

## LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 15<sup>th</sup> day of <sup>May</sup>~~APRIL~~, 1997, by and between THE CITY OF PENSACOLA, Florida, a municipal corporation of Florida, hereinafter called the "City," and SCUBA SHACK, INC., a Florida corporation, hereinafter referred to as "Scuba Shack," whose address is 711 South Palafox Street, Pensacola, Florida 32501.

FOR AND IN CONSIDERATION of the monies to be paid and the premises and other good and valuable considerations, the City and Scuba Shack agree as follows:

1. The City hereby leases to Scuba Shack and Scuba Shack hereby leases from the City a parcel of submerged real property situated in Pensacola, Escambia County, Florida, which is more particularly described as:

The East 14 feet of the North 50 feet of Lot 26 and the North 50 feet of Lots 27 and 30 of Block 35 of the Waterfront Tract as per the map of the City of Pensacola, Florida, copyrighted by Thomas C. Watson in 1906.

2. The term of this lease shall commence on the date first written above and shall run for a period of twenty-five (25) years. If Scuba Shack notifies the City in writing during the period commencing on the twenty-third anniversary of the date of this lease agreement and ending on the twenty-fourth anniversary date of this lease agreement, that Scuba Shack desires to release the Leased Premises for a period beyond the expiration of the twenty-five year term of this lease and if Scuba Shack submits with said notice a proposed lease agreement for such period, then the City shall not lease the Leased Premises to any other party without first considering Scuba Shack's proposal and rejecting it with written notice of such rejection.

3. At all times during the term of the lease all leasehold improvements on the Leased Premises shall be and remain the property of Scuba Shack. If Scuba Shack fails to remove such leasehold improvements prior to the termination of the lease, then the leasehold improvements shall become the property of the City. Provided, however, if the City gives Scuba Shack written demand, one hundred eighty days prior to the termination of this lease, that Scuba Shack remove the leasehold improvements, then Scuba Shack shall remove such improvements at its own expense prior to the termination of this lease, whereupon such improvements shall remain the property of Scuba Shack. If Scuba Shack, after receipt of such demand, fails or refuses to remove such leasehold improvements, then the City may, at its option, remove or cause such improvements to be removed, in which event Scuba Shack shall pay the City's expense for such removal without being entitled to any offset or credit for salvage value.



4. Scuba Shack shall pay to the City, as rent for the Leased Premises, the annual sum of four hundred dollars (\$400) in advance for the first five years of the lease term, the first such annual payment being due and payable upon the date of this lease agreement. A fair market rent shall be renegotiated every five years prior to the anniversary date of this lease agreement based upon the submerged lands lease policy currently in effect with the Bureau of State Land Management of the Department of Natural Resources for State submerged land leases, or its successor. If the parties fail to negotiate a fair market rent six months prior to such anniversary date, then the rent for the succeeding five year period shall be determined by the average of the fair market rent recommended by the reports of two independent appraisers, one selected by the City and one selected by Scuba Shack. If the appraisal reports are not completed prior to the anniversary dates so that such average and fair market rent cannot be determined, then Scuba Shack shall pay the same annual rent as it paid during the previous five year period until such time as the fair market rent can be determined, at which time the rent shall be adjusted as of the date of commencement of the five year period with appropriate refund or additional payment being due.

5. The Leased Premises shall be used solely for docking and related facilities, the design and specifications for construction of which must first be approved by the City Engineer. Scuba Shack shall not fill any part of the Leased Premises without the express consent of the City.

6. The Lessee may at its own expense remove any existing docking on the Leased Premises or the adjacent City submerged property and, after construct such docking and related facilities desired. The Lessee agrees that any construction, modification, alteration and removal of docking and related facilities on the Leased Premises will be done in accordance with local, state and federal laws. The Lessee agrees to submit to the City for its review and approval, plans for the construction, modification, alteration and removal of docking and related facilities on the leased premises during the term of this lease. The Lessee agrees that it will make every effort to incorporate dock design standards compatible with the Baylen Slip Marina and future City marinas.

7. Scuba Shack shall indemnify and save harmless the City against and from any and all claims for property damage or bodily injury including death, by or on behalf of any person or persons, partnerships, corporations, or other entities arising from Scuba Shack's conduct of or management about the Leased Premises, or from any occurrence in or about the Leased Premises, and will further indemnify and save the City harmless against and from any and all claims arising from any breach or default on the part of Scuba Shack in the performance of any covenant or agreement on the part of Scuba Shack to be performed pursuant to the terms of this lease agreement, or arising from any act or negligence of Scuba Shack, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, counsel fees, expense and liabilities incurred incident to any such claim or action thereon; and in case any action or proceeding be

brought against the City by reason of any such claim Scuba Shack, upon notice from the City, shall resist or defend at Scuba Shack's expense, such action or proceeding by counsel reasonably satisfactory to the City.

8. Scuba Shack shall maintain insurance and provide the City with certificates of insurance in accordance with Exhibit "A" during the life of this lease agreement. Scuba Shack will not commence construction activities on the Leased Premises until the certificates of insurance have been approved by the City's Department of Risk Management. The City shall have the right to make reasonable increases to the minimum required limits of liability on Exhibit "A" during the term of this lease agreement or any renewal or extension hereof. Scuba Shack shall be responsible for all deductibles under its insurance policies.

Scuba Shack shall provide the City with Certificates of Insurance listing the City as an Additional Insured from all Contractors performing construction, modification, alteration, or removal of docking and from all Contractors performing dredging services on and about the Leased Premises during the term of this lease.

9. It shall be Scuba Shack's responsibility to provide maintenance dredging on and about the Leased Premises as deemed necessary for the operation of the marina and docking facility. The Lessee shall dredge only to depths permitted by the Florida Department of Environmental Regulation and the U.S. Army Corps of Engineers. It shall be the City's responsibility to provide maintenance dredging of the Baylen Slip basin to the boundaries of the Leased Premises in accordance with maintenance schedules of the Port of Pensacola, or as otherwise necessary to maintain navigable access to the Leased Premises. The City's responsibility to maintain navigable access to the leased boundaries shall be governed by permits issued for such work. The City will not object, and shall assist, if necessary, Scuba Shack in securing a separate contract with the City's maintenance dredge contractor at such times as the opportunity provides. However, in no way shall any assistance be construed to be a monetary obligation on the part of the City.

10. The City shall retain all rights in adjacent waters, which shall include the right to construct additional piers, docks, boat slips and the like.

11. Scuba Shack, its transferees, grantees, successors and assigns, shall irrevocably release the City, its contractors, employees, agents and servants, from any and all claims for damages of whatever nature resulting from any dredging by the City, including the incidental depositing of dredged materials resulting from dredging, bulkheading, and/or riprapping, and other incidental damage resulting from any dredging operations and the like which might occur. The parties, their successors and assigns, shall cooperate with each other in connection with the securing of periodic dredging of Baylen Slip, and in this connection, agree to execute such applications, releases and other documents necessary or incidental to the approval of the U.S. Army Corps of Engineers,

or other public agency, to undertake and execute such dredging as shall be requested by either party. The parties, on behalf of themselves and their successors and assigns, further release each other from any and all claims for damage occasioned or arising from any disturbance of the submerged water bottom which results as a natural consequence, from normal periodic maintenance, bulkheading, riprapping of dredging by either party, either in the maintenance and repair of any marina of the use, maintenance and employment of the rights of the marina waterways.

12. In the event that Scuba Shack desires to construct a new bulkhead waterward of the existing bulkhead on the City's property, they shall submit plans for such bulkhead for the City's review and approval. Both parties agree that in the event a new bulkhead constructed on any part of the Leased Premises or if a bulkhead is constructed on adjacent property owned by Scuba Shack and such construction is in any part funded by the City, that Scuba Shack shall provide a walkway and provide public access along any walkway constructed as part of the bulkhead construction and an easement will be recorded recognizing the public's right to utilize the public walkway.

13. Scuba Shack may not, without the City's prior written consent, assign its interest in this lease agreement to any person or entity other than its successor as owner of the parcel of real property lying immediately easterly of the Leased Premises.

14. This lease agreement may be terminated by either party at any time by giving written notice of its intention to terminate the lease agreement six (6) months prior to said termination.

15. All notices sent to Scuba Shack pursuant to this lease agreement shall be sent to Scuba Shack, Inc., 711 South Palafox Street, Pensacola, Florida 32501. All notices sent to the City pursuant to this lease agreement shall be sent to the Office of the City Manager, City of Pensacola, 180 Governmental Center, Pensacola, Florida 32501.

IN WITNESS WHEREOF, the parties hereto, or their agents duly authorized, have hereunto set their hands and affixed their seals on the day and year first above written.

CITY OF PENSACOLA, FLORIDA  
a municipal corporation

By: *[Signature]*  
City Manager

ATTEST:

*[Signature]*  
City Clerk

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 1997, by EDMOND R. HINKLE and SHIRLEY F. LAW, the City Manager and City Clerk, respectively, of the CITY OF PENSACOLA, a municipal corporation, for and on behalf of the City.

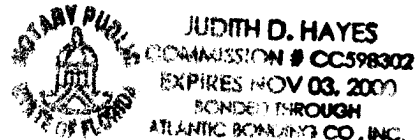
NOTARY PUBLIC

Signature: *[Signature]*  
Printed: Judith D. Hayes

STATE OF FLORIDA AT LARGE  
My Commission Expires:

"APPROVED AS TO CONTENT"

By *[Signature]*  
Assistant City Mgr.  
Date 4-29-97



APPROVED AS TO FORM AND EXECUTION	
BY	<u><i>[Signature]</i></u> City Attorney
Dated	<u>5/6/97</u>

SCUBA SHACK, INC.

By: Eilene Beard

Eilene Beard, Co-Director

Gene Ferguson

Gene Ferguson, Co-Director

WITNESSES:

Greg Jorgensen  
Ben Rush

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 1997, by EILENE BEARD and GENE FERGUSON, Co-Directors, SCUBA SHACK, INC., a corporation, on behalf of the corporation. He/she is personally known to me or has produced Driver's Licenses as identification.

NOTARY PUBLIC

Signature: Veronica Winters

Printed: VERONICA WINTERS



Veronica Winters  
MY COMMISSION # CC506252 EXPIRES  
October 26, 1999  
BONDED THIRD TROY FARM INSURANCE, INC.

STATE OF FLORIDA AT LARGE  
My Commission Expires:

## **ATTACHMENT "A"**

### MINIMUM INSURANCE REQUIREMENTS

1. Workers' Compensation - If legally required, Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. In addition, the policy must include:
  - a) Employers' Liability with a limit of not less than \$100,000 each person - accident, \$100,000 each person - disease, \$500,000 aggregate - disease.
  - b) Notice of Cancellation and/or Restriction - Insurance must be documented in a Certificate of Insurance which provides the City with thirty (30) days notice of cancellation or material change.
  - c) Coverage must be included for the U.S. Longshoremen and Harbor Workers Act on an "if any" basis.
2. Commercial General Liability - Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability policy filed by the Insurance Services Office and must include:
  - a) Minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage Liability.
  - b) Premises and Operations
  - c) Products and Completed Operations
  - d) Independent Contractors
  - e) Protection and Indemnity Insurance for liability arising out of the ownership and operation of vessels.
  - f) City of Pensacola listed as an additional insured and coverage documented in a Certificate of Insurance which provides the City with thirty (30) days notice of cancellation or adverse material change.

**FINAL DOCUMENT REVIEW FORM**  
(blue)

**USER AGENCY**

Document: SCUBA SHACK, INC. & CITY LEASE AGREEMENT (2 Copies)

       Project             Contract             Lease             Other      (Check One)

**Name/Description:** Lease Agreement for Submerged Property between  
City of Pensacola and Scuba Shack, Inc. (Baylen Slip)

User Agency: Administration Contact Person: Al Coby

Date of Council Approval: 2/27/97 Sent to Contract Administration: 4/16/97

**CONTRACT ADMINISTRATION**

25 YR 4/96 - 4/21  
P 400 YR

RECEIVED  
Date Received: APR 16 1997

\_\_\_\_ Pending (See comments below); \_\_\_\_\_ Send to User Agency: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Signature)

Approved: [Signature] (Signature) Send to Risk Management Agency 1/22/97

Comments: APPROVED AS TO CONTENT

## RISK MANAGER

Date Received: 4/22/97

\_\_\_\_ Pending (See comments below); \_\_\_\_\_ Send to User Agency: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Signature)

✓ Approved: Tom Mueley  
(Signature)

Send to City Manager 4/25/97

Comments: \_\_\_\_\_

RECEIVED  
APR 22 1997

DEPARTMENT OF  
RISK MANAGEMENT



**CITY MANAGER'S OFFICE**

Date Received: 4/29/97

☒ Approved: [Signature]  
(Deputy/Assistant Manager)

☐ Pending (See comments below); \_\_\_\_\_ Send to User Agency: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(City Manager)

☒ Document Executed; [Signature] Send to City Clerk: 5/1/97  
(Signature)

Comments: \_\_\_\_\_

**CITY CLERK**

5/1/97

Send Original to City Attorney 5/1/97

Document Officially Recorded: \_\_\_\_\_  
(Signature)

**CITY ATTORNEY**

Date Received: 5/1/97

☒ Pending (See comments below); [Signature] Send To User Agency: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Signature)

☒ Approved as to Form; [Signature] Send Original to City Clerk 5/6/97  
(Signature)

Comments: We need the corporate seal of the corporation. If it is not available, a  
corporate officer may write the word "seal" & draw a circle around it.

**CITY CLERK**

5/6 Returned 1 to Roxane, kept 1 original

Retain Original

City Clerk Document Control Number: \_\_\_\_\_

Send copy of original to User Agency \_\_\_\_/\_\_\_\_/\_\_\_\_