

## DOCKAGE USE AGREEMENT

THIS IS A DOCKAGE USE AGREEMENT, entered into on \_\_\_\_\_, 2018 by and between:

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

and

**RUBBER DUCK HOLDINGS, INC. D/B/A YACHTSALESINTERNATIONAL.COM**, whose address is 10 South New River Drive East, Suite 105, Fort Lauderdale FL 33301-2801, hereinafter "LESSEE."

The City Commission by Motion on \_\_\_\_\_ 2018 authorized the proper City officials to enter into this Lease Agreement with LESSEE.

CITY owns and operates municipal dockage facilities along the New River.

LESSEE is desirous of using a certain portion of said CITY dockage facilities to dock vessels requiring storage in connection with LESSEE'S business operation.

City acknowledges that their request for such dockage space was the first request for such dockage space from the public.

In consideration of the mutual promises, covenants and conditions contained in this Lease and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

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

**2. Premises.**

(a) CITY hereby agrees to lease to LESSEE the following dockage facilities (hereinafter referred to as "PREMISES"):

Slip numbers 1 through 6 inclusive, constituting approximately 300 linear feet of dock space along the South New River Drive West, Riverwalk, and Fort Lauderdale, Florida.

(b) CITY reserves the right to use any portion of the PREMISES for certain special events upon thirty (30) days written notice to LESSEE. CITY agrees to cooperate with LESSEE in minimizing disruption to LESSEE'S business

operations in the event CITY has to invoke the provisions of this subsection 2(b). LESSEE shall be entitled to a prorated reduction in rent for any portion of the PREMISES used for special events during the Lease term.

**3. Term.** CITY agrees to lease the PREMISES to LESSEE for a twelve (12) month term beginning October 1, 2018 and ending September 30, 2019. Either party may terminate this Lease Agreement without cause by giving thirty (30) days advance written notice to the other party as provided herein. In the event of a default in any material provision of this Lease and such default remains uncured after the time allowed for cure, the non-defaulting party may terminate this Lease upon five (5) days advance written notice to the defaulting party.

#### **4. Rental Payment**

Rent for the PREMISES, slips 1 through 6 for the twelve (12) month term shall be \$87,633.95 plus applicable taxes, payable in equal monthly installments of \$7,302.83 per month, in advance on the first day of the month to which applicable. Any payment for rent, applicable taxes and other billed charges received by CITY after the fifth day of the month to which applicable shall be subject to a late payment fee of fifteen percent (15%) of the amount overdue.

In addition to the rent stated above, LESSEE is required to reimburse to CITY the cost of shore-side electric service and the 6% Florida sales tax and any other sales or use tax due and owing under this Dockage Use Agreement.

**5. Purpose.** The PREMISES shall be used for the dockage of vessels that are part of LESSEE'S sales inventory or inventory of vessels awaiting servicing at LESSEE'S place of business, which is located off-PREMISES. The PREMISES shall not be used for the dockage of vessels engaged in the business of (a) charter, (b) sightseeing, or (c) fishing.

**6. Acceptance of Premises.** LESSEE acknowledges that it has made a thorough and complete inspection of the PREMISES and is fully advised of its condition, nature of construction and state of repair. LESSEE fully accepts the PREMISES in its present condition.

**7. Ability to Transact Business.** LESSEE hereby represents and warrants that it is licensed and registered to transact business within the State of Florida, that it has adequate financial resources, and has the business skill and ability to perform all obligations herein imposed diligently, skillfully and successfully.

**8. Repair and Replacement of Facilities.** LESSEE shall have the use of the existing wood fenders, wood piling system, cleats, electrical pedestals, sewage connections and fire hose boxes located on the PREMISES. The maintenance and replacement, if necessary, of these items, due to LESSEE'S negligent acts or omissions, shall be the sole responsibility and at the sole cost and expense of LESSEE. LESSEE must have the written approval of CITY before undertaking any replacement of these items.

## **9. Operation of Vessels.**

(a) LESSEE shall operate vessels at the PREMISES in such a manner as not to undermine or damage the existing bulkhead. LESSEE shall be solely responsible for the cost of all repairs to the bulkhead in the event such undermining occurs.

(b) LESSEE shall operate its vessels in such a manner that it does not obstruct vessel, vehicle or pedestrian traffic, cause a safety hazard in or to the use of the adjacent street or waterway, or block access to any designated Water Taxi stops. If a violation of this provision occurs and is not corrected by LESSEE after forty-eight (48) hours from receipt of written notice from CITY, LESSEE may be considered in default of this Lease Agreement. In addition, loading of provisions from vehicles is permitted in designated loading zones only; loading on or adjacent to Riverwalk is prohibited without prior written authorization of the Supervisor of Marine Facilities.

**10. Fueling of Vessels and Petroleum Products.** The fueling of vessels is not permitted on the PREMISES. Storing recycled engine oil and petroleum based products on CITY property is also prohibited. LESSEE is required to enter into an agreement with a licensed contractor to remove oil and petroleum based products with the approval of the Supervisor of Marine Facilities.

**11. Parking.** CITY agrees to provide LESSEE with six (6) parking permits for parking spaces at designated permit parking locations on S.W. 1st Avenue and South New River Drive, for non-exclusive use by LESSEE. Fees for such permits are included in the rental rate for the PREMISES. The number of permits provided may be decreased by CITY with sixty (60) days written notice to LESSEE. This provision grants LESSEE a mere license to use said parking spaces and shall not be deemed to transfer a leasehold or other interest to LESSEE in the spaces.

**12. Indemnification Against Claims.** LESSEE shall indemnify and hold harmless CITY from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Lease for any bodily injury, loss of life or damage to property sustained in or about the PREMISES, or appurtenances to them, arising out of the use of the PREMISES by LESSEE or its employees, agents, or servants or the breach, default or performance of LESSEE, or its employees, agents or servants under this Agreement, and from and against all costs, attorneys' fees, expenses and liabilities incurred in and about any such claim, suit, action, damage or cause of action, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments or decrees which may be entered in them. LESSEE will further, upon CITY'S request, assume and defend any action, regardless of whether such claim is groundless, fraudulent or false, that may be brought against CITY as the result of any action arising out of the use of the PREMISES or a breach or default of this Agreement by LESSEE or its employees, agents or servants, and shall further assume and pay all associated costs and attorneys' fees which may be incurred by CITY. However, the City retains the right to select counsel of its own choosing.

Nothing herein shall be construed as a waiver of the City's sovereignty immunity or consent to be sued by any third party.

Nothing contained in this section shall be construed as an agreement by LESSEE to indemnify CITY for any claims or causes of actions arising solely from the public's use of property in the Riverwalk area located adjacent to the PREMISES.

**13. No Liens Created.** LESSEE covenants and agrees that LESSEE has no power 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 PREMISES. Should any such lien be filed against CITY, LESSEE shall discharge the same within thirty (30) days thereafter by paying the same, by filing a bond, or otherwise as permitted by law. LESSEE shall not be deemed to be the agent of CITY under any term, paragraph, condition or covenant of this Lease Agreement.

**14. Utility and Operating Costs.**

(a) LESSEE shall reimburse CITY for the cost of electricity at the established FP&L rate for 150 lineal feet of dockage that is metered by the CITY. Electricity shall be billed to LESSEE by CITY one month in arrears.

(b) Water service to the PREMISES shall be supplied by the CITY. There shall be no separate charge to LESSEE for water service.

(c) All other utility expenses shall be billed directly to LESSEE. LESSEE agrees to promptly pay, when due, all utility and operating costs arising from and incurred as a result of the operation of LESSEE'S business on the PREMISES.

(d) CITY shall provide trash receptacles and trash pick-up service for the PREMISES. Storage of trash (e.g. cartons, boxes, etc.) outside the trash receptacles is prohibited and LESSEE shall dispose of such excess trash on a daily basis at its cost.

(e) LESSEE shall reimburse CITY for the cost of the submerged land lease from the State of Florida at a rate equal to six percent (6%) of the rent payable by LESSEE.

(f) All reimbursables are subject to Florida state sales taxes. Sales tax exemptions from prepaid tax on tangible rentals or the associated forms of income are not permitted under the lease.

**15. Taxes.** During the term of this Lease Agreement, LESSEE agrees to pay when due all taxes and special assessments levied and assessed against the PREMISES or against any improvements located on them. The obligation of LESSEE shall include the payment of all ad valorem property taxes, sales and use taxes, special assessments, the applicable rental tax specified under the Florida Statutes, Section 212.03(6), and any and all other taxes or assessments of every kind and nature whatsoever resulting from this Lease Agreement or LESSEE'S activities under it. Sales

tax exemptions from prepaid tax on tangible rentals or other associated forms of income are not permitted under the lease.

**16. Use of Loudspeakers and Spotlights.** LESSEE shall not use spotlights on the premises except in the case of an emergency. LESSEE agrees that it shall conduct its operations at the PREMISES in a manner that will ensure minimal emanation of noise and odor towards surrounding areas and in compliance with CITY'S Code of Ordinances.

**17. Maintenance and Surrender of Premises.** LESSEE agrees at its expense to keep and maintain the PREMISES in the same state of repair and condition as existed on the date of commencement of this Lease Agreement, reasonable wear and tear excepted. CITY shall repair damage to pilings and seawall not the result of LESSEE'S negligence. LESSEE at its sole expense agrees to deliver to CITY, upon the termination of this Lease Agreement, the entire PREMISES, including any improvements and fixtures located on them, in the same state of repair and condition as existed on the date of commencement of this Lease Agreement, reasonable wear and tear excepted.

**18. Security.** CITY is not responsible for providing security to the PREMISES. Twenty four (24) hour a day manned or mechanical security for vessels docked on the PREMISES must be provided by LESSEE, at its sole cost and expense.

**19. Use of Equipment/Repair of Vessels.**

(a) The use of heavy machinery or equipment, including but not limited to, forklifts, tractors, generators, or other similar items is not permitted on the PREMISES.

(b) The use by LESSEE and its employees, of small motorized carts and small hand carts for transportation purposes is permitted on the PREMISES.

(c) LESSEE agrees to comply with Section 8-149(b) of the CITY'S Code of Ordinances regarding the repair and maintenance of vessels.

**20. Storage.**

(a) Equipment Storage. Storage of equipment or any other type of storage on the upland property adjacent to the docks and seawalls of the Premises by LESSEE is prohibited.

(b) Additional Vessel Storage. Use of the CITY docks for additional storage for special events or occasional needs by the LESSEE'S vessels other than specified by the Lease must be authorized by the Supervisor of Marine Facilities a minimum of 30 days in advance of the scheduled date of the special use event. Special use events include, but are not limited, to the Fort Lauderdale International Boat Show, Winterfest Boat Parade. LESSEE agrees to pay the current Lease fee for additional available dockage, and provide in advance of the

event an amended Certificate of Insurance for the additional area if not already covered under LESSEE'S annual Certificate of Insurance.

**21. Possession.** Delivery of possession of the PREMISES to LESSEE shall be made at the time of the commencement of the term of this lease.

**22. Gambling, Adult Entertainment, Obnoxious Uses.** LESSEE hereby acknowledges that the City of Fort Lauderdale has a policy barring any use of its municipal docks to base a vessel that engages in or promotes any gambling or gambling related activities or is used as an adult entertainment establishment or for adult uses as defined in the Code of Ordinances of the City of Fort Lauderdale (hereinafter "adult entertainment"), or related activities or other types of activities that are not in harmony with the Riverwalk Linear Park as a destination for tourists and residents of all ages. LESSEE agrees not to utilize the premises for the dockage of vessels that conduct or are engaged, directly or indirectly, in the promotion of gambling or gambling related activities, or adult entertainment or related activities. LESSEE agrees it will not distribute promotional or advertising materials linking the vessels docked at the premises or the municipal docks with any gambling, adult entertainment or related activities, or gambling related activities located in the City of Fort Lauderdale or any other destination.

**23. Insurance.**

(a) LESSEE shall obtain and keep in force continuously during the term of this Lease Agreement, comprehensive general liability insurance, with minimum combined single limits of One Million Dollars (\$1,000,000.00) per occurrence. LESSEE shall also maintain hull insurance coverage for all vessels docked on the Premises in the minimum limits of Three Hundred Thousand Dollars (\$300,000.00). CITY shall be included under such policy as an additional named insured. A Certificate of Insurance evidencing this coverage shall be provided to the CITY before the commencement of this Lease Agreement.

(b) LESSEE shall further provide proof of coverage to the CITY and carry at its own cost and expense, Workers Compensation and Employers' Liability Insurance, including United States Longshoremen and Harbor Workers' Coverage and claims arising under the Jones Act. Limits: Employer's Liability - \$100,000.00; Workers Compensation as required by law. It is further agreed that any requirements of CITY to provide a safe berth under a Wharfinger policy is waived.

(c) All coverage to be afforded CITY by LESSEE shall be primary and shall not be affected by any insurance which CITY may carry in its own name.

**24. Assignment and Subleasing.** This Lease Agreement shall not be assignable or otherwise transferable. LESSEE may sublease the PREMISES to third party vessel owners or operators not utilizing space in connection with LESSEE'S business operations, only upon the prior written approval of the Supervisor of Marine Facilities.

**25. Laws and Ordinances.** In its use and occupation of the PREMISES, LESSEE agrees to comply with all applicable laws, statutes, ordinances, City of Fort Lauderdale Marine Facilities Dockage Agreement, rules or regulations promulgated by the federal, state, county, regional or local governments or any of its agencies, departments or subdivisions.

**26. Improvements by LESSEE.** LESSEE shall not make any improvements to the PREMISES without the prior written approval of CITY. In the event CITY provides prior written approval as above aforesaid, construction of any improvements may only be undertaken when permits have been obtained from all regulatory agencies having jurisdiction over the proposed improvements and all construction must be strictly performed in accordance with all permits issued, with all applicable CITY Codes, the South Florida Building Code and within all Riverwalk Design guidelines.

**27. Ownership at Termination.** All fixtures, alterations, improvements, structures, additions and modifications of every kind now existing or later erected, installed or placed within the PREMISES shall, at the end of the term or earlier termination of this Lease Agreement, for any reason, be and become the property of CITY and shall be left in good condition and repair, ordinary wear and tear excepted, unless CITY at its option requires LESSEE to remove all or a portion of same. LESSEE agrees at its sole expense to promptly remove same and to promptly repair and restore all portions of the entire PREMISES to good condition upon such removal. A fixture is defined as an article which was a chattel, but which, by being physically annexed or affixed to the PREMISES by LESSEE is incapable of being removed without structural or functional damage to the PREMISES, and has become a part and parcel of them. Non-fixture personally owned by LESSEE at the expiration of the term or earlier termination of this Lease Agreement, for any reason, shall continue to be owned by LESSEE, and at the time of such expiration or earlier termination, LESSEE at its option, may remove all such personalty, provided LESSEE is not then in default of any covenant or condition of this Lease Agreement; otherwise, all property shall remain on the PREMISES until the damages suffered by CITY from any such default have been ascertained and compensated. Any damage to the PREMISES caused by the removal by LESSEE of any such personalty shall be repaired by LESSEE immediately at its expense.

**28. Default.** It is agreed that upon any default by LESSEE in keeping any term or condition of this Agreement to be kept and performed by LESSEE, CITY may after five (5) days written notice to LESSEE, re-enter and take possession of the PREMISES. That power granted in this paragraph to CITY is in addition to any other rights or remedies which CITY may have under the existing laws of the State of Florida with regard to the removal of tenants or other legal recourse. All rights and remedies available to CITY may be exercised concurrently or separately.

**29. Lien Provision.** In the event of LESSEE'S breach of any of the provisions of this Lease Agreement, CITY shall thereupon have a lien upon all revenues, income, rents, earnings and profits from the PREMISES as additional security for LESSEE'S faithful performance of each of the terms and provisions hereof and to secure payment of all sums owing to CITY hereunder. All such revenues, income, rents, earnings and profits derived or accruing from the PREMISES from the date of such breach shall

constitute the property of CITY and shall not constitute an asset of LESSEE or any trustee or receiver appointed for LESSEE'S property. The provisions hereof shall be effective without CITY'S re-entry upon the PREMISES or repossession thereof.

**30. Contractors and Subcontractors.** Contractors or Subcontractors shall be allowed on the PREMISES under the direct supervision of LESSEE or its employees only. Any Contractors or Subcontractors found on the PREMISES by CITY in violation of this Section may be removed by CITY.

**31. Signs and Banners.** LESSEE shall not erect any signs or banners on the PREMISES for advertising purposes. Any signs or banners on vessels docked on the PREMISES are subject to prior CITY approval and must comply with CITY'S Code of Ordinances.

**32. Rafting of Vessels.** The rafting of vessel(s) to vessel(s) docked on the PREMISES is prohibited. "Rafting" as used in this Section means the practice of securing or tying-up a vessel to a vessel that is docked at a docking facility.

**33. Discharge of Wastewater.** LESSEE shall discharge wastewater from all vessels only into a pump-out facility provided by CITY or into another land-based or water-based facility approved by the CITY. Any violation of this provision of the Lease will result in the immediate expulsion of the vessel from the PREMISES.

**34. Severability.** If any section, subsection, sentence, clause, provision, or portion of this Lease Agreement shall be held invalid for any reason, the remainder of this Lease Agreement shall not be affected thereby.

**35. Non-discrimination.** LESSEE, in exercising any of the rights or privileges herein granted to it, shall not, on the grounds of race, color, sex, disability, sexual orientation or national origin, discriminate or permit discrimination against any persons or group of persons in any manner.

**36. Other remedies.** In addition to the options herein above granted, CITY may exercise any or all options available to it under the laws of Florida, all of which options may be exercised concurrently or separately.

**37. Non-waiver.** The failure of CITY to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease Agreement in any one or more instances shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements. LESSEE covenants that no surrender or abandonment of the PREMISES or of the remainder of the term herein granted shall be valid unless accepted by CITY in writing. CITY shall be under no duty to relet the PREMISES in the event of an abandonment or surrender or attempted abandonment or surrender by LESSEE. Upon LESSEE'S abandonment or surrender or attempted abandonment or surrender, CITY shall have the right to retake possession of PREMISES or any part thereof, and such retaking of possession shall not constitute an acceptance of LESSEE'S abandonment or surrender thereof.



**38. Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice sent by registered U.S. mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving notice:

CITY: City Manager  
City of Fort Lauderdale  
P. O. Drawer 14250  
Fort Lauderdale, Florida 33302

LESSEE: Udo Willersinn  
Rubber Duck Holdings, Inc.,  
d/b/a Yachtsalesinternational.com  
10 South New River Drive E, Suite 105  
Fort Lauderdale, FL 33301

**39. Amendment.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

**40. Governing Law.** This Agreement shall be governed by the laws of the State of Florida, with venue lying in Broward County, Florida.

**41. Extent of Agreement.** This Lease Agreement represents the entire and integrated agreement between CITY and LESSEE and supersedes all prior negotiations, representations or agreements, either written or oral.

**42. Special Events.**

(a) The CITY as the LESSOR, through the Supervisor of Marine Facilities, may require the LESSEE to relocate the LESSEE'S vessel(s) to an alternate slip location for special events with forty-five (45) days advance notification specifying the approximate dates for relocating the vessel(s), including but not limited to such events as the Fort Lauderdale International Boat Show, Winterfest Boat Parade. The sole cost of relocating the LESSEE'S vessel(s) including the cost of hiring a Captain or loss of business or any other costs attributed to relocating the LESSEE'S vessel(s) is not the responsibility of the City in any way.

(b) Repair to Premises. Upon forty-eight (48) days written notice to LESSEE, CITY, at its sole discretion, may require LESSEE to temporarily dock its vessels at an alternate location other than the PREMISES due to repair work to the Premises or construction work which may occur at an area near the PREMISES during the term of this Agreement. CITY agrees to minimize the disturbance, if any, to LESSEE'S business operations by such substitution and further agrees to offer LESSEE an alternate docking location within a reasonable distance from LESSEE'S business operation. If an alternate docking location cannot be found, CITY agrees to renegotiate the terms of this Lease Agreement with LESSEE for

the remainder of the Lease term; provided, however, that if no agreement can be reached by the parties, either party may terminate this Lease Agreement as provided in Section 3 above. The sole cost of relocating the Lessee's vessels including the cost of hiring a Captain(s) or loss of business or any other costs attributed to relocating the Lessee's vessel is not the responsibility of the City in any way.

**43. Submerged Lands.** City owns and controls certain facilities known as the Municipal Dockage Facilities along the New River ("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. LESSEE shall agree to abide by any conditions therein and shall be responsible for reimbursement to the CITY of any costs associated with meeting such conditions of the submerged land lease.

44. The Effectiveness of this Agreement is subject to approval by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

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

WITNESSES:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
[Witness type or print name]

By \_\_\_\_\_  
Dean J. Trantalis, Mayor

\_\_\_\_\_  
[Witness type or print name]

By \_\_\_\_\_  
Lee R. Feldman, City Manager

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:  
Alain E. Boileau, City Attorney

\_\_\_\_\_  
Lynn Solomon, Assistant City Attorney

WITNESSES:

**RUBBER DUCK HOLDINGS, INC.**, a Florida Corporation

\_\_\_\_\_

By \_\_\_\_\_  
Udo Willersinn, Director

\_\_\_\_\_  
[Witness print/type name]

(CORPORATE SEAL)

\_\_\_\_\_

\_\_\_\_\_  
[Witness print/type name]

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2017 by **Udo Willersinn**, as **Director** of and on behalf of **RUBBER DUCK HOLDINGS, INC.**, a Florida corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary, Typed  
Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number