

Marina Management Agreement
Between Westrec Marina Management, Inc.,
and
City of Dania Beach, Florida

Exhibit "A"

Table of Contents

1.	Documents Comprising Contract.	1
2.	General Contract Terms.....	2
3.	Management.	5
4.	Authority of Westrec.	6
5.	Duties of City.....	12
6.	Compensation of Westrec.....	12
7.	Fiscal Non-funding.	12
8.	Audit.	12
9.	Public Emergencies.	13
10.	Sales Tax.....	13
11.	City's Ownership of Improvements.	13
12.	Permits.	13
13.	Hours of Operation	13
14.	Termination of this Agreement.....	14
15.	Limiting Legislative or Judicial Action.....	14
16.	Nondiscrimination.	15
17.	Hurricane Preparedness.	15
18.	Termination of Agreement.	15
19.	Approvals.....	15
20.	Rights Reserved to the City.	16
21.	Lien.	16
22.	Compliance with City's Internal Control Processes.....	16
23.	Recycled Material.	16
24.	Infringement of Patent, Trademarks or Copyrights.	17
25.	Signage.	17
26.	Condemnation.....	17
27.	Mechanic's Liens.	17
28.	Indemnity.	17
29.	Alternative Dispute Resolution.	18
30.	Reservations.....	18
31.	Facilities.....	18
32.	Collection of Delinquent Accounts.	18
33.	Use of Trademarks, Service Marks and Related Items.....	19

MARINA MANAGEMENT AGREEMENT

THIS MARINA MANAGEMENT AGREEMENT (the "Agreement") dated _____, 2010 is between Westrec Marina Management, Inc., a California corporation, authorized to do business in Florida ("Westrec"), 16633 Ventura Boulevard, 6th Floor, Encino, CA 91436, and City of Dania Beach, Florida, a municipal corporation, ("City", together with Westrec, the "Parties"), 100 W. Dania Beach Blvd., Dania Beach, FL 33004.

RECITALS

- A. City owns the Marina located at 101 North Beach Road, Dania Beach, Florida 33004, known as Dania Marina (the "Marina");
- B. It is the intention of City that the wet slips at the Marina be rented to third parties for use as temporary boat storage facilities, and that the Marina facilities are put to their intended use;
- C. Westrec is in the business of managing marinas and currently manages similar facilities;
- D. City has engaged Westrec to manage the Marina and Westrec shall manage, operate, provide maintenance and security for the Marina in accordance with the terms and conditions of this Agreement as hereinafter set forth in the location described as the Marina Operating Area ("MOA") described in Exhibit "A", which is attached and incorporated into this Agreement by this reference;
- E. City's intent in retaining Westrec is to have a vital, financially successful and self-supporting marina by engaging Westrec to improve the Marina infrastructure, minimize costs, and maximize net revenue to the City; and
- F. The City finds that this Agreement serves both a public purpose and a municipal purpose.

AGREEMENT

NOW, THEREFORE, in consideration for the mutual covenants herein contained, Westrec and City agree as follows:

1. Documents Comprising Contract.

The contract shall include this Agreement, as well as the following documents, which are made a part of the Agreement and incorporated into it by their reference:

- (a) The City of Dania Beach Request for Proposal, RFP #2009-016 ("RFP"), its Exhibits and Attachments issued on October 30, 2009, and all of its addenda is attached to this Agreement as Exhibit "B".

(b) Exhibits

Exhibit A - Marina Operating Area ("MOA")
Exhibit B - RFP

(c) Attachments

Applicable City policies

- (a) Purchasing Policies and Procedures
- (b) Budget Procedures

(d) For the first year of this Agreement, the parties shall mutually develop the annual marina budget and submit it for review and approval to the City Manager and City Commission for the upcoming fiscal year of the City, beginning October 1, 2010. Thereafter, the parties shall develop such a budget for any subsequent years and submit it to the City Manager and City Commission by July 1st of the applicable year.

If there is a conflict between the terms of this Agreement and above-referenced documents then the conflict shall be resolved as follows: the terms of this Agreement shall supersede over other documents, and the terms of the remaining documents shall be given preference in their above-listed order.

2. General Contract Terms.

(a) **Non-exclusive Contract.**

Award of this Agreement shall impose no obligation on the City to utilize Westrec for all work of the type which may develop with respect to the Marina during the term of this Agreement.

(b) **Additional Services and Locations.**

The City reserves the right to request additional services relating to this Agreement from Westrec when approved by the Parties, in accordance with additional services as set forth in the RFP. Westrec shall provide such additional services as may become necessary. The City reserves the right to unilaterally add or delete locations or services at its sole option as it may deem necessary or in the best interests of the City. In such case, Westrec will be required to provide services pursuant to this Agreement in accordance with the terms, conditions and specifications, and as set forth in an amendment approved by the Parties.

(c) **Entirety of Agreement.**

The Parties agree that this Agreement sets forth the entire agreement between the Parties and there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified,

superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the Parties. This Agreement and the exhibits and attachments hereto and other documents and agreements specifically referred to herein constitute the entire fully integrated Agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written communication or agreements between the Parties excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may only be amended by written documents, properly authorized, executed and delivered by both Parties hereto. For the City, appropriate authorization shall be construed to mean formal action by the elected officials of the City, except where specified within this Agreement that the City Manager or his or her designee shall have approval or authority. This Agreement shall be interpreted as a whole unit. This Agreement shall not be construed in favor of one party or the other. All matters involving this Agreement shall be governed by the laws of the State of Florida and the proper venue for any litigation arising hereunder will be a state or federal court located in Florida with venue within Broward County, Florida.

If City or Westrec incurs any expense in enforcing the terms of this Agreement, whether suit is brought or not, each party shall bear its own costs and expenses including, but not limited to, court costs and reasonable attorneys' fees. The parties waive any rights each may have to a jury trial.

(d) Headings.

Headings of various paragraphs and sections of this Agreement and its table of contents are for convenience and use of reference only and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

(e) Severability.

The terms and conditions of this Agreement shall be deemed to be severable; consequently, if any clause, term or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions and notwithstanding such determination, this Agreement shall continue in a full force and effect unless the particular clause, term or condition held to be illegal or void renders the balance of the Agreement to be impossible of performance

(f) No Waiver of Right to Enforce.

The waiver of any breach or any term covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term, or condition shall be deemed to have been waived, unless such waiver be in writing. Nor shall there be any accord and satisfaction unless expressed in writing and signed by both the City and Westrec.

(g) Performance.

Service shall be performed in a timely manner as specified in the City's RFP.

The Parties expressly agree that time is of the essence in the performance of this Agreement and the failure to complete the performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the Parties of any obligation to accept such performance.

(h) Notices.

Any notice required or permitted herein is to be given in writing and shall be personally delivered or mailed, first class postage prepaid or delivered by an overnight delivery service to the respective addresses of the Parties set forth below their signatures on the signature page hereof, or to such other address as any party may give to the other in writing. Any notice required by this Agreement will be deemed to have been given and received when personally served or one (1) day after delivery to an overnight delivery service or five (5) days after deposit in the first class mail.

To the City: City of Dania Beach, Florida
100 W. Dania Beach Blvd.
Dania Beach, FL 33004
Attn: City Manager

With Copy to: City of Dania Beach, Florida
100 W. Dania Beach Blvd.
Dania Beach, FL 33004
Attn: Thomas Ansbro, City Attorney

To Westrec: Westrec Marina Management, Inc.
16633 Ventura Boulevard, 6th Floor
Encino, CA 91436

With copy to: Westrec Marina
801 North East Third Street
Dania Beach, Florida 33004
Attn: Gary Groenewold
Vice President Southern Area

(i) Remedies.

Each party shall have full remedies available under existing laws, including, but not limited to, the Uniform Commercial Code, mediation, alternative dispute resolution and all state and federal courts of any jurisdiction.

(j) **Assignment, Subcontracting, Corporation Acquisitions and Mergers.**

Westrec shall perform this contract. No assignment or subcontract shall be allowed without the prior written consent of the City including an assignment pursuant to a corporate acquisition or merger. In the event of an assignment of the contract to a wholly owned subsidiary of Westrec, the City's written consent shall not be unreasonably withheld. Westrec shall provide a written notice to the City within thirty (30) business days of any assignment or subcontract.

(k) **Miscellaneous.**

(i) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument;

(ii) No representative of Westrec or the City is authorized to make any representations, warranties or agreements other than as expressly set forth herein;

(iii) Any consent required by this Agreement to be given by City to Westrec shall be given in writing; and

(iv) Westrec hereby disclaims any implied or express warranties, guarantees or representations of any kind other than as expressly set forth in this Agreement.

3. **Management.**

(a) **Term.**

Subject to the terms of this Agreement, City hereby engages Westrec to manage the Marina and Westrec hereby agrees to manage the Marina for an initial term of slightly more than two (2) years commencing on the date hereof and ending at midnight on September 30, 2012. The City shall have the sole and absolute discretion to renew this Agreement for an additional two (2) year term by providing Westrec written notice of its election to renew this Agreement within ninety (90) days prior to the expiration of this Agreement.

(b) **Other Marinas.**

City acknowledges that Westrec is in the business of managing marina and other facilities ("Facilities") both for its own account and for third parties. It is hereby expressly agreed that Westrec and its affiliates may continue to engage in such activities, and may manage Facilities in addition to those it presently manages so long as the Facilities are not in direct competition with City. Westrec agrees not to manage or lease any other Facility within three (3) nautical miles of the City's marina without the express written consent of the City. This provision shall not apply to the following existing Westrec facilities: Harbour Towne Facility, Haulover Marine Center Facility, Hall of Fame Marina, and Sunrise Harbor Marina .

(c) **Independent Contractor Status and Compliance with the Immigration Reform and Control Act of 1986.**

Westrec is and shall remain an independent contractor and is neither agent, employee,

partner nor joint venturer of the City. Westrec acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 USC Section 1324 et seq. and regulations relating thereto as either may be amended from time to time. Westrec's failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the contract at the discretion of the City.

4. Authority of Westrec.

(a) General Authority.

Westrec hereby agrees to provide the City with Marina Management Services as requested and as specifically outlined in the RFP, this Agreement and all subsequent official documents that form the contract documents for this Agreement, in compliance with the City's approved annual marina budget and City policy restrictions and procedures stated or referenced herein. Westrec shall have the authority to fully and completely supervise and direct the operations of the Marina and matters associated or related to the operation of the Marina, including boat slip rentals, retail sales of sundries, and supervision of all leases of space at the Marina referenced as Exhibit "A" attached to this Agreement and incorporated into it by this reference. City shall execute such documents as Westrec and City, in their reasonable judgment, deem necessary or advisable for Westrec to carry out its management of the Marina.

(b) Renting of the Marina.

Westrec shall use its reasonable discretion in recommending and establishing the terms and conditions of occupancy of boat slips in the Marina to the City. The City shall set the rates for the boat slip rentals after considering recommendations provided by Westrec. Westrec shall enter into written rental agreements (the form of which shall be reviewed and approved in advance and in writing by the City) with such tenants and Westrec will collect rent from such tenants as an agent of the City and shall be responsible for all rental receipts until physical delivery and signed acceptance of the receipts by the City. The form of rental agreement shall be prepared, reviewed, as appropriate by Westrec and recommended to and provided by the City for acceptance. Westrec shall maintain all rental and receipt records of the Marina and provide a summary report to the City at least monthly (or more frequently as requested by the City Finance Director) of marina rental revenues earned or billed, rental collections and outstanding balances due.

(c) Marketing and Advertising.

Westrec shall establish the policies and procedures which it deems necessary or advisable for directing the marketing activities of personnel relating to the Marina subject to authorized budget appropriations and restrictions. All advertising of the Marina, including signs, may be carried under the Westrec's name and the name of the City. All advertising and marketing costs shall be paid directly by Westrec on behalf of the City and shall be subject to the City's approval. Westrec shall include the Marina in all newsletters or periodicals which it publishes or distributes and City agrees to pay a pro rata share of related expenses as set out in paragraph 4 (r) Shared Expenses.

(d) Repair, Maintenance and Improvements.

Westrec shall make and execute, or supervise and have control over the making and executing of, all decisions concerning the acquisition of furniture, fixtures and supplies for the Marina, and the purchase, lease or other acquisition of the same, on behalf of the City within the scope of the marina's annual approved budget. Westrec shall make and execute, or supervise and have control over the making and executing of, all decisions concerning the routine day-to-day maintenance, including parking lot and restrooms, repair and landscaping of the Marina, on behalf of the City. In connection with performance of routine day-to-day maintenance, repair and landscaping, Westrec shall negotiate and supervise the installation of minor capital improvements related to the Marina which Westrec, in its reasonable discretion, deems necessary or appropriate; provided, however, that Westrec shall obtain the prior approval of the City for all expenditures in excess of five hundred dollars (\$500.00) for any one item (except monthly or recurring operating charges and emergency repairs if in the opinion of Westrec such expenditures are necessary to protect the Marina from damage or to maintain services to the tenants as called for in their leases). Westrec agrees to follow and comply with the City's Purchasing Policies and Procedures. All invoices for repairs, maintenance and improvements costs shall be approved by Westrec in writing and be paid directly by the City, subject to the approved marina budget or any subsequent approvals.

(e) Personnel.

Westrec's employees in contact with the public shall perform their duties in an efficient and courteous manner. Westrec shall insure all its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. Failure of an employee to do so shall be grounds for the City to demand his or her removal from duties on the Marina property. Westrec shall provide the City with the name and telephone number of a management person who will be on call at all times for emergencies or other matters related to the operations under this Agreement.

(f) Non-compete provision.

Current Marina employees will be provided an opportunity for employment with Westrec pursuant to this Agreement. Westrec agrees and that some of these employees may seek other positions within the City's personnel system shall not interfere with the hiring of such employees by the City. The City agrees not to solicit these employees for employment or otherwise compete with Westrec in this regard.

(g) Budget.

The City's 2009-2010 Preliminary Budget was prepared by City staff and Westrec shall review and provide recommended adjustments to the City Administration by August 27, 2010 for consideration at the City's scheduled budget hearings. Westrec agrees to operate the Marina in accordance with the City's final annual marina budget that is approved by the City Commission (the attached Pro Forma is subject to the City's review, modification and approval). Westrec shall annually, beginning with the fiscal year 2011-12, develop a proposed budget in June, in conjunction with the City's budget preparation process, which shall be reviewed, modified and approved by the City Manager and City Commission in September. The annual budget submittal shall include, but not be limited to, all of the proposed revenue sources and expenditures for the Marina. Westrec proposes to sell sundries to marina tenants and shall remit to the City on a monthly basis, within ten (10) days after the end of the applicable month, five percent (5%) of

gross sales. The proposed revenue projection shall include detailed written justification to support the proposed sources and projections. Westrec in proposing the annual expenditure budget shall include, but not be limited to, the following:

(1) **Personnel Costs.** All marina employees and staff will be employed and paid by Westrec. An organizational chart listing all of the full and part-time positions that Westrec is proposing, their positions with titles, number in each position, proposed pay ranges, and benefit costs for each position, shall be provided to the City.

(2) **Marketing and Promotion Costs.** Westrec shall provide a comprehensive marketing and promotion budget which will list the proposed specific expenditures and expected revenue plans and impacts to support the proposed plan.

(3) **Proposed Capital Improvement and Repair Maintenance Plan.** Westrec shall develop a proposed detailed Capital Improvement and Repair Maintenance Plan that specifically describes each proposed expenditure, activity, justification or need for activity, and the estimated cost.

(h) Agreements.

Westrec shall have the authority to negotiate and recommend to the City such agreements which Westrec deems necessary or advisable for the furnishing of utilities, services, concessions and supplies, for the maintenance, repair and operation of the Marina and such other agreements which may benefit the Marina or be incidental to the matters for which Westrec is responsible hereunder. In the event any such agreement for the purchase of equipment or supplies exceeds Two Thousand Five Hundred Dollars (\$2,500.00), Westrec shall be required to follow the City's procurement requirements and submit three (3) quotations from separate suppliers to the City.

(i) Other Decisions.

Westrec shall make all decisions in connection with the day-to-day operations of the Marina.

(j) Regulations and Permits.

Westrec will observe, obey and comply with all rules and regulations adopted by the City and all laws, ordinances, and or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to the operations under this Agreement. Failure to do so will constitute a breach of this Agreement. Westrec shall procure all required permits, licenses and approvals, on behalf of the City, for the operation and performance under this Agreement. All permit or regulatory fees or costs shall be paid directly by the City, subject to the approved marina budget or any subsequent approvals.

(k) Management Records and Reports of Disbursements and Collections.

Westrec shall establish, supervise, direct and maintain the operation of a system of written internal controls, record keeping and bookkeeping with respect to all revenue billing,

receipts and disbursements in connection with the management of the Marina. The books, records and accounts shall be maintained at Westrec's Southern Regional Accounting Office using a Westrec's accounting system. Revenue billings and receipts shall be reconciled, totaled on a bank deposit slip and deposited to the City's bank, or delivered to the City's Finance Department daily to discourage thefts and office break-ins at the Marina office. The City shall pay \$300 per month for bookkeeping, billing and accounting services.

City acknowledges that any budgets or projections prepared by Westrec for City are only estimates of revenues and expenses, that the initial budgets and projections prepared by Westrec and approved by the City will be based in part on information provided by City, that any projections prepared by Westrec are subject to, and may be affected by, changes in financial, economic, competitive and other conditions and circumstances beyond Westrec's control and that such projections and budgets are not to be construed as a guarantee by Westrec of the actual results to be obtained from operations. Westrec acknowledges the importance of monitoring its actual revenue collections and expenditures in comparison to the approved budget plan. Westrec shall notify the City Manager in writing at least monthly of material deviations from the marina's approved budget plan. A material deviation from the marina's budget plan shall be defined as a cumulative fiscal year to date budget variance in either revenues or expenditures that exceeds 15% of the budget plan, respectively. City acknowledges that Westrec makes no representations or warranties as to the results to be obtained from operations. City acknowledges that Westrec has no knowledge, and cannot certify the accuracy of any historical information provided to Westrec by City. All receipts will be deposited into the City's bank account. Receipts will be accounted for on the Westrec's books by Westrec personnel. All purchases for the Marina which fall under the City's area(s) of responsibility shall be made such that they are in compliance with the City's Purchasing Policy, Procedures and Code.

(l) Collection.

Westrec shall analyze and direct the collection and billing of all accounts receivable due to the City with respect to the Marina. Westrec shall provide a monthly reporting to the City in electronic format reflecting the details of each receivable balance and the cumulative total of all receivables that are more than 60 days past due and shall be responsible for establishing policies and procedures to minimize the amount of bad debts.

(m) Legal Actions.

Westrec shall cause to be instituted, on behalf and in the name of the City, any and all legal actions or proceedings Westrec deems necessary or advisable to collect charges with the advice and consent of the City, rent or other income due to City with respect to the Marina or to oust or dispossess tenants or other persons unlawfully in possession under any lease, license, concession agreement or otherwise, and to collect damages for breach thereof or default thereunder by such tenant, licensee, concessionaire or occupant. Westrec shall also assist the City in the defense of any and all actions and proceedings brought by tenants, suppliers, vendors and similar persons relating to the Marina and City shall be responsible for satisfying and paying the costs of defending all such claims to the extent not covered by insurance. Westrec shall provide notice to City of any and all actions or proceedings instituted by, on behalf of, or against

the City.

(n) Insurance.

Westrec (as specified in its response to the bid, in its section entitled "Risk Management and Insurance", at Page 72) shall pay for and maintain all necessary insurances including but not limited to, Marina Operators Legal Liability, automobile coverage, theft coverage, and environmental pollution coverage, listing the City as an additional named insured. Westrec shall provide Workers Compensation coverage. The costs incurred by Westrec for insurance coverage applicable to the MOA shall be included in the approved marina budget and shall be paid or reimbursed by the City, pursuant to the approved marina budget.

Westrec shall purchase or endorse its master policy to include the City. Westrec's policy must be primary.

As a part of the marina budget planning process for each subsequent Fiscal Year (beginning in FY2010 – 2011), all insurance coverage will be re-evaluated and specific coverage may be redistributed between the City and Westrec depending on what is most advantageous to the Parties. However, at all times the cost for insurance coverage for the MOA and the marina operations shall remain a part of the marina budget and will ultimately be paid or reimbursed by the City. If either Party chooses to carry additional insurance coverage that is not contemplated by the approved marina budget, then the cost of such coverage shall be the responsibility of the insured Party.

(o) Restrictions.

Notwithstanding anything to the contrary set forth in this Section 4, Westrec shall not be required to do, or cause to be done, anything for the account of City (i) which may make Westrec liable to third parties; or (ii) which may not be commenced, undertaken or completed because of insufficient funds of City.

(p) Force Majeure.

Neither the City nor Westrec is required to perform any term or covenant of this Agreement so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the City's or Westrec's control and that the City or Westrec cannot, by exercising due diligence, prevent or overcome in whole or in part.

(q) City Approval

Westrec agrees it will obtain prior written approval from the City prior to implementing changes on the following matters:

- (1) Changes from the original approved plans, activities signage and graphics;
- (2) Equipment Westrec plans to install requiring any building or facility modifications;
- (3) Any use of the City's name;
- (4) Any improvements to be constructed on the Marina property;
- (5) Hours of daily operation;
- (6) Uniforms to be used by the employees;
- (7) The décor of the Marina and all signs to be installed directed or displayed in or on the Marina property and any changes thereto at anytime during this Agreement; and
- (8) Maintenance Requirements

Further, it is understood by Westrec, that should any changes related to the above items be disapproved, either Party may offer alternative solutions.

(r) Shared Expenses.

The Parties acknowledge that certain economies may be achieved with respect to certain expenses to be incurred on behalf of the City hereunder if materials, supplies, or services are purchased by Westrec in quantity for use not only in connection with the Marina but in connection with other marinas managed by Westrec or its affiliates. Westrec shall have the right, with the advice and written consent of the City, to purchase such materials, supplies, insurance or services in its own name and charge City a pro rata share of the cost; provided, however, that the pro rata cost of such purchase to City shall not result in expenses greater than would otherwise be incurred at competitive prices and on terms available in the area where the Marina is located or the service is rendered; and, provided further, Westrec shall provide a copy of the financial records to the City upon request and shall make records available to City at Westrec's corporate headquarters office at all reasonable times after reasonable notice to Westrec so City may review any such expenses incurred.

(s) Reporting Requirements.

Westrec must submit a monthly written report to the City Manager containing information which includes but is not limited to:

- (1) Occupancy (both numbers and dollars), historical comparison;
- (2) Marketing and promotions;
- (3) Revenues, Expenses and Net Income in comparison to approved budget;
- (4) Capital improvements status report;
- (5) Insurance claims;
- (6) Delinquent Receivables (exceeding 60 days)
- (7) Litigation; and
- (8) Safety and environmental incidents;

(9) Customer Service Issues (Westrec shall respond to customers within five days).

(10) Parking Permit Roster

(t) Business Continuity Plan.

Westrec shall provide the City with a copy of its business continuity plan covering the Marina as well as the company head office. Westrec will provide the City with the results of any testing of its business continuity plan.

5. Duties of City.

City shall cooperate with Westrec in the performance of its duties under this Agreement and to that end, upon the request of Westrec, City agrees to provide reasonable office space for Westrec employees on the premises of the Marina, to give Westrec access to all files, books and records of City relevant to the Marina, and to execute all documents and instruments as Westrec, in its reasonable judgment, deems necessary or advisable to enable it to carry out its management of the Marina.

6. Compensation of Westrec.

Westrec agrees to operate and maintain the Marina and associated property on a negotiated fixed fee basis. The City shall pay Westrec One Hundred Thirteen Thousand Three Hundred Dollars (\$113,300.00) annually as compensation for the performance of services under this Agreement ("Compensation"). Such payment shall be paid in twelve monthly installments on the 15th of each month commencing _____ 15, 2010. The Compensation shall increase annually, in an amount equal to the increase in the United States Department of Labor Consumer Price Index-South Urban from the previous year, however the annual fee increase shall not exceed five percent (5%), or as agreed to by the Parties. In the event this Agreement is terminated by either party, the Compensation shall be paid on a pro-rata basis.

7. Fiscal Non-funding.

In the event that sufficient budgeted funds are not available for any new fiscal period, the City shall notify Westrec of such occurrence and this Agreement shall terminate on the last day of the then current fiscal period without expense or penalty to the City.

8. Audit.

Westrec shall retain all records relating to this contract for a period of at least five (5) years after final payment is made. All financial records noted under Section 4(k) of this Agreement shall be subject to an annual audit by the City's auditing firm. Westrec shall create and maintain its financial records in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, City reserves the right to audit such records pursuant to City policy.

9. Public Emergencies.

It is expressly made part of this contract that before, during and after a public emergency, disaster, hurricane, tornado, flood or other acts of God, that City shall require a "first priority" for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety as determined by the City. Westrec

agrees to rent, sell, lease all goods and services to the City or governmental entities on a "first priority" basis.

10. Sales Tax.

Westrec shall pay the prevailing State of Florida sales and use tax for any amounts payable under this Agreement.

11. City's Ownership of Improvements.

Upon the expiration of this Agreement, for any reason, all existing and any future installed fixtures, equipment, improvements and appurtenances attached to or built into the Marina in such a manner as to become part of the freehold estate whether or not by the expense of Westrec, shall become and remain a part of and be surrendered with the Marina property. Any furniture, furnishings, equipment or other articles of moveable personal property owned by Westrec and located on the Marina property shall be and remain the property of Westrec and may be removed by it at any time during the term of this Agreement so long as Westrec is not in default of any obligations under this Agreement and the same has not become part of the freehold estate and so long as such do not materially affect Westrec's ability to use such premises and conduct its business as provided herein.

12. Permits.

Pursuant to Section 218.80, Florida Statutes, the City will pay for all City permits and fees, including license fees, permit fees, impact fees or inspection fees applicable to the Work through an internal budget transfer(s). Contractor is not responsible for paying for permits issued by City, but is responsible for acquiring all permits. City may require Contractor to deliver internal budget transfer documents to applicable City agencies when Contractor is acquiring permits. City is not responsible for any penalty fees for improper work or fees related to inspections for improper work.

13. Hours of Operation.

The Marina property will be required to operate seven (7) days a week, including holidays, during those hours approved by the City. Sufficient staff will be available to provide outstanding service. The City may require change in hours of operation if in the reasonable discretion of the City such a change is desirable for providing the best service to the public.

14. Termination of this Agreement

(a) The Agreement may be terminated by the City upon the following terms and conditions:

- (i) in the event of a default in the performance of this Agreement by Westrec, which default shall remain uncured for thirty (30) days after Westrec receives the written notice of default from the City which specifies the nature of such default, the City may terminate this Agreement as of date set forth in such notice; or
- (ii) the City shall have the right to terminate this Agreement with or without cause at any time by giving written notice to Westrec at least

ninety (90) days prior to the effective date of such termination, which date shall be specified in the written notice.

(iii) Westrec shall have the right to terminate this Agreement with or without cause at any time by giving written notice to the City at least (90) days prior to the effective date of such termination, which date shall be specified in the written notice.

(b) Westrec shall have the right, upon thirty (30) calendar days from receipt of written notice to the City by certified or registered mail, to the address specified in at paragraph (2)(h) above, to terminate this Agreement at any time after the occurrence of one or more of the following events:

(i) issuance by any court of competent jurisdiction of any injunction, substantially restricting the use of the Marina property; or

(ii) a breach by the City of any of the terms, covenants, or conditions contained in this Agreement and the failure of the City to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail return receipt requested from the Westrec of the existence of such breach; or

(iii) the assumption by the U.S. Government or any authorized agency or any other governmental agencies of the operation, control or use of the Marina .

15. Limiting Legislative or Judicial Action.

In the event that any municipal, county, state or federal body of competent jurisdiction passes any law, ordinance or regulation in any way restricting or prohibiting the use of the Marina for purposes of this Agreement, this Agreement may be terminated by either Party, pursuant to paragraph 13 above and will be null and void and unenforceable by any party to this Agreement and the City shall have no further liability under this Agreement. In the event that any court or legislative body of competent jurisdiction issues an injunction substantially restricting or prohibiting the use of the Marina for the purposes of this Agreement, which injunction stays in force for more than thirty (30) calendar days, this Agreement will be null and void and unenforceable by any party to this Agreement and the City shall have no further liability under this Agreement. If the City deems the Agreement null and void by function of this paragraph, the City will not be liable to Westrec for damages arising therefrom and the City shall have no further liability under this Agreement.

16. Nondiscrimination.

Westrec does for itself, its personal representatives, successors in interest and assigns as part of the consideration and agreement consideration, covenant and agree that:

(a) No person on the grounds of race, color, religion, national origin, sexual orientation, age, residency within or without the City or disability shall be excluded from

participating in or be denied the benefits of or be otherwise subjected to discrimination in the use of the Marina except for bona fide cause allowed by law.

(b) As to the construction of any improvements on or over the marina, such land or in the furnishing no services, no person on the grounds of race, color, religion, national origin, sexual orientation, age, residency within or without the City or disability shall be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination, except for bona fide causes allowed by law.

(c) That Westrec shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, non discrimination under programs receiving federal assistance through the City of health, education and welfare-effectuation of Title VI of the Civil Rights Act of 1964 and as such regulations may be amended that in the event a breach of any of the above non-discrimination covenants, the City shall have the right to terminate the Agreement and this Agreement shall be null and void. Westrec shall not discriminate against City employees or applicants for employment in the performance of the contract with respect to hiring tenure terms, conditions or privileges of employment because of age, sex, or physical disability (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national original or ancestry.

17. Hurricane Preparedness.

Westrec shall follow the City's emergency evacuation and hurricane plan as may be supplemented by Westrec, subject to the City's approval.

18. Termination of Agreement.

Following the termination of this Agreement by either party within fifteen (15) calendar days, or earlier if determined by the City, Westrec shall forthwith remove all of its personal property not acquired under the terms of the Agreement. Any personal property of Westrec not removed in accordance with this paragraph may be removed by the City for storage at the cost of Westrec or shall constitute a gratuitous transfer of title thereof to the City for whatever disposition is deemed to be in the best interests of the City. The City shall not be liable to Westrec for safekeeping for Westrec's personal property during or after termination of this Agreement.

19. Approvals.

Except as otherwise provided, whenever approvals are required herein by either party, such approval shall not be unreasonably withheld.

20. Rights Reserved to the City.

All rights not specifically granted to Westrec by this Agreement are reserved to the City, and the designation of any particular remedy for the City without prejudice to any other relief available in law or equity and all such relief is reserved to the City.

21. Lien.

The City shall have a lien upon all personal property of Westrec engaged in executing the requirements under this Agreement, to secure the payment to the City of any unpaid money accruing to the City under the terms of this Agreement.

22. Compliance with City's Internal Control Processes.

Westrec agrees to comply with the City's procurement policies and procedures, budget policies and other policies.

23. Recycled Material.

Westrec agrees to use recovered materials to the extent practical under the terms of this contract.

The City wishes to encourage Westrec to use recycled materials in fulfilling contractual obligations to the City and that such a policy will serve as a model for other public entities and private sector companies.

When awarding a purchase of \$5,000.00 or less or recommending a purchase in excess of \$5,000.00 for products, materials or services, Westrec may allow preference to a responsive bidder who or which certifies that its product or material contains the greatest percentage of post-consumer materials. If bidding on paper products, it may certify that their materials or products contain at least the content recommended by the EPA guidelines.

Definitions under this section are as follows:

"Recovered Materials": Materials that have recycling potential, can be recycled, and have been diverted or removed from the solid waste stream for sale, use or reuse, by separation, collection or processing.

"Recycled Materials": Materials that contain recovered materials. This term may include internally generated scrap that is commonly used in industrial or manufacturing processes, waste or scrap purchased from another manufacturer and used in the same or a closely related product.

"Post-consumer Materials": Materials which have been used by a business or consumer and have served their intended end use and have been separated or diverted from the solid waste stream for the purpose of recycling such as newspaper, aluminum, glass containers, plastic containers, office paper, corrugated boxes, pallets or other items which can be used in the remanufacturing process.

24. Infringement of Patent, Trademarks or Copyrights.

Westrec agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damages or expense including attorney fees, arising from or by reason of any actual or claimed trademark patent or copyright infringement or litigation based thereon with respect to the services or goods or any part thereof covered by this Agreement, and such obligations shall survive the term of this Agreement.

25. Signage.

Westrec shall abide by the City's Sign Code. Any changes to exterior signage must meet applicable City codes and ordinances.

26. **Condemnation.**

(a) **Total Condemnation.**

If during the term of this Agreement or any extension or renewal of this Agreement, all of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this Agreement will terminate, and the payments will be abated during the unexpired portion of this Agreement effective as of the date the condemning authority takes the Area.

(b) **Partial Condemnation.**

If less than all, but more than ten percent (10%) of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by the right of eminent domain, or is sold to the condemning authority under threat of condemnation, either party may terminate the Agreement by giving written notice to the other party within sixty (60) days. If the area is partly condemned and neither party elects to terminate this Agreement or if less than ten percent (10%) of the area is condemned, this Agreement will not terminate, but the payments to be made will be adjusted equitably during the unexpired portion of this Agreement.

(c) **Condemnation Award.**

The City will receive the entire award from any condemnation, and Westrec will have no claim to that award or for the value of any unexpired term of this Agreement.

27. **Mechanic's Liens.**

Westrec will not Contract for any products or services on behalf of the City that might allow any mechanic's lien or lien of any kind to be placed on the MOA.

28. **Indemnity.**

(a) **Westrec's General Indemnity.**

City agrees to indemnify Westrec for claims brought against Westrec only to the extent that they are found to result from the sole negligence of the City, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors, or third party agents of the City. This indemnification shall not be construed as a waiver of the City's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the City could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the City must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129.06, Florida Statutes, and Article VII, Section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the City to only those damages caused by City's sole negligence, and specifically not include any attorneys' fees or costs associated therewith.

(b) **Indemnity.**

Westrec is responsible only for the payment of that portion of any cleanup cost for compliance with hazardous materials laws that arise during the term of this Agreement as a result of a discharge of hazardous materials directly attributable to the negligence of a Westrec employee. The City is responsible for all other cleanup costs, including all costs associated with environmental compliance at the Marina, and the City is responsible for insuring that any other responsible party participates in the clean up to the extent of its responsibility for relief.

Westrec shall indemnify, defend, and hold harmless the City from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen including without limitation counsel, engineering, or any other professional or expert fees, that the City may incur by reason of the negligence of Westrec employees during the term of this Agreement as set forth herein. This section survives the expiration or earlier termination of this Agreement.

29. Alternative Dispute Resolution.

Westrec and the City agree that any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be first subject to mediation by a mutually agreed upon mediator before any suit is filed.

30. Reservations.

Reservations for Marina slips are currently accepted up to four (4) months in advance. Westrec has provided an operations plan relating to reservations policy, including reservations, software, prepaying requirements and cancellation policies.

Any changes to the reservations policy must be approved by the City Manager.

31. Facilities.

Westrec will maintain the premises in good order and in sanitary and safe condition.

Westrec shall provide one boat slip, as needed, for use by the City for a police boat at all times during the term of this Agreement.

32. Collection of Delinquent Accounts.

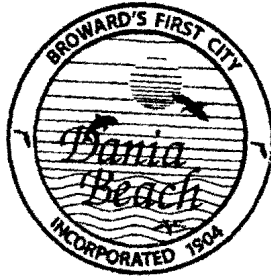
City shall be responsible to pursue collection of delinquent accounts exceeding 60 days.

33. Use of Trademarks, Service Marks and Related Items

In providing its services under this Agreement, Westrec will use the name, trademark and service mark "WESTREC" and such other trademarks, service marks, logos, commercial symbols, insignia and designs as Westrec shall deem appropriate (collectively, the "Trademarks") and certain operations manuals and software (including operations, emergency procedures, personnel, risk management and accounting software and manuals), formats (including financial reporting and budgeting formats) and forms (including bookkeeping, accounting and lease forms) and software (collectively, the "Proprietary Material"). Westrec grants City the nonexclusive, nontransferable right to have Westrec, for the benefit of City, use the Trademarks and Proprietary Material in connection with the management and operation of the Marina all subject to Westrec's complete control. It is understood and agreed that Westrec shall have the right to use and license others to use the Trademarks and Proprietary Material elsewhere for any purposes whatsoever, including without limitation in the management and operation of other marinas. Immediately

upon the expiration or termination of this Agreement, City shall (a) return to Westrec all materials bearing any of the Trademarks and all Proprietary Material without retaining any copies thereof, and (b) cease all use of the Trademarks and Proprietary Material by all means required, including without limitation changing all telephone listings using any of the Trademarks, removing all signs bearing any of the Trademarks, and using its best efforts to have existing tenants at the Marina sign new leases to replace their existing lease forms. Nothing contained in this Agreement shall give City any right, title or interest in or to any of the Trademarks or Proprietary Material, except the mere privilege and license during the term of this Agreement to have Westrec, for the benefit of City, use the Trademarks and Proprietary Material in connection with the management and operation of the Marina. City acknowledges and agrees that the Trademarks and Proprietary Material are the exclusive property of Westrec and that City now asserts and will hereafter assert no claim to any goodwill, reputation or ownership of any of the Trademarks or Proprietary Material. City shall not do or permit any act or thing to be done in derogation of any of Westrec's rights in any of the Trademarks or Proprietary Material, either during the term of this Agreement or thereafter. City shall not, during or after the term of this Agreement, in any way dispute or impugn the validity of the Trademarks or Proprietary Material, the rights of Westrec therein, or the rights of Westrec or other licensees of Westrec to use the same, both during the term of this Agreement and thereafter. The provisions of this section shall survive the expiration or termination of this Agreement.

IN WITNESS OF THE FOREGOING, the Parties have executed this Marina Management Agreement as of the date first-above written.



ATTEST:

Louise Stilson

Louise Stilson, CMC
City Clerk

CITY:

**CITY OF DANIA BEACH,
FLORIDA, a Florida municipal
corporation**

Robert Baldwin
Robert Baldwin
City Manager

Approved as to form and correctness:

Thomas J. Ansbro
Thomas J. Ansbro,
City Attorney

CONTRACTOR:

**WESTREC MARINA
MANAGEMENT, INC., a
California corporation, authorized
to do business in Florida**

WITNESSES:

Mary Pastore
Signature
MARY PASTORE
PRINT Name
Jeffrey K. Ellis
Signature
JEFFREY K. ELLIS
PRINT Name

[Signature]
William Anderson
President

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

The foregoing instrument was acknowledged before me on _____ 2010, by William Anderson, as President of Westrec Marina Management, Inc., a California corporation, authorized to do business in Florida, on behalf of the corporation. He/she is personally known to me or produced _____ as identification and did (did not) take an oath.

*see attached loose
Acknowledgment certificate*

NOTARY PUBLIC
State of California

My commission expires:

ACKNOWLEDGMENT

State of California
County of Los Angeles

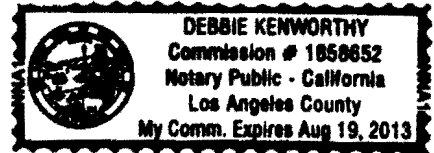
On September 13, 2010 before me, Debbie Kenworthy, Notary Public
(insert name and title of the officer)

personally appeared William W. Anderson
who proved to me on the basis of satisfactory evidence to be the pers on(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the pers on(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Debbie Kenworthy (Seal)



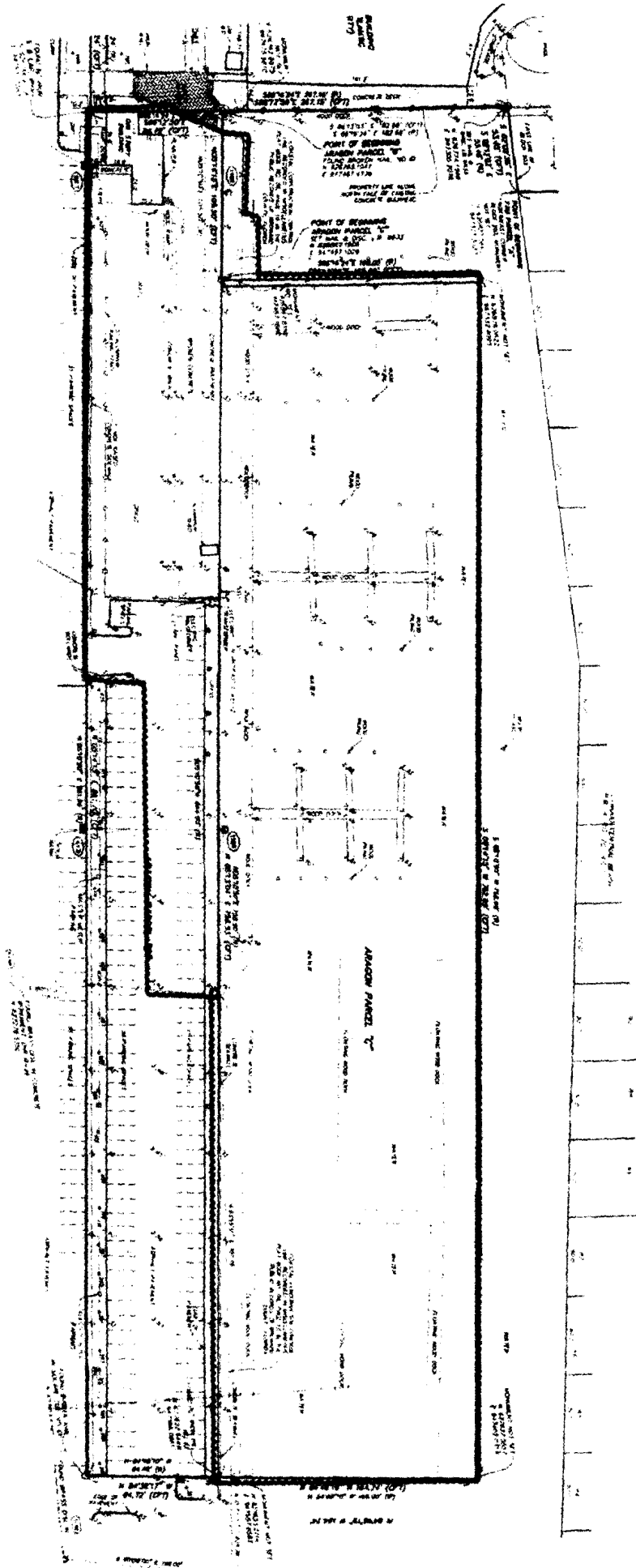


EXHIBIT "A"
MARINA OPERATING AREA (MOA)