

## LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of November, 2012 by and between the City of Saint Paul, a municipal corporation, by its Department of Parks and Recreation (hereinafter referred to as "City"), and the Magnolia Blossom Cruises LLC, a corporation registered in the State of Minnesota (hereinafter referred to as Magnolia Blossom).

WHEREAS, the City owns the Watergate Marina located at 2500 Crosby Farm Road and adjacent to Crosby Farm Regional Park; and

WHEREAS, Magnolia Blossom is owned by Dan Dickinson; and

WHEREAS, the City has a management agreement with Allied Management (Allied) for management of Watergate Marina; and

WHEREAS, Magnolia Blossom has located and operated a cruise boat (the Magnolia Blossom) at Watergate Marina for the 2006 through 2012 seasons and the City believes that the continued operation of the Magnolia Blossom at Watergate Marina enhances the public's access to the river-front and the related enjoyment of the park, and wishes to provide License renewal per current agreement item #12.

NOW THEREFORE, it is mutually agreed and understood as follows:

1. **License:** The Department hereby grants a license allowing Magnolia Blossom to locate and operate the river boat Magnolia Blossom at the Watergate Marina from January 1, 2013 though December 31, 2017, with a single five year renewal option.

2. **License fee:** Magnolia Blossom agrees to pay the City an annual licensing fee, in the amounts and by the dates set forth below:

|                   |             |
|-------------------|-------------|
| January 31, 2013: | \$ 5,600.00 |
| January 31, 2014  | \$ 5,700.00 |
| January 31, 2015  | \$ 5,800.00 |
| January 31, 2016  | \$ 5,900.00 |
| January 31, 2017  | \$ 6,000.00 |

3. **Hours of operation:** Magnolia Blossom must end all charters and cruises by 11:00 p.m. except in instances where it has obtained advance written consent from the City for a later ending time. Requests must be made at least two (2) weeks in advance and in no case will a charter or cruise be permitted to end later than midnight. It shall be presumptively reasonable to deny such a request and the City need not approve such request for extension unless there are strong reasons necessitating a later ending time and such extension does not cause substantially increased costs, noise, traffic or disruption to the Marina.

3. **Dockage Agreement:** A dockage agreement with Allied Management Company for the period of the Agreement will be required before this Agreement is valid. A copy of the agreement must be on file with the City.
4. **Parking:** Magnolia Blossom must annually present a parking plan to Allied Management Company and the City for review and approval in January of each operating year.
5. **Insurance:** Magnolia Blossom shall provide at its own cost and expense, liability insurance naming the City as an additional insured thereon. Insurance shall cover injury to persons or property in an amount not less than the limits of the City's liability as set forth in Minn. Stat. §466.01 et seq ( \$500,000 individual, \$1,500,000 aggregate as of January 1, 2010, and increasing thereafter). Magnolia Blossom shall also provide a Marina Operators Legal Liability Policy with limits not less than \$500,000 for one occurrence and \$1,000,000 aggregate. Magnolia Blossom shall provide evidence of such coverage to the City upon execution of the agreement. Nothing in this provision shall be construed in any manner as a waiver by the City of its statutory limits of liability, immunities or exceptions. Magnolia Blossom shall be obligated to maintain such coverage in full force and effect at all times that this Lease Agreement is in effect, and failure to do so shall be a breach thereof.
  - 5.1. Magnolia Blossom shall annually supply to City a current insurance certificate for the policies required in Section 5. Further, Magnolia Blossom's Insurance Agent shall provide to the City evidence of the Insurance Agent's ERRORS and OMISSIONS Insurance Policy.
  - 5.2. The limits cited under the insurance requirement above establish minimums; and it is the sole responsibility of Magnolia Blossom to purchase and maintain additional insurance that may be necessary in relation to this agreement.
  - 5.3. Magnolia Blossom shall place the insurance with responsible insurance companies authorized and licensed to do business in the State of Minnesota and approved by City. The policies required in Section 5 shall be endorsed to indicate that the insurer shall give notice to the City of Saint Paul of cancellation or changes in accordance with the policy provisions.
  - 5.4. If, for any reason, any of the insurance hereunder is void, Magnolia Blossom is responsible to the City for the total amount of uninsured loss.
  - 5.5. If Magnolia Blossom operates its vessel without insurance, and claims are brought forth naming the City, the City shall have the right to defend itself from such claims and then bring claim against Magnolia Blossom for the full amount of such costs of defense and/or claim costs against Magnolia Blossom in addition to any other breach of contract costs associated therewith.
6. **Indemnification:** Magnolia Blossom hereby agrees to defend, indemnify and hold the City and any of its officers, agents and employees harmless from any claims, damages, or

causes of action arising from the use and operations of Watergate Marina by Magnolia Blossom, its agents, officers, or employees.

7. **Alcohol sales:** There will be no alcohol sales in the Watergate Marina.
8. **Compliance with Laws:** Magnolia Blossom agrees to comply with all applicable federal, state and local laws, regulations or standards governing the services performed under this License and to provide the City of Saint Paul with evidence that all required approvals, licenses and certificates required have been obtained and maintained.
9. **Non discrimination:** Magnolia Blossom will not discriminate against any employee or applicant for employment because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same. Magnolia Blossom will not discriminate in the offering of services under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance. Additionally, Magnolia Blossom must abide by all federal, state, and local laws relating to discrimination in public accommodation.
10. **Live entertainment:** Live entertainment events will not take place in the Watergate Marina unless planned by Allied or the Watergate Boat Club, and advance written consent is obtained from the City. Requests for live entertainment in the Watergate Marina must be made at least two (2) weeks in advance. It shall be presumptively reasonable to deny such a request and the City need not approve such request unless there are strong reasons necessitating live entertainment in the Watergate Marina and such live entertainment does not cause substantially increased noise, traffic or disruption to the Marina.
11. **Reports:** Magnolia Blossom will provide an annual report to the City of operations by January 31<sup>st</sup> of each following year of the Agreement. The report will include a summary of the Magnolia Blossom's previous year financials (revenues, expenses, net income) including a comparison to the prior year's same information, number of trips, number of participants, and accident reports.

The City has a right to inspect all books and records pertaining to the operation of the Magnolia Blossom. The City shall be granted inspection of said books and records by providing Magnolia Blossom with written notice, whereby Magnolia Blossom shall have fifteen (15) days to provide such information to the CITY.

12. **License renewal:** Magnolia Blossom may request renewal of this license for an additional five year renewal term by giving the City a written request no later than September 1, 2017. The City will respond by December 15, 2017 but the City is not obligated to agree to renewal and this License conveys no right or privilege to renewal.

If parties can not agree to renewal terms by January 31, 2018, the renewal option shall be terminated, notwithstanding Magnolia Blossom's timely notice of intent to renew.

13. **Alterations:** Any alteration to the Watergate Marina must be approved by the City. Before the City grants approval Allied Management must review and approve the plan. Magnolia Blossom requires no alterations or additions to its existing dock and ramp accesses related to this license. Alterations that adversely affect the environmental health of the Watergate Marina will not be approved. There will be no clear-cutting or planting (non-native vegetation) without advance written authorization from the City.
14. **Environmental restoration:** Magnolia Blossom will be responsible for restoring any environmental damage caused by the operations of Magnolia Blossom. City will determine what damages have been done, what restoration will be required and the completeness of the restoration.
15. **Recycling:** Magnolia Blossom must maintain a recycling program on the boat.
16. **Signage:** The City reserves the right to approve the placement and content of all signage within and surrounding the Watergate Marina. Prior to placement of any signage, Magnolia Blossom shall obtain written authorization from the City.
17. **Magnolia Blossom Employees:** Employees of Magnolia Blossom shall be identifiable, well groomed and appropriately dressed. Magnolia Blossom employees are not employees or agents of the City and are not entitled to any of the rights, privileges, or benefits of City of Saint Paul employees.
18. **Peaceful Surrender:** Magnolia Blossom, at the expiration of this License Agreement, shall quit peacefully and surrender possession of the License Premises and its appurtenances to the City in as good order and condition as the property was delivered to Magnolia Blossom.
19. **Notices:** All notices herein provided to be given, or that may be given by either party to the other, shall be deemed to have been fully given when served personally on the City or Magnolia Blossom, or when made in writing and deposited in the U.S. Mail, certified and postage prepaid, and addressed to Magnolia Blossom at P.O. Box 296, Afton, MN 55001, and to the City at the Department of Parks and Recreation, 400 City Hall Annex, 25 West Fourth Street, Saint Paul, Minnesota 55102. The address to which the notice shall be mailed may be changed by written amendment of this License. Nothing herein shall preclude the giving of such address change notice by personal service.
20. **Law Governing:** This Agreement will be governed and construed in accordance with the laws of the State of Minnesota, and venue of any lawsuit commenced shall be in the district court of the County of Ramsey, Second Judicial District, Minnesota.

21. **Amendments:** Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.
22. **Force Majeure:** The City shall not be held responsible for acts of God including, but not limited to: severe weather, storms, floods earthquake or other natural occurrences, power failures, electrical power surges or current fluctuations, or civil military emergencies, and Magnolia Blossom ' s obligation to pay the license fee set forth in §2 shall not be affected by such events.
23. **Transfer/Assignment:** This License Agreement is not transferable to any other party or entity without prior written approval of the City and this License Agreement shall automatically terminate on the date set forth in paragraph 1 unless an extension is agreed to in writing by the Parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands to this Agreement as of the day and year first above written.

**CITY OF SAINT PAUL:**

**MAGNOLIA BLOSSOM CRUISES:**

\_\_\_\_\_  
Mayor

  
\_\_\_\_\_

\_\_\_\_\_  
Director of Parks and Recreation

\_\_\_\_\_  
Director of Financial Services

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney