

## **Boat Ramp Use Agreement between The City of Belle Isle and Regal Marine**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Belle Isle, a Florida Municipal Corporation, (the "City") having a principal address of 1600 Nela Avenue, Belle Isle, FL 32809, and Marketing Business Associates LTD, dba Regal Marine Industries, a Florida Limited Partnership ("Regal"), having a principal address of 2300 Jetport Drive, Belle Isle, FL 32809.

### **RECITALS:**

- A. City maintains and controls the Venetian Boat Ramp and appurtenant City owned or controlled grounds and facilities in Belle Isle, FL (collectively referred to hereinafter as the "Ramp").
- B. The City currently does not allow any boats over 24 feet in length to be launched from the Ramp.
- C. Regal manufactures boats that are over 24 feet in length and over 12,000 pounds (6 tons), which are considered to be oversized boats for the purposes of using the Ramp.
- D. Due to their larger size, the Regal boats cannot navigate under the Hoffner Bridge and therefore are unable to use the Randolph Ramp to launch boats for their events.
- E. Hoffner Avenue has a truck restriction of 6 tons, except for local deliveries, and Regal uses oversized vehicles to transport the oversized boats to the Venetian Boat Ramp.
- F. Regal has 2 events per year (2 days each) where they invite customers to 2110 Hoffner Road to display Regal boats ("Events").
- G. The City desires to permit Regal to utilize the Venetian Boat Ramp for the sole purpose of launching and retrieving Regal boats before and after the events and to set forth in writing the terms and conditions of Regal's use of same.

### **WITNESSETH:**

The City, for good and valuable consideration and in consideration of the covenants and promises exchanged herein, grants Regal a revocable, non-exclusive license to utilize the Ramp pursuant to the following terms and conditions:

#### **1. RECITALS.**

The recitals as set forth above are hereby deemed true to the best of the parties' knowledge and are incorporated herein as material provisions of this Agreement.

#### **2. REVOCABLE LICENSE.**

- 2.1. City hereby grants to Regal a revocable, non-exclusive license to utilize the Ramp for the sole purpose of launching and retrieving oversized boats at the Ramp during the Events identified in the Recitals, and Regal hereby accepts such license subject to the terms and conditions contained herein.

- 2.2. In consideration for such license, Regal agrees to assume and to perform all of Regal's duties contained in this Agreement.
- 2.3. Regal acknowledges and agrees that any right Regal may have to use the Ramp pursuant to any other agreement or understanding with City or any other person or entity acting on behalf of the City, is superseded by this Agreement.

3. TERM.

The rights and obligations of the parties under this Agreement are effective as of the date of execution of this Agreement and will immediately expire upon the City's written notification to Regal informing Regal of City's intent to terminate this Agreement together with the license granted hereunder.

4. IMPROVEMENT/ DUTY TO NOTIFY.

- 4.1. Regal acknowledges and agrees that Regal is prohibited from constructing any improvements or making any modifications to, in, or on the Ramp and adjacent facilities and grounds, nor shall Regal expand, modify, alter, or otherwise change any improvements currently existing at the Ramp, unless agreed to in writing between Regal and the City. Any improvements that might be agreed to by the City and Regal in writing, must be paid for solely by Regal.
- 4.2. If Regal notices or otherwise observes a condition at the Ramp or any of the facilities appurtenant thereto that might pose a risk to Regal or other users of the Ramp, Regal agrees to notify the City of the condition and to immediately cease utilizing the Ramp until the condition has been addressed and, if necessary, remedied by the City or Regal, as may be applicable. Regal shall repair, at Regal's own expense, any damage resulting or otherwise arising from Regal's use of the Ramp, including the driveway, Pasadena Drive, and Venetian Drive.

5. COMPLIANCE WITH LAWS.

Regal shall comply with all laws, orders, ordinances, rules, regulations, or requirements of any governmental authority having jurisdiction over the Ramp and streets and facilities Regal will be using in conjunction with its use of the Ramp.

6. USE/ASSIGNMENT.

Regal agrees not to allow any individual, organization, or other third party (unless such individual is an agent, officer, volunteer, contractor, or employee acting on behalf of Regal) to use the facilities and agrees to immediately report all persons engaging in unauthorized use of the Ramp to the City. Regal further covenants and agrees that Regal may not assign any of Regal's rights under this Agreement to any other person or entity, whether expressly, impliedly, or by operation of law, without first obtaining the express written consent of City, which consent may be withheld in the sole and absolute discretion of City.

7. INDEMNITY.

Regal shall, at its own expense, indemnify, defend, and hold harmless the City, including its authorities, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status, from and against any and all claims of every kind and nature (including losses incurred or suffered in consequence of bodily injury to a person or damage to property), damages, losses and expenses, including, but not limited to attorney's fees, arising out of or resulting from use of the Ramp or other nearby property or facilities, provided that the claim, damage, loss, or expense is caused by a negligent act or omission of Regal, including anyone directly or indirectly employed by Regal or anyone acting on behalf of Regal, except that Regal will not be required to indemnify, defend, and hold harmless the City if such claim, damage, loss, or expense is the result of the sole negligence of the City, or of anyone directly or indirectly employed by the City or anyone for whose acts the City may be liable at law. Regal's indemnification obligations herein will survive termination or expiration of this Agreement.

8. EVENT OF DEFAULT.

- 8.1. Upon any default by Regal under any of Regal's obligations under this Agreement, the City may, at its option, terminate this Agreement or exercise any other remedy available to City at law, in contract, or in equity.
- 8.2. The rights and remedies of City under this Agreement are not mutually exclusive. The exercise by City of one or more of the rights or remedies under this Agreement does not preclude the exercise of any other right or remedy. Damages at law may not be an adequate remedy for a breach or threatened breach of this Agreement, and, in the event of a breach or threatened breach of any provision hereunder, the respective rights and obligations hereunder are enforceable by specific performance, injunction, or other equitable remedy.

9. WAIVER.

Any waiver of any covenant or condition of this Agreement must be in writing signed by the party waiving the right, shall extend to the particular case only, and only in the manner specified, and shall not be construed as applying to or in any way waiving any further or other rights hereunder. The exercise of any of the aforementioned options may not be construed as a waiver of City's right to recover actual damages for any breach in an action at law or to restrain any breach or threatened breach in equity or otherwise.

10. INSURANCE.

Consistent with Regal's indemnification obligations herein and as a precondition to using the Ramp, Regal agrees to obtain and maintain, at its own expense, those minimum insurance policies and coverages as set forth below and further agrees to include the City as an additional insured on all liability policies required hereunder throughout the term of this Agreement. **All such policies shall be acquired and maintained on an occurrence**

**basis. Furthermore, all insurance policies provided pursuant to this Agreement must include one or more endorsements (i) making the policies primary and non-contributory with any valid and collectible insurance available to the City and (ii) waiving subrogation in favor of the City.** Proof of such insurance may be provided to the City in the form of an updated Acord 25 form certified by Regal's insurer(s) or insurance agent as may be applicable or in the form of the actual policy. The City reserves the right to request proof of insurance at any time and deny Regal access to the Ramp if such proof of insurance is not provided. Regal shall carry the following types and amounts of insurance with limits no less than those shown below and in the form and from companies satisfactory to the City. Such limits are minimum insurance limits and may not be construed or otherwise interpreted to limit or restrict Regal's indemnification obligations pursuant to paragraph 7 *supra*.

<u>SCHEDULE</u>	<u>LIMITS</u>
Workers' Compensation	Florida Statutory Coverage
Commercial General Liability*	\$1,000,000 Each Occurrence
	\$2,000,000 General Aggregate
	\$1,000,000 Products/Comp.Ops Agg.
	\$1,000,000 Personal/Adv Injury
Boat/Marine Liability Policy*^	\$1,000,000 Each Occurrence
	\$2,000,000 General Aggregate
Automobile Liability (Any Auto)*±	\$1,000,000 Combined Single Limit

\* Regal must add the City as an additional insured to the policy.

^ The Boat/Marine policy must cover all watercraft used in conjunction with the Ramp or otherwise located on City property and is required as a precondition to Regal's use of the Ramp pursuant to this Agreement or in connection the License conveyed herein. This policy may be waived by the City if Regal's Commercial General Liability policy is endorsed to provide functionally and monetarily equivalent coverage in connection with any watercraft Regal uses in conjunction with the Ramp and appurtenant facilities.

± If the Automobile Liability Policy is not endorsed for "any auto," Regal shall, as a condition of using the Ramp, carry an appropriate policy for the vehicles that will be used and is prohibited from using any types of vehicles (*e.g.*, owned autos, scheduled autos, hired autos, and/or non-owned autos, etc.) that are not covered by such policy.

## 11. MISCELLANEOUS / ADDITIONAL DUTIES.

- 11.1. This Agreement constitutes the entire agreement between the parties with respect to the Regal's use of the Ramp and the revocable, non-exclusive license granted hereunder, and supersedes any oral agreements or prior written agreements between the parties in connection herewith.
- 11.2. This Agreement is governed by the laws of the state of Florida, and any venue and jurisdiction for any litigation arising from or otherwise concerning this Agreement shall be in a court of competent jurisdiction located within Orange County, Florida.
- 11.3. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability will not affect the remainder of the Agreement, which will remain in full force and effect and be construed, to the extent practicable, as any such provision had not contained the provision held invalid or unenforceable.
- 11.4. The covenants herein shall be binding upon, and the rights hereunder will inure to the benefit of the parties, their personal representatives, successors and assigns, except that Regal's rights will inure only to those assigns for which Regal has obtained City's prior written consent in accordance with Section 6 of this Agreement.
- 11.5. The provisions of the Agreement may not be construed to create a joint venture or partnership between City and Regal.
- 11.6. City and Regal agree that neither this Agreement, nor any memorandum thereof may be recorded in the official records.
- 11.7. Regal will notify the City at least thirty (30) days prior to any Event of the date of such Event, the number and type of boats to be launched, the size and weight of such boats, and information regarding the size and weight of the vehicles transporting the boats.
- 11.8. Regal will request a police escort for all oversized vehicles if required by the Belle Isle Police Department.
- 11.9. Regal will reimburse the City for all costs incurred by the City in providing all police escorts prior to, during and after the events, which costs will include all applicable labor, materials, and consumables (e.g., fuel) costs.
- 11.10. The City and Regal will perform a joint inspection of the Ramp prior to launching and after retrieving boats participating in Regal's events to determine if any damage was done by Regal to the ramp and its facilities. Any damage arising as a result of Regal's actions or omissions or use of the Ramp will be repaired by Regal within fourteen (14) days of the damage. The City retains the right to reduce any such damages to the monetary cost of fully repairing the Ramp and appurtenant facilities and charge such to Regal, whereupon Regal shall pay any such invoice within thirty (30) days of its receipt thereof.
- 11.11. Consistent with its indemnification obligations set forth herein, Regal is solely responsible to pay for any and all damages to the Ramp or appurtenant grounds and facilities, regardless of whether such damages arise or result from the actions, omissions, or use of the Ramp of or by Regal, its officers, employees, contractors, subcontractors, volunteers, agents, or any other person indirectly or directly in the employ of Regal.

- 11.12 Regal is responsible for the proper and safe dockage of its watercraft, including any watercraft in the custody or care of Regal, to prevent damage to any such watercraft, the Ramp, any adjacent docks, and any other watercraft in the area. Regal must keep each watercraft properly secured at all times until safely and appropriately launched and under its own power with a qualified and an appropriate pilot at the helm. The City shall not, under any conditions, be responsible for damage to watercraft used in connection with the Ramp or appurtenant facilities, it being understood that the Ramp is not designed to be used in connection with the oversized watercraft utilized or otherwise operated by Regal.
- 11.13 All provisions of this Agreement that contemplate continuing obligations of the parties extending beyond the termination or expiration of this Agreement, including any indemnification and insurance provisions and requirements contained herein, shall survive termination or expiration of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -**

**SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals to this Boat Ramp Use Agreement between The City of Belle Isle and Regal Marine below.

ACCEPTED AND AGREED TO:

CITY OF BELLE ISLE, FLORIDA

MARKETING BUSINESS ASSOCIATES LTD,  
DBA REGAL MARINE INDUSTRIES, A  
FLORIDA LIMITED PARTNERSHIP

By: \_\_\_\_\_  
Bob Francis, ICMA-CM  
City Manager

By: \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Yolanda Quiceno, CMC  
City Clerk

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_  
\_\_\_\_\_ online notarization, this \_\_\_\_\_ by \_\_\_\_\_,  
partner (or agent) on behalf of Marketing Business Associates Ltd, dba Regal Marine Industries,  
a Florida Limited Partnership. He/she is personally known to me or has produced \_\_\_\_\_  
\_\_\_\_\_ as identification.

Witness my hand and official seal in the State and County last aforesaid this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

Notary Seal

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_