



PURCHASE AND SALE AGREEMENT

Buyer / Seller		
Buyer: Chuck Dammon	Seller: Bret Clark	
Co-Buyer :	Co-Seller	
Vessel Information		
Make: Wellcraft	Vessel Name:	Official/Title No.:
Model: 290 Coastal	Hull No: WELHHA45J304	Reg No.: Place of Registration:
Year: Length: 2004 29ft 0in	Engines: Yamaha FPX	Country / Flag: United States
Additional Units (Tenders, Toys, Trailers)		
Agreement Terms		
Offer Date: Mar 07, 2018	Listing Broker: Waylen Bay Marine	Purchase Price: US\$50,000.00 USD
Seller Acceptance Date: Mar 07, 2018	Selling Broker: Waylen Bay Marine	Less Deposit: US\$5,000.00 USD
Buyer Accept/Reject Date: Mar 12, 2018	Trade-In Description:	Less Trade Allowance:
Closing Date: Mar 23, 2018	Delivery Location: ST Augustine, FL	Net Cash Difference: US\$45,000.00 USD
Additional Terms:		

- 1. Agreement** Buyer agrees to purchase and Seller agrees to sell, all right, title and interest to the Vessel on the terms and conditions as set forth herein (the "Agreement"). Capitalized words herein refer to the items in the chart above unless otherwise defined herein. Listing Broker and Selling Broker shall be referred to herein as "Brokers." If there is a Trade Allowance, the terms and conditions of the trade-in will be governed by a Trade-In Vessel Addendum.
- 2. Timeframe for Acceptance of Agreement; Deposit.** If this Agreement is not signed and delivered to all parties ("Execution") on or before the SELLER ACCEPTANCE date, this Agreement shall be ineffective and the Deposit(s) shall be returned to Buyer unless Buyer otherwise instructs the Selling Broker. Within three (3) business days following Seller's execution of this Agreement, Buyer shall pay the Deposit to the Selling Broker's escrow account (as acknowledged below) as a deposit toward the Purchase Price to be held subject to the terms of this Agreement. Seller's obligations are not binding until the Deposit clears Selling Broker's account.
- 3. Survey Option; Acceptance of Vessel; Conditions of Survey.** Buyer's obligation to purchase is subject to Buyer's satisfaction, in Buyer's sole discretion, with a trial run and survey of the Vessel, if Buyer elects to have the Vessel surveyed. In such event: (a) Buyer will select the Surveyor and thereupon Surveyor and not Brokers, will be the sole party responsible for any errors or omissions with respect to such survey, notwithstanding the fact that Brokers may have provided information and assisted Buyer with hiring the Surveyor; (b) *the survey shall be completed as soon as practicable after Execution*; (c) all costs of the survey are the Buyer's sole responsibility, including associated costs such as haul-out, dry dock charges, and

Initials Buyer(s): CD, _____

Initials Seller(s) _____, _____

subcontractors, for example; (d) Buyer and its surveyor will be solely responsible for the scope of the survey and the trial run with respect to determining conformity with the Buyer's requirements; and (e) Buyer must deliver written notice of rejection or acceptance to Seller by no later than the BUYER ACCEPT/REJECT date. **Buyer's failure to timely accept/reject shall be construed as a rejection.** Upon Buyer's acceptance, and/or initiation of survey, Seller will not make any personal use of the Vessel pending Closing. If Buyer rejects the Vessel, after all expenses incurred on Buyer's behalf have been paid: (i) the Agreement shall terminate; (ii) the parties and Brokers will be released from any further liability hereunder; and (iii) the Deposit shall be returned to Buyer. The trial run shall be at Seller's sole risk and expense. Brokers shall not be responsible for the cost of correcting any items found to be deficient in the survey.

4. **Closing.** Closing shall occur on or before the CLOSING DATE, or at such other time as may be agreed by the parties in writing. Seller shall deliver the Vessel at the DELIVERY LOCATION (if blank, at Listing Agent's principal place of business) together with all gear, machinery, equipment and all other articles and appurtenances on board the Vessel as of the date of signature of this Agreement by the Buyer ("Items"), except for those Items included in a written exclusion list ("Exclusion List") delivered to Buyer within two (2) days of Execution, but in no event later than Closing. If unacceptable, Buyer shall then have two (2) business days from receipt of the Exclusion List (but in no event later than Closing) to deliver, at Buyer's option, written notice of termination of this Agreement to Seller. In such event, after all expenses incurred in on Buyer's behalf have been paid, (i) the Agreement shall terminate, (ii) the parties and Brokers will be released from any further liability hereunder, and (iii) the Deposit shall be returned to Buyer. Buyer's failure to deliver timely notice of termination will constitute Buyer's acceptance of the Exclusion List. Seller shall deliver to Brokers all necessary documents for transfer of title to Buyer on or before the Closing Date. Final payment due at the time of Closing shall be in the form of cleared funds. The preferred and accepted manner is for final payment by bank-to-bank wire transfer. Any other form of payment must be made early enough to allow funds to be cleared on or before the Closing Date. Any funds due Broker(s) for storage, insurance, repairs and/or other items accrued to the Seller's account shall be deducted from the Seller's net proceeds prior to disbursement of funds to Seller.

5. **Brokers.** The parties acknowledge that the SELLING BROKER agency and the LISTING BROKER agency are the only brokers procuring this Agreement. The term "Broker" as used herein refers to the Selling Agency and Listing Agency, collectively. Notwithstanding that only one party may be responsible for payment of Brokers' fees, the parties agree that the Listing Agency is agent for the Seller only (and owes no fiduciary responsibilities to the Buyer) and the Selling Agency is agent only for the Buyer (and owes no fiduciary responsibility to the Seller). Notwithstanding the foregoing, if a Broker is both the Listing Agency and Selling Agency, the parties consent to Broker acting as a dual-agent in this transaction for both Buyer and Seller, and Broker shall perform only the duties expressly set forth herein and no implied duties or obligations shall be read into the Agreement. The parties further agree that Broker may disclose to both parties facts known to Broker materially affecting the Vessel's value or desirability. Broker shall not, without Owner's consent, disclose to Buyer that Seller is willing to sell the Vessel for an amount less than the asking price. The parties each represent and warrant that neither has employed or dealt with any broker, agent or finder in carrying out the negotiations relating to the sale of the Vessel to Buyer and acknowledge that Broker is a third-party beneficiary to this Agreement.

6. **Seller's Representations; Requirements for Closing.** Seller represents and warrants that: (a) the Vessel is being conveyed free and clear of all debts, claims, maritime or common law liens, security interests, encumbrances, excise taxes, and any other applicable taxes, customs' duties, or tariffs due of any state, country, regulatory and/or taxing authority of any kind whatsoever (collectively, "Encumbrances"); and (b) Seller has good and marketable title to the Vessel, which Seller will warrant and defend. By the Closing Date, Seller shall deliver to Buyer: (i) satisfactory evidence of title; (ii) proof of payment/removal of all Encumbrances, if any; (iii) a personal guaranty and indemnification from the Seller (or the beneficial owner(s) of the Seller if Seller is a corporate entity) guaranteeing Seller's representations and warranties in (a) and (b) above; and (iv) any other necessary documents for transfer of good and marketable title to the Buyer. Seller shall pay any cost associated with, and shall cooperate fully to obtain, any authorization for sale as may be required from any governing authority. Any party which is a corporate entity will provide to the other prior to Closing (x) proof that it is in good standing under the laws of the State under which the entity has been formed, (y) a consent action or resolution demonstrating the entity's duly authorized decision to purchase or sell the Vessel, and (z) a power of attorney demonstrating the authority of the individual accepting the Vessel and/or executing the Agreement and/or purchase and sales documents.

7. **Risk of Loss; Force Majeure.** Risk of loss, damage or destruction to the Vessel shall be Seller's prior to delivery of the Vessel. The Closing Date is subject to the non-occurrence of *force majeure* events such as, without limitation, war, terrorism acts, strikes, accidents, tropical storms, hurricanes, natural disasters, or any other causes beyond Seller's control ("*Force Majeure*"). If a *Force Majeure* event occurs or the Vessel is otherwise damaged, the Closing Date (and all time periods referred to in this Agreement) shall be deemed extended by the time necessary to deliver the Vessel in the same condition as it existed on the date of Execution. However, if (a) the *Force Majeure* or damage to the Vessel delays the Closing Date for a period of at least thirty days or (b) if the *Force Majeure* or damage requires repairs in excess of five percent of the Purchase Price (5%)

Initials Buyer(s): CD

Initials Seller(s) _____

then (i) this Agreement will be deemed terminated, (ii) the respective rights and obligations of each party will cease to exist and be of no further force and effect, (iii) Buyer's Deposit(s) will be returned to Buyer after all expenses incurred by Seller or Broker on Buyer's behalf have been paid, and (iv) neither party will be entitled to, and hereby waives, any claim for specific performance, damages, compensation, interest, or any other claims.

8. **Default.** In the event the Closing is not consummated due to Buyer's non-performance, including but not limited to failure to pay monies due or execute all documents necessary for completion of the purchase by the Closing Date, all Deposit funds paid prior to Closing shall be retained by the Seller and Broker as liquidated and agreed damages, in full settlement of all claims between the parties, and the parties shall be relieved of all obligations under this Agreement. Buyer and Seller agree that the deposited funds shall be divided equally between the Seller and the Brokers, except that Brokers' share shall not exceed any commission due Brokers had a sale been consummated. Brokers shall then divide in the same proportions as the commission would have been divided had a sale been consummated. If Closing is not consummated due to Seller's non-performance, all money paid or deposited pursuant to this Agreement by the Buyer shall be returned to the Buyer upon demand, or the Buyer shall have the right of specific performance. Seller agrees that specific performance is reasonable in light of the uniqueness of the Vessel, difficulty of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. On Seller's default the Seller shall forthwith pay Broker the full commission provided for by the listing agreement.

9. **Sales, Use, and Property Taxes.** Sales or use taxes, if applicable on this purchase, are the responsibility of the Buyer. Buyer hereby indemnifies Seller and Broker for the payment of same. As per this Agreement, Property tax is the responsibility of the Owner of Record on January 1st of any given year. This contract does not implement any prorating of Property Tax, unless otherwise stated in ADDITIONAL TERMS. Seller and Buyer are advised to take this into account when agreeing on the terms of purchase.

10. **REPRESENTATIONS AND WARRANTIES.** SELLER AND THE BROKERS BELIEVE THAT ANY INFORMATION ANY OF THEM HAS PROVIDED ON THE VESSEL IS GOOD AND CORRECT AND OFFER THE INFORMATION IN GOOD FAITH, BUT DO NOT AND CANNOT GUARANTEE THE ACCURACY OF THE INFORMATION. BUYER WARRANTS AND REPRESENTS THAT HE IS NOT RELYING ON ANY ADVERTISEMENTS, PROMISES, DESCRIPTIONS, AFFIRMATIONS, OR REPRESENTATIONS (WHETHER ORAL OR WRITTEN, PRIOR TO OR CONTEMPORANEOUS WITH THIS AGREEMENT) PROVIDED BY THE BROKER. UPON CLOSING, IT IS UNDERSTOOD THAT THE BUYER HAS ACCEPTED THE VESSEL IN ITS "AS IS" CONDITION. NO WARRANTY, EITHER EXPRESS OR IMPLIED, AND NO REPRESENTATION AS TO THE CONDITION OF SAID VESSEL, ITS FITNESS FOR ANY PARTICULAR USE OR MERCHANTABILITY, HAS BEEN GIVEN OR IS BINDING UPON BROKER, ALL OF WHICH ARE DISCLAIMED.

11. **Financing.** Buyer's obligations are not contingent upon Buyer obtaining financing, unless otherwise stated in ADDITIONAL TERMS. Buyer represents that it will arrange financing, if necessary. Buyer acknowledges that Broker(s) has made no representations or warranties with respect to Buyer's ability to obtain financing, Buyer's qualifications to obtain any type of mortgage on the Vessel, or Buyer's ability to document the Vessel so that it is a "vessel of the United States" for purposes of the Ship Mortgage Act. 46 U.S.C. 911 et seq.

12. **Counterparts.** This Agreement may be signed in any number of identical counterparts, each of which will be an original (including signatures delivered via facsimile or electronic mail) with the same effect as if the signatures were upon the same instrument.

13. **Binding Effect; Contemporaneous Contracts; Future Sales.** This Agreement is binding on all parties, their heirs, personal representatives and/or assigns. Seller shall not sell the Vessel or enter into any contract for the sale of same while this Agreement is in effect. If a sale is not consummated per the terms of this Agreement, and the Buyer and Seller enter into a contract between themselves within two years after this Agreement is terminated for the transfer of ownership of the Vessel, the Seller agrees to pay the Broker an amount identical to the commission the Broker would receive under the terms of the listing contract.

14. **Transferred Warranties.** No warranties are transferred to Buyer unless listed in this section and attached hereto. Any costs associated with such transfers shall be Buyer's. Seller's transfer of its interest in such warranties is subject to the condition that neither Seller nor Broker makes any representation concerning such warranties and that the warranties transferred are subject to the terms thereof.

15. **Escrowed Funds.** The parties acknowledge that: (a) Broker shall not be responsible for the Deposit until the funds have cleared into Broker's account; (b) the Selling Broker shall hold the Deposit as an escrow agent once the funds have cleared and any other funds received by either Broker from any party will be held in trust for that party; (c) Broker may retain applicable commission prior to disbursement of the balance due to Seller; and (d) in any dispute involving any such funds held by Broker, Broker shall be indemnified for legal fees and costs relating in any way to such dispute, including those incurred in any appeals

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(which obligation is secured by a lien in the escrowed funds) and those relating to its claim for a commission, unless Broker is found, in a final unappealable judgment, to have engaged in willful misconduct or acted with gross negligence.

16. **Miscellaneous.** Notwithstanding anything herein to the contrary, this Agreement, including its exhibits and schedules, is the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous negotiations, agreements, representations, warranties, and understandings pertaining thereto, be it written, oral, or otherwise. Buyer and Seller hereby jointly and severally indemnify and hold the Broker harmless from any and all third party claims, demands, causes of action, losses, liabilities, damages and judgments, arising in connection with the Broker's undertaking pursuant to the terms and conditions of this Agreement. Should Broker become a party to any litigation involving this Agreement, Broker shall be reimbursed for its costs and attorney's fees, at all pretrial, trial and appellate levels, by the party or parties found to have breached this Agreement. If any term, condition, or provision of this Agreement is held to be unenforceable for any reason, it shall, if possible, be interpreted to achieve the intent of the parties to this Agreement to the extent possible rather than avoided. In any event, all other terms, conditions and provisions of this Agreement shall be deemed valid and enforceable. It is understood that there are no other duties, obligations, liabilities, or warranties, implied or otherwise, except as set forth herein. This Agreement may not be amended or modified, except in writing, signed by both parties. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, telefax, email or personal delivery, but proof of delivery shall be required for such to be effective. Unless otherwise provided for herein, Buyer may not assign this Agreement without Seller's consent, which consent shall not be unreasonably withheld. No claim or right arising out of this Agreement can be waived or discharged by one party, in whole or in part, unless in writing, nor shall any waiver be applicable except in the specific instance for which it is given. Any proceeding relating to this Agreement will be brought in the courts of the state and county of the main office of the Selling Broker, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court, waives any objection it may now or hereafter have to venue or to convenience of forum, and agrees not to bring any proceeding relating to this Agreement in any other court. The Additional Terms in the info box above shall be incorporated herein.

The parties, having been advised to consult legal counsel with respect to this Agreement hereby waive trial by jury with respect to any claim relating to this Agreement, whether against each other or against the Broker as a third party beneficiary.

<u>BUYER(S)</u>	<u>SELLER(S)</u>
Signature: <u>Chuck Dammon</u>	Signature: _____
Print Name: <u>Chuck Dammon</u> <small>06:55 AM GMT-06:00</small>	Print Name: <u>Bret Clark</u>
Date: <u>Mar 08, 2018</u>	Date: _____
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

SELLING BROKER: Acknowledgement and receipt of deposit

Signature: _____	Date: _____
Print Name: _____	Amount: <u>US\$5,000.00 USD</u>

THIS AGREEMENT IS NOT BINDING UNTIL SIGNED BY BOTH PARTIES AND DEPOSIT FUNDS HAVE BEEN RECEIVED AND CLEARED INTO BROKER'S ESCROW ACCOUNT

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