

DOCKAGE FACILITY USE AGREEMENT

THIS IS AN AGREEMENT, entered into this _____ day of _____, 2013 by and between:

CITY OF FORT LAUDERDALE, a Florida municipal corporation, 100 North Andrews Avenue, Fort Lauderdale, FL 33301, hereinafter "CITY"

and

WINTERFEST, INC., a Florida corporation, FEI # 650059092, 512 N.E. Third Avenue, Fort Lauderdale, FL 33301, hereinafter, "WINTERFEST"

RECITALS;

Pursuant to Motion, adopted at its meeting of October 25, 2013, the City Commission of the City of Fort Lauderdale authorized the proper City officials to enter into this Agreement.

WINTERFEST is the sponsor of the 2013 Winterfest Boat Parade, a signature event in the CITY annually held in the month of December in conjunction with an array of holiday festivities.

CITY owns and controls certain dockage facilities along New River and WINTERFEST is desirous of renting the dockage facilities along New River to facilitate the staging of vessels and creation of a viewing area for the public for the 2013 Boat Parade.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are correct and are hereby incorporated into this Agreement.

2. Definitions. The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise.

City Manager means CITY's Chief Executive Officer, its City Manager, or his or her designee.

Contract Administrator means the Supervisor of Marine Facilities of the CITY, or his designee. In the administration of this agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

Day(s). In computing any period of time expressed in day(s) in this Revocable License, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Dockage Facilities means the dock slips for the berthing of vessels, including the upland dock areas immediately adjacent thereto used primarily for staging and embarking and disembarking from vessels. The Dockage Facilities shall include:

MARSHALL POINT Slip Nos. 1 - 14;
COOLEY'S LANDING Slips No. 1, 2, 6, 7, 10-12, 13, 14, 14E, 15, 16, 17, 24, 26E, 28-30;
NEW RIVER NORTH Slip Nos. 45 – 84;
NEW RIVER SOUTH Slip Nos. 1 – 43

The term **Dockage Facilities** shall also include municipal docks and other dockage facilities controlled by the CITY that may not be referenced above, but as may be authorized by the Contract Administrator for a separate fee. Exhibit "A" is an aerial photo showing the general location of the Marshall Point Slips, the Cooley's Landing Slips, the New River North Slips and the New River South Slips.

Dockage Facilities / Staging Area means Marshal Point Slip Nos. 1 - 14 and Cooley's Landing Slip Nos. 1, 2, 6, 7, 10-12, 13, 14, 14E, 15, 16, 17, 24, 26E, 28-30;

Dockage Facilities / Viewing Area means New River North Slip Nos. 45 – 84 and New River South Slip Nos. 1 - 43

Effective Date means the effective date of this Use Agreement, which shall be the date upon which the City Commission grants authorization for the proper City officials to execute this License.

Event means the 2013 Boat Parade sponsored by WINTERFEST, scheduled to be held December 14, 2013, with the staging area at the beginning of the Event to be held in the waters of New River in the vicinity of the Theatre of the Performing Arts and the parade continuing Eastward down the waters of New River and Northward along the Intracoastal Waterway to the waters of Lake Santa Barbara, and returning by way of reverse course.

Permit means either a Building Permit issued by the Building Official pursuant to The Florida Building Code and Broward County Administrative Amendments or an Engineering Permit issued by the Office of the City Engineer, or both, whichever the case may be. The term **Permit** also includes any other permit or permission issued by a governmental agency with subject matter jurisdiction over the actions to be taken and includes all conditions relating thereto.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust,

cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

3. Use. CITY and WINTERFEST agree that WINTERFEST shall have exclusive use of the Dockage Facilities / Staging Area for the staging of vessels in conjunction with the 2013 Boat Parade and shall have non-exclusive use of the Dockage Facilities / Viewing Area for the purpose of creating a vessel clearance area where the general public may view the Event. CITY shall keep the water slips in the Dockage Facilities / Viewing Area free of berthed vessels.

4. Term. WINTERFEST shall have use and possession of the Dockage Facilities / Staging Area commencing 8:00 AM, December 14, 2012 and terminating 8:00 AM, December 15, 2012. Dockage fees for any vessel remaining at any Slip within the Dockage Facility / Staging Area after 8:00 AM, December 14, 2013, shall be the obligation of WINTERFEST, unless the vessel enters a separate Dockage Agreement with the CITY.

5. Dockage Fee. The Contract Administrator, with the approval of the City Manager may require payment for the CITY'S loss of revenue resulting from the required vacation of vessel-occupied slips for the Event staging or for Dockage Facility / Staging Area or Dockage Facility / Viewing Area during the aforementioned term. The potential loss of revenue is estimated to be **\$2,099.70**, plus 6% sales tax. WINTERFEST shall owe CITY the sum decided by the Contract Administrator and City Manager.

6. Operating Costs. WINTERFEST shall bear sole responsibility for and be obligated to bear any costs associated with the Event under this Agreement. Removal of any bulk trash, bottles, plastic cups, or other debris remaining from the Event is the sole responsibility and obligation of WINTERFEST. All other trash from vessels participating in the Event and berthed in the Dockage Facilities / Staging Area must be disposed of properly in trash containers provide at the Dockage Facilities. Unless otherwise agreed upon, consumption of water and electric service for routine use by vessels participating in the Event and berthed in the Dockage Facilities may be used at no cost to the CITY.

7. INSURANCE. At all times during the term of this Agreement, WINTERFEST, at its sole cost and expense, shall keep or cause to be kept in effect the following insurance coverages:

- (a) Public and liquor liability and property damage liability insurance coverage in the amount of \$1,000,000 per occurrence, in standard form, insuring WINTERFEST against any and all liability for bodily injury or property damage arising out of or in connection with the use of the Dockage Facilities under this Agreement and shall name the CITY as an additional insured. All such policies shall cover the Event activities and the possession, use, occupancy and maintenance of the Dockage Facilities and any other CITY property. This policy shall not be affected by any other insurance carried by CITY. This policy shall be primary and without right of contribution.

- (b)** All of the policies of insurance provided for in this Agreement:
- (i)** shall be in the form and substance approved by the Department of Insurance of the State of Florida ("DOI"),
 - (ii)** shall be issued only by companies licensed by DOI,
 - (iii)** Certificates of Insurance pertaining to same shall be delivered to City, at least ten (10) days prior to the commencement of the use of the Event,
 - (iv)** shall be with a carrier having an AM Best's Rating of not less than A-, Class VII,
 - (v)** shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and
 - (vi)** shall provide that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon City and shall not be invalidated as to the interest of City by any act, omission or neglect of WINTERFEST.
- (c)** In any case where the original policy of any such insurance shall be delivered to WINTERFEST, a duplicated original of such policy shall thereupon be delivered to City.
- (d)** City does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect WINTERFEST or the interests or liabilities of its contractor's but are merely minimum requirements established by CITY'S Risk Management Division. CITY reserves the right to require any other insurance coverages that CITY deems necessary depending upon the risk of loss and exposure to liability.
- (e)** WINTERFEST agrees to deliver a certificate of insurance evidencing such coverage to CITY not later than ten (10) days prior to the term of this Agreement.
- (f)** WINTERFEST shall require that all vessel participant owners occupying dock space controlled by the CITY enter into the current standard "City of Fort Lauderdale Marine Facilities Dockage Agreement".

8. INDEMNIFICATION.

- (a)** WINTERFEST shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every

kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of WINTERFEST under this Agreement or the Event, conditions contained therein, resulting from the location, construction, repair, removal, demolition, maintenance, use or occupancy of the Dockage Facilities thereof or improvements thereto, or the breach or default by WINTERFEST of any covenant or provision of this Agreement except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY, its officers, agents and employees.

- (b) Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation, operation, maintenance, repair or restoration of the Dockage Facilities or the Event, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.
- (c) WINTERFEST further agree to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the CITY, WINTERFEST shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY, provided that the CITY (exercisable by the CITY's Risk Manager) shall retain the right to select counsel of its own choosing.
- (d) Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges and immunities as set forth in Florida Statutes Section 768.28.

9. Parking. Vehicular parking for employees and contractors of WINTERFEST is not permitted at designated dock permit parking areas, except as permitted by the Contract Administrator.

10. Delivery of Equipment. Delivery of equipment, accessories and display material to the vessels participating in the Event is strictly prohibited at the Dockage Facilities, unless expressly approved by the Contract Administrator before such delivery.

11. Vandalism. CITY shall not be responsible for vandalism or damage to vehicles or vessels in connection with the Event while berthed at the Dockage Facilities.

12. Noise. No amplified sound or music of any kind shall be permitted at the Dockage Facilities during the staging activities for the Event.

13. Storage. Use of the Dockage Facilities for storage of equipment or related accessories prior to the term of this Use Agreement is strictly prohibited.

14. Fueling and Petroleum Products. Other than the CITY'S approved mobile fueling site on New River, fueling of vessels at the Dockage Facilities is prohibited. Oil changes, lubrication of engines or related parts, transmission fluid changes, and any type of maintenance on engines that produces toxic omission at the CITY'S Dockage Facility / Staging Area is strictly prohibited.

15. Security. WINTERFEST shall be solely responsible for providing security for the vessels, their owners, employees, contractors, guests and invitees during the Event. It shall be WINTERFEST'S obligation to ensure pedestrian traffic movement from interfering with vessel activities at the Dockage Facilities during the Event.

16. Temporary Improvements. All costs, fees, Permits and other governmental approvals related to the delivery, erection, use and removal of Event related equipment, trailers, tents, or other related accessories shall be the sole financial responsibility of WINTERFEST. Any such improvement that necessitates the physical attachment of the item to CITY property must be commenced only after securing the prior approval of the Contract Administrator. The removal of such items after the Event shall be the sole responsibility of WINTERFEST, including repair or replacement of any damaged mooring pilings, cleats, docks, walks, landscaping, buildings and equipment, electrical wiring or accessories. Notwithstanding prior approval of the Contract Administrator, WINTERFEST is required to obtain any and all applicable governmental Permits and approvals for any activities, work or improvements requiring the issuance of a Permit or approval with respect to WINTERFEST'S use of the Dockage Facilities in conjunction with the Event.

17. Marine Sanitation. All vessels using the Dockage Facilities connected with the Event must be equipped with a U.S. Coast Guard approved marine sanitation device, which meets or exceeds all local, state and federal regulations.

18. Special Conditions.

18.1 This Agreement may be terminated without notice in the event of threat to the public health or public safety as may be determined in the sole discretion of federal, state or local officials charged with making such determinations. The CITY shall not be liable to WINTERFEST for any losses incurred by reason of such termination.

18.2 The CITY and WINTERFEST shall not assign their rights under this Agreement, except that in the event of a cancellation or termination of the agreement between WINTERFEST for the production of the Event.

18.3 WINTERFEST agrees that nothing herein contained is intended or should be construed as in any way creating or establishing the relationship of partners or joint ventures between the CITY and WINTERFEST for any purpose or in any manner whatsoever, and that it shall not represent to any third parties that such is the case.

18.4 Either party may terminate this Agreement for any reason whatsoever with advance written notice given a minimum of five (5) days prior to the Event.

18.5 Liens Against the Dockage Facilities. WINTERFEST shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of CITY in and to the Dockage Facilities, and no Person shall ever be entitled to any lien, directly or indirectly derived through or under the WINTERFEST, or its agents, servants, employees, contractors or officers or on account of any act or omission of said WINTERFEST as to the Dockage Facilities. All Persons contracting with the WINTERFEST, or furnishing materials, labor or services to said WINTERFEST, or to its agents or servants, as well as all Persons shall be bound by this provision of the Agreement. Should any such lien be filed, WINTERFEST shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. WINTERFEST shall not be deemed to be the agent of CITY, so as to confer upon a laborer bestowing labor upon or within the Dockage Facilities, or upon materialmen who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the CITY's right, title or interest in and to the Property or Dockage Facilities. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the CITY.

19. Miscellaneous.

19.1 Entire Agreement. This Agreement shall constitute the entire agreement between the parties, and no warranties, inducements, considerations, promises or other references shall be implied or impressed upon this Agreement that are not expressly addressed herein.

19.2 Two identical originals. This Agreement has two (2) identical originals, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

19.3 No financial interest. No member of the governing body of the CITY or other unit of government, and no other officer, employee or agent of the CITY or other unit of government who exercises any decision-making authority with regard to this Agreement shall have any personal financial interest, direct or indirect, in this Agreement.

19.4 Governing Law. This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Florida.

19.5 Interpretation Of Agreement. Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of any other genders. Words importing the singular number shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All

references to any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. .

19.6 Severability. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because of conflicts with any provision(s) hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portion of this Agreement or any part thereof.

19.7 Amendments. No changes, amendments, modification, cancellations or discharge of this Agreement or any part hereof shall be valid unless in writing and signed by the parties hereto, or their respective successors and assigns.

19.8 Notices. Any and all notices given or required under this Agreement shall be in writing and may be delivered in person by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addresses.

City: Lee R. Feldman, City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

With copy to: Supervisor of Marine Facilities
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With copy to: Robert B. Dunckel, Assistant City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

WINTERFEST: Winterfest, Inc.
512 N.E. Third Avenue
Fort Lauderdale, FL 33301
Attn: Lisa Scott Founds, Executive Director

Notices mailed in accordance with this section shall be deemed effective forty-eight (48) hours after the time the Notice has been deposited in with the United States Postal Service, postage prepaid. Notices delivered personally shall be deemed effective on receipt.

19.9 Warranties as to Brokers. Each party hereby represents and warrants to the others that (i) no broker, finder or other third party has been

employed or retained by any of them relating to the Agreement or the transactions contemplated hereby; (ii) all negotiations relative to this Agreement have been carried on directly between them without the intervention of any person or entity; and (iii) no person is entitled to any brokerage, finders' fee or third party compensation or commission with respect to this Agreement or any of the transactions contemplated hereby.

19.10 ADA. WINTERFEST shall have the continuing obligation of compliance with the Americans With Disabilities Act, as same may be amended from time to time, with respect to the use of the Marina under this Agreement.

19.11 Compliance with Laws and Regulations. WINTERFEST shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Fort Lauderdale, and of any other public authority that may be applicable to this Agreement and the possession, use, occupancy and maintenance of the Marina under this Agreement.

19.12 No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

19.13 No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

19.14 Non-Discrimination. WINTERFEST shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

19.15 Emergencies. If an emergency situation arises with respect to the Dockage Facilities during the term of this Agreement or any condition relating thereto or to the Event which presents an imminent threat to the health or safety of Persons or property, the CITY shall make reasonable efforts to provide telephone notice to the WINTERFEST'S Contact Person. If, following that notice, WINTERFEST fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety to Persons or property, CITY may undertake such limited actions as are necessary to eliminate the emergency; and CITY shall be entitled to recover its reasonable costs of cure from WINTERFEST. For the purposes of this Paragraph, WINTERFEST'S Contact Person shall be **LISA SCOTT-FOUND**S; telephone number **954-767-0686**; cell phone number **954-562-7021**; fax number **954-767-0665**; and e-mail address: **Lisa@Winterfestparade.com**. In the event the WINTERFEST'S Contact Person or any other information

pertaining to the WINTERFEST'S Contact Person shall change, such change shall be provided to the Contract Administrator.

19.16 Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this License shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

CITY OF FORT LAUDERDALE

By _____
John P. "Jack" Seiler, Mayor

[Witness type or print name]

By _____
Lee R. Feldman, City Manager

[Witness type or print name]

(CORPORATE SEAL)

ATTEST:

Jonda K. Joseph, City Clerk

Approved as to form:

Robert B. Dunckel, Asst. City Attorney

WITNESSES:

WINTERFEST, INC., a Florida corporation

Dawn Read

Dawn Read
[Witness type or print name]

By Lisa Scott-Founds

Lisa Scott-Founds, President
[Type or print name & title]

Kathleen Keleher

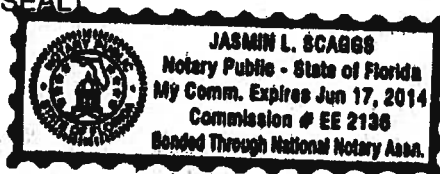
Kathleen Keleher
[Witness type or print name]

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 7th of October, 2013, by Lisa Scott-Founds, as President of WINTERFEST, INC. a Florida corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification and did not (did) take an oath.

(SEAL)



Jasmin L. Scaggs
Notary Public, State of Florida

(Signature of Notary taking Acknowledgment)

JASMIN L. SCAGGS
Name of Notary Typed, Printed Or Stamped

My Commission Expires: June 17, 2014
Commission Number