

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

RIGHT OF ENTRY

Pease Development Authority, Division of Ports and Harbors (“PDA-DPH”) with an address of 555 Market St., Portsmouth, NH 03801 under authority set forth in NH RSA 12-G, grants a Right of Entry (“ROE”) **Lucas Marine, LLC (“Lucas”)**, with a mailing address of **335 Washington Rd., Rye, NH 03870** to use property of the State of New Hampshire, **Rye Harbor Marine Facility, 1870 Ocean Blvd., Rye, NH 03870** (the “Premises”) pursuant to the terms of this Right of Entry and for the following purposes and for no other uses unless expressly authorized:

PREMISES: Rye Harbor Marine Facility

PURPOSE OF ROE: Non-exclusive use of the Premises facilities for Charter Boat Operations & Customer Parking

PERIOD OF USE: Period 1-June 1, 2023-June 30, 2024
Period 2-July 1, 2024-June 30, 2025
Period 3-July 1, 2025-June 30, 2026

CUSTOMER

PARKING FEE: Period 1-\$5.00 per vehicle
Periods 2 -\$5.00 per vehicle, subject to change per paragraph 2

The ROE is given subject to the following conditions:

1. The term of this ROE is set forth in the Period of Use above. Requests for extension or renewal shall be submitted to the DPH Director in writing by **April 1, 2026**.
2. **Lucas’s** customers shall have nonexclusive use of parking spaces situated at the Premises parking lot. PDA-DPH will charge customers a \$5.00 parking fee per vehicle for any vehicle using the Marine Facility parking lot. Parking fees are subject to change during the term of this ROE. **Lucas** shall work cooperatively with PDA-DPH to ensure its customers abide by all traffic and parking requirements at the Marine Facility.
3. **Lucas** employees and agents shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot. Notwithstanding the foregoing, **Lucas** shall be provided with employee seasonal parking passes in accordance with the provisions of Pda 604.03 or as agreed upon in any other lawful agreement made with PDA-DPH. **Lucas** agrees to require all of its employees and agents to park in the area designated by PDA-DPH as “Employee Parking,” and further understands and agrees that any violation of this clause may result in the revocation of the employee’s driving and parking privileges within the facility, as well as termination of this ROE.

4. **Lucas** agrees that its employees and agents who are the owner or custodian of any animal, while at the Marine Facility, or within any building subject to any ROE where PDA-DPH is a party, shall at all times have said animal on a standard or retractable leash not greater than six (6) feet in length and shall promptly and properly dispose of any waste or garbage the animal excretes or causes to be scattered on the property.
5. **Lucas** shall obtain a separate Pier Use Permit in connection with its charter operation which allows nonexclusive access to the Premises pier, in accordance with N.H. Administrative Rules Part Pda 600, all subject to the oversight and direction of PDA-DPH.
6. **Lucas** shall obtain all necessary licenses and permits required in connection with the operations described herein. Required documents may include, but are not limited to, Pier Use Permit, Captains License(s), applicable NH Fish and Game Fishing and/or Charter licenses, and NH Secretary of State Registration paperwork.
7. The scheduling of departures and arrivals in connection with any activity allowed under this ROE will not interfere with the scheduled use of common areas or adjoining areas by other entities which have actively conducted business at the Premises and have been previously issued an ROE(s) by PDA-DPH.
8. **Lucas** shall obtain advance approval from the PDA-DPH for all signs and advertisements posted on the Premises. In all cases the decision of PDA-DPH on whether to approve the sign or advertisement shall be in its sole discretion and shall be final.
9. **Lucas** shall be responsible for routine cleaning of all areas of the Premises and equipment which is used in connection with its operations at the Premises and for picking up garbage and rubbish its operations generate and depositing same at a designated location on the Premises where PDA-DPH can dispose of it. At no time shall waste water of any kind be disposed of on the Premises.
10. **Lucas** shall indemnify, defend (with counsel acceptable to the State of New Hampshire and PDA-DPH) and hold the State of New Hampshire and PDA-DPH harmless against and from any and all claims, judgments, damages, penalties, fines, assessments, costs and expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts' fees) resulting or arising during the term of this ROE:
 - A. From any condition of the Premises including any building structure or improvements thereon for which **Lucas** has taken possession of hereunder;
 - B. From any breach or default on the part of **Lucas** to be performed pursuant to the terms of this ROE, or from any act or omission of **Lucas**, or any of its agents, contractors, servants, employees, licensees or invitees; or
 - C. From any accident, injury, death, loss or damage whatsoever caused to any person or property occurring during the term of this ROE, on or about the areas (including, but not limited to piers, docks, gangways, ticket office and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this ROE.
11. On or before the effective date of this ROE, **Lucas** and any agent, contractor, or vendor of **Lucas** shall provide PDA-DPH with proof of required insurance coverage as outlined in **Exhibit A**.

12. Notwithstanding the foregoing, no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire is reserved to the State of New Hampshire to the fullest extent allowed under law and the sovereign immunity of PDA-DPH is reserved to it to the fullest extent allowed under law subject, however to contractual claims arising under this ROE to the extent such are permitted by New Hampshire NH RSA Ch. 491:8 as the same may be amended.
13. **Lucas** may terminate this ROE by giving PDA-DPH a thirty (30) day notice in writing. The provisions of paragraph 10 shall survive termination.
14. PDA-DPH may terminate this ROE by giving **Lucas** thirty (30) days advanced written notice of termination in the event of the failure of **Lucas** to perform, keep or observe any of the provisions of this ROE and the failure of **Lucas** to correct the default or breach within the time specified by PDA-DPH.
15. This ROE may be terminated immediately by PDA-DPH in the event **Lucas** fails to provide proof of insurance coverage, or engages in any activity which is deemed by PDA-DPH in its sole discretion to compromise public safety or health. The provisions of paragraph 10 shall survive termination.
16. In the performance of this ROE, **Lucas** is in all respects an independent contractor and is neither an agent nor employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of **Lucas** or any of its officers, employees, agents or members resulting in either personal or property damage to any individual, firm or corporation. Neither **Lucas** nor any of its officers, employees, agents or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor are they entitled to any of the benefits, Worker's Compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees.
17. **Lucas** agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to its equipment or supplies or equipment rented or leased by the **Lucas** from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.
18. In connection with the performance of this contract, **Lucas** agrees to comply with all statutes, laws, regulations and orders of federal, state, county or municipal authorities, including those of PDA-DPH which shall impose any obligation or duty on **Lucas**.
19. **Lucas** shall be familiar with and follow Administrative Rules CHAPTER 600. The Rules are available from PDA-DPH upon request or can be viewed on the Divisions web site, www.portofnh.org.
20. In accordance with Administrative Rule Pda 603.11 (a), **Lucas** acknowledges that camping or sleeping on state-owned commercial piers and associated facilities is prohibited.
21. In accordance with Administrative Rule Pda 603.11 (b), **Lucas** acknowledges the service and consumption of alcohol is prohibited unless permission has been granted with the terms of a written contractual agreement with PDA-DPH.

22. **Lucas** is responsible for providing all necessary and required safety equipment and training to its employees and customers as may be required and appropriate to the uses allowed under this ROE.
23. Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and **Lucas** for the purpose of discussing current operational issues, presentation of official requests for changes in schedules, process, and other pertinent business which may arise. The PDA-DPH will be represented at these meetings by the Director of the DPH or his/her authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate. **Lucas** shall be represented, at a minimum, by one (1) officer/member of the company.
24. This ROE may not be assigned or transferred without the express written approval of the PDA-DPH.
25. **Lucas** may not self-fuel any boat used in connection with this ROE on the Premises or within the Premises. **Lucas** will be allowed to purchase fuel from an approved vendor (diesel only) or from the fuel service available at the Premises (diesel or gasoline). To purchase diesel fuel from an approved vendor, the vessel owner must have a fuel variance approved by the Office of the NH State Fire Marshall in accordance with Information Bulletin #2015-07, as may be amended from time to time.
26. This ROE has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.
27. This ROE may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page left blank-Signature page follows]

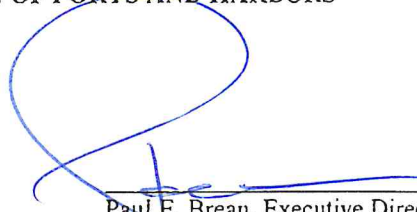
Lucas Marine, LLC
Charter ROE, Rye
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PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 6/14/23

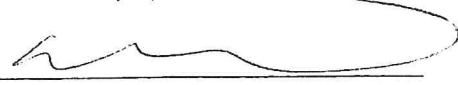
Raeline A. O'Neil
Witness signature

Raeline A. O'Neil
Witness printed name

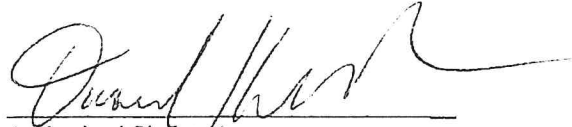

Paul E. Brean, Executive Director, PDA

Lucas Marine, LLC

Date: 6/6/2023


Witness Signature

Sarah Halaby-Weston
Witness Printed Name


Authorized Signature

David Kohlbase/manager
Printed Name/Title

EXHIBIT A

TO: RIGHT OF ENTRY HOLDERS - CHARTER ONLY (NO BUILDING ON SITE)

RE: MINIMUM REQUIREMENTS OF CERTIFICATES OF INSURANCE FOR CHARTERS OPERATING ON PROPERTY OF THE STATE OF NH, PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS

All Charter Right of Entry holders are required to provide proof of insurance to the Pease Development Authority-Division of Ports and Harbors (PDA-DPH) before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. The following are the minimum requirements for insurance coverage:

1. **Protection and Indemnity:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Dockside liability endorsement:** Covering piers, gangways, and docks.
3. **Automobile Liability:** Automobile liability coverage to a limit of not less than \$1,000,000.00 per occurrence.
4. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
5. **Additional Insureds:** Pease Development Authority Division of Ports and Harbors and the State of New Hampshire must be named as additional insureds under all liability coverages.
6. **Certificate Holder:** Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
7. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
8. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage.
9. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.