

EXHIBIT B
Paintsville Lake Marina RFP
Sample Sublease

SUBLEASE AGREEMENT
BETWEEN
COMMONWEALTH OF KENTUCKY
DEPARTMENT OF PARKS
AND

_____ **[MARINA ENTITY]**

THIS SUBLEASE AGREEMENT, entered into on this _____ day of _____, 20____, by and between the COMMONWEALTH OF KENTUCKY, acting by and through the Secretary of the Finance and Administration Cabinet, for the use and benefit of the Tourism, Arts, and Heritage Cabinet, Department of Parks, hereinafter referred to as the “Sublessor,” and _____ [Marina, Address], hereinafter referred to as the “Sublessee.”

WITNESSETH:

WHEREAS, the Sublessor, through its Department of Parks, operates a marina facility located at 1581 Kentucky Route 2275, in Staffordsville, Johnson County, Kentucky 41256, which is located at the Paintsville Lake State Park, and which is leased to the Department of Parks by the United States Army Corps of Engineers under Lease No. DACW69-1-84-1044, dated May 1, 1984; and

WHEREAS, the Sublessor, through sublease agreements, has historically allowed the private operation of a marina facility on Paintsville Lake, within Paintsville Lake State Park, as an amenity for tourists and visitors to the park; and

WHEREAS, the most recent agreement for the operation of the marina facility expired without a renewal option or option for extension on October 10, 2021; and

WHEREAS, pursuant to Chapters 45 and 56 of the Kentucky Revised Statutes, the Sublessor has publicly advertised for bids for interested parties to operate the marina facility at Paintsville Lake State Park; and

WHEREAS, the proposal received from _____ (Marina Operator), the Sublessee, was deemed by an evaluation committee to be the best suited to the Commonwealth’s needs; and

WHEREAS, this sublease between the Sublessor and Sublessee incorporates language from: (1) the Request for Proposals (RFP) and any addenda thereto and (2) Sublessee’s proposal submitted in response to the RFP. Additionally, this sublease is subject to all terms and conditions contained in Lease No. DACW69-1-84-1044 between the U.S. Army Corps of Engineers and the Commonwealth (attached hereto and identified as **Exhibit A**). In the event of a conflict of

language between the documents referenced above, the provisions and requirements set forth and/or referenced in this Sublease Agreement shall govern.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Sublessor, the Sublessor and Sublessee hereby agree as follows:

1. **Description of Property:**

The Sublessor hereby grants to the Sublessee a Sublease to occupy and use, subject to all of the terms and conditions hereinafter stated, the Operation of a Marina Facility and surrounding area as shown on **Exhibit B**, which is attached hereto and expressly made a part hereof. The Sublessee shall select one of two options for the operation of a high-quality marina at Paintsville Lake State Park:

_____ Option 1 shall involve the construction of a marina structure as described below:

[INSERT INFORMATION FROM PROPOSED PLAN]

_____ Option 2 shall require the Sublessee to acquire title and possession of the existing marina structure at Paintsville Lake and, at the Sublessee's sole expense, the rehabilitation of the structure to include the following improvements:

- Full-service restaurant with the sale of a variety of food and beverages to include foods found in a full-service restaurant subject to Commonwealth approval. Please be advised alcohol sales are currently prohibited on the Subleased Premises, but they may be considered in the future, subject to applicable law, and the approval of USACE and the Commonwealth.
- A marina store open and operational during operating hours. Subject to Commonwealth approval, the marina store must sell light refreshments, prepared foods, snacks, ice, souvenirs and similar items.
- A functioning fuel tank, fuel lines and pumps (with twice-yearly routine maintenance of fueling system)
- Repair or replacement of any damaged/deteriorated decking and structural frames, including concrete walkways, throughout structure
- Electrical infrastructure upgrade that meets current Housing Building and Construction codes and USACE requirements, particularly Docks A, B and C toward the front of the marina structure
- Inspection and any needed repair of underwater anchors, cabling systems, winches, shore connections or other equipment, per the Guidelines for the Safe Operation and Maintenance of Marinas attached as **Exhibit C**.

All upgrades must be in accordance with local, state, and federal laws, regulations, and current codes, including approval by the Department for Housing, Buildings, and Construction; the Finance and Administration Cabinet; State or Local Department of Health; and USACE.

2. Term:

The Sublease Agreement shall be for a period commencing on January 1, 2023 and shall end eleven (11) years thereafter, on April 30, 2034, with an extension for an additional ten (10) year term, contingent upon the U.S. Army Corps of Engineers' extension of the Prime Lease and the Commonwealth's determination that the Sublessee is satisfactorily performing its duties and adhering to the terms and conditions of this Sublease Agreement.

3. Rental Consideration:

(a) In consideration of the granting of this Sublease Agreement, the Sublessee agrees to pay _____ percentage of gross receipts per month for revenue earned from Sublessee's operation of the marina facility at Paintsville Lake and the escrow payment set forth in Section 29 herein.

(b) The rental payments shall be made monthly, payable to the Kentucky State Treasurer, and delivered to the Paintsville Lake State Park office, on or before the close of business of the 12th day of the next month.

(c) "Gross receipts" shall be the total amount of cash or credits received by the Sublessee from all business operations, including receipts from restaurant food and beverage sales, food/grocery items; gasoline sales; sale or servicing of private boats; rental of motors, ski boats, houseboats, fishing boats, jet skis, kayaks, canoes and any other marina rental equipment; and any and all other incidental income, including the total gross revenue generated by any Sublessee or consigned items during the term of this Sublease Agreement. Gross receipts shall also include, for the purposes of this Sublease Agreement, boat slip and moorage rental (for purposes of these calculations, the slip rental payment shall be treated as if received on a monthly basis rather than on an annual basis). However, Kentucky tax, writing fees for licenses (hunting, fishing, watercraft) and Federal Excise tax on those items subject to it, are exempt from the gross receipts for fee purposes. Fees for utilities should be exempt from commission rate. Gross receipts, as defined in reference to revenue derived from all sales, including consigned items, located on the Leased Premises, shall mean total dollar sales derived from the sale of said items, as opposed to commissions received by the Sublessee. When any item, use of an item, or service is sold, including, but not limited to, boat sales or food/snack concession operation equipment or vending machine products, generated sales on consignment or otherwise, the Sublessee shall view the total of the sale as a gross receipt and shall pay as rent to the Commonwealth its percentage of Gross Receipts due under the lease based on the total price of that sale, not just on the Sublessee's fee; i.e., the share of the total price which the Sublessee receives.

(d) Should the Sublessee be late on rental payment to the Sublessor, then such payment shall accrue interest at the rate of one percent (1%) per month or twelve percent (12%) per annum for each month the rental payment is late.

4. Prime Lease:

This Sublease Agreement shall be made subject to all rights of the U.S. Army Corps of Engineers under Lease No. DACW69-1-84-1044, dated May 1, 1984, and all documents between the U.S. Army Corps of Engineers and the Commonwealth of Kentucky, including any new or amended lease. All the provisions of said Sublease Agreement and contract shall be binding upon all parties. The Sublessee shall abide by all rules and regulations, which may be promulgated by the U.S. Corps of Engineers in connection with the use of the premises.

In the event that an issue is addressed in one document that is not addressed in the other document, no conflict in language shall be deemed to occur. However, the Commonwealth reserves the right to clarify any sublease relationship in writing with the concurrence of the Sublessee, and such written clarification shall govern in case of conflict with the applicable requirements stated in these documents. In all other matters not affected by the written clarification, if any, this Sublease Agreement shall govern. Memoranda of Understanding, written clarification and/or correspondence shall not be construed as amendments to the Sublease Agreement.

5. Marina Operation:

(a) The Sublessee hereby agrees to daily operate as a marina concession and for no other purposes other than as outlined herein, except as authorized by the express written consent of the Department of Parks upon the terms and conditions herein set forth.

(b) The Sublessee understands and covenants the facility must be open to the general public not later than _____, 2023, unless a later date is approved by Sublessor. Minimum hours of operation shall be as follows:

- May 1 – October 31 (“Operating Season”): 7:00 a.m. – 8:00 p.m.
- November 1 – April 30 (“Off-Season”): 8:30 a.m. – 4:30 p.m. – Restaurant and Store operations are optional during the Off-Season

(c) The operation of the marina shall, at a minimum, include the following business activities:

- Full-service restaurant with the sale of a variety of food and beverages to include foods found in a full-service restaurant subject to Commonwealth approval. Please be advised alcohol sales are currently prohibited on the Subleased Premises, but they may be considered in the future, subject to applicable law, and the approval of USACE and the Commonwealth.
- Marina Store with sale of light refreshments, prepared foods, snacks, ice, souvenirs and similar items;
- Furnishing a marina structure that provides at least 52 open slips and 116 covered slips for mooring and docking of privately-owned boats;
- Rental to the public of watercraft, with a minimum of three (3) watercraft with motors or personal watercraft;
- Sale of boat and fishing merchandise, supplies, tackle, and bait;

- Sale of gasoline, oil, and other desired petroleum products;
- Sewage pumpout services pursuant to KRS 235.230(4); and
- Accessible and operational restrooms when the marina is open, subject to applicable ADA requirements.

The Sublessee may provide the following additional services on the Subleased Premises:

- Subject to USACE and Department of Parks' prior written approval, additional boat slips may be added;
- Rental to the public of kayaks or canoes from the boat launch area subject to Department of Parks approval;
- Limited incidental sales of boats, motors, and boat accessories, subject to Department of Parks prior written approval;
- Servicing of privately-owned boats;
- Sale of grocery items, such as bread, milk, meat, and other related products;
- Alcohol sales are currently prohibited but they may be considered in the future, subject to applicable law, and the approval of USACE and the Commonwealth;
- Other related business activities, subject to the prior written approval of the Sublessor.

The Sublessee shall not conduct, engage in, or allow any other form of trade or commercial activity, nor perform any type of service on the Leased Premises or property under the control of the Commonwealth, other than as set forth in this Sublease Agreement.

6. Public Use of Marina:

The Sublessee agrees to keep the facilities open to the public. The Sublessee shall set reasonable rates and prices for its goods and services and may be subject to approval by the Department of Parks. In addition, its slip, boat, and personal watercraft rental rates and prices will be subject to review and written approval by the Department of Parks throughout the entire term of the Sublease Agreement. The Sublessee shall not be permitted to charge for entrance or admission to the Subleased Premises, including, but not limited to, the store, restaurant, and restroom facilities.

Additionally, in accordance with Lease Agreement DACW69-1-84-1044 between the U.S. Army Corps of Engineers and the Commonwealth of Kentucky, the Sublessee agrees that no attempt shall be made by the Sublessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the premises, subject, however, to the authority and responsibility of the Sublessee to manage the premises and provide safety and security to the visiting public.

7. Agreement as to Employees:

The Sublessee shall employ only competent and orderly employees and contract laborers, who shall be subject to a criminal background check and who will keep themselves neat and clean. The Sublessee, its employees, and contract laborers will accord courteous and competent treatment and service to all guests and patrons. The Sublessee, its employees, and contract laborers shall be

properly trained in their duties and must be adequate in number and quality to provide prompt, courteous, and efficient service to the public. The Sublessee shall issue and enforce an employee uniform policy that has been preapproved by the Department of Parks.

8. Utilities:

The Commonwealth divests itself of any and all responsibility to all utility service components located on the Subleased Premises, as well as all utility service components located downstream of each marina utility meter. The Sublessee shall, at its sole expense, be responsible for **all** utility service components located on the Subleased Premises and downstream of each marina utility meter throughout the entire term of the Sublease Agreement, including, but not limited to, the following:

(a) Provide for and timely pay for **all** utilities for the operation of the marina. The existing marina utilities are metered separately from all other Park facilities; utility providers will bill the Sublessee directly.

(b) Pay all costs and obtain all regulatory approvals necessary for utility upgrades, rerouting, provider changes, and any other utility modifications.

(c) Ensure adequate domestic and fire safety water service for the entire marina. Paintsville Utilities provides water service to the marina and will bill the Sublessee directly. The Sublessee shall timely pay each monthly bill.

(d) Annually certify to the Department of Parks that all water and sanitary systems on the Subleased Premises have been inspected and comply with federal, state, and local standards and regulations. A licensed plumber shall make the certification. Inspectors with the Commonwealth Department of Housing, Buildings, and Construction must perform inspections for permitted repairs and modifications.

(e) Certify to the Department of Parks that all electrical components on the Subleased Premises have been inspected and comply with federal, state, and local standards whenever modifications are made or damages occur to the electrical system. Inspectors with the Commonwealth Department of Housing, Buildings, and Construction must perform inspections for permitted repairs and modifications.

(f) Sublessee shall comply with KRS 235.230(4), which governs sewage pumpout services to be provided by the Sublessee. Only sanitary waste can be discharged (i.e., no oil, grease, cleaning chemicals, etc.). Waste must be transferred to a stationary pump at the marina. From the marina pump, waste is transferred into the Paintsville Utilities sewer system. Paintsville Utilities will bill the Sublessee directly. The Sublessee shall timely pay each monthly bill. In no instance shall waste be discharged into the water. A pumpout log must be maintained by the Sublessee, along with documentation showing the frequency and location of pumpout services and shall be provided to the U.S. Army Corps of Engineers and Department of Parks upon request.

(g) Should it elect to do so, Sublessee shall, at its own expense, be responsible for the provision of all internet or telecommunications services to customers and guests or Sublessee may permit individual slip occupants to secure these services.

9. Security:

The Sublessee shall provide suitable security for its entire operation on the Subleased Premises. The Department of Parks will not provide security for the Subleased Premises.

10. Financial Records:

The Sublessee is required to keep complete and accurate financial records and books relating to Subleased Premises' business operations, pursuant to 304 KAR 1:010, and any and all other applicable laws or regulations, of all transactions relating to the marina facilities and to maintain such additional records as the Sublessor deems necessary to adequately reflect the operations conducted on the Subleased Premises. These records will be subject to inspection or audit by designated representatives of the Sublessor at all times during regular business hours and shall be made available at a convenient location for that purpose.

11. Financial Audit:

The Sublessee further covenants that, promptly after the close of each Sublessee's fiscal year, it will, at its own expense, cause an audit to be made of its books and accounts relating to the operation of the facilities for the preceding fiscal year by an independent firm of certified public accountants of recognized ability and approved by the Department of Parks, and a copy of the audit shall be submitted to the Department of Parks no later than three (3) months after year's end. Distribution of the audit to other interested parties will be the responsibility of the Department of Parks.

12. Slip Rental Agreements:

The Sublessee shall annually maintain and keep a dockage license agreement for every slip renter on the Subleased Premises, which shall be a slip rental agreement between the Sublessee and the boat owner. The agreement shall be updated annually, and a copy of each slip rental agreement shall be provided to the Department of Parks upon request. The Sublessee shall utilize a dockage license agreement similar or identical to the Department of Parks agreement, attached hereto as **Exhibit D** and shall hold harmless the Sublessor and the U.S. Corps of Engineers from any acts or omissions of the boat owner, which could result in liability to the Sublessor or the U.S. Corps of Engineers.

13. Permits and Licenses:

(a) The Sublessee shall procure all necessary permits, licenses, and certificates which are required by state and local laws, and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments. Plans for electric, fire code, housing, etc. must be reviewed by the Department of Housing, Buildings and Construction, the Department of Parks,

and the U.S. Corps of Engineers prior to any re/construction of the marina. The Sublessee shall conform to operational standards of the Commonwealth and to all bona fide rules, procedures, applicable laws, and requirements set forth herein.

14. Sublessee's Lack of Ownership Interest:

The Sublessee agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises by virtue of this Sublease Agreement or its occupancy and use thereunder, except for the rights and privileges granted hereunder.

15. Incorporation of Prior Agreements:

It is agreed by the parties to this Sublease Agreement that all prior negotiations have been merged into this Sublease Agreement, which may not be modified, altered or amended except by an "Amendment to Sublease Agreement" signed by all parties to this Sublease Agreement.

16. Choice of Law and Venue:

It is agreed by the parties hereto that all questions as to the execution, validity, interpretation, construction, and performance of the resulting Sublease Agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this Sublease Agreement shall be filed in Franklin County, Kentucky.

17. Taxes:

The Sublessee shall be responsible for paying all state, federal, and local taxes, including but not limited to, ad valorem taxes assessed against the marina development and the operations conducted on the Subleased Premises.

18. Renovation of Premises:

(a) During the course of the Sublease Agreement, the Sublessee shall not construct, modify, upgrade, alter, renovate, improve, or majorly repair facilities located upon the Subleased Premises, without prior written approval from the Commonwealth through the Department of Parks, the Division of Real Properties, and the U.S. Army Corps of Engineers (if applicable). The Sublessee shall comply with the Department of Parks Lessee Property Modification Request procedures, attached hereto as **Exhibit E**, which is expressly made a part of this Sublease Agreement. All plans and specifications for any construction activities must be approved by the Finance and Administration Cabinet, Division of Contract Administration and Engineering prior to construction.

(b) As soon as practical, but no longer than ninety (90) days after the execution of this Sublease Agreement, the Sublessee shall submit professionally-signed drawings and specifications of any proposed new marina. If Sublessee intends to utilize the existing marina structures, Sublessee must provide, satisfactory to the Commonwealth, a fully executed agreement addressing ownership and clear title of the existing marina structure within thirty (30) days of execution of

this Sublease Agreement and provide within ninety (90) days of award professionally-signed drawings and specifications for, at a minimum, the improvements to the existing marina facility specified herein. The deadlines set forth in this paragraph may be extended at the Commonwealth's sole discretion. All drawings and specifications are required to be stamped and signed by a registered professional in the Commonwealth of Kentucky.

(c) The Commonwealth's approval is not intended to verify constructability or conformance with any applicable codes but rather to ensure that the Sublessee's proposed design is consistent with its proposal, the requirements of the present Sublease Agreement, and is in the best interest of the Commonwealth. In addition, the Sublessee, at its sole expense, shall:

(i) Agree that proposed construction, modifications, upgrades, alterations, renovations, improvements, and major repairs to the Subleased Premises shall be subject to all applicable building codes of the Commonwealth, the Americans with Disabilities Act (ADA), and Guidelines for the Safe Operation and Maintenance of Marinas attached as **Exhibit C**, which is attached hereto and expressly made a part hereof.

(ii) Obtain all regulatory approvals, building permits, and other necessary approvals prior to commencing construction/renovation activities. In addition to the Commonwealth's approval, the Sublessee's construction/renovation activities may also require prior approval by USACE and the Department of Housing, Buildings, and Construction or other State and local agencies. The Sublessee solely shall determine the necessary approvals and permits and solely shall be responsible to obtain them. The Sublessee shall be responsible for all fees associated with said approvals and permits. Refer to the Department of Parks Lessee Property Modification Request procedures (**Exhibit E**) for more detail.

(iii) Obtain occupancy permits required by law prior to permitting the general public to enter an area of the Subleased Premises that has been constructed, modified, upgraded, altered, renovated, improved, or majorly repaired.

(iv) Make reasonable attempts to design and construct projects compatible with the following goals:

- (a) Increase environmental performance and economic value over time;
- (b) Enhance satisfaction and productivity of workers through energy-efficient systems;
- (c) Incorporate environmentally friendly materials and products; and
- (d) Reduce waste.

(c) The Commonwealth, through the Department of Parks and the Division of Engineering and Contract Administration, shall routinely monitor all construction/renovation work performed by the Sublessee or its agents under the terms of this Sublease Agreement to ensure that work is being performed in a manner that provides a safe and healthy environment for the public.

19. **Mechanic's or Materialman's Liens:**

(a) Nothing in this Sublease Agreement shall in any way be deemed or construed as constituting an order or request by the Commonwealth, express or implied, to any contractor, subcontractor, supplier, materialman, or laborer for the performance of any labor or the furnishing of any materials for the maintenance of any improvements on, alterations to, or other improvements of the Subleased Premises; nor as giving the Sublessee any right, power, or authority to grant for or permit the rendering of any services or furnishings of any materials that would give rise to the filing of any mechanic's liens against property of the Commonwealth or the U.S. Army Corps of Engineers or the Sublessee's subleasehold interest therein.

(b) Furthermore, the Sublessee and/or its contractors shall not suffer or permit any mechanic's or materialman's lien to be filed against the property of the Commonwealth or the U.S. Army Corps of Engineers or the Sublessee's subleasehold interest in the Subleased Premises, by reason of work, labor, services, or materials supplied to or claimed to be supplied to the Sublessee. If a mechanic's or materialman's lien shall be filed against the Subleased Premises or the Sublessee's subleasehold interest at any time, the Sublessee shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond, an Order of a Court of competent jurisdiction or otherwise. If the Sublessee, in good faith, disputes the validity or correctness of any such lien, then it may refrain from paying or causing the same to be discharged of record, but it shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness of validity of such lien. The Sublessee shall not be deemed to be in default under this Sublease Agreement while such proceedings or litigation are being conducted in good faith by it. However, if the Sublessee fails to cause any such lien to be discharged within the period aforesaid, or fails to contest the same as provided above, then the Sublessee shall be deemed to be in default of this Sublease Agreement, which shall be a basis for termination of said Sublease Agreement.

20. **Performance Bonds:**

(a) For any proposed construction, renovation, alteration or major repair the Sublessee or its assignee shall furnish separate performance and payment bonds to the Commonwealth and include the Commonwealth and the U.S. Army Corps of Engineers as additional insureds. The Sublessee or its designee shall furnish a performance bond satisfactory to the Commonwealth in an amount equal to one hundred percent (100%) of the approved construction project. The Sublessee or its designee shall also furnish a payment bond satisfactory to the Commonwealth in an amount equal to one hundred percent (100%) of the project construction contract for the protection of all persons performing labor or furnishing materials, equipment, or supplies for the Sublessee or its contractors for the performance of the work provided for in this project, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance law.

(b) Each bond furnished by the Sublessee or its designee shall incorporate by reference the terms of the project fully as though they were set forth verbatim in such bonds. In the event the project construction contract is adjusted by written document executed by both parties, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.

(c) The performance and payment bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent. A true and accurate copy of the surety company's power of attorney authorizing the agent to issue bond on their behalf shall be submitted with the bonds.

(d) Sublessee acknowledges that the performance bond protects the Commonwealth in the event the Sublessee defaults on the project. The payment bond assures payment of those supplying labor and materials to the Sublessee. Unemployment compensation and workers' compensation do not protect against these contingencies.

(e) Sublessee acknowledges, authorizes and agrees that if it fails to furnish separate performance and payment bonds as required by this section, Sublessor may acquire said bonds on Sublessee's behalf and Sublessee agrees to pay all expenses of acquiring said bonds, including any associated attorney's fees and costs.

21. Subleasing, Assignments, and Mortgages or Sublessee's Interest:

(a) During the course of the Sublease Agreement, the Sublessee shall not, with the exception of boat slip agreements relative to the storage and mooring of boats and boating equipment, as specified in Paragraph 12, voluntarily, involuntarily, or by operation of law, assign, sublet, mortgage, or transfer the Sublease Agreement or any interest created therein to any other person, partnership, corporation, or other entity (including, without limitation, mergers, consolidations, reorganizations, partnerships, or other business combinations) without first notifying and obtaining the prior written consent of the Commonwealth. Any attempt to assign, sublet, mortgage, or transfer the Sublease Agreement or any interest created therein without such consent shall be void. If an assignment, sublet, mortgage, or transfer of this Sublease Agreement is made with the consent of the Commonwealth, the Sublessee shall not be relieved from payment of all rent (revenues), according to the terms of this Sublease Agreement, or from the performance of all other terms, covenants, and conditions of the Sublease Agreement. If consent is once given by the Commonwealth to any such assignment, mortgage, or subletting, such consent shall not operate as a waiver of the necessity for obtaining the Commonwealth's consent to any subsequent assignment, mortgage, or subletting. Furthermore, any change in the Sublessee's business status (i.e., partnership, corporation) shall be reported to the Commonwealth immediately. No assignment, subletting, transfer, or mortgage of the Sublessee's interest in the property shall be effective or binding against the Sublessor, until such time as the assignee and Sublessor execute an amendment to this Sublease Agreement reflecting such transfer.

22. Improvements and Additions and Removal of Equipment and Supplies Upon Expiration or Termination of Sublease Agreement:

(a). It is understood and agreed by the parties that the Sublessee shall have the right, during the term of the resulting Sublease Agreement, to erect structures and install equipment in or upon the Subleased Premises, which structures and equipment so placed in or upon or attached to said premises shall be and remain the property of the Sublessee and may be removed therefrom

by the Sublessee, at its sole expense, at any time prior to any termination or the expiration of the Sublease Agreement, so long as the Sublessee has the written approval of the Commonwealth; provided, however, that no structures may be erected upon the Subleased Premises until and unless the design and proposed location thereof have been approved by the Commonwealth and the U.S. Army Corps of Engineers; provided, further, the Sublessee shall, upon the removal of said structures and equipment, or any part thereof, promptly repair any damage to the Subleased Premises resulting from the installation or removal of said structures and equipment.

(b) All structures and equipment of the Sublessee placed in or upon or attached to the Subleased Premises shall be at the sole risk of the Sublessee. Nothing herein contained, however, shall be construed to confer any right upon the Sublessee to construct, operate, or maintain any structure without compliance with requirements of the Commonwealth and the U.S. Army Corps of Engineers.

(c) Before the expiration of the Sublease Agreement or its termination by the Sublessee, the Sublessee shall vacate the Subleased Premises, remove the structures and equipment of the Sublessee therefrom, and restore the Subleased Premises to a condition satisfactory to the Department of Parks. If, however, the Sublease Agreement is terminated by the Sublessor, the Sublessee shall vacate the Subleased Premises within sixty days of the Sublessor mailing or hand delivering the termination notice, remove said structures and equipment, and restore the Subleased Premises to the aforesaid condition within such time as the Department of Parks may designate. In either event, if the Sublessee shall fail or neglect to remove said property and restore the premises, then, at the option of the Sublessor, said structures and equipment shall either become the property of the Sublessor without compensation therefor, or the Sublessor may cause the structures and equipment to be removed and no claim for damages against the Sublessor or its officers or agents shall be created by or made on account of such removal and restoration work. The Sublessee shall also pay the Sublessor on demand any sum which may be expended by the Sublessor after the expiration, revocation, or termination of this Sublease Agreement in removing the structures and equipment and/or restoring the Subleased Premises.

Should the Sublessee holdover, fail to remove the marina structures and equipment, and continue operations upon termination or expiration of the Sublease Agreement without the consent of the Sublessor, then rent in the amount of the higher of a) \$1000.00 per day; or b) two times the amount of the average monthly (based on the previous twelve months) Sublease rental rate/revenue payable to the Commonwealth prorated on a daily basis shall become due and owing.

23. Indemnification:

(a) The Sublessee shall indemnify and hold harmless the Sublessor, the U.S. Army Corps of Engineers, and any of the agents, employees, or representatives of the Sublessor and the U.S. Army Corps of Engineers, from any and all claims, demands, damages, actions, costs (including attorney fees), and charges which the Sublessor or the U.S. Army Corps of Engineers may have to pay by reason of injury to any person or property or loss of life or property resulting from or in any way connected with the character, condition, or use of the Subleased Premises or any means of ingress thereto, or egress therefrom, or resulting from the Sublessee's operations on the Subleased Premises, unless such injury or loss arises directly from the gross negligence of the

Commonwealth or the U.S. Army Corps of Engineers, or any of their departments or agencies, or officers or employees while acting within the scope of their employment.

(b) The Sublessee shall, at its own expense, assume defense of such claims and actions for damages arising out of such injuries or losses which may be brought against the Sublessor or the U.S. Army Corps of Engineers by third persons; and shall pay such judgments that may be rendered in such actions, unless such claims or actions for damages and/or judgments arise directly from the gross negligence of the Commonwealth, any of its departments or agencies, or any of its officers, agents, or employees while acting within the scope of their employment.

(c) In the event that either party deems it necessary to take legal action to enforce any provision of the Sublease, and in the event the Sublessor prevails, the Sublessee agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer.

24. Notices:

Except as provided otherwise herein, all notices under this Sublease shall be either mailed by registered or certified mail, addressed or hand-delivered to the receiving party. Notice shall be effective upon mailing or hand delivery of such notice.

25. Maintenance of Premises:

At a minimum, the following property and facilities shall be subject to the maintenance provisions of this Section, to wit: (i) all floating docks, gangways, ramps, piers, slips, and walkways, together with all appurtenances, equipment, utility service components, and signage thereupon; and (ii) all marina buildings, fuel tanks and dispensing systems, maintenance and storage sheds, and any and all other structures. Except as otherwise specifically reserved, the Sublessor divests itself of any and all maintenance to the marina facilities. Consequently, the Sublessee shall, at its sole expense, be responsible for all maintenance and repair duties throughout the entire term of the Sublease, including, but not limited to, the following:

(a) Keeping existing and proposed buildings, structures, and other improvements located on the Subleased Premises, both interior and exterior, and all equipment and personal property within and attached to said buildings and structures in good repair, and not suffering or permitting any waste to be committed or anything to be done on the Subleased Premises that would constitute a nuisance.

(b) Conspicuously posting regulatory and other safety signage on the Subleased Premises, such as notifications regarding swimming, stray electrical currents, smoking near fuel, fishing, etc.

(c) Daily removal of trash from the entire Subleased Premises, including the dock and shoreline. The Sublessee shall frequently monitor the Subleased Premises and remove trash as reasonably directed by the Department of Parks or U.S. Army Corps of Engineers, to maintain a

clean and orderly appearance. Trash from the Subleased Premises shall be properly disposed of in a dumpster, the location of which shall be determined by the Department of Parks. The dumpster shall be procured and maintained by and at the sole expense of the Sublessee, and the Sublessee shall daily monitor and remove trash in and around the immediate vicinity of the dumpster or as reasonably directed by the Department of Parks or the U.S. Army Corps of Engineers. The Sublessee shall be responsible, at its sole expense, for emptying the dumpster at least twice per week during operating season and weekly during the off-season.

(d) Providing all janitorial services, cleaning, painting, pest control services, similar services, and all supplies and materials required thereto.

(e) Implementing a program of preventative equipment maintenance that is in accordance with manufacturer recommendations, particularly with regard to fire extinguishers, fuel pumps, sewage pumpout, life preservers, electrical, or any other equipment needed for safe operation of the marina and keeping detailed records that shall be provided to the Department of Parks upon request.

(f) Removal of any and all debris that should become lodged within the Subleased Premises, to be completed at the direction of and in conjunction with U.S. Army Corps of Engineers and/or Department of Parks.

(g) Rebuilding, restoring, and/or replacing the Subleased Premises necessitated by casualty resulting from fire, flood, wind, rain or other weather event and the negligent, reckless, or intentional acts of the Sublessee, its agents, its contractors, its employees, its patrons or guests.

(h) Operating and maintaining the gasoline tanks and dispensing systems in compliance with all laws and regulations promulgated by the Commonwealth Energy and Environment Cabinet, Department of Agriculture, and any other applicable local, state, or federal agency. Maintenance of these components includes, but is not limited to, regular inspections, painting, and pumping of sludge and/or water from the tanks (caused by flooding, leaks, or other problems). The Sublessee shall promptly provide copies of all gasoline tank and dispensing system inspections, documents, and reports to the Department of Parks. The Sublessee shall also assume all responsibility to repair or replace gasoline tank and dispensing system components, in whole or in part, if necessary or required by a regulating agency. The Sublessee shall replace the gasoline tank or any dispensing system component if it deteriorates to the point of replacement. All such repairs or replacement shall be made as soon as possible and no later than 30 days from the date of notice, absent the agreement of the Commonwealth.

(i) Maintaining the grounds of the Subleased Premises, including the shoreline. Park staff shall maintain the property adjacent to the Subleased Premises.

If the Sublessee does not make necessary repairs timely after notice from the Commonwealth, the Department of Parks shall have the right to enter the premises and make the repairs at the sole expense of the Sublessee.

26. Maintenance of Commonwealth/U.S. Army Corps of Engineers Property:

In addition to the provisions above, the Sublessee shall be responsible for the proper care and custody of any Sublessor/U.S. Army Corps of Engineers property furnished for Sublessee's use in connection with the performance of the Sublease Agreement. This responsibility includes the repair and/or replacement of such property due to loss, damage, or negligence, normal wear and tear excepted, and to cure deficiencies noted in regular inspection of the marina facilities by the Sublessor's marina inspection team, as described within this Sublease Agreement below. Failure to cure deficiencies outlined in the annual inspection report within the permitted time frame may result in the Sublessor exercising its rights under the Sublease Agreement.

The Sublessee shall do those acts necessary to (1) maintain the property in a reasonably attractive, clean, efficient, and safe condition; (2) prolong the useful life of the property; and (3) cause the property to be in conformity with all federal, state, and local regulatory standards.

27. Inspections:

The Sublessee shall participate in annual inspections by the Commonwealth, which may include representatives of the U.S. Army Corps of Engineers; Department of Parks; the Finance and Administration Cabinet; the Department of Housing, Buildings and Construction; the State Fire Marshal's Office; the State or Local Department of Health; and other appropriate representatives of the Commonwealth. The inspections will determine (1) whether the Sublessee is in conformity with the provisions of the Sublease, and (2) to specify what act or acts are necessary to conform with the provisions of the Sublease. As soon thereafter as practicable, the Commonwealth shall provide to the Sublessee a written inspection report detailing the findings and recommendations.

The Sublessee shall have thirty (30) days following receipt of the inspection report to either (1) complete the recommendations made by the Commonwealth's representatives or (2) present a written plan, for approval by the Commonwealth's representatives, which details the actions to be taken in order to correct any deficiencies and an anticipated completion date.

In the event the Sublessee fails either to (1) complete the recommendations within thirty (30) days, or (2) submit a reasonable plan, approved by the Commonwealth, within thirty (30) days, together with a projected date of completion by which to accomplish those recommendations, and to complete such plan as agreed, unless good cause be shown for delay, then the Sublessor may enter upon the Subleased Premises and do that which is necessary to maintain or repair the property. The Sublessee shall indemnify and hold harmless the Sublessor from all costs and expenses of any such maintenance or repair accomplished by the Sublessor. Should the Sublessor be required to do that which is necessary to maintain or repair the property, then the Sublessor may, at its sole discretion, declare the Sublessee in default of the Sublease.

The Sublessee shall also submit to inspections by U.S. Army Corps of Engineers, which may or may not be conducted in conjunction with the Commonwealth's inspections. The Sublessee shall comply with all inspection requirements and recommendations made by U.S. Army Corps of Engineers. In the event the Sublessee fails to satisfy the U.S. Army Corps of Engineers inspection

requirements, then the Sublessor may, in consultation with U.S. Army Corps of Engineers, declare the Sublessee in default of the Sublease Agreement.

28. Escrow.

(a) In order to ensure that the Sublessee shall be sufficiently liquid to indemnify the Sublessor against the costs and expenses that it may incur to maintain and repair the property, the Sublessee agrees that, upon execution of the Sublease Agreement, Sublessee shall either deposit \$50,000 or, on the 10th business day of each month deposit a sum of money equal to TWO AND ONE-HALF PERCENT (2-1/2%) of the gross sales of the total marina operation realized for the preceding one month, as reported to the Commonwealth by the Sublessee, but in no instance less than one thousand five hundred dollars (\$1,500) per month (“minimum maintenance deposit”), in a demand deposit account in a Kentucky financial institution authorized to do business pursuant to KRS Chapters 286.3 and 286.6 for the purpose of providing to the Sublessee a working maintenance account with a balance of up to Fifty Thousand Dollars (\$50,000).

(b) The parties agree with respect to the demand account referenced herein that the Sublessee may withdraw from the escrow account at any time that funds are available on the condition that the Commissioner of Department of Parks, or his/her designee, countersigns the check or other instrument to withdraw proceeds from the aforesaid account. The Sublessee shall be deemed by this Sublease Agreement to be authorized to draw from the above account as needed for the reimbursement of maintenance or repair expenses throughout the year, with the prior written approval of the Commissioner of Parks or his/her designee. Accompanying each request for reimbursement, the Sublessee must provide legitimate estimates for repairs and/or maintenance to the facilities with proof of payment to each of the Sublessee’s contractors. In the event funds are withdrawn from the escrow account for maintenance or repair expenses, the Sublessee shall resume monthly deposits of two and one-half percent (2-1/2%) of the gross sales of the total marina operation realized for the preceding one month, as reported to the Commonwealth by the Sublessee, until the escrow account balance returns to Fifty Thousand Dollars (\$50,000).

(c) As to the operation of the escrow deposit account, the parties hereto agree:

1. That the account shall be an interest-bearing account and that the amounts either deposited in or accruing upon said account shall be considered a cost or an expense of maintaining the subleasehold;
2. That the account shall be maintained jointly in the names of the Commonwealth of Kentucky, Commissioner, Department of Parks or his/her designate, and Sublessee;
3. Withdrawals from the account shall be made only upon the signatures of the representatives of both parties, only to reimburse the Sublessee during each calendar year for those maintenance or repair costs accompanied by verifiable receipts for those costs, incurred during that year as agreed to by the Sublessor; or to reimburse the Sublessor for maintenance or repair costs incurred as a result of the Sublessee’s failure to perform such maintenance or repair. Refusal by the

Sublessee to authorize a withdrawal from the account to reimburse the Sublessor for maintenance or repair costs incurred under this section shall constitute a material breach of this Sublease Agreement.

4. Escrow account funds shall not be utilized to pay salaries, overhead, or operating expenses.
5. That said escrow deposit account, and the requirement for same, shall exist during the entirety of the term of the Sublease Agreement and any extensions thereof;
6. That it is the intention of the parties that distributions shall be made from the escrow deposit account for reimbursement to the Sublessor for all costs and expenses it shall have incurred to maintain or repair the components of the marina at the failure of the Sublessee to perform such necessary maintenance or repair.
7. At the expiration of the term of this Sublease Agreement and any extensions thereto, and after the fulfillment of the requirements of this section and completion of any necessary repairs as determined by the Sublessor at its sole discretion, the entirety of the contents of the account shall be returned to the Sublessee.

29. Protection of Work, Property, Employees, and Public:

The Sublessee shall continuously maintain adequate protection of all of his/her work from damage and shall protect the Sublessor's/U.S. Army Corps of Engineers' property from injury or loss arising in connection with this Sublease. Sublessee shall make good any such damage, injury, or loss and shall adequately protect adjacent property as provided by law and the Sublease Agreement documents.

The Sublessee shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the Kentucky Worker's Compensation laws and all federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed. The Sublessee shall designate a responsible member of his/her organization on the work as safety officer, whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the Department of Parks, upon Sublessee's written notification to begin operation of the marina or the date the Sublease is fully executed, whichever date is earlier.

30. Employment Practices:

The Sublessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Sublessee must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. Such action shall include, but is not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or

termination, rates of pay, or other forms of compensation and selection for training including apprenticeship. The Sublessee agrees to post in a conspicuous place available to employees and applicants for employment, notices setting forth the provisions of this clause.

The Sublessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Sublessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability, except where it relates to a bona fide occupational qualification.

The Sublessee shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Sublessee shall comply with related Commonwealth laws and regulations.

The Sublessee shall comply with regulations issued by the Secretary of Labor of the United States in Title 20, Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 14026, the regulations issued by the Secretary of Labor in 29 CFR part 23 pursuant to the Executive Order, Federal Sick Leave Policies in Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the Federal Rehabilitation Act of 1973. The Sublessee shall comply with the Civil Rights Act of 1964 and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973, as amended and the Kentucky Civil Rights Act. The Sublessee shall also abide by all the terms and conditions of the aforementioned Prime Lease, to include but not be limited to, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Sublessee, its agents, successors, transferees, and assigns.

The Prime Lease requires the Commonwealth, as lessee, to sign an assurance that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241) and the Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, and requires that all Sublessee shall supply like assurance. An assurance will be attached to the resulting Sublease and must be signed by the Sublessee pursuant to Exhibit B of the Prime Lease.

The Sublessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

31. **Insurance:**

Each insurance policy required by this Section shall name the Sublessor and U.S. Army Corps of Engineers as additional insureds and shall also provide that said policy will not be cancelled, terminated, or changed without at least thirty (30) days prior written notice to the Sublessor and U.S. Army Corps of Engineers.

The Sublessee shall furnish to the Department of Parks copies of the initial certificates of coverage for each policy required by this Section within ten (10) business days of the date that the Sublease Agreement is fully executed by all parties, or the date the Sublessee is granted written permission to enter the property to begin construction and/or operation, whichever date is earlier.

In addition, the Sublessee shall furnish to the Department of Parks renewal certificates of coverage for each policy required by this Section at any time upon request but at least ten (10) business days prior to the expiration of each policy, for the full term of the Sublease Agreement and any renewals thereof.

(a) **Liability Insurance:** During the full term of this Sublease Agreement, the Sublessee shall be required to obtain, from an insurance company authorized to do business in the Commonwealth, and keep in force, at Sublessee's own expense, as a minimum, a commercial general liability insurance policy providing minimum combined single limits of coverage of Five Million Dollars (\$5,000,000) per occurrence, and having an aggregate annual limit of not less than Five Million Dollars (\$5,000,000), with an umbrella of Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate limit of Five Million Dollars (\$5,000,000). The minimum liability amounts of required insurance coverage established under this section may be subject to modification by the Commonwealth upon sixty (60) days' notice to the Sublessee.

(b) **Casualty Insurance:** During the term of this Sublease Agreement, the Sublessee shall maintain, at the Sublessee's total expense, fire and extended coverage insurance, including theft and vandalism, covering the entire leased premises in an amount equal to its full replacement cost value. Sublessee shall also carry and maintain during the term of the Sublease Agreement, at Sublessee's sole cost and expense, fire and extended coverage insuring all of the contents and inventories in the Subleased Premises to the extent of their full insurable value. In the event of a loss, the Sublessee must repair/replace the marina facility within a twelve (12) month period from the date of loss.

(c) **Property Insurance:** During the term of the Sublease Agreement, the Sublessee shall maintain, at its sole expense, property insurance for the entire Leased Premises, including the marina, against loss of damage by fire, lightning, windstorm, or other casualty in an amount not less than one hundred percent (100%) of the full insurable value thereof. The term "full insurable value" shall mean the actual replacement cost.

32. Promotional Materials and Souvenirs:

The Department of Parks shall have the right to review and approve the Sublessee's proposed promotional materials prior to the publication, dissemination, or broadcast of such

materials, including digital or social media. Marina promotional materials may incorporate Department of Parks “branding” upon prior written approval by the Department of Parks.

The Department of Parks shall have the right to review and approve the Sublessee’s proposed souvenirs and other similar items that it proposes to sell.

33. Advertising and Signage:

The Sublessee, shall, at its sole expense, be responsible for all marina signage throughout the entire term of the Sublease Agreement, including, but not limited to, the following:

(a) Install or modify marina promotional sign(s) at appropriate locations, subject to the prior written approval of the Department of Parks. Marina promotional sign(s) shall complement existing Park signage in color and lettering and may incorporate Department of Parks “branding” upon prior written approval by the Department of Parks. Proposed signage along state-maintained highways must also be approved by the Commonwealth Transportation Cabinet prior to installation.

(b) Post all signs required by regulatory agencies in conformance with the applicable regulatory requirements.

(c) Maintain and repair all aforementioned signs as necessary or reasonably directed by the Department of Parks or U.S. Army Corps of Engineers.

34. Contractual Relations:

The Sublessee shall be held to be an independent contractor and all persons employed by it, or serving in a voluntary capacity, in the exercise of the rights granted under this Sublease Agreement shall be its employees, servants, and agents only.

35. Right of Entry:

The Sublessor reserves the right for the Commonwealth, its officers, agents, and employees, as well as officers, agents, and employees of U.S. Army Corps of Engineers, to enter upon the Subleased Premises at any time to inspect said premises, operation, and equipment, or for any purposes in connection with work necessary to benefit of the Commonwealth and the U.S. Government, including, if necessary, any ingress or egress in the form of an easement that shall not unreasonably interfere with the marina operation.

36. Termination for Default:

This Sublease Agreement shall be subject to the following termination provisions:

(a) If at any time during the period in which the proposed Sublease Agreement is in effect, the Sublessee, in the opinion of the Sublessor, defaults on any obligation incurred hereunder, including, but not limited to, the payment of rental due the Sublessor or the failure to maintain standards of service required or in any manner fails to provide adequate service to the public, then the Sublease Agreement shall be subject to termination by the Sublessor, with no right of recourse remaining in the Sublessee. All rights and benefits of the Sublessee set forth herein shall be deemed forfeited, subject to the terms of this Sublease Agreement; provided, however, that before any termination shall occur under this section, the Sublessee shall be given written notice and be allowed thirty (30) days from receipt of notice in which to cure such default or non-compliance. If said default or non-compliance is cured within the above time period, then the Sublease Agreement shall remain in full force and effect. In the event of termination for default, then the Sublessee shall be responsible for paying to the Sublessor any monetary sum due, up to and including the date of termination.

(b) If, in a twelve (12) month period, the Sublessee has been notified three times or more by the Sublessor that it is in default on its monetary obligation to be paid to the Commonwealth, then the Sublessor may, at its sole option, declare the Sublessee in immediate default and the 30-day cure provision shall not apply.

37. Procedure on Termination for Default:

Upon mailing by certified mail to the Sublessee a Notice of Termination issued pursuant to 200 KAR 5:312, the Commonwealth may proceed as follows:

- (1) Declare the Sublease to be terminated, in which event the Sublease Agreement, all rights of the Sublessee, and all duties of the Sublessor shall immediately cease and terminate and the Sublessor may immediately possess and enjoy the Subleased Premises as though this Sublease Agreement had never been made, without prejudice, however, to any and all rights of action against the Sublessee that the Commonwealth may have for rent, damages, or breach of covenant; or
- (2) Take immediate possession and, in its sole discretion re-let the properties or any part thereof, for such term or terms and on such conditions as the Sublessor determines, and recover from the Sublessee any deficiency between the amount of rent, additional rent and all other charges payable under the Sublease Agreement, plus any expenses incurred by the Commonwealth in connection with repairs, or alterations the Commonwealth deems necessary or appropriate to make in connection with such re-letting, all costs incurred in actually re-letting the properties, and sums expended for reasonable attorney's fees; but the Commonwealth shall be under no duty to re-let the properties.

38. Inclusivity of Agreement:

The various rights, options, elections, powers, and remedies contained in the Sublease Agreement shall be construed as cumulative and not one of them shall be exclusive of any of the

others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations upon the other party have been fully performed.

39. Force Majeure:

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, labor troubles, inability to procure labor or materials, failure of power, riots, insurrection, War, Acts of God, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the delayed party, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of the Section shall not operate to excuse Sublessee from the prompt payment of rent, or any other payments required by the terms of this Lease and shall not operate to extend the Lease Term. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.

40. Sublessee Responsibility for Assets:

The Sublessee promises and commits to maintain its assets in the Paintsville Lake Marina operation for the purposes of providing and producing revenue, and for the purpose of providing security to the Sublessor to ensure the Sublessee's performance of its obligations under this Sublease Agreement. For the purposes of this Sublease Agreement, the term "assets" shall be construed to mean: (1) physical properties to include, but not be limited to, houseboats, jet skis, docks, marina buildings, storage sheds, and physical inventory; and (2) accounts receivable in an amount equal to its expenses to operate, to pay the sublease fee(s) to the Sublessor, and an amount equal to the sum necessary to pay its secured creditors. Further, the Sublessee agrees to maintain its current level of "assets," as defined in this paragraph, and as provided in Sublessee's proposal to the RFP, and as will be existing as of the effective date of this Sublease Agreement, and shall, thereafter, not remove said "assets" from the marina operation, nor allow the current level of assets to diminish, without prior written approval from the Commonwealth.

41. Effect of Waiver:

The waiver by the Sublessor of, or failure of the Sublessor to take action with respect to any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of the same or any other term, covenant, or condition contained herein.

42. Conflict of Interest:

The Sublessee covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Sublessee further covenants that in the performance of the Sublease Agreement no person having any such known interests shall be employed. By entering into the

Sublease Agreement, the Sublessee covenants that it is not in violation of KRS Chapter 11A (Executive Branch Code of Ethics).

43. Disclosure of Financial Information:

The Sublessee certifies that, by entering into this Sublease Agreement with the Sublessor and that by holding and performing this Sublease Agreement, the Sublessee will not be violating either any conflict of interest statute (KRS 45A.330-340, KRS 164.390) or KRS Chapter 11A, the Executive Branch Code of Ethics, or any other applicable statute or principle by the performance of this Sublease Agreement, nor will Sublessee realize any unlawful benefit or gain directly or indirectly from it. Non-compliance may result in termination of the Sublease Agreement.

The Sublessee agrees that the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records or other evidence which are directly pertinent to the resulting Sublease Agreement for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records or other evidence provided to the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the Sublease Agreement shall be subject to public disclosure pursuant to 200 KAR 5:314 regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1) prior to the execution of the Sublease Agreement. The Secretary of the Finance and Administration Cabinet shall not restrict the public access to any information that would otherwise be subject to public access if a state government agency was providing the service.

44. Severability Clause:

If any provision of this Sublease Agreement is declared invalid or unenforceable, then the remainder of said Sublease Agreement shall continue in full force and effect.

45. Successors or Assigns:

The covenants, conditions, and agreements made and entered into by the parties hereto are declared and agreed to be binding upon and to inure to the benefit of their respective successors and/or assigns.

46. Cancellation Clause:

Subject to the provisions of 200 KAR 5:312, which is hereby incorporated as if fully set forth herein, either party to the resulting Sublease Agreement may cancel said Sublease Agreement by giving written notice to the other party, specifying the date of cancellation; such notice to be given not less than thirty (30) days prior to the date of cancellation.

47. **Prohibition Against Removal of Trees or Minerals:**

The Sublessee agrees that no live trees will be cut, no vegetation dug, nor the landscape altered in any way without prior consultation and written approval of the Department of Parks, and where applicable, the U.S. Corps of Engineers. In no event shall the Sublessee extract or remove any minerals, oil, or gas from the premises.

IN TESTIMONY WHEREOF, the parties have affixed their signatures the day and year first above written.

REVIEWED AND AGREED:

SUBLESSOR:

Holly M. Johnson, Secretary
Finance and Administration Cabinet

COMMONWEALTH OF KENTUCKY)

COUNTY OF FRANKLIN)

Before me, a Notary Public in and for said County and State, personally appeared Holly M. Johnson, Secretary of the Finance and Administration Cabinet of the Commonwealth of Kentucky in the foregoing Sublease, and acknowledge the signing of the Sublease to be a voluntary act and deed on behalf of the Commonwealth of Kentucky.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 20__.

Notary Public, State-at-Large

My Commission Expires: _____

SUBLEESSEE:

COMMONWEALTH OF KENTUCKY)

COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ in the foregoing Sublease, and acknowledge the signing of the Sublease to be a voluntary act and deed on behalf of _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 20__.

Notary Public, State-at-Large

My Commission Expires: _____

RECOMMENDED:

Russ Meyer, Commissioner
Department of Parks

Michael E. Berry, Secretary
Tourism, Arts & Heritage Cabinet

REVIEWED:

Office of the General Counsel
Tourism, Arts & Heritage Cabinet

APPROVED:

ANDY BESHEAR, GOVERNOR OF THE
COMMONWEALTH OF KENTUCKY

REVIEWED:

Counsel
Office of the Governor

THIS INSTRUMENT PREPARED BY:

Patrick McGee, Attorney
Finance and Administration Cabinet
200 Mero Street, 5th Floor
Frankfort, Kentucky 40601
(502) 564-6660

DRAFT