

DOCKAGE USE
TRI-PARTY AGREEMENT

THIS IS AN AGREEMENT, entered into on October 18, 2016,
among:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, 100 North Andrews Avenue, Fort Lauderdale, FL 33301, hereinafter referred to as "City",

and

MARINE INDUSTRIES ASSOCIATION OF SOUTH FLORIDA, INC., a Florida corporation, 2312 South Andrews Avenue, Fort Lauderdale, FL 33316, hereinafter referred to as "MIA", jointly and severally with YPI

and

YACHTING PROMOTIONS, INC., a Florida corporation, 1115 N.E. 9th Avenue, Fort Lauderdale, FL 33304 hereinafter referred to as "YPI", jointly and severally with MIA

WHEREAS, Pursuant to Motion, adopted at its meeting of October 18, 2016, the City Commission of City authorized the proper City officials to enter into this Agreement; and

WHEREAS, City owns and controls certain facilities known as the Las Olas Marina ("Marina"), which Marina includes dockage facilities situated on sovereignty-submerged land leased from the Board of Trustees of the Internal Improvement Trust Fund under an existing Sovereignty Submerged Land Lease; and

WHEREAS, MIA and YPI desire to occupy all the dock slips available at the Marina to accommodate vessels participating in the 2016 Annual Fort Lauderdale International Boat Show ("Boat Show") and City acknowledges

that their request for such dockage space was the first request for such dockage space from the public; and

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. USE. City hereby authorizes MIA and YPI to occupy all the available dock slips and docks at the Marina to accommodate vessels for public exhibition participating in the Boat Show for the period **November 1, 2016** through **November 8, 2016** inclusive. The MIA and YPI shall provide adequate manned security services for protection against any unauthorized entry and damage or theft to vessels while at the docks at all times during the term of this Agreement.

- (a) YPI and MIA may install or contract with others to install or cause to be installed certain temporary physical improvements to the Marina, including but not limited to, security fencing, floating docks, lighting, flags, advance set up including barge operations, and other miscellaneous personal property in connection with the production of the Boat Show for display of vessels and related event activities for public exhibition. All costs, fees, permits and other governmental approvals related to the delivery, erection, use and removal of said items shall be the responsibility of and shall be paid solely by MIA and YPI. Any (i) such improvement or (ii) operation requiring use of the dock slips or docks that necessitates the physical attachment of the item to City property or (iii) use of dockage for storage of equipment or for barge operations on or before **November 1, 2016** shall be commenced only upon the prior approval of the Manager of Marine Facilities. Upon the removal of any such item, MIA and YPI shall be solely responsible at their expense for the repair or replacement of any damaged piling, cleats, docks, walks, landscaping, buildings, and equipment, electrical wiring or accessories to a condition existing prior to the term of this Agreement. Notwithstanding prior approval from the Manager of Marine Facilities, MIA and YPI shall secure all applicable governmental permits for any work or improvements requiring the issuance of a permit.

- (b) On October 25, 2016, a representative of City and YPI and MIA will jointly inspect the Marina prior to YPI and MIA taking possession of and berthing any vessels at the Marina. The City will designate, in writing, all areas containing a known weakness or defect. Upon notice areas containing a known weakness or defect, YPI and MIA shall take actions to ensure that public use of such identified area or areas is prohibited until the end of the use period (November 8, 2016) under this Dockage Use Agreement. On November 8, 2016 the representatives will again jointly inspect the Marina and note any damage resulting from the Boat Show. MIA and YPI agree to repair any such damage within five (5) business days, except that the parties agree that significant repairs requiring building or engineering permits will be done by the City or City's agents or City's contractors and the reasonable cost of such repairs shall be charged to MIA and YPI.
- (c) City agrees to cause the Marina to be open for use for the Boat Show during the term of this Agreement and shall have the responsibility for maintaining any existing permanent physical improvements located thereon, including outside lighting, docks, electrical and water systems, unless damaged by MIA, YPI or their employees, invitees, exhibitors or agents.

3. DOCKAGE FEE. MIA and YPI agree to pay a dockage fee for the use of the Marina in the amount of **\$99,422.60**, plus electric consumed at the established FP&L metered rate for this location based on the kilowatt hourly charge, plus applicable sales taxes, payable at the office of the Supervisor of Marine Facilities on or before October 25, 2015 as detailed in **Exhibit A**. In the event of a holdover of any vessels on or after twelve (12) noon of November 8, 2016 without the owner or agent of such vessel having entered into a dockage permit with the City by the close of business on November 8, 2016 MIA and YPI shall pay City at the daily rate per over-all slip length occupied by the holding vessel shown on **Exhibit A**, electric fees and applicable sales tax for each vessel docked in the interior slips for each calendar day or part thereof that any vessel(s) shall remain at the Marina, payable within three (3) business days of the holdover use of the Marina. City shall have any and all remedies available under federal, state or maritime law for nonpayment of dockage for such holdover vessels.

In addition to the fee stated above, MIA and YPI shall pay an advance deposit for the use of electric power at the Marina during the term of this Agreement, in the amount of **\$9,000**. The calculation of actual electric power usage based on current FP&L rates during the term of the Agreement shall be done by City and invoiced to MIA and YPI, which invoice shall be payable within ten (10) business days if usage exceeded the deposit and refunded by City if the deposit exceeded the usage.

4. INSURANCE.

During the term of this Agreement, MIA and YPI at their sole expense, shall provide insurance of such a type and with such terms and limits as noted below. Providing and maintaining adequate insurance coverage is a material obligation of MIA and YPI. MIA and YPI shall provide the City a certificate of insurance evidencing such coverage. MIA and YPI's insurance coverage shall be primary insurance as respects to the City for all applicable policies. The limits of coverage under each policy maintained by MIA and YPI shall not be interpreted as limiting their liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida and possess an A.M. Best rating of A-, VII or better, subject to the approval of the City's Risk Manager.

The coverages, limits and/or endorsements required herein protect the primary interests of the City, and these coverages, limits and/or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the MIA and YPI against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by MIA or YPI under this Agreement.

The following insurance policies/coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$10,000,000 each occurrence and \$10,000,000 aggregate for Bodily Injury, Property Damage and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The City, a political subdivision of the State of Florida, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of MIA and YPI. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, or volunteers.

Workers' Compensation and Employer's Liability
Limits: Workers' Compensation – Per Chapter 440, Florida Statutes
Employers' Liability - \$500,000

Any firm performing work on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

MIA and YPI must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act.

Insurance Certificate Requirements

- a. MIA and YPI shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. MIA and YPI shall provide a Certificate of Insurance to the City with a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of MIA and YPI to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, MIA and YPI shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
- f. The City shall be named as an Additional Insured with a Waiver of Subrogation.

g. The Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the certificate.

The Certificate Holder should read as follows:

City of Fort Lauderdale
1350 W. Broward Blvd
Fort Lauderdale, FL 33312

MIA and YPI have the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at MIA and YPI's expense.

If MIA and YPI's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, they may provide an Umbrella/Excess insurance policy to comply with this requirement.

MIA and YPI's insurance coverage shall be primary insurance as respects to the City, a political subdivision of the State of Florida, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of MIA and YPI's insurance and shall be non-contributory.

Any exclusions or provisions in the insurance maintained by MIA and YPI that excludes coverage for work contemplated in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, and any lapse in coverage shall be considered breach of contract. In addition, MIA and YPI must provide confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of MIA and YPI's insurance policies.

All notices of any claim/accident (occurrences) associated with work being performed under this Agreement, shall be provided to MIA and YPI's insurance company and the City's Risk Management office as soon as practicable.

It is MIA and YPI's responsibility to ensure that all sub-Applicants comply with these insurance requirements. All coverages for subcontractors shall be subject to all of the requirements stated herein. MIA and YPI further confirm that their

insurance will apply as excess over any other valid and collectible coverage of their vendors. Any and all deficiencies are the responsibility of MIA and YPI.

5. INDEMNIFICATION.

- (a)** MIA and YPI 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 MIA and YPI under this Agreement, conditions contained therein, resulting from the location, construction, repair, removal, demolition, maintenance, use or occupancy of the Marina or improvements thereto, or the breach or default thereof by MIA and YPI 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 Marina or dock facilities, 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)** MIA and YPI 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, MIA and YPI 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 limit in any way the City's rights, privileges and immunities as set forth in Florida Statutes Section 768.28.

6. EVENTS OF DEFAULT, TERMINATION OF AGREEMENT AND REMEDIES.

- (a) The following shall constitute events of default:
 - (1) Any material misrepresentation, written or oral, made by MIA or YPI to the City.
 - (2) Failure by MIA or YPI to timely perform and/or observe any or all of the covenants, rules, regulations, guidelines or terms and conditions of this Agreement after notice of the inability to timely perform and/or observe such as has been given by the City, thereby offering MIA and YPI a reasonable period of time to correct same.
- (b) The occurrence of any event of default may, at the sole option of the City, work an immediate and automatic forfeiture of any rights conferred by this Agreement and, thereupon, the City and its agents shall have the right to the immediate cancellation of this Agreement pending the satisfaction of any and all contractual financial obligations.
- (c) No remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies at law, in equity, or by statute existing now or hereafter; no delay or omission to exercise any right to power accruing upon any event of default shall impair any such right or power, nor shall it be construed to be a waiver of any event or default or acquiescence therein, and every such right and power be exercised from time to time and as often as may be deemed expedient.

7. SPECIAL CONDITIONS.

- (a) This Agreement may be terminated without notice in the event of threat to the public health, safety or welfare 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 MIA or YPI for any losses incurred by reason of such termination.
- (b) The City and MIA and YPI shall not assign their rights under this Agreement, except that in the event of a cancellation or termination of the agreement between MIA and YPI for the production of the Boat Show, it is agreed and understood that MIA and its agents, employees, or independent contractors shall assume the rights and obligations of YPI under this Agreement.
- (c) MIA and YPI 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 MIA and YPI for any purpose or in any manner whatsoever, and that it shall not represent to any third parties that such is the case.
- (d) MIA and YPI agree to furnish copies of the permits from the U.S. Army Corps of Engineers and the DEP "Special Event" permit including any required surveys or lease instruments for use of sovereignty submerged lands in conjunction with the use of the Las Olas Municipal Marina at least ten (10) days prior to the term of this Agreement and as a condition of this Agreement, MIA and YPI agree to abide by any conditions therein and shall be responsible for any costs associated with meeting such conditions.

8. GENERAL CONDITIONS.

- (a) **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.
- (b) **Three identical originals.** This Agreement has three (3) identical originals, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

- (c) **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.
- (d) **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida, with venue being in Broward County, Florida.
- (e) **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. .
- (f) **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.
- (g) **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.

- (h) **Binding on successors and assigns.** All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.
- (i) **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 Feldman City Manager
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

MIA: Marine Industries Association of South Florida, Inc.
2312 S. Andrews Avenue
Fort Lauderdale, FL 33316
Attention: Kristina Hebert

YPI: Yachting Promotions, Inc.
1115 N.E. 9th Avenue
Fort Lauderdale, FL 33304
Attention: Dane Graziano

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.

- (j) **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.

- (k) **ADA.** MIA and YPI 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.
- (l) **Compliance with Laws and Regulations.** MIA and YPI 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.
- (m) **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.
- (n) **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.
- (o) **Non-Discrimination.** YPI and MIA 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.
- (p) **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 Agreement 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.

- (q) **City Manager authority to execute amendments in event of tropical storm or hurricane.** In the event it becomes necessary, because of imminent threat of a tropical storm or hurricane with its attendant threats of property damage and personal injury, to postpone the Boat Show to a later date or dates, the City Commission hereby delegates to the City Manager the authority to execute an amendment(s) to this Agreement providing for modified dates for the use of the dock slips at the Marina.

9. MISCELLANEOUS. Any reference made in this Agreement to MIA and YPI, shall mean the parties jointly and severally.

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:

Jeffrey A. Modarelli, City Clerk

Approved as to form:

Cole J. Copertino,
Assistant City Attorney

WITNESSES:

**MARINE INDUSTRIES
ASSOCIATION OF SOUTH
FLORIDA, INC.**

[Witness type or print name]
(CORPORATE SEAL)

By _____,
President

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2016 by _____, as President of MARINE INDUSTRIES ASSOCIATION OF SOUTH FLORIDA, 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)

Notary Public, State of Florida

Dock Use Agreement
2016 Boat Show
Rev. 10.12.16

(Signature of Notary taking
Acknowledgment)

Name of Notary Typed, Printed
Or Stamped

My Commission Expires:

Commission Number

WITNESSES:

YACHTING PROMOTIONS, INC.

By _____
Dane Graziano,
Vice President and C.O.O.

[Witness type or print name]

(CORPORATE SEAL)

STATE OF BROWARD:
COUNTY OF FLORIDA:

The foregoing instrument was acknowledged before me this
_____, 2016, by **Dane Graziano** as Vice President and
C.O.O of YACHTING PROMOTIONS, INC., a Florida corporation, on behalf of
the corporation. She is personally known to me or has produced
_____ as identification and did not (did)
take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking

Acknowledgment)

Name of Notary Typed, Printed
Or Stamped

My Commission Expires:

Commission Number

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Dock Use Agreement
2016 Boat Show
Rev. 10.12.16