mobius has no knowledge, and cannot certify the accuracy of any historical information provided to Mobius by Town.

**K. Collection of Delinquent Accounts.**

Mobius shall analyze and direct the collection and billing of all accounts receivable with respect to Marina operations and shall be responsible for establishing policies and procedures to minimize the amount of bad debts. Mobius shall provide a copy of its collection policies and procedures to the Town.

**L. Legal Actions.**

Mobius shall cause to be instituted, on behalf and in the name of the Town, any and all legal actions or proceedings Mobius deems necessary or advisable to collect charges with the advice and consent of the Town, rent or other income due to Town with respect to the Marina or to oust or dispossess tenants or other persons unlawfully in possession under any lease, license, concession agreement or otherwise, and to collect damages for breach thereof or default thereunder by such tenant, licensee, concessionaire or occupant. The costs of all such legal actions or proceedings shall be borne by the Town. Mobius shall also assist the Town in the defense of any and all actions and proceedings brought by tenants, suppliers, vendors and similar persons relating to the Marina and Town shall be responsible for satisfying and paying the costs of defending all such claims to the extent not covered by insurance. Mobius shall provide timely notice to the Town of any and all actions or proceedings instituted by, on behalf of, or against the Town.

**M. Insurance.**

Mobius shall pay for and maintain throughout the term of this Agreement all insurances necessary and proper for the day-to-day management and operation of the Marina, including but not limited to automobile coverage, theft coverage, workers compensation coverage, and Marina operations legal liability in the minimum amount of \$1,000,000.00. Mobius' workers compensation coverage policy shall not allow termination, expiration, cancellation, or substantial modification without at least thirty (30) days prior written notice to the Town. Mobius shall at all times furnish the Town with a current certificate of insurance coverage.

The costs incurred by Mobius for insurance coverage shall be included in the

approved Marina budget and shall be paid by Mobius, pursuant to the approved Marina budget. As a part of the Marina budget planning process for each subsequent fiscal year, all insurance coverage will be re-evaluated and specific coverage may be redistributed between the Town and Mobius depending on what is most advantageous to the Parties. Any such redistribution shall be agreed-to in writing in the form of an addendum to this Agreement.

**N. Restrictions.**

Notwithstanding anything to the contrary set forth in this Agreement, Mobius shall not be required to do, or cause to be done, anything for the account of the Town (i) which may make Mobius liable to third parties; or (ii) which may not be commenced, undertaken or completed because of insufficient funds of Town.

**O. Town Approval**

Mobius shall obtain prior approval from the Town prior to implementing any of the following:

- i. Changes from any approved plans, activities, or signage at the Marina;
- ii. Installation of equipment requiring any building or facility modifications;
- iii. Any use of the Town's name, except as authorized by the Town as part of a marketing and advertising strategy pursuant to Section III(E) above;
- iv. Any improvements to be constructed on the Marina property;
- v. Changes to the Marina's hours of daily operation;
- vi. Installation of any signs displayed in or on the Marina property and any changes thereto at anytime during this Agreement.

**P. Shared Expenses.**

The Parties acknowledge that certain economies may be achieved with respect to certain expenses to be incurred on behalf of the Town hereunder if materials, supplies, insurance or services are purchased by Mobius in quantity for use not only in connection with the Marina but in connection with other marinas managed by Mobius or its affiliates. Mobius shall have the right, with the advice and consent of the Town, to purchase such materials, supplies, insurance or services in its own name and charge the Town a pro rata share of the cost; provided, however, that the pro rata cost of such purchase to the Town shall not result in expenses greater than would otherwise be incurred at competitive prices and on terms available in the area where the Marina is located or the service is rendered; and, provided further, Mobius shall provide a copy of the financial records to the Town upon request and shall make records available to the Town at Mobius' corporate headquarters office at all times so that the Town may review any such expenses incurred. At no time shall Mobius be entitled to reimbursement by the Town for the costs of any materials, supplies, insurance or services purchased for use at any location other

than the Marineland Marina.

**Q. Reporting Requirements.**

Mobius shall submit a monthly written report to the Mayor which shall include:

- i. Occupancy statistics, together with a comparison of such monthly statistics to recent years, described both in the number of unit-days and in the revenues generated therefrom;
- ii. Marketing and promotional activities;
- iii. Detail of non-routine expenses;
- iv. Capital improvements status report;
- v. Insurance claims;
- vi. Litigation;
- vii. Safety and environmental incidents; and
- viii. Any other information Mobius deems appropriate to convey to the Town.

**IV. AUTHORITY AND OBLIGATIONS – TOWN OF MARINELAND.**

**A. Cooperation.**

Town shall cooperate with Mobius in the performance of its duties under this Agreement, and to that end, Town agrees to provide reasonable office space for Mobius employees on the premises of the Marina; to give Mobius access to all files, books and records of the Town relevant to the Marina; and to consider at a regular, publicly noticed meeting, all documents and instruments as Mobius, in its reasonable judgment, deems necessary or advisable to enable it to carry out its management of the Marina.

**B. Insurance.**

The Town shall pay for and maintain all insurances necessary and proper for the fee simple ownership of the Marina, including but not limited to property casualty insurance for the MOA, environmental pollution coverage, and general liability insurance.

**C. Ownership of Improvements.**

Mobius agrees that all existing and any future installed fixtures, equipment, improvements and appurtenances attached to or built into the Marina or on any property owned by the Town in such a manner as to become part of the freehold, whether or not by the expense of Mobius, shall become and remain a part of and be surrendered with the Marina property. Any furniture, furnishings, equipment or

other articles of moveable personal property owned by Mobius and located on the Marina property shall be and remain the property of Mobius and may be removed by it at any time during the term of this Agreement, so long as:

- Mobius is not in default of any obligations under this Agreement;
- Such property of Mobius has not become part of the freehold of any real property owned by the Town; and
- The removal of such property does not materially affect Mobius' ability to use such premises and conduct its business as provided herein.

## **V. TERMINATION OF AGREEMENT.**

In the event of the termination of this Agreement under any of the provisions contained in this Article, this Agreement shall become null and void and unenforceable by any Party hereto, and neither the Town nor Mobius shall have any further liability or obligation except as provided herein.

Immediately upon notice of termination as provided in this Article, Mobius shall discontinue its operations at the Marina and shall remove all its personal property no later than the effective date of termination. Any personal property of Mobius not removed in accordance with this paragraph may be removed by the Town for storage at the cost of Mobius or shall constitute a gratuitous transfer of title thereof to the Town for whatever disposition is deemed to be in the best interests of the Town. The Town shall not be liable to Mobius for safekeeping for Mobius' personal property during or after termination of this Agreement.

### **A. Termination by the Town.**

This Agreement may be terminated by the Town under the terms and conditions as set forth below.

#### **1. Immediate Termination.**

The Town may immediately terminate this Agreement by providing written notice to Mobius upon the occurrence of any of the following:

- i. Voluntary bankruptcy or reorganization by the Mobius, or the institution of proceedings and involuntary bankruptcy against Mobius, if such proceedings continue for a period of more than ninety (90) days;
- ii. Assignment by Mobius for the benefit of creditors;
- iii. Abandonment or discontinuation of operations except as provided herein for more than a seven day period without prior written approval from the Town;
- iv. Discovery of any misstatement in Mobius' Statement of Qualifications

leading to the award of this Agreement, which in the determination of the Town significantly affects Mobius' qualifications to perform under the this Agreement.

**2. Termination after Thirty (30) Days.**

The Town may provide written notice of default and termination of this Agreement within thirty (30) days, as set forth herein, for the reasons set forth below:

- i. Nonpayment of any sum or sums due hereunder after the due date for such payment; provided, however, that such termination shall not be effective if Mobius makes the required payments during the thirty (30) calendar day period following mailing of written notice.
- ii. Existence of any condition imposing a threat to health or safety of public patrons; provided, however, that Mobius shall have the opportunity to correct such condition within the thirty (30) calendar day period from receipt of written notice.
- iii. A final determination in a court of law in favor of the Town in litigation instituted by Mobius against the Town or brought by the Town against Mobius.
- iv. Instances in which a corporate acquisition or a merger represents a conflict of interest or is contrary to any local, state, or federal laws.

In the event that Mobius does not cure any breach described in this subsection, to the satisfaction of the Town, within the thirty (30) calendar days of the notice as set forth herein, then this Agreement shall be terminated.

**3. Termination after Forty-five (45) Days.**

The Town may provide written notice of default and termination of the Agreement within forty-five (45) days, as set forth herein, for the reasons set forth below:

- i. Nonperformance of any covenant of this Agreement not otherwise addressed in Section V(A) of this Agreement.
- ii. The inability or failure of Mobius to provide the Town with an unqualified, certified statement of Marina occupancy and/or gross revenues, or to strictly adhere to the revenue control procedures established in this Agreement.

In the event that Mobius does not cure any breach described in this subsection, to the satisfaction of the Town, within the forty-five (45) calendar days of the notice as set forth herein, then this Agreement shall be terminated.

**4. Habitual default.**

Notwithstanding the foregoing, in the event Mobius has repetitively defaulted four (4) times within a twelve (12) month period in the performance of this Agreement, or has breached any of the terms, covenants and conditions required herein to be kept and performed by Mobius, regardless of whether Mobius has cured each individual condition of breach or default, Mobius may be determined by the Town to be a "habitual violator." At the time such determination is made, the Town shall issue to Mobius a written notice advising of such determination citing the circumstances therefor. Such notice shall also advise Mobius that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults, whatever nature taken, with all previous breaches and defaults shall be considered cumulative and collectively shall constitute condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Town may cancel this Agreement upon the giving of written notice of termination to Mobius, with such termination to be effective upon the 10th calendar day following the date of receipt thereof. In the event of termination as provided in this subsection, all payments due hereunder shall be payable and immediately due, up to and including the effective date of termination. Mobius shall have no further rights hereunder.

**5. Natural Disaster**

In the event that the Town's Marina is destroyed or significantly damaged by a natural disaster or act of God, either Party may terminate this Agreement upon providing 30 days' written notice to the other Party.

**6. Loss of Tax Exempt Status**

The Town shall provide notice to Mobius, and an opportunity to cooperate with the Town, as to the measures that may be necessary to protect the tax exempt status for Ad Valorem purposes. In the event that the Town loses its tax exempt status on the existing municipal improvements as a result of the implementation or enforcement of the terms of this Agreement, either Party may initiate to modify the terms of this Agreement upon providing 30 days' written notice to the other Party.

**B. Termination by Mobius.**

Mobius shall have the right, upon thirty (30) calendar days from receipt of written notice to the Town by certified or registered mail sent to the address specified in Section VI(I) above, to terminate this Agreement at any time after the occurrence of one or more of the following events:

- i. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Marina property, which injunction stays in force for more than thirty (30) calendar days.

- ii. A breach by the Town of any of the terms, covenants, or conditions contained in this Agreement and the failure of the Town to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail from Mobius of the existence of such breach.
- iii. The assumption by any governmental agency, or any other authorized agency, of the operational control or use of the Marina.

**C. Termination for Condemnation.**

**1. Total Condemnation.**

If during the term of this Agreement or any extension or renewal of this Agreement, all of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, this Agreement shall terminate, and the payments will be abated during the unexpired portion of this Agreement effective as of the date the condemning authority takes the said Area.

**2. Partial Condemnation.**

If less than all, but more than ten percent (10%) of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by the right of eminent domain, or is sold to the condemning authority under threat of condemnation, either Party may terminate this Agreement by giving written notice to the other Party within sixty (60) days. If the said area is partly condemned and neither Party elects to terminate this Agreement, or if less than ten percent (10%) of the said area is condemned, this Agreement shall not terminate, but any payments to be made hereunder shall be adjusted equitably during the unexpired portion of this Agreement.

**3. Condemnation Award.**

The Town shall receive the entire award from any condemnation, and Mobius shall have no claim to that award or for the value of any unexpired term of this Agreement.

**VI. GENERAL CONTRACT TERMS.**

**A. Exclusivity of Contract.**

During the term of this contract, Mobius Marine shall have exclusive management rights for any marina expansion as to any services authorized by the terms of this contract. With the exception of this provision, this is not an exclusive contract. Award of this contract shall impose no obligation on the Town to utilize Mobius for services not covered by the scope of this contract needed during the contract period.

**B. Additional Services and Locations.**

The Town reserves the right to request additional services relating to this Agreement from Mobius. Upon mutual agreement by the Parties, Mobius shall provide such additional services as may become necessary. The Town reserves the right to unilaterally add or delete locations or services at its sole option as it may deem necessary or in the best interests of the Town. In such case, Mobius will be required to provide services pursuant to this Agreement in accordance with the terms, conditions and specifications, and as set forth in an amendment approved by the Parties. In the event of a change in the scope of services to be provided and/or number of locations to be served, Mobius shall present a revised annual Marina budget for the Town's approval.

**C. Entirety of Agreement.**

The Parties agree that this Agreement sets forth the entire agreement between the Parties and there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the Parties. This Agreement and any exhibits and attachments hereto and other documents and agreements specifically referenced herein constitute the entire fully integrated Agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written communication or agreements between the Parties with respect hereto excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within this Agreement. This Agreement may only be amended by written documents, properly authorized, executed and delivered by both Parties. For the Town, appropriate authorization shall be construed to mean formal action by the elected officials of the Town, except where specified within this Agreement that the Mayor or his or her designee shall have approval or authority. This Agreement shall be interpreted as a whole unit. This Agreement shall not be construed in favor of one party or the other. All matters involving this Agreement shall be governed by the laws of the State of Florida and the proper venue for any litigation arising hereunder will be a state or federal court located in Florida with venue within Flagler County, Florida.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**D. Headings.**

Headings of various Articles and Sections of this Agreement and its table of contents are for convenience and use of reference only and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

**E. Severability.**

The terms and conditions of this Agreement shall be deemed to be severable; consequently, if any clause, term or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions and notwithstanding such determination, this Agreement shall continue in full force and effect unless the particular clause, term or condition held to be illegal or void renders the balance of the Agreement to be impossible of performance.

**F. No Waiver of Right to Enforce.**

The waiver of any breach or any term covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term, or condition shall be deemed to have been waived, unless both Parties agree to such waiver in writing; nor shall there be any accord and satisfaction unless expressed in writing and signed by both the Town and Mobius.

**G. Force Majeure.**

Neither the Town nor Mobius is required to perform any term or covenant of this Agreement so long as performance is delayed or prevented by force majeure, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the Town's or Mobius' control and that the Town or Mobius cannot, by exercising due diligence, prevent or overcome in whole or in part.

**H. Performance.**

Service shall be performed in a timely manner. The Parties expressly agree that time is of the essence in the performance of this Agreement and the failure to complete the performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the Parties of any obligation to accept such performance.

**I. Notices.**

Any notice required or permitted herein is to be given in writing and shall be personally delivered or mailed, first class postage prepaid or delivered by an overnight delivery service to the respective addresses of the Parties set forth below, or to such other address as any party may give to the other in writing. Any notice required by this Agreement will be deemed to have been given and received when personally served or one (1) day after delivery to an overnight delivery service or five (5) days after deposit in the first class mail.

To the Town:  
Town of Marineland  
Attn: Mayor

To Mobius:  
Mobius Marine, Inc.  
Attn: Chris Kelley

With copy to:  
Town of Marineland Attorney  
Dennis Bayer, Esq.

9507 Oceanshore Blvd.  
St. Augustine, FL 32080

5 Sea Oak Drive  
St. Augustine, FL, 32080

109 South 6th Street  
Flagler Beach, FL 32136

**J. Remedies.**

Each party shall have full remedies available under existing laws, including, but not limited to, the Uniform Commercial Code, mediation, alternative dispute resolution and all state and federal courts of any jurisdiction.

**K. Assignment, Subcontracting, Corporation Acquisitions and/or Mergers.**

No assignment or subcontract shall be allowed without the prior written consent of the Town, except in the event of an assignment of the contract to a wholly-owned subsidiary of Mobius, in which case the Town's written consent shall not be unreasonably withheld.

**L. Recovery of Attorney's Fees.**

If it shall become necessary for either party hereto to engage attorneys to institute legal action for the purpose of enforcing its rights hereunder or for the purpose of defending legal action brought by the other party hereto, the party or parties prevailing in such litigation shall be entitled to receive all costs, expenses and fees (including reasonable attorneys' fees) incurred by it in such litigation (including appeals).

**M. Representations.**

No representative of Mobius is authorized to make any representations, warranties or agreements other than as expressly set forth herein. Any consent required by this Agreement to be given by Town to Mobius shall be given in writing. Mobius hereby disclaims any implied or express warranties, guarantees or representations of any kind other than as expressly set forth in this Agreement.

**VII. MISCELLANEOUS PROVISIONS.**

**A. Nondiscrimination.**

Mobius does hereby for itself, its personal representatives, successors in interest and assigns as part of this Agreement, agrees that:

- i. No person on the grounds of race, color, religion, national origin, sexual orientation, age, residency within or without the Town or handicap shall be excluded from participating in or be denied the benefits of or be otherwise subjected to discrimination in the use of the Marina except for bona fide cause allowed by law.
- ii. Mobius shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80. Mobius shall not discriminate against Town employees or applicants for

employment in the performance of this Agreement with respect to hiring tenure terms, conditions or privileges of employment because of age, sex, or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national original or ancestry.

**B. Hurricane Preparedness.**

Mobius shall follow any and all emergency evacuation and hurricane plans adopted by the Town or by Flagler County, Florida.

**C. Public Emergencies.**

It is hereby made part of this Agreement that before, during and after a public emergency, disaster, hurricane, tornado, flood or other acts of God, that the Town shall be granted a "first priority" for goods and services provided by Mobius in the interest of the general public. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety as determined by the Town. Accordingly, Mobius agrees to rent, sell, and/or lease all goods and services to the Town or governmental entities on a "first priority" basis. The Town expects to pay a fair and reasonable price for all products and services rendered or contracted in the event of a disaster, emergency, hurricane, tornado, or other acts of God.

**D. Sales Tax.**

Mobius shall pay the prevailing State of Florida sales and use tax for any amounts payable under this Agreement.

**E. Audit.**

Mobius shall retain all records relating to this contract for a period of at least three years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, the Town reserves the right to audit these records at any such time as it deems necessary.

**F. Approvals.**

Except as otherwise provided, whenever approvals are required herein by either party, such approval shall not be unreasonably withheld.

**G. Rights Reserved to the Town.**

All rights not specifically granted to Mobius by this Agreement are reserved to the Town, and the designation of any particular remedy for the Town without prejudice to any other relief available in law or equity and all such relief is reserved to the Town.

**H. Lien.**

The Town shall have a lien upon all personal property of Mobius to secure the payment to the Town of any unpaid money accruing to the Town under the terms of this Agreement.

**I. Submerged Land Lease.**

A submerged land lease is attached hereto as Exhibit 2. Mobius agrees to operate the Marina Operating Area (MOA) in such a fashion as to not violate such submerged land lease.

**J. Compliance with Town's Internal Control Processes.**

Mobius agrees to comply with the Town's procurement policies and procedures, budget policies and other policies.

**K. Recycled Material.**

The Town wishes to encourage Mobius to use recycled materials whenever practical in fulfilling contractual obligations to the Town and desires that such a policy will serve as a model of environmental awareness for other public and private entities. Mobius agrees to use recovered materials to the extent practical under the terms of this Agreement.

When awarding a purchase for products, materials or services, Mobius may allow preference to a responsive bidder who certifies that its product or material contains the greatest percentage of post-consumer materials, as long as such award is otherwise consistent with the Town's Purchasing Policies and Procedures. If bidding on paper products, a bidder may certify that its materials and/or products contain at least the content recommended by EPA guidelines.

**L. Infringement of Patent, Trademarks or Copyrights.**

Mobius agrees to indemnify the Town and hold it harmless from and against all claims, liability, loss, damages or expense including attorney fees, arising from or by reason of any actual or claimed trademark patent or copyright infringement or litigation based thereon with respect to the services or goods or any part thereof covered by this Agreement, and such obligations shall survive the term of this Agreement.

**M. Mechanic's Liens.**

The Town's interest in the MOA is not subject to mechanic's liens for improvements made, or contracted for, by Mobius. Mobius shall not permit any mechanic's lien or liens to be placed on any property owned by the Town, or on any improvements thereto, for any work contracted or arranged by Mobius. Mobius must give written notification to all contractors making any improvements on Town property of the provisions of this Agreement.

If a mechanic's lien is filed on Town property as described herein, Mobius shall be

solely responsible for such lien and shall promptly pay it and take all necessary actions to have the lien or liens removed. If default in payment of the lien continues for ten (10) days after the Town's written notice to Mobius, the Town may, at its option, pay the lien or any portion of it without inquiring into its validity. Any amounts the Town pays to remove a mechanic's lien caused by Mobius to be filed against Town property, including expenses and interest, are due from Mobius to the Town and must be repaid to the Town immediately upon rendition of notice, together with interest of twelve percent (12%) annually until fully paid.

**N. Indemnity.**

**1. Mobius' General Indemnity.**

The Town hereby agrees to indemnify Mobius for claims brought against Mobius only to the extent that they are found to result from the negligence of the Town, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors, or third party agents of the Town. This indemnification shall not be construed as a waiver of the Town's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the Town could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the Town must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129.06, Florida Statutes, and Article VII, Section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the Town to only those damages caused by the Town's negligence, and specifically not include any attorneys' fees or costs associated for actions not related to the Town's negligence.

**2. Environmental Indemnity.**

Mobius shall be responsible only for the payment of that portion of any cleanup cost for compliance with hazardous materials laws that arise during the term of this Agreement as a result of a discharge of hazardous materials directly attributable to the negligence of a Mobius employee. The Town shall be responsible for all other cleanup costs, including all costs associated with environmental compliance at the Marina, and the Town shall be responsible for ensuring that any other responsible party participate in the clean up to the extent of its responsibility for relief. Mobius shall indemnify, defend, and hold harmless the Town from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen, including without limitation counsel, engineering, or any other professional or expert fees that the Town may incur by reason of the negligence of Mobius employees during the term of this

Agreement as set forth herein. This subsection survives the expiration or early termination of this Agreement.

**O. Alternative Dispute Resolution.**

Mobius and the Town agree that any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be first subject to mediation by a mutually agreed upon mediator before any suit is filed.

**P. Festivals and Special Events.**

Frequently, festivals and special events draw boaters to the Marina and fill Marina slips. Some festivals and special events may have some impact on the Marina operations, and Mobius shall cooperate with the Town and designated festival committees in planning activities to support the Marina.

**Q. Use of Trademarks, Service Marks and Related Items**

In providing its services under this Agreement, Mobius will use the name, trademark and service mark "MOBIUS" and such other trademarks, service marks, logos, commercial symbols, insignia and designs as Mobius shall deem appropriate (collectively, the "Trademarks") as well as certain operations manuals (including operations, emergency procedures, and personnel manuals), formats (including financial reporting and budgeting formats) forms (including bookkeeping, accounting and lease forms), and risk management and accounting software (collectively, the "Business Materials").


Mobius hereby grants Town the nonexclusive, nontransferable right to, for the benefit of Town, use the Trademarks and Business Materials, subject to Mobius' review and approval of specific applications. It is understood and agreed that Mobius shall have the right to use and license others to use the Trademarks and Business Materials elsewhere for any purposes whatsoever, including without limitation in the management and operation of other marinas. Immediately upon the expiration or termination of this Agreement, Town shall (a) return to Mobius all materials bearing any of the Trademarks and all Business Materials without retaining any copies thereof, except for any items acquired using the Town's or other public agency's funds or any materials required to be retained by the Town in accordance with Chapter 119, Florida Statutes; and (b) cease all use of the Trademarks and Business Materials by all means required, including without limitation changing all telephone listings using any of the Trademarks, removing all signs bearing any of the Trademarks, and using its best efforts to have existing tenants at the Marina sign new leases to replace their existing Mobius lease forms.

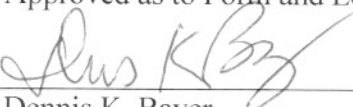
Nothing contained in this Agreement shall give the Town any right, title or interest in or to any of the Trademarks or Business Materials, except the mere privilege and license during the term of this Agreement for the Town to use the Trademarks and Business Materials in connection with the management and operation of the Marina. The Town acknowledges and agrees that the Trademarks and Business

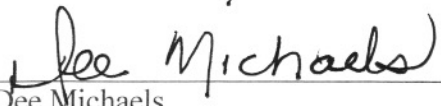
Nothing contained in this Agreement shall give the Town any right, title or interest in or to any of the Trademarks or Business Materials, except the mere privilege and license during the term of this Agreement for the Town to use the Trademarks and Business Materials in connection with the management and operation of the Marina. The Town acknowledges and agrees that the Trademarks and Business Materials are the exclusive property of Mobius and that the Town now asserts and will hereafter assert no claim to any goodwill, reputation or ownership of any of the Trademarks or Business Materials. The Town shall not do or permit any act or thing to be done in derogation of any of Mobius' rights in any of the Trademarks or Business Materials, either during the term of this Agreement or thereafter. The Town shall not, during or after the term of this Agreement, in any way dispute or impugn the validity of the Trademarks or Business Materials, the rights of Mobius therein, or the rights of Mobius or other licensees of Mobius to use the same, both during the term of this Agreement and thereafter. The provisions of this subsection shall survive the expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, the Parties have hereby executed this Marina Management Agreement as of the date first-above written.

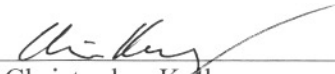
**Town of Marineland, Florida:**

By:   
Name: Leslie Babonis  
Title: Mayor, Town of Marineland

Approved as to Form and Legality:  
  
Dennis K. Bayer  
Town Attorney

Attest:   
Name: Dee Michaels  
Title: Town Clerk

**Mobius Marine, Inc.:**

By:   
Name: Christopher Kelley  
Title: Owner