BOAT SLIP LEASE AGREEMENT

PARTIES: This Lease is made between the **CITY OF STUART, FLORIDA**, a municipal corporation with its principal place of business located at 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter the "**LESSOR**" and **WINDWARD MARINA STUART, LLC**, a Florida limited liability company, with its principal place of business located at 2999 NE 191 Street, Suite 800, Aventura, Florida 33180, hereinafter the "**LESSEE**".
The above named agree to the following lease terms:

1. **LEASE.** LESSOR leases to LESSEE and LESSEE leases from LESSOR the Designated Boat Slip closest to the boat ramp located 400 S.W. Federal Highway, Stuart, Florida 34994 (coordinates: 27°11'49.8"N 80°15'27.1"W) (herein, "**Boat Slip**"). The Designated Boat Slip is more particularly depicted in aerial photograph attached hereto as **Exhibit "A."** LESSEE agrees to use the Boat Slip solely for the docking or mooring of Lessee's boat(s), as allowed by the Rules of LESSOR and for no other purposes and uses whatsoever. The LESSOR also agrees to permit LESSEE to use its boat ramp facilities for the in and out launching of LESSEE's Boat(s). LESSEE hereby accepts the Boat Slip in an "as is" condition.

2. **TERM AND RENT.** The term of this Lease shall be for a period of ten (10) years commencing on 7/1/2020 2020 and ending on 6/31/2030 2030. The monthly amount due for rent of the Boat Slip shall be Five Hundred and no/100 Dollars ($500.00) and will be due on the 1st of each month thereafter. There shall be no penalty for annual payments remitted in advance.

3. **INSURANCE.** LESSEE represents and warrants that the insurance certificate attached to this Agreement as **Exhibit "B"** is currently in force and shall continue in force throughout the term of this Agreement. LESSEE shall maintain liability insurance in the amount of $300,000.00 per occurrence and $1,000,000.00 aggregate on LESSEE's Boat(s) and personal property located at the Boat Slip and shall name the LESSOR as an additional insured. LESSEE agrees, and the applicable insurance policies described above shall provide, that the LESSEE's insurance shall be, at all times primary, regardless of whether or not the LESSOR has any collectible insurance.

4. **TAXES AND SERVICES.** LESSEE agrees to pay all applicable sales tax, resort tax and all other governmental taxes related to the Agreement, regardless of whether described in this Agreement or not. LESSEE agrees to pay for all services provided related to the Agreement (herein, "Services") in accordance with the rates established by LESSOR, from time to time. All fees and charges for Services shall be payable in advance unless otherwise agreed to by both parties.

5. **THE BOAT SLIP**. The Boat Slip shall be used and occupied only by LESSEE and shall be used for the sole purpose of the mooring of LESSEE's Boat(s), (herein, "**Boat(s)**"). LESSEE must promptly remove LESSEE's Boat(s) from the Boat Slip upon reasonable demand of LESSOR due to inclement weather, such as a tropical storm or hurricane watch or warning. The Boat(s) must comply with all applicable laws, rules, orders and regulations. LESSOR reserves the right to inspect the Boat(s) for compliance.

6. **OCCUPANCY AND USE OF BOAT SLIP.** The Boat Slip shall be used only by LESSEE, crew, invitees and permitees, subject to the rules and regulations hereinafter described.

(a) **Use**. It is the intention that this Boat Slip is being provided as intergovernmental agency cooperation. At no time shall the Boat Slip be used for personal or private business use.

(b) **Neglect**. LESSEE shall not cause or permit any waste, misuse or neglect with respect to the Boat Slip and/or utilization of water.

(c) **LESSOR Rules**. LESSEE agrees to abide by all the LESSOR's Rules and Regulations, as amended from time to time.

(d) **Purpose**. The Boat Slip shall be possessed, occupied and used solely for the purpose of providing non-residential mooring and for no other purpose. At no time shall the Boat Slip be used for the mooring of a vessel providing "live aboard" services.

(e) **Safety**. The Boat Slip shall be used and occupied in a safe, careful, and proper manner.

(f) **Use & Compliance with Laws.** LESSEE and all persons using and/or occupying the Boat Slip and/or the Boat(s) shall abide by and comply with all present and future ordinances, regulations and laws of all governmental and quasi-governmental entities, whether federal, state or local, having jurisdiction (including, without limitation, any requirement to obtain and maintain permits and approvals) with respect to the Boat Slip and/or Boat(s). LESSEE will immediately inform LESSOR in writing of: (i) any and all governmental or regulatory notices, orders and/or actions instituted, completed, or threatened affecting the Boat Slip; and (ii) any and all claims made or threatened by any third party against the LESSEE, LESSOR and/or the Boat Slip. LESSEE shall neither permit nor commit whether with or without knowledge or consent, any illegal or unlawful practice or act in or upon the Boat Slip or the surrounding property. LESSEE shall be responsible to comply with all requirements and for payment of all fees, fines, penalties, expenses and other costs that may be imposed by, any governmental and/ or quasi-governmental entities, whether federal, state or local, having jurisdiction with respect to the Boat Slip and/or the Boat(s).

(g) **Non-Disturbance**. LESSEE agrees to avoid doing at any time anything which would hamper, disturb or interfere with the quiet and peaceful enjoyment or other persons within the surrounding area or which would hamper, disturb or interfere with the use by such other persons of the surrounding area serving the community, LESSOR, or its Manager in their management operation and maintenance of the surrounding area.

(h) **Liveaboard.** No Liveaboards are permitted. "Liveaboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period.

(i) **Maintenance.** Boat maintenance or repair activities that require the removal of the boat(s) from the water, or removal of major portions of the boat(s), including the engine, for purposes of routine repairs or maintenance on site are prohibited over the water at the Boat Slip or at Shepard Park, except where such activities are necessitated by emergency conditions which have resulted in or can result in the sinking of the boat(s). Specifically prohibited shall be hull scraping, stripping, sanding, painting, recoating, and other maintenance or repair activities which may result in degradation of water quality from discharge or release of potential contaminants into the water.

(j) **Fish Cleaning.** No fish cleaning is allowed while in the Boat Slip or on the dock, on the boat(s) or in Shepard Park.

(k) **Attachment to Dock and/or Boat Slip.** No nails, screws or any other type of fastener can be inserted into dock boards, pilings or any other portion of the dock and/or Boat Slip without written permission from the LESSOR's City Manager. No additions or deletions, improvements or repairs may be made to the dock, and/or Boat Slip, or pilings without first having obtained the written consent of the LESSOR.

(l) **No Right to Sub-Lease Boat Slip:** LESSOR will not Sub-Lease Boat Slip while

LESSEE is in possession of Boat Slip during the rental period.

7. **ASSIGNMENT.** LESSEE shall not assign, sublet, or transfer any portion of this Agreement. Any purported assignment, sublet or transfer by LESSEE shall be a default of this Agreement and will be considered null and void by LESSOR. The City Manager shall be consulted for any request for assignment of the balance of the Lease to another valid governmental agency and shall use reasonable considerations when determining same.

8. **OWNERSHIP BY LESSOR.** LESSEE acknowledges and agrees that the real property to which the Boat Slip is attached is exclusively owned by the LESSOR and, therefore, the Boat Slip and its use thereof are subject to the terms and conditions hereof.

9. **MAINTENANCE OF BOAT SLIP AND BOAT.**

a) **Maintenance by LESSOR**. LESSOR shall maintain the Real Property to which the Boat Slip is attached to the walkway and surrounding area, including (without limitation) all riparian land located thereon as defined pursuant to Ch. 253, F.S. and the shoreline thereof (collectively, "Attached Property").

b) **Maintenance by LESSEE**. LESSEE is solely responsible for Boat Slip upkeep, maintenance, repair, and/or replacement, if needed. LESSEE shall keep and maintain the Boat(s) and all personal property of LESSEE in good state of maintenance and repair and in a sightly, healthy and clean condition, and so as to comply with all applicable ordinances, regulations and laws of all government and quasi-government entities, whether federal, state or local, having jurisdiction.

10. **DAMAGES.** LESSEE shall be strictly liable for any and all damages to the Boat Slip, and Attached Property, caused by LESSEE, LESSEE's Boat(s), LESSEE's employees, family, agents, guests, contractors, vendors, crew, invitees and/or permitees, or in any way relating to the Boat Slip, the Boat(s) and/or the use thereof.

11. **NO ADDITIONS OR ALTERATIONS BY LESSEE.** LESSEE shall not make any additions or alterations in or upon the Boat Slip of any nature whatsoever without first having obtained the written consent of the LESSOR. Dock boxes are prohibited.

12. **RIGHT OF ENTRY BY LESSOR.** LESSOR, its agents, contractors, vendors and employees may at any time without consent of LESSEE enter in and upon and have free access to the Boat Slip for the purposes of examining and inspecting the same, for delivery of notices, for determining if the same are in a healthy, clean and well maintained condition, and notifying LESSEE of such repairs to the Boat Slip that may be necessary. LESSOR shall not enter the Boat(s) without reasonable advance notice to LESSEE, unless in the event of an emergency.

13. **NOTICES.** Any notice(s) that either party herein desires or is required to give to the other must be in writing. Any notice to the LESSOR must be delivered by Certified Mail, Return Receipt Requested, postage prepaid to LESSOR at: **City of Stuart, Attention City Manager, 121 SW Flagler Avenue, Stuart, Florida 34994**. Any notice to the LESSEE may be delivered to LESSEE by hand-delivery to LESSEE, or by mailing same by Certified Mail, Return Receipt requested, properly addressed to LESSEE at: **2999 NE 191 Street, Aventura, Florida 33180**, with postage thereon fully prepaid. The place of delivery for any such notice may be changed by the giving the other party written notice in accordance with this provision not less than ten (10) days prior to the date upon which the change shall become effective.

14. **DEFAULTS.** In the event, that the LESSEE defaults in its financial or other obligations under this Agreement, or fails or refuses to comply with the provisions of this Agreement, or applicable law, LESSOR shall have the right to:

(i) Revoke LESSEE's Agreement and exclusive use of the Boat Slip;

(ii) Terminate this Agreement as provided herein and require the LESSEE turn over control of the Boat Slip to the LESSOR without any obligation to LESSEE,

financially or otherwise;

(iii) Enter upon the Boat Slip and tow and/or remove the Boat(s) from the Boat Slip with prior written notice sent to LESSEE by Certified Mail, Return Receipt Requested, and store the Boat(s) at LESSEE's sole expense; and/or

(iv) Exercise any and all other rights and remedies available to LESSOR herein, via federal or state law or in equity.

15. **WAIVER.** No failure, or successive failures, on the part of the LESSOR to enforce any provision nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge there of or render the same inoperative or impar the right of the LESSOR to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

16. **INDEMNIFICATION.** LESSEE shall indemnify and hold harmless LESSOR from and against any and all claims, suits, actions, damages, causes of action, release or discharge of fuel, chemicals, waste or other pollutants by Boat(s) or arising during the term of this Agreement, and for any personal injury, loss of life or damage to property sustained in or about the leased premises which arises in connection with the use of the leased premises by LESSEE, contractors, invitees or guests, and in connection therewith. LESSEE shall also indemnify and hold harmless LESSOR from and against all costs, attorney's fees, expenses and liabilities incurred in and about such claim, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any liability, cause of action, lawsuit, orders, judgments and decrees which may be entered therein or therefrom.

17. **TERMINATION.** The LESSEE may terminate this Lease upon not less than ninety (90) days written notice to the LESSOR, City of Stuart at the location listed in this Agreement for providing notice. In the event of early termination of this Agreement for any reason, no rent or fee shall be refunded to LESSEE. Not later than five (5) days after termination of this Agreement for any reason, LESSEE shall vacate the Boat Slip and leave same in condition as good or as better than it was at the beginning of this Agreement, reasonable wear and tear excepted.

18. **MISCELLANEOUS PROVISIONS.**

(a) All understandings and agreements between LESSOR and LESSEE with respect to the Boat Slip are merged into this Agreement, which fully and completely express the parties' agreement. This Agreement may not be changed or terminated verbally and may be amended or modified only by an instrument in writing signed by LESSEE and an authorized officer of the LESSOR.

(b) This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Florida. Venue of any dispute between the parties regarding this Agreement or the Boat Slip shall only lie in courts located in Martin County, Florida. The prevailing party in any action, arising directly or indirectly from this Agreement or LESSEE's mooring of the Boat(s) in the Boat Slip shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

(c) The caption and titles to the various sections of this Agreement are for convenience and reference only, and in no way define, limit, affect or describe the proper scope or intent of this Agreement. All individuals named herein as LESSEE are jointly and severally liable for all obligations pursuant to this Agreement. All pronouns and variations thereof shall be construed to refer to the masculine, feminine, neuter, singular or plural form thereof as to the identity of the person or persons, or as the situation may require.

(d) No waiver, express or implied, of any breach of one or more of the terms and covenants contained in this Agreement shall be deemed or taken to be a waiver of any succeeding or other breach. LESSEE agrees that the rights of LESSOR under this Agreement are cumulative and that any failure on the part of LESSOR to exercise promptly any rights hereunder shall not operate to forfeit any of said rights.

(e) All promises, covenants and agreements set forth in this Agreement shall be binding upon, apply to and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, LESSOR and LESSEE have executed this Agreement as of the date and year set forth below their respective signatures.

WHEREFORE, the parties have hereunto affixed their hands and seals as of the _____ day of _____, 2020.

Signed, sealed and witnessed in our presence:

LESSOR:

CITY OF STUART

By:_____

MICHAEL J. MEIER

MAYOR

ATTEST:

_____

MARY R. KINDEL
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

_____

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

LESSEE:

WINDWARD MARINA STUART, LLC

By: Stefan Johansson

Print Name:

As its: Manager

_____

Feb 6-2020