

DOCKAGE FACILITY USE AGREEMENT

THIS IS AN AGREEMENT, entered into this _____ day of _____, 2021 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, 512 N.E. Third Avenue, Fort Lauderdale, FL 33301, hereinafter, "WINTERFEST"

RECITALS;

Pursuant to a Motion, adopted at its meeting of **November 16, 2021**, 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 2021 Winterfest Boat Parade, a signature event in the CITY that is held annually 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 2021 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 true and 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 authorized by the Contract Administrator for a separate fee. **Exhibit "1"** 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 2021 Boat Parade sponsored by WINTERFEST, scheduled to be held December 11, 2021, 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.

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 2021 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 at 8:00 AM on December 11, 2021 and terminating at 8:00 AM on December 12, 2021. Dockage fees for any vessel remaining at any Slip within the Dockage Facility / Staging Area after 8:00 AM on December 12, 2021, shall be the obligation of WINTERFEST, unless the vessel enters a separate Dockage Agreement with the CITY.

5. 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 provided 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.

WINTERFEST shall be responsible for, and shall maintain, all areas of the City's Dockage Facilities during the term of this Agreement, including the staging and viewing areas used, and restore said facilities to their condition prior to WINTERFEST'S use. CITY shall inspect the Event site location(s) for damage within twenty-four hours of the conclusion of the Event and the City shall provide WINTERFEST with a written report of any damage found at of the Dockage Facilities. The report shall state the cost of repair(s) necessary to restore the public property. Within seven (7) calendar days of the WINTERFEST's receipt of this report, WINTERFEST shall pay the cost to restore the City's property or challenge the City's report by a writing addressed to the City's Contract Administrator. Resolution of any such challenge shall be made by the City Manager and WINTERFEST agrees to abide by the City Manager's decision.

6. INSURANCE. As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, WINTERFEST, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of WINTERFEST. WINTERFEST shall provide the CITY a certificate of insurance evidencing such coverage. WINTERFEST's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by WINTERFEST shall not be interpreted as limiting WINTERFEST's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the CITY's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the CITY, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by WINTERFEST for assessing the extent or determining appropriate types and limits of coverage to protect WINTERFEST 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, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by WINTERFEST under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

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

- \$1,000,000 each occurrence and \$2,000,000 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 Florida municipal corporation, 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 WINTERFEST. The coverage shall contain no special limitation on the scope of protection afforded to the CITY, its officials, employees, and volunteers.

Insurance Certificate Requirements

- a. WINTERFEST shall provide the CITY with a valid Certificate of Insurance (binders are unacceptable) no later than ten (10) days prior to the start date of this Event.
- b. WINTERFEST shall provide to the CITY a Certificate of Insurance having 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 WINTERFEST 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, WINTERFEST 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 of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on the general liability policy.
- g. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue

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WINTERFEST has 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 WINTERFEST's expense.

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

WINTERFEST's insurance coverage shall be primary insurance as respects to the CITY, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by WINTERFEST that excludes coverage required 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, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, WINTERFEST must provide to the CITY 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 WINTERFEST's insurance policies.

WINTERFEST shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to WINTERFEST's insurance company or companies and the CITY's Risk Management office, as soon as practical.

It is WINTERFEST's responsibility to ensure that any and all of WINTERFEST's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of WINTERFEST.

WINTERFEST shall require that all vessel participant owners occupying dock space controlled by the CITY enter into a "City of Fort Lauderdale Marine Facilities Dockage Agreement", attached thereto, as **Exhibit "2"**. It is WINTERFEST's responsibility to ensure that any and all of WINTERFEST's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of WINTERFEST.

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.

7. 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, the location, construction, repair, removal, demolition, maintenance, use or occupancy of the Dockage Facilities 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.

8. 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.

9. 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.

10. 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.

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

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

13. 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.

14. 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.

15. 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 not commence prior to the written approval of the Contract Administrator. The removal of such items or improvements 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.

16. 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.

17. Special Conditions.

17.1 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.

17.2 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.

17.3 WINTERFEST agrees that nothing herein contained is intended or should be construed as in any way creating or establishing any employment relationship, partnership or joint venture 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.

17.4 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.

17.5 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 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 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 as amended, 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.

18. Miscellaneous.

18.1 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.

18.2 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.

18.3 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.

18.4 Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal

jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

18.5 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.

18.6 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.

18.7 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.

18.8 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: Chris Lagerbloom, 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: Alain E. Boileau, City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

WINTERFEST: Lisa Scott-Founds, President
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.

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 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.

18.14 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.

18.15 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.

18.16 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 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 WINTERFEST'S Contact Person or any other information pertaining to WINTERFEST'S Contact Person shall change, such change shall be provided to the Contract Administrator.

18.17 Public Records. This agreement and any other documents pertinent to this Agreement is subject to the public records disclosure as prescribed in Chapter 119, Florida Statutes, and as may be amended or revised, or as otherwise provided by law. **IF WINTERFEST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO WINTERFEST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.**

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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 _____
Dean J. Trantalis, Mayor

[Witness type or print name]

By _____
Chris Lagerbloom, ICMA, City Manager

[Witness type or print name]

(CORPORATE SEAL)

ATTEST:

Jeff Modarelli, City Clerk

Approved as to form:
Alain Boileau, City Attorney

By _____
Patricia SaintVil-Joseph, Asst. City Attorney

WITNESSES:

**WINTERFEST, INC., a Florida
Not for-profit Corporation**

By _____
Lisa Scott-Founds, President

[Witness type or print name]

(CORPORATE SEAL)

[Witness type or print name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2021, by Lisa Scott-Founds, as President of WINTERFEST, INC., a Florida Not for-profit Corporation, on behalf of the corporation, who is personally known to me or has produced _____ as identification and did not (did) take an oath.

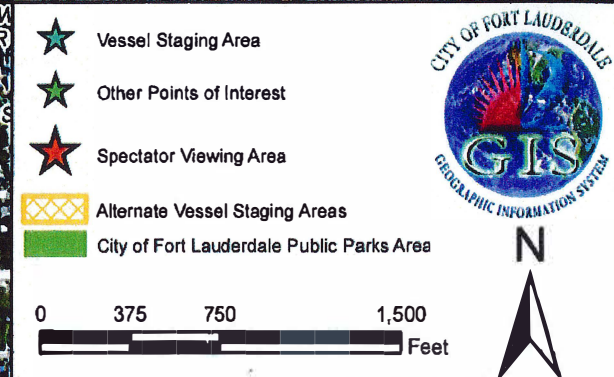
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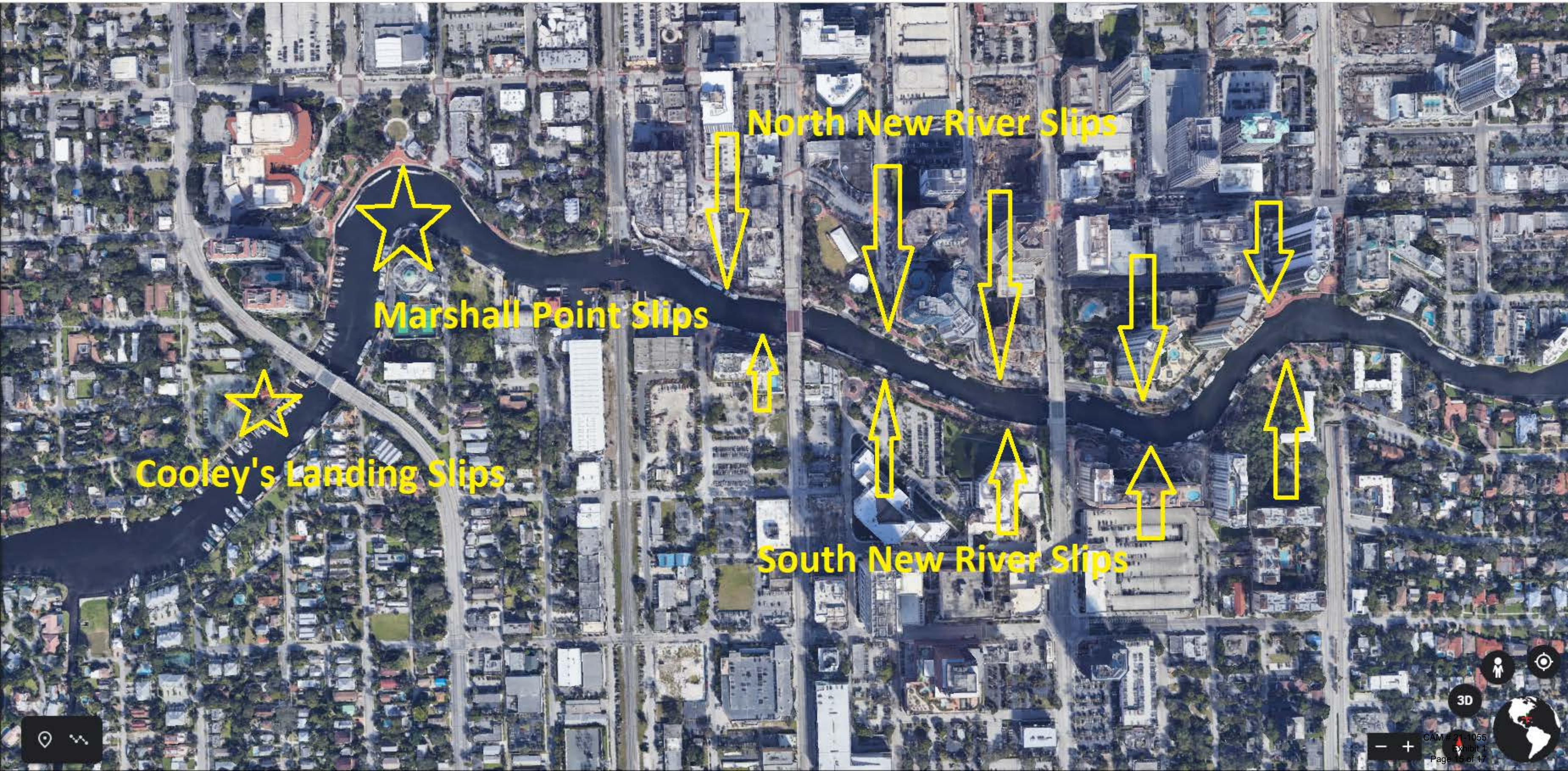
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed
Or Stamped

My Commission Expires:

Commission Number





North New River Slips

Marshall Point Slips

Cooley's Landing Slips

South New River Slips

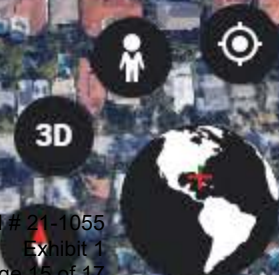


EXHIBIT 2

City of Fort Lauderdale Marine Facilities

Admiralty and Maritime Dockage Agreement

This Agreement made this _____ day of _____ 20_____, by and between The City of Fort Lauderdale, hereinafter referred to as “City”, and the undersigned owner of the vessel named herein, herein referred to as “Owner”.

WHEREAS, the City operates and maintains municipal dockage facilities for use by yacht owners and/or boat owners with properly documented or registered vessel(s) (excluding house boats) capable of self-propulsion and in good condition; and

WHEREAS, Owner is the legal and registered owner of the vessel or yacht (“Vessel”) described below; and

WHEREAS, Owner desires to lease from the City a dock slip or slips within the docking facility to accommodate the Vessel.

NOW THEREFORE, City and Owner, in exchange for valuable consideration and of the covenants and stipulations hereinafter described, agree as follows:

- The above recitals are true and accurate and are incorporated in this Agreement.
- City agrees to rent the dock slip or slips identified above for berthing of the Vessel in exchange for payment of fees pursuant to the terms and conditions of this Agreement. The term of this Agreement may not exceed one (1) year unless authorized by the City Commission.
- There is no agreement to create a bailment of the Vessel, nor do the parties intend to create a bailment of the Vessel.
- This is an Admiralty and Maritime Dockage Rental Agreement under the General Maritimes Laws, Statutes and Code of the United States of America, laws of the State of Florida and ordinances of the City of Fort Lauderdale.
- Owner agrees to pay City dock rental fees as specified by the schedule of rates established by the City, as said rates may be modified from time to time by the City. The current effective rate for said dock slip is specified above. Refunds due to lease termination, or for any other reason, are not permitted. In addition to the dock rental fees, the City, at its sole discretion, may implement a reasonable surcharge to recover increases in costs for utility services.
- This Agreement is effective for the period specified above and shall remain in effect unless terminated pursuant to the terms of the Agreement.
- In the event a deposit is required to rent the slip or slips, the deposit will be held by the City and refunded upon expiration of this Agreement only if the Owner is in good standing. An Owner is in good standing for purposes of this Agreement if the Owner has complied with the terms, conditions, covenants and obligations under this Agreement. If Owner is not in good standing, the deposit will be forfeited by Owner for damages. The City shall have no obligation to place Owner’s deposit into a separate account or to pay interest on the deposit.
- This Agreement is for berthing space only and does not convey the right of domicile to the Owner for any part of the City Docking Facility. Berthing space is to be used at the sole risk of the Owner and the City shall not be liable to Owner for care, protection or security of the Vessel, its appurtenances or contents, or for any loss or damage of any kind or nature to the Vessel, its appurtenances, or contents, however caused. The Owner hereby releases the City from any and all liability for loss, death, damage or injury to any person or property arising out of or in connection with the condition or use of the Vessel or the condition or use of the City Docking Facility, dock slip or the City’s services whether such injury is caused by or through the acts or omissions of the City or by any other cause whatsoever. City makes no warranty or representation of any kind as to the condition of piers, walks, gang ways, ramps mooring gear, electrical or water service, cable or other utilities and shall not be responsible to the Owner for injuries to persons or property occurring on City property for any reason.
- Owner agrees to hold the City harmless and to save, defend and indemnify the City, its officers, employees and agents from any and all any loss, damage, penalty, fine, judgment, claim, damage, liability or cost including, without limitation, attorney’s fees, whether at the trial or appellate level, for any injury, loss or damage to person or property arising directly or indirectly from or in connection with any act or omission on the part of the Owner, Owner’s agents, employees or guests or in connection with any false or misleading statement made by Owner herein. Any counsel selected by Owner pursuant to this indemnity shall be subject to the approval of the City. This indemnity shall survive termination of this Agreement.
- This Agreement may be terminated prior to the expiration date upon occurrence of the following conditions:
 - By the City for breach or forfeiture of any of the covenants or provisions of this Agreement by Owner.
 - By written notice of termination without cause by the City to the Owner.
 - By Owner upon written notice accompanied by tender of all unpaid fees or charges, if any.
 - By City in the event of the sale, transfer or rental of the Vessel or by virtue of an assignment of the rights under this Agreement to any other person or entity not a party to this Agreement. For purposes of this Agreement, sale and transfer shall include sale or transfer of the Vessel or sale and transfer of the corporation, Limited Liability Company or other corporate entity, which is the Owner of the Vessel.
- Written notice mailed or delivered to the Owner’s address shown above shall constitute sufficient notice to Owner and notice in writing to the Supervisor of Marine Facilities shall constitute sufficient notice to the City concerning the terms of this Agreement.
- It is understood and agreed that this Agreement is for the Vessel only and is personal to the Owner of the Vessel, whether that owner be an individual, corporation, limited liability or other corporate entity. This Agreement is not assignable or transferable to any other person or entity, nor is it assignable in the event of the sale of the stock, assets or interests of a corporation, Limited Liability Company or other corporate entity which owns the Vessel. Further, all or a portion of the dockage space may not be sublet or assigned to a third party or entity. Use or occupancy of the Vessel is restricted to the Owner and his/her family, paid crew and bona fide guests while located on City Docking Facility. The Owner agrees to advise the City of any legal change or ownership or rental of the Vessel, or of a change of ownership of the corporate entity while subject to this Agreement no later than 24 hours following such change. Part ownership of a vessel does not in any way imply an obligation on the part of the City to furnish dockage to any of the partners other than the original signer of this Agreement if the partnership is dissolved for any reason whatsoever.
- The City reserves the right to use or rent the docking slip or slips rented hereunder when such docking slip or slips is or are unoccupied for any period exceeding 24 hours. The Owner shall not be entitled to any reduction in rental fees under this Agreement in the event the City uses or rents the docking space assigned to the Owner. Owners and operators of any Vessel shall advise the Dockmaster of their estimated time of return to the dock at the time of departure. Owners or operators of any Vessel with annual, seasonal or monthly status are required to give 48 hours’ notice of their return. If Owner fails to provide adequate notice of the return date, then the City reserves the right to assign another docking slip or slips of similar size.
- Prior to signing this Agreement, Owner shall furnish the Supervisor of Marine Facilities with copies of marine insurance for the above described vessel including public liability, property damage and personal injury insurance which insurance shall name the City as a loss payee and additional insured and shall provide proof of ownership of the Vessel. This proof shall consist of a current copy of either state registration of the Vessel or documentation by the U.S. Coast Guard or Foreign Authority as the case may be.
- All applicable dockage fees are payable in advance of any specified period. In the event a payment is more than 5 days late, the Owner agrees to pay a one-time late fee of 15% on each periodic payment past due.
- The Owner, his or her employees, agents, licensees or invitees injuring or damaging the City’s docks shall immediately reimburse the City in an amount equal to the cost of repairing such damage or injury to the dock. Pursuant to Chapter 8-116 of the City’s Code of Ordinances, the City shall have a lien on the Vessel, its equipment and appurtenances, which damaged the City docks.
- The Owner agrees the City shall have a lien, maritime or possessory, upon the Vessel and any other vessel owned by the Owner for storage fees, dockage fees, repairs, improvements, any related charges, or personal injury or damage caused or contributed by the Vessel, Owner, guests or crew, including but not limited to damage to pier, piling, docks, wharf, buoys, other vessels, pollution by discharge of oil products, sewage or toxic waste or any hazardous material, loss by sinking, collision, fire, or other losses and for expenses necessary for preservation of the Vessel or expenses reasonably incurred in the sale or other disposition of the Vessel. The lien shall attach as of the commencement date of this Agreement and released when all fees owed are paid in full. As an additional remedy, Owner hereby authorizes City to sell Vessel at a non-judicial sale in the event of non-payment of rent, storage fees, utility charges, service fees or any other fees authorized by statute for a period of six months in accordance with the provisions of section 328.17 of the Florida State Statutes. Further, in the event of a breach or violation of this Agreement, City shall be entitled to pursue any and all remedies available under law including, without limitation, maritime laws.
- In the event of any breach/default hereunder, the Owner hereby agrees to pay all collection fees, collection service fees, dockage fees, damages, attorney fees, court costs, interest, late fees and any other fees or cost associated with recovery for breach of this Agreement.
- The Owner agrees to comply with the laws, regulations and ordinances of the City and all rules and regulations for the City Marine Facilities; a copy of said rules and regulations is attached hereto and by reference made a part hereof. Any attachments to this Agreement, including applicable rental fees, facility rules and regulations and parking rules and regulations issued by the Supervisor of Marine Facilities are part of this Agreement. Should a breach of the Agreement or violation of any rule and/or regulation occur, this Agreement shall terminate immediately at the sole discretion of the City. Owner agrees that upon such termination, City may immediately remove the Vessel without notice to Owner from its dock space at the Owner’s risk and Owner’s expense and take possession of the dock mooring facility.
- The person signing below does hereby certify that he/she has read, fully understands and agrees to comply with all of the conditions of this Agreement and the rules and regulations attached herewith. Owner also certifies that the description of the Vessel is correct and that he/she is the lawful Owner of the Vessel or is the authorized agent of the Owner and has the power and authority to enter into a binding agreement on behalf of the Owner.
- If the Vessel remains at the slip following the termination of the Agreement, and without otherwise limiting the rights of the City hereunder, Owner shall be deemed occupying the slip for purposes of transient dockage and shall pay the City the then applicable daily rate of transient dockage for each day the Vessel continues to occupy the dock space.
- In the event of litigation to enforce or interpret this Agreement, jurisdiction shall lie in circuit court of Broward County, Florida or United States District Court for the Southern District of Florida. Both parties waive their right to request a trial by jury.
- The City’s rights and remedies hereunder are cumulative in nature and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available in law. No waiver or forbearance of a breach of this Agreement shall be construed as a waiver or forbearance of any other or subsequent breach, and the acceptance of any performance hereunder or the payment of any amounts after the same have become due or at a time when any other default exists shall not constitute a waiver of the right to demand payment of all other amounts owed or a waiver of any other default then or thereafter existing.
- The obligation of each Owner executing this Agreement is joint and several.
- If any provision contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, this shall not affect any other provisions and this Agreement shall be construed as if such provision had never been contained in this Agreement.
- This Agreement is the entire agreement between the parties and supersedes all prior agreements. No modifications or amendments to this Agreement are valid unless in writing and signed by both parties.

Owner/Agent/Captain:

City:

(Print Name & Authority or Title)

(Print Name)

By: _____

By: _____

City of Fort Lauderdale Marine Facilities

Dock Rules and Regulations

EXHIBIT 2
City of Fort Lauderdale Marine Facilities
Admiralty and Maritime Dockage Agreement

1. **Floating Homes/Houseboats:** Floating homes as defined under City Code of Ordinances 47-19.6.A.1 are strictly prohibited. This prohibition applies to all floating homes designed or used primarily as a dwelling or residence including those that may have been altered or converted by mechanical means or otherwise for the purpose of transforming the watercraft to meet the minimum definition of vessel as defined in City Code of Ordinances 47.19.6.A.2. Houseboats are not permitted.
2. **Slip Assignment:** The Dockmaster or dock staff shall assign slips and no changes will be permitted without the City’s permission. No stacking or rafting of vessels is permitted. Bona fide tenders that normally reside aboard or are towed may be tied alongside or astern of the Vessel at the Dock master’s discretion, but may not protrude beyond the limits of the slip. Tenders may not be left in any slip alone or unattended for any period without the permission of the Dockmaster.
3. **Motorized vehicles:** No motorized vehicles, bicycles, roller blades, skateboards, scooters or any other mechanical transportation, other than ambulatory scooters or wheelchairs, may be ridden on the docks. Storage of any equipment on piers, seawalls or adjacent green space areas is prohibited. Examples include but are not limited to: Bicycles, surfboards, plants, dock boxes, oil and grills.
4. **Seaworthiness:** Only vessels in good and seaworthy condition and in a constant state of readiness will be permitted to enter the dock space. Owners of vessels whose propulsion machinery is inoperative in excess of 24 hours must notify the Dockmaster immediately. Owner must inform Dockmaster of the action being taken to return the vessel to operation as soon as possible and the Owner’s plan for immediate evacuation should an emergency requiring evacuation occurs. The City reserves the right but not the responsibility to take any action it deems necessary to safeguard said Vessel, adjacent vessels, docking facility or property of the City. Owner agrees to pay all reasonable costs and service fees incurred by the City.
5. **Vessel appearance:** The Owner is responsible to keep the Vessel in such condition that it does not become unsightly or dilapidated or reflect unfavorably on the appearance standards of the City’s Marine Facilities. Decks of all vessels berthed at the City’s Marine Facilities shall be kept clear of debris, trash or other unsightly material at all times. Laundry of any type or any item of a personal nature shall not be hung or spread to air dry in the public view of any vessel or pier.
6. **Garbage and waste:** All garbage and trash shall be placed in the City provided receptacles. Disposal of oil, filters, rags and hazardous materials shall be legally disposed of away from City property and not disposed of in City containers. The discharge of any trash, petroleum product, hazardous material, wastewater or sewage into waterways is strictly prohibited.
7. **Fires and Dangerous Conditions:** The use of charcoal burners, BBQ grills, gas or electric welders, gas torches or any other flame producing equipment is prohibited except within the Vessel (e.g. cooking, stoves lamps, lanterns).
8. **Fueling:** Fueling of a vessel is prohibited at all Municipal Marine Facilities except as permitted under Chapter 8 –118 (b) (c) (d) (e) (f) of the City of Ft. Lauderdale Code of Ordinances. Vessels desiring to fuel must contact the Dockmaster for approval.
9. **Swimming/Diving:** Recreational swimming and diving from marine facilities is prohibited. Diving for vessel bottom maintenance/repair is permitted. Fishing permitted in designated areas only.
10. **Generators:** Vessel generator use is permitted. Upon notice of a complaint of any kind relating to noise and/or odor, etc., the use of said generator must cease immediately.
11. **Maintenance:** Repaints, outfitting or refitting of vessels at the docks is prohibited. Minor repairs, which require paint touch-ups, mechanical adjustment, electrical work and varnishing, are permitted subject to the Dockmaster’s approval. The use of some power tools is permitted. This is strictly limited to vacuum sander, drill and buffers. Grinders, chippers, needle guns tenting, and tarps are not permitted. Upon a complaint of any kind relating to power tool noise, dust, etc. the use of said tool will cease immediately. Portable compressor and generator use from docks is prohibited. Spray painting or any kind is strictly prohibited. All work is restricted to aboard the Vessel. No work will be permitted on piers, seawalls or in public greens spaces adjacent to any of the City’s Marine Facilities.
12. **Tipping:** Tipping of dock staff is prohibited.
13. **Signage:** No signage or banners may be placed on the Vessel, the dockage space or adjacent to the marina docks except “for sale” signs which may not be larger than three hundred thirty six (336) square inches in size. The Supervisor may remove any non-approved sign or banner from the Vessel without notice to the Owner. Similarly, the Owner may not affix or attach by any means, any other object, fixture, or equipment to the docks without prior written permission from the Supervisor. Neither the Vessel’s nor the Supervisor’s address shall be used for business purposes without written prior permission of the Supervisor.
14. **Utility Failure:** City is not responsible for any utility failure or damages that may result there from.
15. **Noise:** Owners/guests/tenants/tradesmen shall use discretion in the use of televisions, stereos, loud hailers, horns, radios or any other on-board equipment so as to not create a nuisance. Rigging shall be secured to prevent slapping. Masts with self-storing sails are required to have stoppers.
16. **Hurricanes:** Upon receiving verbal notice of “Tropical Storm Warning’, issued by the National Hurricane Center, all vessels moored at the City’s Marine Facility are required to remove loose gear, electrical cords and water hoses. It is strongly recommended that Owner seek and secure other dockage at hurricane safe harbor or shipyard.
17. **Soliciting at Docks:** It shall be unlawful for any operator of a charter boat, fishing boat or sightseeing boat docked at the municipal docks to solicit business or offer for sale goods, wares, merchandise or services at any other place other than from the boat so licensed or from a sales booth operated in connection therewith.
18. **Use of City Water:** No Vessel shall be permitted to use a siphon at any time which is connected with the City water supply, or use the City water supply to force water through such siphon. City water shall not be used as a coolant for air conditioners or other machinery. Air conditioners and water supply hoses must be turned off on unattended Vessels.
19. **Annual Dockage Agreements:** All Annual Dockage Agreements require payment of the first month’s dockage fees, utilities and taxes plus an additional deposit amount equal to a month’s dockage fees and taxes. The additional month’s deposit may only be applied to the 12th month of this agreement. Owner agrees to forfeit the full amount of the deposit if this agreement is terminated prior to the full term of twelve months. Early termination of an Annual Lease for any reason requires a 30 day written advanced notice to the Supervisor of Marine Facilities and a departure date certain.

NOTICE TO VESSEL OWNERS: The City hereby informs you that in the event you fail to remove your Vessel from City Marine Facilities promptly after the issuance of a tropical storm warning or hurricane watch for south Florida, from Cape Canaveral through the Florida Keys, in accordance with Florida Statute Section 327.59, the City, its employees or agents, is authorized to remove your Vessel, if reasonable, from its dock slip or slips or to take any reasonable actions deemed appropriate by the City, its employees or its agents, in order to better secure your Vessel and to protect marina property, private property, and the environment. You are further notified that you may be charged with a reasonable fee for labor materials or any other fees associated with any such action. The City shall have no liability for damage to property or person resulting from these actions.

PARKING RULES AND REGULATIONS

1. Each vessel docked at the City’s Marine Facilities is entitled to one parking space at no additional charge as long as dockage fees are current. Two parking permits may be issued to vessels whose duration of stay exceeds 30 days.
2. All parking permits are valid up to a maximum of five days beyond the date through which dockage fees are paid. Dockage rental fee must be kept current for a violation not to occur.
3. Depending upon space availability, the Supervisor may issue additional temporary day guest permits. All such permits are temporary and revocable at will and shall be surrendered at the request of the Dockmaster.
4. No parking permits will be issued for any period dockage is in arrears.
5. Temporary permits must be displayed on the rearview mirror at all times.
6. Any alteration in display or changes of dates is not permissible and may result in the loss of parking privileges.
7. The Dockmaster’s office has no authority to void or negate parking tickets. All disputed parking tickets must be submitted to the Parking Systems office.

Violation of the above rules and regulations, disorder, depredations or indecorous conduct by an owner, crew or guests that might injure a person or cause damage to property or harm the reputation of the City Docking facilities shall be cause for immediate removal of the vessel in question from the dock. Any unused portion of the rental term will not be refunded and shall be retained by the City. City reserves the right to pursue any and all remedies available as a result of violation of these Rules and Regulations.