

GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "**Lease**") is entered into as of the _____ day of _____, 2017, by and between the Lessor and the Lessee both hereinafter named.

ARTICLE I.

STATEMENT OF BACKGROUND AND PURPOSE

WHEREAS, the Lessor is the owner in fee simple of certain uplands located at 201 South Birch Road in the City of Fort Lauderdale, Broward County, Florida referred to herein as the "**Existing Parking Lot**" and leasehold owner of certain submerged sovereign land located at 240 E. Las Olas Circle in the City of Fort Lauderdale, Broward County, Florida ("**Existing Submerged Area**" and collectively referred to with the Existing Parking Lot as the "**Existing Marina Premises**" as further described by metes and bounds on Exhibit A.

WHEREAS, the City Commission, pursuant to Section 8.09 of the City Charter adopted Resolution No. _____ on _____, 2016 declaring its intent to lease the Existing Marina Premises for a term not to exceed fifty (50) years plus such length of time (not to exceed five (5) years) to complete construction of the required improvements; and

WHEREAS, the City Commission finds that the Existing Marina Premises are no longer needed for a public or governmental purpose; and

WHEREAS, pursuant to Section 8.09 of the City Charter, the City Commission finds that it is in the best interest of the citizens to seek bid to Lease the Existing Marina Premises from interested persons in accordance with a request for proposal approved by the City Commission;

WHEREAS, in response to the Lessor's Lease, Management & Development for the Las Olas Marina Request for Proposal #264-11791 (the "**RFP**"), Lessee submitted to Lessor a proposal, which was approved by the Fort Lauderdale City Commission (the "**City Commission**") on or about October 5, 2016 as revised on October 18, 2016 by Resolutions No. 16-175 and No. 16-180 (the "**Resolutions**") for the lease and redevelopment of the Existing Marina Premises as hereafter defined.

WHEREAS, this Lease was negotiated pursuant to the authority expressly conferred by the Fort Lauderdale City Commission in the Resolutions, which authorized the negotiation of this Lease subject to the approval of the terms and conditions by the City Commission.

WHEREAS, in accordance with Section 8.09 of the City Charter, a Public Hearing was held before the City Commission during a Regular Meeting of the City Commission held on _____, 2017 for the purpose of permitting citizens and taxpayers the opportunity to review the proposed Lease and object to the execution, form or conditions of the proposed Lease; and

WHEREAS, by unanimous approval of the City Commission, proper City officials were authorized, empowered and directed to execute this Lease by adoption of Resolution No. _____ during a Public Hearing at its Regular Meeting held on 2017.

WHEREAS, it is the mutual desire of the Parties that the Demised Premises (defined below) be leased and demised by Lessor to Lessee for the purposes set forth in this Lease, subject to and upon the express terms and conditions contained herein. The Parties believe that this Lease is consistent in all material respects with the RFP.

NOW THEREFORE, in consideration of the foregoing and of the rent, covenants, and agreements hereinafter set forth, the Parties do hereby covenant and agree as follows:

ARTICLE II.

FUNDAMENTAL PROVISIONS & DEFINITIONS

Lessor: The City of Fort Lauderdale, a Florida municipal corporation and sometimes referred to herein as the “City” or “Lessor”.

Lessor's Address: The City of Fort Lauderdale
c/o: City Manager
Attn: Mr. Lee Feldman
100 North Andrews Avenue
Fort Lauderdale, FL 33301
lfeldman@fortlauderdale.gov

Lessee: Las Olas SMI, LLC, a Delaware limited liability company

Lessee's Address: 17330 Preston Road, Suite 220A
Dallas, Texas 75252
Attention: Bryan C. Redmond
T: 972-789-1400
F: 972-763-0300
Email: bryan@suntexventures.com

Commencement Date: The date that Possession of the Demised Premises is tendered to Lessee after all final approvals are provided by the City Commission, State of Florida and any other Applicable Authorities as necessary to authorize the Lessor's execution of this Lease. The City Commission reserves the right to approve or reject in its sole discretion this Lease at any time on or before the date which is thirty (30) days after Lessor's receipt of all approvals of the State of Florida and any other Applicable Authorities as necessary to authorize the Lessor's execution of this Lease only. Lessee acknowledges Lessor retains control over the operation and management of the Demises Premises until the Commencement Date and retains the right to receive any and all revenue, income and proceeds generated by the Demised Premises until Lessee assumes possession.

Sublessee(s): Any sublessee or lessee under a sublease which deemed a Permitted Transfer or Approved Sublease in accordance with this Lease.

Recitals: The Recitals are true and correct and are incorporated herein.

Authorized Representative: Shall mean (i) as to the Lessor, the City Manager or such other person(s) as may be designated by the City Manager from time to time in writing to the Lessee; and (ii) as to the Lessee, Bryan Redmond or David Filler, or such other Person(s) as the Lessee may designate to Lessor in writing from time to time.

City Manager: The Chief Executive Officer of the Lessor. All decisions as set forth in Section 17.6 attributed to the Lessor in this Lease may be made by the City Manager, or his authorized designee, unless otherwise specified in this Lease.

Demised Premises: Certain portions of Existing Marina Premises together with the existing improvements, and all rights, privileges, easements, and appurtenances belonging to or in any way appertaining to the Existing Marina Premises and the proposed Lessee Improvements (defined below) all as more particularly depicted in the designated portions of the redevelopment site rendering attached hereto as Exhibit "B" which currently includes (i) a 4,313 square foot

waterfront support facility building containing the marina office, police substation, meeting room, laundry facilities, restrooms and showers to be demolished by Lessor (with temporary replacement support facilities materially similar in scope to what exist currently, at no cost to Lessee except for any rental charges incurred by Lessor after December 31, 2020 if the temporary facility is still in use by Lessee, during Lessee's redevelopment in a location reasonably determined by Lessor and Lessee which location should not interfere in any material manner with construction of Lessee's Initial Improvements or Lessor Improvements) and redeveloped by Lessee in accordance with the Permitted Use and certain portions of the surface parking area to be excavated and dredged as necessary for additional dockage and slips and currently located within the 7.64 acres of uplands gifted to the City in fee simple by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the "TIITF") and (ii) the entire 193,772 square feet of submerged lands area leased from the TIITF pursuant to that certain Modified Submerged Lands Lease executed on or about October 3, 1996 with an expiration date of February 13, 2021 (the "Submerged Lands Lease") and 60 existing wet slips and 3,430 linear feet of docks located within the submerged lands. The Demised Premises will also include all Lessee Improvements which are constructed by or at the expense of Lessee during the Lease Term on the Demised Premises except for portions of the promenade, bulkhead and portions of seawall which are designated outside of the Demised Premises as agreed to by Lessor and Lessee. Notwithstanding, Lessee acknowledges Lessor has no obligation to construct any improvements, including without limitation, the promenade, bulkhead or that portion of the seawall lying within the Demised Premises except as expressly set forth in Exhibit C attached hereto.

Adjustments to the Demised Premises: The legal descriptions for the Demised Premises are currently included in the legal description of the Existing Marina Premises described in Exhibit A. The current legal description for the Demised Premises will be influenced by adjustments to the legal descriptions for the Demised Premises which are necessary to reflect the footprints of the buildings comprising such premises as they are actually constructed and the location of the bulkhead, promenade and seawall. The parties hereby recognize that the legal description of the Demised Premises may need to be adjusted from time to time so as to be coterminous with the actual legal description of the footprint of the buildings intended to be constructed upon the Demised Premises, as approved by applicable governmental authorities, and that such adjustments will necessarily cause some adjustments to the legal description of the Demised Premises. To the extent that the Lessee determines that the footprint of the buildings in the Demised Premises needs to be modified, then, the Lessee shall prepare an ALTA survey meeting the

minimum technical standards of the revised legal description(s) (“**Legal Description**”) along with an updated title commitment which Legal Description and updated title commitment shall be subject to the review and approval by Lessor which approval shall not be unreasonably withheld or delayed. Upon Lessor’s approval of such Legal Description (“**Approved Legal Description Modification**”) the legal descriptions of the Demised Premises previously approved shall be modified to reflect such modified Legal Description as set forth in the Approved Legal Description Modification and shall be added as Exhibit D by amendment to this Lease.

Lease Term: Commencing on the Commencement Date and continuing for fifty (50) years, plus such length of time, not to exceed five (5) years from the Commencement Date, to complete construction of Lessee Improvements for the Demised Premises (the “**Expiration Date**”) unless terminated earlier as expressly provided herein and subject to TIITF’s agreement to extend the Submerged Lands Lease in favor of Lessor for use by Lessee. The term of this Lease shall run coterminous with the term of the Submerged Lands Lease, as extended. A lawful termination of the Submerged Lands Lease as evidenced by written notice from TIITF, or any successor entity to the TIITF, after the expiration of any applicable cure period triggered by notice to Lessee and Lessor, shall be deemed a termination of this Lease.

Monthly Rent: As more particularly set forth in Article VI.

Permitted Use: A marina facility and all of its current uses on the Existing Marina Premises including (i) non-exclusive access to the multi-level parking garage to be constructed by Lessor at Lessor’s sole expense adjacent to the Demised Premises as designated on Exhibit B (the “**Parking Garage**”) in accordance with a certain Parking Agreement to be executed by Lessor and Lessee (the “**Parking Agreement**”), (ii) a newly constructed waterfront support facility, at Lessee’s expense as it relates to the permanent facility, containing a ship store, boat and boater services, a casual dining restaurant and ancillary retail and hospitality services designated by Lessee and approved by Lessor, such approval not to be unreasonably withheld, conditioned or delay, (iii) a primary dining restaurant, at Lessee’s expense, and a secondary food and beverage facility similar in concept to what is commonly known as “tiki bar”, both of which shall include outdoor seating as further depicted on Exhibit B, (iv) existing slips and docks located on the Demised Premises which, subject to approval by the Applicable Authorities, shall, be expanded to include additional slips with dockage of up to approximately 7,000 linear feet in total on the Demised Premises (after excavating and dredging a portion

of the existing surface parking on the upland areas as more specifically designated on Exhibit B), all at Lessee's expense, (v) and other Lessee Improvements constructed on the Demised Premises by Lessee during the Lease Term, which may include an additional restaurant and other ancillary retail, all of which is contingent upon the approval by the Applicable Authorities and the Lessor's review and approval of the Lessee Improvements' plans and specifications as set forth herein, such Lessor approval not to be unreasonably withheld, conditioned or delayed. Lessor and Lessee acknowledge that the food and beverage operations on the Demised Premises shall consist of one facility that primarily functions as an upscale restaurant with the sale and on-site consumption of alcohol being a secondary revenue source while the other facility shall be similar in concept to a "tiki bar" where alcohol sales will be a prominent revenue source, but no facility on Demised Premises shall operate as a night club. Additionally, Lessee agrees no food or beverage venue shall emit unreasonably loud noises or create a nuisance to the surrounding neighbors. Notwithstanding anything to the contrary contained herein, Lessee and Lessor agree all food and beverage venues located on the Demised Premises, including the tiki bar, shall be open no later than 11:00 PM EST on weekdays and 1:00 AM EST on weekends.

Possession: Lessor shall give possession of the Demised Premises to Lessee within 30 days after ratification by the City Commission after approval of this Lease by the State of Florida and any other Applicable Authority (including TIITF) required to approve the execution of this Lease by applicable Governmental Regulations and satisfaction or waiver of the conditions set forth herein by the City Commission, it being agreed that conditions by any Applicable Authority including the City that would not be deemed a material expense to the Lessor or can otherwise be performed by Lessee in due course during construction shall not be considered conditions precedent to Possession.

Effective Date: means the date this Lease is fully executed by the Lessee and Lessor.

Governmental Regulations: means all laws, resolutions, ordinances, rules, regulations, statutes, building codes and other matters of all governmental authorities having jurisdiction over the Demised Premises (the "**Applicable Authorities**"), including all health, zoning, construction, environmental and regulatory requirements.

Hazardous Substances: means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and

wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated by any Environmental Agency, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated byphenyls, (iv) radon, (v) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et. seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903), (vii) defined as "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et. seq. (42 U.S.C. Section 9601), or (viii) designated as a "hazardous substance" as defined in Chapter 403 (Part IV) of the Florida Statutes. "Hazardous Substances Laws" shall mean all applicable municipal, County, district, state and federal laws, codes, ordinances, rules, regulations and orders, as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection or regulation, protection of air, water or other natural resources, or the use, analysis, generation, manufacture, storage, disposal or transportation of any Hazardous Substances.

Lessee Improvements: means collectively the real and personal property improvements constructed by Lessee at Lessee's expense during the Lease Term on the Demised Premises with Lessor's approval which shall initially include, without limitation, the dredging and excavation of certain portions of the uplands parking area (including seagrass mitigation work as necessary) to accommodate additional slips and dockage bringing the total dockage to approximately 7,000 linear feet and temporary docks during construction as needed to continue existing marina operations and new seawall required to support the additional slips and dockage, construction of a new waterfront support facility which shall replace all existing uses in the current or temporary waterfront support facility, construction of a portion of the promenade lying within the Demised Premises of similar quality and materials as the proposed promenade lying outside the Demised Premises and add at least two (2) restaurants and other ancillary retail space as permitted and approved by the Applicable Authorities (the "**Initial Improvements**"). Lessee will coordinate commencement and completion of Lessee Improvements with Lessor, and its agents, employees and contractors, to minimize disruption to traffic flow, pedestrian travel, noise pollution and other nuisances to the surrounding neighborhood and community. Both parties acknowledge that health and safety are primary concerns in

planning and constructing the Lessee Improvements. Notwithstanding any Force Majeure, all improvements must be completed within five (5) years from the Commencement Date pursuant to Section 8.09 of the City Charter.

Lessor Improvements: means, as generally described on Exhibit C attached hereto, the demolition and replacement of the current waterfront support facility with a temporary waterfront support facility for non-exclusive use by Lessee during Lessee's construction of the Initial Improvements, redevelopment of a certain portion of the promenade located on the Demised Premises, a Parking Garage and adjacent green space which improvements shall all be constructed and maintained and operated at Lessor's sole expense throughout the term of the Lease subject to any rental charges incurred by Lessor after December 31, 2020 related to the temporary waterfront support facility but only if the temporary waterfront support facility is still in use by Lessee after December 31, 2020. Notwithstanding, unless expressly set forth otherwise on Exhibit C, the Lessor shall not be obligated to demolish or remove gate houses, fencing, small structures or electrical boxes lying within the Demised Premises. Lessor shall proceed in a diligent manner and use its best efforts to complete Lessor Improvements in a timely fashion. However, failure to do so shall not be deemed an event of default under this Agreement. Lessor, in its sole discretion, reserves the right to modify Lessor Improvements based on limitations of the site or failure to receive development approvals from the Applicable Authorities.

Leasehold Mortgage: means any mortgage, deed of trust or similar lien on the leasehold estate of Lessee hereunder. "**Leasehold Mortgagee**" means the holder of any Leasehold Mortgage or other purchaser at a foreclosure or other sale pursuant to the terms of a Leasehold Mortgage that has acquired the leasehold estate under this Lease by foreclosure or a Leasehold Mortgagee that has obtained a new Lease under the provision of Section 14.7 hereof, and their successors and assigns.

Effect of Reference to Fundamental Lease Provisions and Definitions: Each of the foregoing definitions and fundamental lease provisions shall be construed in conjunction with and limited by the references thereto in the other provisions of this Lease.

ARTICLE III.

LEASE GRANT

Section 3.1. Demised Premises. In consideration of the obligation of Lessee to pay rent as herein provided and in consideration of the other terms,

covenants and conditions hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, the Demised Premises TO HAVE AND TO HOLD said premises for the Lease Term all upon the terms and conditions set forth in this Lease. Lessor further agrees that if Lessee shall perform all of the covenants and agreements herein required to be performed by Lessee, Lessee shall, subject to the terms of this Lease, at all times during the continuance of this Lease have peaceful and quiet possession of the Demised Premises, subject to the Permitted Title Exceptions as described in Exhibit “___” which Lessor has no obligation to cure or remove.

ARTICLE IV.

TERM

Section 4.1. Primary. The term hereof shall commence on the Commencement Date and continue in full force and effect until the Expiration Date, subject to earlier termination as provided herein.

ARTICLE V.

INSPECTION & TITLE/SURVEY REVIEW

Section 5.1. Inspection. Commencing on the Effective Date of this Lease and for one year thereafter, Lessee shall have the right to (the “**Pre-Development Period**”) to inspect the Existing Marina Premises and the Demised Premises prior to taking Possession of the Demised Premises, to conduct feasibility studies regarding Lessee’s intended use and redevelopment of the Demised Premises; provided, however, that any invasive testing shall require the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed and shall not interfere with the ongoing operations of the existing marina. Lessee’s permitted studies may include without limitation: (i) core soil borings if called for by a Phase I Environmental Site Assessment (“**Phase I**”) so long as core soil borings are conducted on the Demised Premises or areas of the Existing Marina Premises where Lessee may be constructing a promenade or bulkhead and do not unreasonably interfere with Lessor’s Improvements; (ii) environmental and architectural tests and investigations, including a Phase I; (iii) physical inspections of all improvements, including existing seawall, fixtures including, existing docks, equipment, subsurface soils, structural members, and personal property; and (iv) examination of plans specifications, manuals, and other documents relating to the construction and condition of the Existing Marina

Premises. Lessee and Lessee's agents, employees, consultants and contractors shall have the right of reasonable entry onto the Existing Marina Premises during normal business hours as deemed reasonably necessary by Lessee, solely for purposes adequately completing inspections, studies, tests and examinations of the Demised Premises. All inspections, studies, tests and examinations performed hereunder by Lessee shall be at Lessee's expense. If for any reason during the Pre-Development Period, Lessee does not desire to proceed with this Lease, then Lessee may terminate this Lease by delivering a written notice to Lessor on or before the last day of the Pre-Development Period. In the event that Lessee terminates this Lease pursuant to this Section 5.1 during the Pre-Development Period, neither party shall have any further rights or obligations under this Lease (except for those that accrue on or before the date Lessee terminates the Lease in writing or which may expressly survive the termination of this Lease). If Lessee elects to terminate this Lease, and the condition of the Existing Marina Premises was materially altered due to tests, inspections or pre-development work performed by Lessee or on Lessee's behalf, Lessee must restore the Existing Marina Premises to its original condition in all material respects. Lessee must provide proof of insurance before undertaking any activities and such indemnities as required by the City Manager in his sole discretion. If the City Manager in his sole discretion determines that certain protective bonds (i.e. payment, performance, demolition, etc.) from approved and properly licensed surety or bonding companies are required before conducting any testing on the Demised Premises, then Lessor shall provide same in amounts and from such companies and in such format as determined by the City Manager before being allowed access to the Demised Premises. Lessee must reasonably coordinate its activities with the Lessor by providing no less than forty-eight (48) hours prior written notice to Lessor before undertaking any onsite inspections, investigations, tests or assessments of the Demised Premises. The activities authorized in this section shall not unreasonably interfere with the ongoing operations of the Marina or the public access or right to use the parking lot. Notwithstanding anything to the contrary contained in this Section 5.1, Lessee shall provide at least five (5) days advance notice of its intent to the City Manager, or his designee, prior to conducting any invasive procedures within the Demised Premises.

Section 5.2. Title & Survey Review. Lessor and Lessee shall have the entire Pre-Development Period to review the Survey, Title Commitment and Title Documents as set forth in this Section 5.2 below:

- (a) **Survey.** As soon as reasonably possible, and in any event within twenty (20) business days following the Effective Date (to the extent not previously delivered to Lessee), Lessor shall deliver to Lessee a copy of the most current

survey of the Existing Marina Premises Lessor has in its possession, custody or control. If Lessor has no current ALTA/ASCM survey of the Existing Marina Premises which is satisfactory to Lessee and its lender, Lessee may obtain: (i) a new survey, or (ii) at Lessee's option, an update of Lessor's existing survey which satisfies Lessee's internal survey requirements (such new or updated survey being called the "**Survey**"). Lessee shall pay for the initial cost of any new or updated Survey of the Demised Premises. The legal description set forth in the Survey obtained by Lessee shall be submitted to Lessor for approval in accordance with this Lease and upon approval shall be deemed the Legal Description of the Demised Premises and added to this Lease as Exhibit D.

- (b) **Title Commitment.** As soon as reasonably possible, and in any event within twenty (20) business days after the Effective Date, Lessee shall, at Lessee's expense, deliver or cause to be delivered to Lessor: (1) a title commitment (the "**Title Commitment**") covering the Demised Premises binding any title company chosen by Lessee (the "**Title Company**") to issue a ALTA Leasehold Policy of Title Insurance (the "**Title Policy**") on or before the expiration of the Pre-Development Period, in the full amount of the value associated with the Demised Premises after the construction of the Improvements, insuring Lessee's leasehold title to the Demised Premises to be good and indefeasible, subject only to the Permitted Exceptions defined as any item in the Title Commitment, Title Documents or Survey which is not removed prior to the expiration of the Pre-Development Period; and (2) true and legible copies of all recorded instruments affecting the Demised Premises and recited as exceptions in the Title Commitment (collectively, the "**Title Documents**").

Section 5.3. Pre-Development Period Approvals. On or before the expiration of the Pre-Development Period, Lessor and/or Lessee, as applicable, shall complete the following (collectively the "**Pre-Development Approvals**"):

- (a) Both parties shall approve and execute a mutually acceptable Parking Agreement;
- (b) Lessee shall agree in writing to assume all liability and obligations under the grants in favor of FIND and Broward County as referenced in the RFP or agree to repay the outstanding amounts under the grants;
- (c) Secure approval from TIITF of an extension of the Submerged Land Lease and subsequent amendment of this Lease, if necessary together with TIITF approval of a sublease in favor of Lessee pursuant to Section 9 of the

- Submerged Lands Lease;
- (d) Execute a mutually acceptable Subordination, Nondisturbance and Attornment Agreements in favor of a Leasehold Mortgagee and Sublessee;
 - (e) Commissioning and delivery of the ESA (defined below) to Lessor; and
 - (f) Title commitment evidencing holder of fee and leasehold title to that portion of the Existing Parking Lot being leased to Lessee for redevelopment and an opinion of title from a reputable attorney with experience with real estate matters confirming title in favor of Lessor to the submerged land upon conversion of the Parking Lot to a marina.
 - (g) Delivery by Lessee of a Written Schedule of Values and approval by the City Manager; Schedule of Values is defined as a written schedule setting forth the detailed and itemized cost breakdown, inclusive of labor, materials, permitting fees, and taxes of all elements comprising the Initial Improvements and Minimum Contribution Amount as set forth in Section 8.2 of Article VIII.
 - (h) Execution and Delivery of a long term financial agreement (25 years) with Marine Industries Association of South Florida, Inc. regarding the Boat Show.

If these conditions are not resolved to the mutual satisfaction of both parties, either party may terminate this Lease by delivering a written notice to the other on or before the last day of the Pre-Development Period. In the event that either party terminates this Lease, then neither party shall have any further rights or obligations under this Lease (except for those that accrue on or before the date this Lease is terminated in writing or which may expressly survive the termination of this Lease).

Section 5.4. Construction Approvals Period. Lessee shall have a period commencing on the expiration of the Pre-Development Period and expiring on the earlier of (i) three (3) years after the Effective Date or (ii) the date Lessee commences excavation work (soil borings performed in connection with an environmental assessment are not considered excavation work) on the Existing Parking Lot (the “**Construction Approvals Period**”) to pursue all necessary consents, approvals, permits or licenses required by any Applicable Authority prior to the commencement of construction of the Initial Improvements. If Lessee is unable to secure development approvals from the Applicable Authorities to construct the marina, then Lessee may terminate this Lease by delivering a written notice to Lessor on or before the last day of the Construction Approvals Period. In the event that Lessee terminates this Lease pursuant to this Section 5.4 during the Construction Approvals Period, neither party shall have any further rights or obligations under this Lease (except for those that accrue on or before the date

Lessee terminates the Lease in writing or which may expressly survive the termination of this Lease). If this Lease is terminated, and the condition of the Existing Marina Premises was materially altered due to tests, inspections or pre-development work performed by Lessee or on Lessee's behalf, Lessee must restore the Existing Marina Premises to its original condition in all material respects.

ARTICLE VI.

RENTAL

Section 6.1. Initial Rent Deposit and Base Annual Rental. Lessee has previously submitted a deposit in an amount equal to \$100,000 which shall be applied to the first Year's Base Annual Rental (defined below) which is owed to Lessor. Lessee shall to pay to Lessor on the first day of each calendar month after the Commencement Date for which this Lease is in effect, in lawful money of the United States of America, one-twelfth (1/12) of the **Base Annual Rental** (herein so called), as stated below, for the applicable "**lease year**" herein defined as a period of twelve (12) consecutive calendar months which shall commence on the Commencement Date if the Commencement Date occurs on the first day of a calendar month, otherwise the first lease year shall commence on the first day of the first calendar month next following the Commencement Date subject to the payment of pro-rated Base Annual Rental due in partial month:

- (a) **Initial Base Rent.** The Base Annual Rental for the Initial Base Rent Period shall be \$550,000.00 or \$45,833.33 per month. **Initial Base Rent Period** means that period commencing on the Commencement Date and expiring on the date of substantial completion of the Initial Improvements ("**Initial Improvement Completion Date**"). Additionally, Lessee agrees to diligently pursue the substantial completion of the Initial Improvements on or before the fourth (4th) anniversary of the Effective Date (subject to delays set forth in Section 8.4 below including, without limitation, Unavoidable Delays).
- (b) **Subsequent Base Rent Period.** The Base Annual Rental for the Subsequent Base Rent Period shall be \$1,000,000.00 or \$83,333.33 per month. **Subsequent Base Rent Period** means the period commencing on the date following the Initial Improvement Completion Date and expiring on the Expiration Date. Notwithstanding anything to the contrary contained herein, the Subsequent Base Rent Period shall be deemed to commence on the first (1st) day of the sixty-first (61st) month after the Effective Date unless the

Initial Improvement Completion Date is delayed for reasons set forth in Section 8.4 below including, without limitation, Unavoidable Delays.

Section 6.2. Base Annual Rental Increases. During the Subsequent Base Rent Period, but not before, the Base Annual Rental shall increase ten percent (10%), every five (5) years beginning on the first day of the second (2nd) lease year following the commencement of the Subsequent Base Rent Period meaning, as an example, the Base Annual Rent payable in the second (2nd) lease year through the sixth (6th) lease year following the commencement of the Subsequent Base Rent Period shall be \$1,100,000.00 and the Base Annual Rent payable in the seventh (7th) lease year through the end of the eleventh (11th) lease year following the commencement of the Subsequent Base Rent Period shall be \$1,210,000.00.

Section 6.3. Percentage Rent. In addition to Base Annual Rental, Lessee shall also pay throughout the Lease Term Percentage Rent determined by multiplying the total Gross Sales (defined below) in or from the Demised Premises during the particular Lease Year by the percentage rental rates set forth below:

- (a) Gross Sales (defined below), but not Excluded Revenue (defined below), from wet dock slip rentals, whether generated in connection with the Boat Show (defined below) or otherwise under Slip Licenses entered into by Lessor (the "**Slip Revenue**"): Twelve Percent (12%)
- (b) Gross Sales, but not Excluded Revenue, from Ship store operations including sale of goods and services including merchandise and carry-out food and beverage and other goods specifically sold out of the ship store (collectively the "**Ship Store Revenue**"): Four Percent (4%)
- (c) Gross Sales from Restaurants and Ancillary Retail Shops subleased by Lessee and other operations on the Demised Premises including recreational activity sales, boat rental sales which are not revenue described in sub-items (a) and (b) below (collectively "**Ancillary Operations Revenue**") but only during the Subsequent Base Rent Period and not before: Fifteen Percent (15%).

The percentage rental shall accrue as of the Commencement Date (unless expressly provided otherwise) and shall be paid throughout the Lease Term in monthly arrears on or before the first (1st) day of the second (2nd) calendar month following the month for which percentage rent is calculated in accordance with this Lease. Additionally, on or before the 120th calendar day after the end of the applicable Lease Year, Lessee shall pay to Lessor, a sum of money equal to the product of the

percentage rental factor hereinabove specified, multiplied by the total Gross Sales made in or from the Demised Premises during such preceding Lease year as indicated and not previously paid.

Section 6.4. TIITF Rents. Lessee shall also be solely responsible for all rents, fees, costs and expenses owed by Lessor to TIITF during the Term of this Lease under the Submerged Lands Lease (as it may be amended, revised or restated) and as it relates to operations of Lessee on the Demised Premises (but not areas outside of the Demised Premises) pursuant to the Release of Deed Restriction and Reverter (the "**Uplands Deed**") dated October 24, 1989, Deed No. 90047196, recorded in the Official Records Book 7136, Page 645 of the Public Records of Broward County, Florida. Lessor agrees that it shall not, without first obtaining Lessee's consent, modify the Uplands Deed or the Submerged Lands Lease during the Term of this Lease in a manner that would alter the obligations of Lessee to TIITF in a manner detrimental to Lessee's rental obligations set forth herein. Lessee acknowledges that it must comply with Section 253.0346, Florida Statutes, in order to receive the "First Come, First Serve" rental discount and the clean marina, clean boatyard or clean marine retailer discount on the annual lease fee to TIITF.

Section 6.5. Fractional Years. If the Commencement Date shall be on a date other than the first day of a calendar year or terminate on a date other than the last day of a calendar year, percentage rental for such fractional part of the calendar year following the Commencement Date or preceding the termination date, as the case may be, shall be paid at the specified rate for all Gross Sales made during such fractional part of a calendar year.

Section 6.6. Definition of Gross Sales. The term "**Gross Sales**," as used herein, means the total of all revenue, proceeds, rent, income and receipts received by Lessee from any person of every kind derived directly or indirectly from the operation of the Demised Premises which shall include the entire amount of the sales price, whether for cash or credit or otherwise, of all sales of slip licenses or rentals, dockage fees, together with all ancillary revenue thereto, merchandise, food, drinks and services (including receipts whatsoever of all business conducted in or from the Demised Premises), including mail, to-go or telephone orders received or filled at the Demised Premises, deposits not refunded to purchasers, orders taken although such orders may be filled elsewhere, sales to employees, sales through vending machines or other devices, and sales by any Lessee, sublessee, concessionaire or licensee or otherwise in said Premises except as otherwise expressly provided in Sections 6.7 or 6.8. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made,

irrespective of the time when Lessee receives payment from its customer. No deduction shall be allowed for uncollected or uncollectible credit accounts.

Section 6.7. Excluded Revenue from Gross Sales. Gross Sales shall also not include, however, any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, nor shall it include the exchange of merchandise between the stores of Lessee, if any, where such exchanges are made solely for the convenient operation of the business of Lessee and not for the purpose of consummating a sale which has theretofore been made in or from the Demised Premises and/or not for the purpose of depriving Lessor of the benefit of a sale which otherwise would be made in or from the Demised Premises, nor the amount of returns to shoppers or manufacturers, nor the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by purchaser and accepted by Lessee, nor sales of Lessee's trade fixtures after use by Lessee in the Demised Premises (collectively "**Excluded Revenue**"). Additionally the following shall be considered Excluded Revenue:

- (a) Gratuities received by employees;
- (b) The portion of rent payable by a Sublessee attributable to tenant improvements given to such Sublessee under its Sublease amortized over the initial term of such Sublease at a commercially reasonable interest rate ("**Sub-Tenant Allowances**"), provided such Sub-Tenant Allowances shall only be excluded from Gross Sales of subleases to Affiliates of Lessee to the extent the rent of such Sublease to an Affiliate of Lessee is at fair market value;
- (c) Federal, state or municipal excise, sales, use, occupancy or similar taxes collected directly from sub-tenants, patrons, guests or otherwise, provided such taxes are separately stated;
- (d) Insurance proceeds (other than business interruption, or loss of income insurance);
- (e) Deposits until same are forfeited by the person making the deposit;
- (f) Advance rentals until such time that they are earned;
- (g) Casualty Insurance loss proceeds which are applied toward restoration of

improvements or which are paid over to a mortgagee or otherwise are not retained by Lessee (except for any proceeds of rent interruption insurance);

- (h) Taxes, utilities, insurance and expenses, including common area expenses and maintenance charges paid to the Lessee in the form of rent or otherwise by a sublessee that Lessee passes through to the applicable vendors;

Section 6.8. Gross Sales Derived from Ancillary Operations.

Notwithstanding anything contained herein to the contrary, for purposes of computing Ancillary Operations Revenue, the parties stipulate that the Ancillary Operations Revenue shall only be an amount equal to the rent paid by a sublessee to Lessee pursuant to lease for such purpose and nothing else.

Section 6.9. Statement of Gross Sales. On or before the 120th day of each Lease Year during the term of this Lease, Lessee shall prepare and deliver to Lessor, at the place where rental is then payable, a statement certified as correct by Lessee showing the amount of Gross Sales made during the preceding Lease Year. In addition, , Lessee shall prepare and deliver to Lessor, at the place where rental is then payable, a statement of Gross Sales during the preceding Lease Year. (or partial Lease Year), certified to be correct by an independent Certified Public Accountant. Lessee shall furnish similar statements for its licensees, concessionaires and Sublessees, if any. All such statements shall be in such form as the Lessor may reasonably require. If any such certified statement discloses an error in the calculation of the percentage rental for any period, appropriate adjustment of the percentage rental shall be made, subject, however, to Lessor's rights under Section 6.7 (b).

- (a) **Sales Records.** Lessee shall keep in the Demised Premises a permanent, accurate set of books and records of all sales of merchandise and services and revenue derived from business conducted in or about the Demised Premises, and all supporting records, including, but not limited to, sales, income and other tax reports, banking records, cash register tapes, sales slips and other sales records. All such books and records shall be retained and preserved in accordance with retention requirement of Florida Public Records laws after the end of the calendar year to which they relate or in accordance with Governmental Regulations, and shall be subject to inspection and audit by Lessor and its agent's at all reasonable times.

- (b) **Audit.** Lessor, in its sole discretion, shall have the right to have its auditors make a special audit of all books and records, wherever located,

pertaining to Gross Sales from all revenue sources made in or from the Demised Premises and the capital reserve improvement account. If such statements are found to be incorrect to an extent of more than five percent (5%) over the figures submitted by Lessee, Lessee shall pay for such audit. Lessee shall promptly pay to Lessor any deficiency or Lessor shall promptly refund to Lessee any overpayment, as the case may be, which is established by such audit. Additionally, Lessee and Lessee's subcontractors shall preserve and make available, at reasonable times for examination and audit by Lessor in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Lease for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Lease. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by Lessor to be applicable to Lessee and Lessee's subcontractors', subtenants or sublessee records, Lessee and Lessee's subcontractors, sublessees and subtenants shall comply with all requirements thereof; however, Lessee and Lessee's subcontractors, sublessee or subtenants shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Lessor's disallowance and recovery of any payment upon such entry. Lessee shall, by written contract, require Lessee's subcontractors, general contractors, subtenants and sublessees to agree to the requirements and obligations of this Section. The Lessee shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

- (c) The Lessee herein shall furnish to the Lessor within one hundred twenty (120) days of the end of the Lease Year an audited financial report performed by a certified public accountant licensed to practice in the State of Florida and using commercially reasonable accounting standards, said financial report reflecting the sales and revenue results only of operations during such Lease Year along with fund balance of the capital reserve improvement account.. Said financial report may be consolidated with

Affiliates of Lessee as long as Lessee's financial information is separately disclosed. That is, the statement of sales and revenue of Lessee may not be consolidated with the revenue of any affiliates, subsidiaries or parent of Lessee.

Section 6.10. Parking Revenue from Existing Parking Lot. Lessee acknowledges and agrees Lessor shall retain control, possession and all rights to the Existing Parking Lot and the rent, revenue and proceeds derived therefrom shall inure to Lessor until commencement of construction of the Initial Improvements. Lessor shall be responsible for maintaining the Existing Parking Lot until control is transferred to Lessee. Lessor agrees to remove its parking meters (and any other parking equipment) and deliver possession of the Parking Lot within sixty (60) days after receiving written notice from Lessee of intent to commence construction of the Initial Improvements.

ARTICLE VII.

USE OF DEMISED PREMISES

Section 7.1. Use. The Demised Premises shall be used by Lessee only for the purpose or purposes specified under the Permitted Use definition in Article II and for no other purpose without the prior written consent of Lessor. The Demised Premises may only be used by Lessee as permitted by, and in full and strict compliance with, all Governmental Regulations and any restrictive covenants applicable to the Demised Premises.

Section 7.2. Limitations on Use.

- (a) Lessee shall not, without Lessor's prior written consent, keep anything within the Demised Premises or use the Demised Premises for any purpose which invalidates any insurance policy carried on the Demised Premises. All property kept, stored or maintained within the premises by Lessee shall be at Lessee's sole risk.
- (b) Lessee shall not permit any objectionable or unpleasant odors to emanate from the premises; nor place any antenna, awning or other projection on the exterior of the Demised Premises (other than those indicated on plans and specifications for the Initial Improvements and approved in advance by Lessor in writing in its proprietary capacity under this Lease and not in its regulatory capacity or in the exercise of its police power); nor take any

other action which would constitute a nuisance. Lessee shall comply with local noise ordinances in the operation of radios, televisions, loudspeakers or amplifiers on the Demised Premises.

- (c) Lessee shall take good care of the Demised Premises and keep the same free from waste at all times. Lessee shall keep the Demised Premises clean and free from dirt or rubbish at all times, and shall store all trash and garbage within the Demised Premises or in such area outside and premises as may be designated for such purpose by Lessor and Lessee shall arrange, for the regular pickup of such trash and garbage at Lessee's expense. Lessee shall not operate an incinerator or burn trash or garbage.
- (d) Lessee covenants and agrees that during the Lease it will (a) maintain appropriate certifications and licenses for such use, subject to Force Majeure and (b) seek to maximize the Gross Sales generated therefrom consistent with sound business practices and Lessee's concurrent goal of maximizing its net operating income therefrom subject to Force Majeure.
- (e) Lessee acknowledges the Fort Lauderdale International Boat Show (the "**Boat Show**") is an economic driver for the Fort Lauderdale metropolitan area and the Demised Premises has served as one of the host sites for a number of years. Therefore, Lessee agrees to accommodate the Boat Show on the Demised Premises and agrees to charge no more than a fair market value rate for use of the Demised Premises by the Boat Show taking into consideration the following: (i) any published rates to the tenant under the TITF submerged land lease for the Fort Lauderdale International Boat Show, (ii) rent/fees paid by the promoters or operators of the Boat Show to other marina participants for slips of similar size, and (iii) Lessee's published rates for the applicable season. The published rate schedule shall be submitted to the Lessor annually and Lessee agrees to maintain the same rates between October 1 and June 1 of the following year. Additionally, Lessee shall incorporate a high quality design in connection with the Lessee's Improvements that is reasonably compatible with the Boat Show's desired usage of the Demised Premises to maximize opportunity for Lessor and the Boat Show with advice and counsel from representatives of the Marine Industries Association of South Florida.
- (f) Lessee agrees that at no time will it directly or indirectly knowingly permit the Demised Premises or any portion thereof to be used for any illegal purpose.

- (g) Without the consent of Lessor which may be granted or withheld in the Lessor's absolute discretion, this Lease is issued to Lessee with the explicit condition that any type of gambling at the Demised Premises is prohibited.
- (h) Without the consent of LESSOR, which may be granted or withheld in the LESSOR's absolute discretion no live adult entertainment establishments (as defined in Section 15-156(a) of the City of Fort Lauderdale Code of Ordinances in effect as of the Commencement Date) shall be allowed on the Demised Premises, nor shall adult streaming video be allowed.
- (i) Without the written consent of the Governing Body of the LESSOR, which may be granted or withheld in the LESSOR's absolute discretion, the Lessee shall not create a condominium form of ownership on or within the Demised Premises.

ARTICLE VIII.

DESIGN, CONSTRUCTION, INSTALLATION AND LIEN CLAIMS

Section 8.1. Construction of Improvements. Lessee agrees to cause the Initial Improvements to be constructed on the Demised Premises all in accordance with the submitted plans and specifications and according to alternative C-3 as approved by the City Commission under Resolution _____, which shall include any work or equipment to be done or installed by Lessee affecting existing or constructing any new structural, mechanical or electrical part of Demised Premises in addition to any dredging, grading or other horizontal development work (the "**Plans**"). The Plans for any Improvements shall be submitted to Lessor for review and approval in Lessor's proprietary capacity under this Lease which approval shall not be unreasonably withheld, conditioned or delayed. Within thirty (30) days of receipt of the Plans, the City Commission of Lessor shall give Lessee written notice of either Lessor's proprietary approval or disapproval setting forth the reasons therefore and failure to respond in any manner by the Lessor shall be deemed approval of the Plans which approval shall remain subject to Lessor's approval in its regulatory capacity or in the exercise of its police power under Governmental Regulations. In the event that Lessor disapproves the Plans, Lessee shall within ten (10) business days of receipt of the notice modify the Plans in accordance with the reasons set forth in Lessor's disapproval notice or meet with Lessor to discuss a resolution to any disagreement over changes in the Plans, if applicable. The modified Plans shall be resubmitted to Lessor for Lessor's final

review and approval (not to be unreasonably withheld, delayed, or conditioned). Notwithstanding anything to the contrary contained herein, any approval by Lessor in its proprietary capacity under this Lease shall remain subject to Lessee's compliance with Governmental Regulations, including, without limitation, the City of Fort Lauderdale Uniform Land Development Regulations (ULDRs) which approvals under the ULDRs may be simultaneously pursued while Lessor reviews the Plans under this Lease.

Improvements shall include all Lessee Improvements including both the Initial Improvements and Alterations (defined below) constructed by Lessee but not the Lessor Improvements unless expressly provided herein.

All construction of the Lessee Improvements and the Lessor Improvements shall be done in a good and workmanlike manner and with the use of quality materials. Construction of the Improvements (except for Lessor Improvements which shall be at Lessor's sole risk and expense) shall be at Lessee's respective risk and Lessee shall pay promptly all costs of construction associated with the Improvements for which it is responsible, which shall include, but not by way of limitation, (a) all contract charges (labor, material and services furnished by contractors and subcontractors) (b) all costs of labor and material, (c) engineering, architectural, surveying and other professional fees and costs, and (d) all other costs and expenses (insurance, administrative, zoning, etc.), including, but not limited to, the cost of site clearing, excavating, dredging, site preparation, fill, compaction and grading with soil acceptable to build the proposed Improvements except that Lessor shall use best efforts to assist Lessee in locating an off-site area, at no cost to Lessor, for the disposal of excavated and dredged soils from the Demised Premises. However, Lessor's failure to do so shall not constitute an event of default under this Lease or a right to pursue a claim for damages, whether at law or in equity, against the Lessor. As between Lessor and Lessee, construction of the Initial Improvements shall conclusively be deemed to be substantially completed upon delivery to Lessee of a certificate of occupancy signed by a City of Fort Lauderdale building inspector and any other certificate required by an Applicable Authority with respect to the Initial Improvements.

Section 8.2. Lessee's Minimum Contribution Amount.
Notwithstanding anything to the contrary contained herein, Lessee (or its sublessees) shall contribute no less than Nineteen Million Four Hundred Twenty Five Sixty Three and No/100 Dollars (\$19,425,063) toward the cost of the Initial Improvements (the "**Minimum Contribution Amount**") and shall provide Lessor with evidence of contracts and paid receipts adding up to the Minimum Contribution

Amount in order to fully satisfy the Minimum Contribution Amount covenant, it being understood that costs incurred by a sublessee relating to furniture or equipment shall not be included in the calculation of the Minimum Contribution Amount. Lessee shall be entitled to a credit for improvements made by sublessees to the extent that sublessee improvements add value to the leasehold estate. Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to contribute less than the Minimum Contribution Amount to the extent that Applicable Authorities prohibit Lessee from pursuing the full scope of the redevelopment as depicted in Exhibit B after taking reasonable steps, including expenditure of funds and employing the resources necessary to secure the applicable approvals. In the event Lessee is able to achieve costs savings for elements of construction reflected on the Schedule of Value, such savings shall be deposited into the capital improvement reserve account upon completion of the Initial Improvements. Efforts to reduce redundancy through costs savings shall not take precedence over the requirement to construct a first class marina. . Additionally, Lessee agrees to diligently pursue the substantial completion of the Initial Improvements and payment in full of the Minimum Contribution Amount on or before the Fifth (5th) anniversary of the Commencement Date (subject to delays set forth in Section 8.4 below including, without limitation, Unavoidable Delays).

Section 8.3. Ownership of Improvements. All of the Improvements of any nature constructed by Lessee on the Demised Premises including the Initial Improvements and alterations of the Initial Improvements and other alterations made pursuant to the provisions of this Lease shall be owned by and shall be the property of Lessee during the term of this Lease. The Lessor Improvements shall be owned by Lessor. Upon the termination of this Lease, whether by expiration of the term hereof or by reason of default on the part of Lessee, or for any other reason whatsoever, the Improvements (including the Initial Improvements), and all parts thereof shall merge with the title of the land, free of any claim of Lessee and all persons and corporations (subject to the provisions of Article XIV hereof with respect to the rights of Leasehold Mortgagees holding Leasehold Mortgages, as both such terms are hereinafter defined it being understood that the Leasehold Mortgage should in no event have a maturity date which extends beyond the Expiration Date) claiming under or through Lessee (except for purchase money security interests in equipment and except for trade fixtures and personal property of Lessee that can be removed without damage to the Improvements). , Lessee shall deliver the Demised Premises to Lessor in reasonably good condition, actual wear and tear excepted, upon the termination or expiration of the term of this Lease. Upon the termination of this Lease, Lessee, at Lessor's request, will execute a recordable instrument evidencing the termination of this Lease and stating the termination date.

Section 8.4. Force Majeure. The time for the performance of Lessee's obligations relative to the construction, restoration, repair, operation and maintenance of the Improvements as provided for in this Lease shall be extended for the period that such performance is due to Unavoidable Delays. "**Unavoidable Delay**" shall mean all failures or delays in a party's performance of its obligations hereunder not within such party's reasonable control, including without limitation, the impossibility of such performance which shall result from or be caused by any arbitration, legal proceedings or other litigation threatened, instituted against or defended by such party, in good faith, and not merely for purposes of delay, act of God, acts of the public enemy, wars, blockades, epidemics, earthquakes, storms, floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, breakage or accident to machines or lines or pipe or mains, lawful acts of any governmental agency or authority restricting or curtailing the construction of the Improvements or withholding or revoking necessary consents, approvals, permits or licenses, equipment failures, inability to procure and obtain needed building materials (provided such party who is unable to do so makes reasonable efforts to procure satisfactory substitute materials if practical) whether as a result (directly or indirectly) of any lawful order, law or decree of any governmental authority or agency or otherwise, and any other cause whether of the kind herein referred to or otherwise; provided, that such party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a party to settle any labor dispute shall not qualify or limit the effect of Unavoidable Delay. The inability of a party to secure funds required to perform its agreements hereunder shall not constitute Unavoidable Delay.

Section 8.5. Lessee's Work. Lessee shall have no right, authority or power to bind Lessor, or any interest of Lessor in the Demised Premises, for any claim for labor or material or for any other charge or expense incurred in connection with any construction work done by Lessee within the Demised Premises or any change, alteration or addition thereto, or replacement or substitution therefor, nor to render the Lessor's interest in the Demised Premises liable to any lien or right of lien for any labor or material or any other charge or expense incurred in connection therewith, and Lessee shall in no way be considered as the agent of Lessor in the construction or operation of the Improvements or any replacement or substitution therefor.

Section 8.6. Zoning, Permits & Approval by City. Irrespective of any other provisions of this Lease or additions thereto, the obligations of Lessee under this Lease are conditioned upon (a) approval of the plans and specifications for the

Improvements by the Lessor and any Applicable Authorities including TITF, (b) replating of the Demised Premises, if necessary, in accordance with Governmental Regulations or restrictive covenants, and (c) the issuance of appropriate development orders and building permits for the construction of the Improvements upon the Demised Premises. All such approvals or replating shall be secured prior to the Commencement Date. Lessor, in its capacity as Lessor under this Lease (without waiver of Lessor's regulatory rights or duties provided by Governmental Regulations), hereby agrees to cooperate fully with Lessee in securing the aforesaid permits and approvals and hereby grants Lessee the right to make application for them in the name of Lessor, if necessary. All expenses incurred by Lessee or Lessor in obtaining the permits and authorizations referred to in this paragraph shall be the responsibility of the party responsible for the construction of the respective Improvements (with Lessor responsible for all costs associated with the Lessor Improvements) and the other party shall have no liability for the permitting costs associated with Improvements for which they are not responsible. Notwithstanding the forgoing, each party hereto will, at the request of the other party hereto, take such further actions as are requested and execute any additional documents, instruments or conveyances of any kind which may be reasonably necessary to further effect the transactions contemplated by this Lease, including, without limitation, applications necessary to apply for grants available for construction or maintenance of the Demised Premises or Lessor Improvements, as the case may be. As a condition for Lessor's assistance in applying for grants for construction or maintenance of Lessee Improvements, Lessee shall assume any and all liability and obligations under any grants received for this project. Nothing in this Agreement is intended to limit or restrict the regulatory or police powers and responsibilities of the City in acting on such applications by virtue of the fact that the City may have been required to consent to such applications as a property owner under this Lease.

Section 8.7. Discharge of Liens. If any mechanic's, materialman's or other types of liens or lien claims are filed against the whole or any part of the Demised Premises, arising or resulting from actions or omissions by the Lessee only, then the Lessee shall promptly secure their release, or if the Lessee wishes to contest any such lien or claim and has a reasonable basis for a contest, the Lessee may do so, but only if the Lessee furnishes the Lessor with surety bonds or escrow funds ("**Construction Security**") equal to 125% of the liened amount to protect the Lessor's interest in the Demised Premises and the parties' interests in this Lease during the pendency of the contest. If the Lessee does not secure a lien release or furnish Construction Security, such failure shall constitute an event of default by the Lessee hereunder and, in addition to all other rights and remedies available to the Lessor by reason thereof, the Lessor may, after thirty (30) days' prior written notice

pay such lien or claim and secure such release, and the Lessee shall be obligated to reimburse the Lessor for all sums reasonably expended by the Lessor in paying such lien or claim and securing such release, including attorney's fees, plus interest at the highest lawful rate from the date of the Lessor payment until it is reimbursed. Nothing contained in this **Section 8.7** or elsewhere in this Lease shall be deemed or construed as an authorization by or consent of Lessor or Lessee to the filing of any mechanic's or materialman's lien against the Demised Premises, or against all or any portion of the Demised Premises or any interest therein. At Lessor's election, Lessee may be required to file a notice in accordance with Chapter 713, Florida Statutes.

Section 8.8. Payment and Performance Bond. Prior to commencement of construction of improvements under a sublease (if the value is in excess of \$1,000,000 as it relates to sublessee improvements) or prior to the commencement of construction of the Initial Improvements, Lessee, or sublessee, or Lessee's, or sublessee's selected general contractor (collectively the "**Lessee's GC**") shall furnish to Lessor a Payment and Performance Bond, in the amount of the proposed costs of the Initial Improvements (which in no event shall be below the Minimum Contribution Amount) as surety for faithful performance under the terms and conditions of this Lease or in the amount of the proposed construction costs under the sublease. Lessee previously submitted a \$100,000 proposal security payment ("**Construction Security**") along with the original proposal and the Construction Security shall be returned after acceptance of the Payment and Performance Bond of the Lessee or Lessee's GC; proof of insurance coverage submission, if required; and full execution of this Lease. The corporate surety issuing the Payment and Performance Bond must have a Financial Size Categories (FSC) rating of no less than "A-" by the latest edition of Best's Key Rating Guide, or acceptance of insurance company that holds a valid Florida Certificate of Authority issued by the State of Florida, Department of Insurance, and are members of the Florida Guarantee Fund. Acknowledgment and agreement is given by both parties that the amount herein set for the Payment and Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Lessee to Lessor in the event of a material breach of this Lease. The conditions of the Payment and Performance Bond shall be to insure that the Lessee's GC will:

- a) Promptly make payment to all claimants, as defined in Section 255.05 Florida Statutes, as amended, supplying the Lessee with labor, materials, or supplies, used directly or indirectly by the Lessee in the prosecution of the work related to the Improvements under this Lease;

- b) Pay Lessor all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Lessor sustains because of a default by Lessee under this Lease pursuant to claims made under Section 255.05, Florida Statutes; and
- c) Perform the guarantee of all obligations of the Lessee's under this Lease with respect to the construction, and the acquisition and installation of the Improvements.

The Payment and Performance Bond must be written by a Corporate Surety company on the U.S. Department of Treasury current approved list of acceptable sureties on Federal Bonds, as found in the U.S. Department of Treasury Circular No. 570, with said bonds being executed and issued by a resident agent licensed by and having offices in the State of Florida representing such Corporate Surety at the time such improvements are constructed, conditioned upon full and faithful performance by Lessee, sublessee or any contractor, if applicable, of such contract, and full payment to all laborers and materialmen supplying labor or materials for such improvements. Such bonds shall identify Lessor as additional obligee. If the bonds are provided by the contractor, then to the extent commercially obtainable, the bond shall provide that a default by Lessee or sub-tenant as the case may be, in the performance of the contractor's contract, shall not be raised as a defense to the Lessor as one of the obligee's requiring performance of such construction contract by the surety.

Section 8.9. Contractor's Insurance and Indemnity. The Lessee shall require every contractor performing any work pertaining to the Improvements to furnish certificates of insurance to the reasonable satisfaction of the Lessor. Copies of such certificates shall be furnished to the City Manager. Lessor will be named as an additional insured on such policies. The Lessee shall use commercially reasonable efforts (without being required to incur any increase in cost) to include an indemnification clause on any contract or agreement for any and all labor, services or materials to be provided in connection with the construction of Improvements in excess of \$1,000,000 between Lessee or its Affiliate and any general contractor (each a "**Third Party**") whereby the Third Party shall indemnify and hold harmless the Lessee and Lessor for any and all loss, cost, or expense, including, but not limited to, attorneys' fees and court costs through all trial and appellate levels with respect to personal injury and/or property damage caused by the Third Party, its subcontractors, subconsultants, agents and employees in connection with

performing or providing such labor, services or materials and/or any other of its obligations under the applicable contract or agreement and arising out of its negligence and/or intentional acts.

ARTICLE IX.

SECURING GOVERNMENTAL APPROVALS AND COMPLIANCE WITH LAW

Section 9.1. Compliance with Laws.

- a) Lessee, at Lessee's sole cost and expense, shall obtain any and all governmental licenses, permits, and approvals necessary to construct or install the Improvements and to allow the use and occupancy of the Demised Premises, but not the Lessor Improvements. Lessee shall comply and shall require any Sublessees of the Demised Premises comply, at all times with (i) all applicable Governmental Regulations for the use of the Demised Premises, and (ii) all governmental orders for the correction, prevention and abatement of nuisances arising from Lessee's and/or the Sublessees use of the Demised Premises, all at Lessee's and/or Sublessee's sole cost and expense.
- b) Lessee shall procure at its sole expense any permits and licenses required for the transaction of business in the Demised Premises and/or in any way related to the Demised Premises and shall comply with all laws, ordinances, regulations and orders now in effect or hereafter enacted or passed during the term of this Lease insofar as the Demised Premises and any signs of Lessee are concerned, and shall, except as herein otherwise provided, make at Lessee's own cost and expense all repairs, additions and alterations to the Demised Premises ordered or required by any governmental authorities, whether in order to meet the special needs of Lessee, or by reason of the occupancy of Lessee, or otherwise.
- c) Lessee's compliance with all Governmental Regulations, rules, and other laws shall include, but not be limited to, full compliance with all federal, state, and local laws, rules, and regulations concerning the possession, storage, use, disposal of and clean-up relating to any and all types of hazardous wastes, as the term "**Hazardous Wastes**" is defined by applicable Governmental Regulations.

- d) Lessee shall obtain any and all needed regulatory approvals, licenses, and/or permits relating to the operation of its business, its occupancy of the Demised Premises, and any other such approvals, licenses or permits relating in any way to the Demised Premises during the Lease Term, including, but not limited to, any such governmental approvals, permits or licenses relating to chemicals, petroleum products, hazardous materials, as the term "**Hazardous Materials**" is defined by applicable Governmental Regulations, and/or Hazardous Wastes possessed, used, or stored on the Demised Premises by Lessee.
- e) In the event of any accident or spillage of any petroleum product, chemical, toxic compound, Hazardous Materials and/or Hazardous Wastes on or at the Demised Premises during the Lease Term, as extended, Lessee shall comply with all federal, state and local laws, rules, and regulations pertaining thereto, including notification of proper authorities, safety of all persons potentially affected, evacuation of premises if necessary, clean-up and disposal. Additionally, Lessee shall be solely responsible for all costs associated with any spillage of any such compounds or wastes on or at the Demised Premises, and for the clean-up and disposal of any such compounds, including Hazardous Wastes, on the Demised Premises, in accordance with Governmental Regulations, rules, and orders unless and to the extent caused by negligent act or omission of Lessor's employees acting within the course and scope of their employment.

Section 9.2. Environmental Covenants.

- a) Lessee covenants that during the Lease Term, Lessee shall not permit any toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls, to be generated, treated, stored or disposed of, or otherwise deposited in or located on, or released on or to the Demised Premises, including, without limitation, the surface or the subsurface waters of the Demised Premises. Lessee will not engage in and will not permit any other party to engage in any activity on the Demised Premises which would cause (i) the Demised Premises to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Demised Premises within the ambit of, the Resource Conservation and Recovery Act of 1975 ("RCRA"), 42 U.S.C. §6901, et seq., as amended, or any similar state law or local ordinance or other environmental law, (ii) a release or threatened release of a hazardous substance from or to the Demised Premises within

the meaning of, or otherwise bring the Demised Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601-9657, as amended, or any similar state law or local ordinance of any other environmental law, or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., or the Clean Air Act, 42 U.S.C. §7401, et seq., or any similar state law or local ordinance or any other environmental law. Lessee will not permit any substance or conditions in or on the Demised Premises which might support a claim or causes of action under RCRA, CERCLA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, and no other ground storage tank will be located on or under the Demised Premises, except as presently exists or as approved by Lessor and the applicable authorities. As used herein, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, provided further, to the extent that the laws of the State of Florida establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

- b) In the event Lessee is obligated by any applicable federal, state or local law, ordinance or regulation or otherwise directed by any governmental agency or authority, to clean up, remove or encapsulate or cause the clean-up, removal, or encapsulation of any Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos ("Asbestos") from the Demised Premises, Lessee hereby guarantees to Lessor it shall (i) promptly undertake to arrange for such clean up, removal and disposal in accordance with all Governmental Regulations, (ii) exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) assume the costs and expense, including any fines, of such clean up and removal. Notwithstanding anything to the contrary contained herein, on or before the ninetieth (90th) day after the Effective Date, a Phase I Environmental Site Assessment ("ESA") shall be performed on the Demised Premises. And, if the ESA recommends a Phase II ESA then a Phase II ESA shall

also be performed (the Phase I ESA and any applicable Phase II ESA shall form the “**Environmental Baseline**” for this Lease. Any covenant, obligation or indemnity of Lessee set forth in this Article IX shall not extend to any claim, demand, fine, penalty, cause of action, liability, damage, loss, cost or expense related to the presence of Hazardous Substances that are documented in the Environmental Baseline.

- c) In the event that any lien is recorded or filed against the Demised Premises pursuant to any Governmental Regulations regarding Hazardous Materials, Hazardous Wastes, or Asbestos, Lessee hereby guarantees to Lessor that Lessee shall, not later than thirty (30) days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record (whether by payment, bonding or as otherwise provided by Section 9.2. hereof).
- d) In addition to the foregoing, Lessee shall protect, defend, indemnify and save harmless Lessor, and Lessor's officials, constitutional officers, agents, employees and representatives from and against all loss (including diminution in the value of the Demised Premises), cost, damage, liability, obligation, causes of action, fine, penalty or expense (including attorneys' fees and expenses for investigation, inspection, removal, clean up, and remedial costs incurred to permit continued or resume normal operation of the Demised Premises), imposed upon or incurred by or asserted against Lessor by reason of the following occurrences during the Lease Term, as extended (i) the use, generation, storage, presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials and/or Hazardous Wastes or Hazardous Substances on, from, or affecting the Demised Premises or any other property or the presence of Asbestos on the Demised Premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or -related to such Hazardous Wastes, Hazardous Materials or Asbestos; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Wastes, Hazardous Materials or Asbestos; or (iv) any violation of laws, orders, regulations, requirements, or demands of governmental authorities, which are based upon or in any way related to such Hazardous Wastes, Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

- e) If at any time LESSEE shall become aware, or have reasonable cause to believe, that any Hazardous Substance in violation of any applicable Governmental Regulations has come to be located on or beneath the Demised Premises or within the marina area, LESSEE shall immediately, upon discovering such presence or suspected presence of the Hazardous Substance, give written notice of that condition to LESSOR. In addition, LESSEE shall immediately notify LESSOR in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any Governmental Regulations, (ii) any written claim made or threatened by any person against LESSEE, the Demised Premises or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances, and (iii) any reports made to any Applicable Authorities arising out of or in connection with any Hazardous Substances in or removed from the Demised Premises or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith. LESSEE shall also supply to LESSOR as promptly as possible, and in any event, within five (5) business days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations of any applicable Governmental Regulations relating in any way to the Demised Premises or improvements located thereon or LESSEE'S use thereof.
- f) LESSEE agrees to provide to the LESSOR a copy of all environmental and Hazardous Substance reports (including test results dealing with the Demised Premises) obtained by LESSEE after the Commencement Date hereof, or which otherwise come into LESSEE's possession, custody, or control (regardless of when conducted), within fifteen (15) days following LESSEE'S receipt of same.
- g) The remedial obligation of the LESSEE as stated above shall include the reasonable costs of the following when required by Applicable Authorities:
- all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like; and,
- all cleaning, detoxification, remediation, cleanup and disposal; and,

all tests, audit, monitoring, and reporting; and

payment of all fees, costs, assessments, fines and penalties legally charged by Applicable Authorities in accordance with Governmental Regulations.

The indemnity in Section 9.2 shall include without limitation the reasonable costs of the following when required by Applicable Authorities that enforce laws related to Governmental Regulations:

all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like; and,

all cleaning, detoxification, remediation, cleanup and disposal; and,

all tests, audit, monitoring, and reporting; and

all fees, costs, assessments, fines and penalties charged by Applicable Authorities.

LESSEE agrees to pay for all reasonable attorneys' fees, experts' fees and costs incurred by LESSOR in LESSOR's enforcement against LESSEE of the provision of this Section 9.2;

The indemnification provided in this Section 9.2 shall survive the termination or expiration of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitations for such claim or cause of action;

In the event the LESSOR's insurance coverage requires that the LESSOR's carrier defend any claim that falls within the scope of this indemnity, the LESSEE shall not be responsible to reimburse the LESSOR for its costs of defense; to the extent such defense is provided pursuant to the LESSOR's insurance policy.

- h) At any time during the term of the Lease, the LESSOR may, upon reasonable prior written notice to the LESSEE (taking reasonable action to minimize potential disruption of the operation of the marina **and other Permitted Uses**) to enter upon **the** Demised Premises for the purpose of conducting environmental tests, pursuant to this Section ____ (and thus not as a result of the exercise of its regulatory governmental jurisdiction) ("**LESSOR's Tests**"), to determine the presence and extent of

contamination by Hazardous Substances on or under the Demised Premises, provided that in connection with entering into occupied portions of the Demised Premises, the LESSOR shall provide reasonable advance notice to LESSEE and coordinate such access with LESSEE, in order to not unreasonably interfere with its operations. The LESSOR shall not be entitled to conduct the LESSOR'S Tests unless: (1) a governmental entity (other than the LESSOR) shall have issued a written notice of violation to the LESSEE or the LESSOR with respect to Hazardous Substances on, within, or under the Demised Premises); or (2) the LESSOR has reasonable cause to believe that Hazardous Substances exist on or under the Demised Premises in violation of Governmental Regulations.

- i) The LESSOR'S Tests shall be at the sole cost of the LESSOR. The cost and expenses relating to the LESSOR'S Tests shall not be included in remediation provisions of Section 7.6 or in the scope of any indemnification provided in favor of the LESSOR in this Lease. No LESSOR'S Tests shall be conducted until the LESSOR has provided to the LESSEE the name of the testing contractor (which shall be fully licensed to conduct the LESSOR Tests) and a certificate of insurance with limits reasonably acceptable to the LESSEE confirming that the LESSEE is an additional insured and that coverage exists for property damage, personal injury and business interruption which may result from the LESSOR'S Tests. The LESSOR agrees to indemnify and hold the LESSEE harmless (subject to its limitation of sovereign immunity liability) with respect to any loss, claim or damage (including attorney's fees and expenses) which the LESSEE shall suffer as the result of the conduct of the LESSOR'S Tests.

Section 9.3. Warranties. Except as expressly stated otherwise in this Lease, Lessor makes no representations, express, implied, or otherwise, as to the suitability of the Demised Premises for use by Lessee nor as to the Lessee's intended use of the Demised Premises being in compliance with any deed restrictions, laws, regulations, rules, ordinances, building codes, zoning requirements, or other similar restrictions on use. Lessee acknowledges that it has checked applicable restrictions, laws, building codes, zoning requirements, rules, regulations and ordinances to determine that the Lessee's intended use of the Demised Premises is authorized and permitted by law.

ARTICLE X.

TAXES, FEES AND ASSESSMENTS

From and after the Effective Date, Lessee shall pay, before they become delinquent, all sales, use or excise taxes, ad valorem and non-ad valorem taxes, assessments(whether general, special, ordinary, extra ordinary, foreseen or unforeseen) and other governmental charges and impositions levied or assessed against Lessee's fixtures, equipment and personal property on, attached to, or used in connection with the Demised Premises or any part thereof or related to or arising from the use, occupancy or rents and income derived from the Demised Premises; provided, however, that if any tax is payable in installments, Lessee may also pay in installments, but all such taxes shall be paid in full prior to the expiration of the Lease Term, as extended if applicable. Lessor shall promptly present Lessee with copies of all tax bills received for each lease year for which Lessee is expressly responsible. Upon Lessor's written request, Lessee shall deliver to Lessor official receipts that show payment of all charges required under this Article and contained in Lessor's written request. These receipts must be delivered to the place where the Rent payments are to be made. Lessee shall have the right at Lessee's election to protest the levy, assessment or collection of any taxes, assessments, charges or impositions by appropriate legal action, provided that Lessee shall not thereby permit any lien (other than the lien for current taxes not yet due and payable) or judgment for any taxes, assessments, charges or impositions to be filed or enforced against the Demises Premises. On the written request of Lessee, Lessor will join with Lessee in any such protest on the condition that Lessee pay all of the reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lessor in connection with this joinder. Lessee must give the written notice to Lessor not later than sixty (60) days before the contested taxes would otherwise become delinquent. LESSEE must also furnish LESSOR with a bond with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by LESSOR. The bond or cash must be in an amount equal to the amount of the taxes, claim, charge or assessment together with estimated penalties and interest being contested and must be conditioned upon payment of the taxes, claim, charge or assessment once the validity has been determined. Excluding rent due under Article __, of this Lease, all other payments that Lessee is obligated to make shall be deemed "Additional Rent".

ARTICLE XI.

INSURANCE

Section 11.1. Insurance Requirements. From and after the Effective Date, Lessee shall maintain, at Lessee's sole cost and expense, insurance on the Demised Premises and/or include the following insurance requirements in any agreement it enters into with any contractor(s) for construction work on the Demised Premises or require in its Approved Subleases entered into after the date hereof (excluding boat leases/licenses), the following insurance and Lessee further agrees to provide to Lessor, prior to commencement of the improvements with respect to such contract, certificates of insurance evidencing the contractor's or Sublessee's compliance with the requirements of this Section 11.1 as follows:

- a) **Improvements.** Insurance against loss or damage to Improvements by fire, lightning or other risks included under standard all risk, fire and extended coverage policies, in amounts equal to the full replacement cost of Improvements, as determined by insurance appraisals, one initially conducted on or about the Commencement Date, and every lease year thereafter.
- b) **Comprehensive Liability.** Comprehensive general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Demised Premises in the amount of \$5,000,000.00 (as reasonably adjusted for Sublessees and contractors depending on value of sublease or construction contract) single limit bodily injury per person / property damage, with financially sound companies reasonably acceptable to Lessor and Lessor being added as an "additional insured". This insurance must provide for coverage as set forth the RFP. Lessor shall annually be provided with confirmation that these coverage's are being maintained. With respect to lien documents executed by Lessee in connection with the Demised Premises, Lessee shall obtain the agreement of the Leasehold Mortgagee to permit the proceeds of casualty insurance to be used to reconstruct or replace the damaged Improvements. This coverage may be increased periodically to a level appropriate under then market conditions and industry standards, as reasonably approved by the parties. This MUST be written in the description section of the insurance certificate. Any costs for adding the Lessor as "additional insured" will be at the Lessee's expense. Lessor shall be given notice 10 days prior to cancellation or modification of any stipulated insurance. The insurance

provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate this requirement, it shall be the responsibility of the Lessee to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and sent to the address set forth in the definition of Lessor.

- c) **Insurance Rating.** Lessee's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Lessor's Risk Manager. Any exclusions or provisions in the insurance maintained by the Lessee that precludes coverage for work contemplated in this Lease shall be deemed unacceptable, and shall be considered breach of contract.
- d) **Workers' Compensation.** Worker compensation insurance covering all persons employed by or subcontracted by Lessee in connection with any work done on the Demised Premises pursuant to Florida Statute, Section 440. Exceptions and exemptions will be allowed by the Lessor's Risk Manager, if they are in accordance with Florida Statute.
- e) **Employer's Liability Limits.** \$500,000.00.
- f) **Automobile Liability Insurance.** Insurance covering all owned, hired and non-owned automobile equipment.
 - Bodily injury: \$250,000 each person, \$500,000 each occurrence.
 - Property Damage: \$100,000 each occurrence.
- g) **Marina Operator's Legal Liability.** Lessee shall maintain Marina Operators Legal Liability including Protection and Indemnity with limits not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence.
- h) **Builder's Risk.** Builder's risk insurance in an amount that is commercially reasonable depending on the value of construction contract.
- i) **Professional Liability.** Professional Liability coverage for consultants with limits of \$2,000,000 per occurrence.

The insurance requirements set forth herein shall be included in any subleases, unless waived by Lessor.

Section 11.3. Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Lessor and Lessee each hereby waive any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage arising from any cause covered by insurance required to be carried by each of them pursuant to this Lease or any other insurance actually carried by each of them, regardless of cause or origin, including negligence of the other party hereto, its agents, officers, or employees, and covenants that no insurer shall hold any right of subrogation against such other party. All insurance obtained by either Lessee or Lessor hereunder, especially including the property damage insurance described herein shall contain appropriate waiver of subrogation rights endorsements whereby the insurer releases all rights of subrogation against both Lessor and Lessee and any and all Lessees. Each party shall provide the other with copies of such endorsements upon request.

ARTICLE XII.

MAINTENANCE AND REPAIR; ALTERATIONS; UTILITIES; ACCESS; SECURITY

Section 12.1. Maintenance and Repair of Demised Premises. Subject to the provisions to **Articles VI and XI** hereof, Lessee shall maintain in good repair and condition the entire Demised Premises and all of the Lessee Improvements, fixtures, equipment and personal property on the Demised Premises, and keep them free from waste or nuisance and Lessee shall be required to replace any Lessee Improvements or portion or thereof on the Demised Premises that have reached the expiration of their useful life during the Lease Term as reasonably determined by Lessee in accordance with sound accounting principles. Lessee shall make or manage all repairs which are the obligations of the City to slip-holders including, but not limited to, interior and exterior cleaning, landscaping, painting, decorating, carpentry, and other normal maintenance and repair work. All dock areas shall be inspected weekly and maintained in a safe condition. All utilities serving the docks and slips shall be inspected weekly and maintained. Lessee shall arrange for and document an annual inspection of marina electrical systems by a licensed electrician.

Additionally, Lessee is required to deposit \$150,000 annually into a capital improvement reserve account at Lessee's designated financial institution beginning

one year after the Initial Improvement Completion Date and Lessee must provide Lessor evidence of such deposit in a manner reasonably acceptable to Lessor. At the expiration of the Lease, Lessee shall deliver the Demised Premises and the Lessee Improvements to Lessor in good condition, subject to normal wear and tear. Notwithstanding the forgoing, Lessor shall be solely responsible for maintaining and replacing Lessor Improvements throughout the Term of this Lease and Lessor's sole expense.

12.2. Maintenance, Repair and Operation of Lessor Improvements.

Notwithstanding anything to the contrary contained herein, Lessor, at Lessor's sole cost and expense, and subject to appropriation of funds by the Commissioners of Lessor, shall maintain in good repair and condition the entirety of the Lessor Improvements and keep them free from waste and nuisance in accordance with the Lessor's normal and customary maintenance standards and procedures..

12.3. Alterations. Lessee shall have the right, from time to time, to make additions, alterations and changes to the in or to the Lessee Improvements including the expansion of the number of wet slips as approved by the agency of jurisdiction (hereinafter sometimes referred to collectively as "**alterations**" which term shall, when used in this Section include any replacement or substitution therefor), provided that no event of default shall exist by Lessee in the performance of Lessee's covenants or agreements in this Lease, subject, however, to the following:

- a) no structural alterations of the original facade or exterior of the Lessee Improvements shall be commenced except after receipt of Lessor's written approval of such alterations in its proprietary capacity and not in its regulatory capacity, which approval Lessor agrees not to unreasonably withhold and which shall not be granted prior to all regulatory approvals and after approval by the TIITF, if required;
- b) no alterations shall be made which would impair the structural soundness of the Lessee Improvements;
- c) no alterations shall be undertaken until Lessee has furnished Lessor reasonable evidence that all building permits, licenses and authorizations required by Governmental Regulations and all required consents of Leasehold Mortgagees and the City have been procured. Lessor shall join, but without expense to Lessor, in the application for such permits, licenses or authorizations whenever such action is necessary and is requested by Lessee;

- d) no alterations shall be made which would be in violation of the terms and provisions of the any exceptions not cured or removed as evidenced in the Title Documents [e.g. applicable deed restrictions];
- e) any alterations shall be made within a reasonable time and in a good and workmanlike manner and in substantial compliance with all applicable permits, licenses and authorizations, and building laws and with all other Governmental Regulations;

Section 12.4. Utilities. Lessee is responsible, at its sole cost and expense, for obtaining, connecting, installing, repairing and maintaining all utility lines, connections and facilities at or for the Demised Premises, and Lessee shall pay all charges for cable, heating, air conditioning, water, storm water, sanitation, garbage, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the Demised Premises from and after the Effective Date. Lessor shall in no event be liable or responsible for any cessation or interruption in, or damage caused by, any such utility services.

Section 12.5. Security. Lessee, at its sole cost and expense is responsible for providing security within the Demised Premises that will reasonably ensure the safety of employees and patrons. The Lessee shall take appropriate measures to identify potential emergency situations and develop a plan of action to protect the safety and security of employees and patrons. This plan shall address medical, fire and other emergency situations that threaten the health, safety and welfare of persons, as well as the Demised Premises. All employees are required to be tested annually to demonstrate their proficiency in handling such situations. The Lessee shall provide an annual written safety and security plan for all operating facilities for the review and approval of the Lessor.

ARTICLE XIII.

CASUALTY DAMAGE, DESTRUCTION AND CONDEMNATION

Section 13.1. Casualty Damage or Destruction.

- a) **Lessee's Obligation to Restore.** Should the Improvements currently existing or hereafter situated on the Demised Premises during the term of this Lease be wholly or partially destroyed or damaged by fire, or any other casualty whatsoever, Lessee shall promptly repair, replace, restore or

reconstruct the same in substantially the form in which the same existed prior to any such casualty and with at least as good workmanship and quality as the Improvements being repaired or replaced, all in compliance with the provisions of Article VIII hereof but with such alterations or modification as to restored Improvements as may be consistent with the further terms and provisions hereof. Such work shall commence on or before two hundred ten (210) days from the event giving rise to such construction obligation and shall be completed thereafter with reasonable diligence. In the event of any casualty damage to the Improvements during the last five (5) years of the term of this Lease which would require more than ninety (90) days to repair and restore after commencement of restoration, Lessee shall have the option to terminate this Lease at any time prior to commencement of rebuilding by giving notice of termination to Lessor. In the event of termination of this Lease by Lessee during the last five (5) years of the Lease Term under the circumstances set forth above, this Lease shall terminate and come to an end upon Lessee's termination as aforesaid as though the date of such termination by Lessee were the date of expiration of the term of this Lease, and all insurance proceeds shall be payable as follows first to discharge any Leasehold Mortgages, and then the balance to be paid to Lessor. Notwithstanding the foregoing, Lessor shall be entitled receive funds in any capital improvement reserve account maintained in accordance with Article XII of this Lease.

b) **Deposit of Funds for Restoration.** So long as there exists a Leasehold Mortgage, all fire and extended coverage insurance proceeds shall be deposited with the holder of such Leasehold Mortgage having the first lien priority, but if no Leasehold Mortgage exists then with a federally insured financial institution with offices located in Fort Lauderdale, Florida ("Qualified Bank"). In any event such proceeds shall be received, held and paid out by such Leasehold Mortgage, if any, or by such Qualified Bank, and shall be disbursed for restoration for the casualty damage as follows unless modified by the Leasehold Mortgage:

- Lessee must first secure Lessor's and any Leasehold Mortgagee's reasonable approval of the Plans and Specifications for the proposed restorative work if such Plans and Specifications for restoration deviate materially from the Plans and Specifications for the Improvements which have been so damaged. The insurance proceeds will be paid to Lessee by the first lien Leasehold Mortgagee, if any, or disbursed by such Qualified Bank, if any, after delivery of evidence satisfactory to

such Leasehold Mortgagee, if any, and to Lessor that (a) such repair, restoration or rebuilding has been completed and effected in compliance with this Lease as to quality, and (b) no mechanics' or materialmen's liens have attached to the fee or leasehold estate; or at the option of Lessee, such proceeds may be advanced by such Leasehold Mortgagee or disbursed by such Qualified Bank in reasonable installments. Each such installment (except the final installment) is to be advanced by such Leasehold Mortgagee, if any, or disbursed by such Qualified Bank, if any, in an amount equal to the cost of construction of the work completed (including Lessee's overhead directly related or reasonably allocated thereto) since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by the Lessee's architect in charge, less statutorily required retainage in respect of mechanics' and materialman's liens, together with a reasonable showing of bills for labor and material, and evidence satisfactory to any such Leasehold Mortgagee that no lien affidavit has been filed in county for any labor or material in connection with such work. The final payment or disbursements, which shall be in an amount equal to the balance of such proceeds, shall then be made upon architect's proper certificate of completion and upon receipt of evidenced required by (i) (a) and (i) (b) above, but in no event shall such Leasehold Mortgagee, if any, or such Qualified Bank, if any, be required to advance more than the balance of such insurance proceeds remaining on deposit with such disbursing agent;

- Should the cost of said repairs, restoration or rebuilding be estimated by Lessee's architect in charge to be in excess of said insurance proceeds or should the actual cost determined after Lessee has commenced restoration be in excess of said proceeds, Lessee will upon demand by any such Leasehold Mortgagee or Lessor give satisfactory proof or assurances to such Leasehold Mortgagee that the funds required to meet such deficiency are or will be available to Lessee for such purpose or will deposit the necessary funds to cover such deficiency with such Leasehold Mortgagee;
- Any and all such insurance proceeds in excess of the cost of such repairs, restoration or rebuilding may, if any Leasehold Mortgage so provides, be applied in reduction of unpaid principal and other indebtedness due under such Leasehold Mortgage in the order of priority of such Leasehold Mortgagees; provided, however, that no

insurance proceeds in excess of the cost of such repairs, restoration or rebuilding shall be applied to reduce the amount of any Leasehold Mortgage unless the architect has delivered to Lessee a certificate to the effect that such repairs, restoration or rebuilding have been completed substantially in accordance with Plans and Specifications therefor. In the event that there is no Leasehold Mortgage on Lessee's interest, or no Leasehold Mortgagee elects to apply any such excess, the amount of excess shall be paid over to Lessee.

Section 13.2. Condemnation.

- a) **Total Taking.** Lessor and Lessee agree that should the whole of the Demised Premises be taken (which term when used in this Section 13.2. shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) by the Government of the United States, State of Florida, City of Fort Lauderdale, or any other government or power whatsoever, or by any corporation under the right of eminent or should the whole of said Demised Premises and improvements be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States so that the Demised Premises can no longer be utilized in an economically sound manner by Lessee for the uses and purposes contemplated herein, then this Lease shall terminate as of the date of taking of possession by the condemning authorities (or the later date on which Lessee receives its portion of the award) and the award will be distributed and payable to Lessee so that Lessee is fully reimbursed for all Lessee Improvements previously made and compensated in an amount equal to the net present value of earnings reasonably expected to occur over the Term remaining after the date of the condemnation or eminent domain and any remaining proceeds shall be paid to Lessor but only if such taking is procured by a governmental entity other than Lessor.
- b) **Partial Taking.** Lessor and Lessee agree that should the fee simple title be taken in part of the Demised Premises by the Government of the United States, State of Florida, City of Fort Lauderdale, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should a part of said Demised Premises be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States, then in such event this Lease shall nevertheless continue in effect as to the

remainder of the Demised Premises unless in Lessee's reasonable judgment so much of the Demised Premises shall be so taken or condemned as to make it economically unsound to attempt to use the remainder for the uses and purposes contemplated herein, in which latter event this Lease shall terminate upon notice of termination by the Lessee to Lessor, with such termination to be effective as of the date of taking of possession by the condemning authority (or later date on which Lessee receives its portion of the award) in the same manner as if the whole of the Demised Premises had been thus taken or condemned; provided, however, that if a Leasehold Mortgage then encumbers the leasehold premises this Lease shall not terminate without the prior written consent of the Leasehold Mortgagee. In the event of such taking or condemnation of portion of the Demised Premises where this Lease is not terminated thereby under the provisions of the first sentence of this Paragraph, the Rental payable during the remainder of the term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis having due regard to the square footage of the portion of the Demised Premises thus taken or condemned as compared to the remainder thereof and taking into consideration the extent, if any, to which Lessee's use of the remainder of the Demised Premises shall be been impaired or interfered with by reason of such partial taking or condemnation.

- c) **Partial Taking Award.** In the event that a part of the Demised Premises and Improvements be taken under the power of eminent domain or by condemnation proceedings and this Lease is terminated by reason of such partial taking, then the award will be distributed to Lessee in accordance with Section 13.2 a). In the event that a part of the Demised Premises and Improvements be taken under the power of eminent domain or by condemnation proceedings and this Lease is not terminated by reason of such partial taking, then the condemnation award shall be paid to Lessee to the extent the condemnation impairs the Lessee Improvements and to the Lessor to the extent the condemnation impairs the Lessor's Improvements.
- d) **Rights of Leasehold Mortgagee.** If any Leasehold Mortgagees encumber the leasehold estate, the Leasehold Mortgagees shall, to the extent permitted by law, be made a party to any condemnation proceeding, if any so desire.
- e) **Voluntary Dedication; Easement Grants.** It is further understood, however, that if during the term of this Lease any portion of the Demised

Premises (that is, with respect to the leasehold interest therein) shall be voluntarily devoted to public use by Lessee, it is expressly agreed that there shall be no abatement of Rental on account of said voluntary application to public use, nor shall Lessee thereby permit the public to acquire any right to or interest in any part of the Demised Premises which will continue beyond the termination of this Lease for any cause without Lessor's prior consent. Lessor covenants and agrees to join the Lessee in any action to dedicate portions of the Demised Premises for public streets along the boundaries of the Demised Premises if such dedication is required by the Applicable Authorities as a condition to approve construction of the Improvements and approved by TIIF. Lessor further covenants and agrees that it will not undertake or consent to any change in the zoning applicable to the Demised Premises without Lessee's prior written consent. Any dedication of any portion of the Demised Premises by plat or easement grant previously approved in connection with the Plans, utilities or other purposes provided above shall not result in any reduction or abatement of rent under this Lease.

ARTICLE XIV.

ASSIGNMENT, SUBLETTING AND MORTGAGE

Section 14.1 **Assignment.** Except for Approved Subleases (as defined below in Section 14.2) of space within the Demised Premises, and except for Leasehold Mortgages, and except for boat slip licenses or leases to third parties desiring to lease a wet slip on the Demised Premises ("**Slip Licenses**") or subleases to an Affiliate (defined below) (collectively Leasehold Mortgages, Slip Licenses and Leases to an Affiliate shall sometimes be referred to as "**Permitted Transfers**"), Lessee shall not sell, assign or otherwise transfer any portion of its leasehold estate, or undivided interests therein, to any party other than an Affiliate of Lessee, without the prior written consent of Lessor which consent shall not be unreasonably withheld, conditioned or delayed and shall be deemed granted by Lessor in the event Lessor fails to respond to a request for consent within thirty (30) days after receiving the request. Such an Assignment shall not be valid until there shall have been delivered to Lessor a true copy of instrument effecting such an assignment and the assignee agrees to assume all obligations under this Lease and agrees to perform all

the covenants, terms and conditions of this Lease. In making its decision, the Lessor shall consider the following factors: 1) whether the proposed assignee meets certain reasonable standards of creditworthiness and has the financial resources to operate a marina and its ancillary uses, 2) whether the proposed assignee has the background, experience and expertise to perform its obligations under this Lease and 3) whether the proposed assignee has prior business experience for operating property with uses similar to the Permitted Uses under this Lease and 4) the reputation of the proposed assignee. As used in this Lease, "**Affiliate**" when used in reference to Lessor or Lessee shall refer to any person, firm, corporation, partnership or other legal entity (for convenience herein called "**person**") controlled by, controlling or under common control with a party. Control as used in this definition means actual direction or power to direct the affairs of the controlled person, and no person shall be deemed in control of another simply by virtue of being a director, officer or holder of voting securities of any entity. A person shall be presumed to control any partnership of which he or it is a general partner. Notwithstanding anything to the contrary contained herein, the parties recognize that the Lessee is a limited liability company as of the Effective Date and the Lessor agrees that Lessee's restructuring or change of membership interests pursuant to the current operating agreement of the existing Members (Suntex Marinas LLC and Edgewater Resources LLC) of the Lessee which exists as of the effective date hereof shall not be considered a matter requiring the approval of the City Manager, unless there is transfer of the controlling interest in the Lessee (other than transfers to existing members of such entity or an Affiliate of Lessee or an Affiliate of a current member of Lessee). Additionally, and notwithstanding anything to the contrary, the Parties hereby acknowledge and agree (i) the "going public" by Lessee or any owner of Lessee, including, but not limited to, the filing of a registration statement with the Securities and Exchange Commission and/or the creation of one or more classes of stock and the offering of shares of stock to the public for purchase (the "**Permitted Corporate Transfer**") shall not require the consent of the Lessor and/or the City Manager in any manner. All other company restructuring or change in membership other than Permitted Corporate Transfers shall require the consent of the City Commission which may be granted or denied in the exercise of the City Commission's reasonable discretion within a reasonable time, not to exceed sixty (60) days, it being agreed that consent shall be deemed granted by Lessor in the event Lessor fails to respond to a request for consent within sixty (60) days after receiving the request.

Section 14.2 **Subleasing.** Subleases of space within the Demised Premises that satisfy the requirements of this Section 14.2 are "**Approved Subleases.**"

- a) **Approval.** Except for Permitted Transfers, Lessee shall not sublet all or any portion of the Demised Premises for occupancy by any sublessee without the prior written consent of Lessor through the City Manager which consent shall not be unreasonably withheld, conditioned or delayed and shall be deemed granted by Lessor in the event Lessor fails to respond to a request for consent within thirty (30) days after receiving the request. In determining whether to approve or not approve a proposed sublessee and sublease, the Lessor may consider the specific business experience of the proposed sublessee in the applicable industry, the ability of such sublessee to carry out the purpose or activity of the sublease, and as to financial obligations, the ability to perform only the reasonably current financial obligations under the sublease, and the rent payable pursuant to the Sublease.
- b) **Lease Terms.** In addition to the other required provisions contained in this Lease, Lessee's sublease agreements shall include provisions that provide:
- that the sublease is subject to every provision of this Lease;
 - that the sublease shall not be for a term extending beyond the term of this Lease;
 - that the sublessee is responsible for complying with all Governmental Regulations, and that sublessee's failure to cure after receiving notice of non-compliance will result in Lessee's right to terminate the Lease; and
 - that the sublessee is responsible for obtaining insurance identical to that required of Lessee as described in Section 11.1.
 - a self-operative provision that it is subject and subordinate to this Lease and any amendments, modifications and extensions thereof, including, but not limited to, all use restrictions and shall be subject to the terms of any nondisturbance agreement between LESSOR and such Sublessee or Sub-Sublessee (as applicable).
- c) **Sublessee Attornment.** If this Lease terminates for any reason, including Lessee's default, Lessor shall accept the attornment by

sublessees in good standing and paying fair market rentals under Approved Subleases. In no circumstance is Lessor required to accept a sublease that (X) reduces rental payable to Lessor or calls for the granting of concessions in rent at any time, (Y) allows the prepayment of rent beyond the current month for which rent is due and payable (except the prepayment of rental for the last month of the term of a Lease made to an actual space occupant for the space to be occupied by him), or (Z) imposes on the Lessor any obligation to make alterations to the Demised Premises under the sublease or to reimburse sublessee for alterations made by the sublessee or be liable for any prepaid rents or security deposits and any defaults of Lessee which occurred prior to Lessor's recognition of the sublessee. Lessor shall not be held liable for any acts or omissions of Lessee prior to recognition of the sublease.

Section 14.3 **Continuing Obligations.** Notwithstanding any assignment or subletting, Lessee shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under this Lease (even if future assignments and subletting's occur subsequent to the assignment or subletting by Lessee, and regardless of whether or not Lessor's approval has been obtained for such future assignments and sublettings). Lessor shall be permitted to enforce the provisions of this Lease against the undersigned Lessee and/or any assignee without demand upon or proceeding in any way against any other person. Lessee shall reimburse Lessor for Lessor's reasonable expenses including attorney's fees not to exceed \$1,000.00 incurred by Lessor in connection with any request by Lessee for assignment or subletting.

Section 14.4. **Mortgage of Leasehold.**

(a) **Lessee's Rights.** Lessee may mortgage its leasehold estate, but not Lessor's fee estate, in order to secure a mortgage loan to obtain funds to construct all Improvements including the Initial Improvements, for permanent loan funds used to retire interim construction financing, or for other financing or refinancing directly benefiting the Demised Premises so long as the conditions precedent set forth in Section 14.4 (d) are satisfied.

(b) **Mortgagee's Obligations.** If Lessee permissibly mortgages or encumbers its leasehold estate, the Leasehold Mortgagee shall in no event be required to perform the obligations of Lessee under this Lease unless and until the Leasehold Mortgagee becomes the owner of the leasehold estate pursuant

to foreclosure, assignment in lieu of foreclosure or otherwise; thereafter, the Leasehold Mortgagee shall remain subject to these obligations only so long as the Leasehold Mortgagee remains the owner of the leasehold estate, and in no event shall the obligations to be performed hereunder be more expansive for the Leasehold Mortgagee than for Lessee.

(c) **Lessee's Obligations.** Notwithstanding the foregoing, it is specifically understood and agreed that no mortgaging by Lessee and/or any actions taken pursuant to the terms of the Leasehold Mortgage shall ever eliminate or reduce Lessee's obligation to pay the rent due hereunder and otherwise fully perform under this Lease. Lessee shall give prompt notice to Lessor of the terms of any Leasehold Mortgage. Lessee agrees to duly and timely perform all of its obligations under any such Leasehold Mortgage.

(d) **Conditions Precedent.** Lessee agrees that, as a condition precedent to its right to execute any Leasehold Mortgage, it shall:

(1) furnish to Lessor its loan documents entered into with the Leasehold Mortgagee and a copy of any notice given by the Leasehold Mortgagee to Lessee pursuant to the Leasehold Mortgage at the time that it is given to Lessee;

(2) use commercially reasonable efforts to obtain the Leasehold Mortgagee's agreement to accept Lessor's cure of any default of Lessee under the Leasehold Mortgage (Lessor having no obligation to do so);

(3) require in the Leasehold Mortgage that there will be an ongoing covenant in the event the Leasehold Mortgagee forecloses on the Leasehold Mortgage that the Demised Premises shall continue to be operated in a first-class manner and Lessor shall have the unrestricted right to approve the replacement operator of the Demised Premises and the Lessee Improvements located thereon.

Section 14.5. Mortgagee Right To Cure. If Lessee's leasehold estate is encumbered by a Leasehold Mortgage and written notice thereof has been given to Lessor, Lessor shall give to the holder of the Leasehold Mortgage (at the address or addresses specified in the written notice to Lessor for the giving of notices to the Leasehold Mortgagee, or as otherwise specified by the Leasehold Mortgagee to Lessee in writing) written notice of any default hereunder by Lessee,

contemporaneously with the giving of such notice to Lessee. The holder of the Leasehold Mortgage has the right to take any action or to make any payment necessary or appropriate to cure the specified default, it being the intention of the parties hereto that Lessor shall not exercise Lessor's right to terminate this Lease without first giving the Leasehold Mortgagee the notice provided for herein and affording any Leasehold Mortgagee the same right to cure the default as provided to Lessee in **Article XVI**, below. Lessor agrees not to exercise any right that it may have to terminate this Lease, so long as the Leasehold Mortgagee, or its successor in interest, is performing all of Lessee's covenants, duties and obligations under this Lease.

Section 14.6 Non-Disturbance. Lessor further agrees to execute and deliver to any proposed Leasehold Mortgagee a "**Nondisturbance Agreement**," in form and content acceptable to Lessor in its sole discretion wherein Lessor agrees that Lessor will recognize the mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as Lessee hereunder, and continue to perform all of Lessor's duties and obligations hereunder so long as the mortgagee or its successors and assigns performs all of the duties and obligations of Lessee hereunder. In addition, at Lessee's option, Lessor consents to the following for the benefit of any Leasehold Mortgagee:

- (1) an assignment of Lessee's share of the net proceeds from any award or other compensation resulting from a total or partial taking as set forth in Section 13.2 of this Lease,
- (2) the entry of any Leasehold Mortgagee upon the Demised Premises during business hours, without notice to Lessor or Lessee, to view the state of the Demised Premises,
- (3) that a default by Lessee under this Lease shall constitute a default under any Leasehold Mortgage,
- (4) an assignment of Lessee's right, if any, to terminate, cancel, modify, change, supplement, alter or amend this Lease, and
- (5) that, effective on a default in any Leasehold Mortgage, the Leasehold Mortgagee may (A) foreclose the Leasehold Mortgage pursuant to Florida law and sell the leasehold estate to the purchaser at the foreclosure sale, (B) appoint a receiver, irrespective of whether any Leasehold Mortgagee accelerates the maturity of all indebtedness secured by the Leasehold

Mortgage, (C) enter and take possession of the Demised Premises, manage and operate the same, collect the subrentals, issues and profits therefrom and cure any default under the Leasehold Mortgage or any default by Lessee under this Lease, and (D) assign Lessee's right, title and interest in and to the premiums for or dividends on any insurance required by the terms of this Lease, as well as in all refunds or rebates of taxes or assessments on or other charges against the Demised Premises, whether paid or to be paid, provided that none of the foregoing shall be effective with respect to Lessor until notice of the existence of the Leasehold Mortgage is delivered to Lessor.

Lessor also agrees to execute and deliver to the proposed Leasehold Mortgagee any other documents that the proposed Leasehold Mortgagee may reasonably request concerning the mortgaging by Lessee of the leasehold estate created hereby; **provided, however, that Lessor shall never be required to subordinate Lessor's interest in this Lease in the Demised Premises to the mortgage of the proposed Leasehold Mortgagee, encumber its fee interest, waive its right to receive rent (including, base rent, percentage rent or additional rent), waive its right to require payment of taxes and insurance, waive its sovereign immunity or waive its regulatory or police power.**

Section 14.7 Rights of Mortgagee on Termination to Require a New Lease. If this Lease terminates before the expiration of the term hereof, and if Lessor obtains possession of the Demised Premises in accordance with all conditions precedent as set forth in Section 14.4 (d), Lessor agrees that any Leasehold Mortgagee has the right, for a period of 30 days after termination, to require a new lease of the Demised Premises, and when the new lease is executed and delivered, possession of the Demised Premises.

(1) **Term.** The new lease's term shall commence at the termination of this Lease, and shall expire the same date that this Lease expires, including renewals and extensions, it being understood that the Leasehold Mortgagee shall have the same rights to extend the term of this Lease as are available to Lessee hereunder. The new lease is subject to the provision of the city charter.

(2) **Rent and Other Obligations.** The rent for the new lease shall be at the same rate as would have applied had this Lease not expired or terminated, and all of the rents, covenants, conditions and provisions of the new lease shall be the same as provided for under this Lease. If a Leasehold Mortgagee requires a new lease within the 30-day period, the Leasehold Mortgagee shall

give written notice to Lessor of the election, and within 30 days, Lessor and the Leasehold Mortgagee shall execute a new lease on the terms set forth above, and the Leasehold Mortgagee shall pay to Lessor all accrued rent, additional rent and other sums owed by Lessee to Lessor along with unpaid taxes and insurance that remain unpaid at the time of the execution of the new lease, including reasonable attorneys' fees and expenses incurred in connection therewith.

Section 14.8. No Change in Lease Terms. So long as there are any unpaid or undischarged Leasehold Mortgages on Lessee's leasehold estate of which Lessor has received written notice, Lessor expressly agrees for the benefit of the Leasehold Mortgagee(s) that it will not accept from Lessee a material modification of this Lease, or a voluntary surrender of the Demised Premises, without the written consent of the Leasehold Mortgagee(s), which consent shall not be unreasonably withheld. This provision does not limit Lessor's rights in the event of default by Lessee.

ARTICLE XV.

INDEMNIFICATION

Section 15.1. Lessee Indemnity. From and after the Effective Date, Lessee agrees to protect, defend (with counsel reasonably acceptable to Lessor), indemnify and hold harmless Lessor and Lessor's officers, employees, volunteers, and agents from and against any and all claims (including those for bodily injury, disease, sickness, death, property damage) loss, cost, damage, demands, fines, penalties, causes of actions, administrative proceedings, liabilities, and expense (including court costs and reasonable attorneys' fees and expert fees) to the extent not primarily caused by Lessor's ordinary negligence or willful misconduct of Lessor's employees acting within the course and scope of their employment and which arises from (i) the failure by Lessee or any of its, agents, contractors, employees or Sublessees to perform Lessee's responsibilities, duties and obligations under this Lease in accordance with the terms hereof, (ii) the negligence, reckless, misconduct or willful or intentional acts or omission of Lessee, Lessee's employees, sublessees, servants, or invitees entering the Demised Premises under express or implied invitation of Lessee, (iii) the Lessee's or sublessee's construction, installation, demolition or depreciation of the Improvements or sublessee improvements, (iv) the operation of Lessee's business in the Demised Premises, and any other activities on or about the Demised Premises, including without limitation, any claims, liabilities or damages relating to products liability, or (v)

allegations that this Lease does not comply with the City's charter.

Lessee agrees to pay for all reasonable attorneys' fees, experts' fees and costs incurred by Lessor in Lessor's enforcement against Lessee of the provision of this Article 15.

The indemnification provided in this Article 15 shall survive the termination or expiration of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitations for such claim or cause of action and is not limited by the amount of insurance coverage.

In any matter asserted against the Lessor by third parties which falls within the scope of this indemnity, neither the provisions of this Lease, nor the Lessee's indemnification of the Lessor are intended to waive or affect, and shall not be construed to waive or affect, the Lessor's sovereign immunity, and at all times the Lessor shall retain its sovereign immunity to the greatest extent as may be provided by law. Furthermore, in defending the Lessor against claims of third parties pursuant to the Indemnity provided in this Article 15, the Lessee may assert the Lessor's sovereign immunity to the greatest extent as may be provided by law.

Section 15.2. Third Parties and Sublessees. In connection with its management, operation, promotion and subleasing of the, Demised Premises, including, but not limited to Lessee's business operations, Lessee shall insert into each and every contract or Lease it enters into a clause exculpating Lessor from personal liability under the contract or lease and a clause pursuant to which the third party/Sublessee agrees to indemnify and hold harmless Lessor for the matters set forth in Section 15.1.

ARTICLE XVI.

DEFAULT AND REMEDIES

Section 16.1. Default. Each of the following events is an "Event of Default" by Lessee under this Lease:

(1) Failure by Lessee to pay any installment of rental (including, without limitation, Base Rent, Percentage Rent or Additional Rent) or to pay or cause to be paid taxes (to the extent Lessee is obligated to pay same or cause same to be paid), utilities, insurance premiums or other liquidated sums of money herein stipulated in this Lease to be paid by Lessee if such failure shall continue for a period of thirty (30) days after written notice thereof has been delivered to Lessee (with a copy of

said notice to any Leasehold Mortgagee or trustee as provided by Article XIV hereof).

(2) Failure by Lessee to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease (other than the payment of rent, taxes, utilities, insurance premiums or other liquidated sums of money) stipulated in this Lease to be observed and performed by Lessee if such failure shall continue for a period of one hundred twenty (120) days after written notice thereof has been delivered to Lessee (with a copy of said notice to any Leasehold Mortgagee or trustee as provided in Section 14 hereof); provided, however, that if any such failure (other than a failure involving payment, rent, taxes, utilities, insurance premium or other liquidated sums of money) cannot reasonably be cured within such one hundred twenty (120) day period, then Lessor shall not have the right to exercise Lessor's remedies pursuant to Subparagraph (1) or (2) of Section 16.2. for so long as Lessee proceeds in good faith and with due diligence to remedy and correct any such failure, provided that Lessee has commenced to cure such failure after the effective date of such notice within such one hundred twenty (120) day period.

(3) Failure by Lessee to pay the rent under the Submerged Land Lease, as amended, or revenue under the Uplands Deed as amended or failure to perform or observe any of the terms, covenants, conditions agreements or provisions of either of these documents or as imposed by the State of Florida or TIITF if such failure shall continue for a period of thirty (30) days after written notice thereof has been delivered to Lessee (with a copy of said notice to any Leasehold Mortgagee or trustee as provided by Article XIV hereof).

(4) Any termination of the Submerged Land Lease by TIITF shall be deemed a termination of this Lease, unless the cause of such termination is cured by the Lessee (or Leasehold Mortgagee) within thirty (30) days of termination or waived by TIITF.

Section 16.2. Lessor Remedies for Lessee Default. If an Event of Default occurs hereunder, Lessor may, at any time thereafter (i.e. after the period following the notice provided for in Section 16.1) during the continuance of such Event of Default, do one or more of the following as Lessor's remedies for such Event of Default:

- (a) Subject to the provisions of Article XIV hereof with respect to the rights of any Leasehold Mortgagee and the rights of sublessees, terminate this Lease by giving Lessee written notice of termination (with a copy of said

notice to any mortgagee or trustee as provided in Article XIII hereof), in which event this Lease and the leasehold estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such termination notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article II hereof for the expiration of the term of this Lease, and Lessor, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Demised Premises (including all Improvements comprising part thereof) and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies of Lessor for past due rent or other sums due under the provisions hereof.

- (b) Subject to the provisions of Article XIV hereof with respect to the rights of any Leasehold Mortgagee and rights of sublessees, terminate Lessee's right to possession of the Demised Premises and enjoyment of the rents, issues and profits therefrom, without terminating this Lease or the leasehold estate created hereby, reenter and take possession of the Demised Premises (including all Building Improvements and other Improvements comprising part thereof) and remove all persons and property therefrom, with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for any breaches of covenants (including the payment of rent), then existing or thereafter occurring, and lease, manage and operate the Demised Premises and collect the rents, issues and profits therefrom, all for the account of Lessee, and credit to the satisfaction of Lessee's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing and operating the Demised Premises). If the net rental so received by Lessor exceeds the amounts necessary to satisfy all of Lessee's obligations under this Lease (including reasonable reserves for operations and replacements), Lessee shall be entitled to such excess; provided that all accrued and unpaid rental (including Base Rent, Percentage Rent and Additional Rent) owing to Lessor shall be paid prior to the payment of any such excess to Lessee. In the event Lessor retakes possession of the Demised Premises under the foregoing provisions hereof, Lessor shall not be liable for any damages or injuries arising from its management and operation of the Demised Premises unless caused by the gross negligence or misconduct of Lessor, employees acting within the course and scope of

their employment.

(c) Upon the exercise of Lessor's remedies pursuant to this Section 16.2., Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request to accurately set forth of record the status of the leasehold estate and Lessee's rights hereunder.

(d) Acceleration of Base Rent. In the event that the Lessee is in default in the payment of Base Rent due and owing to Lessor and such default remains unpaid for a period of sixty (60) days after written notice from Lessor to Lessee (with copies to the appropriate Leasehold Mortgagees for whom the Lessor has executed Non Disturbance Agreement, who shall be given an additional thirty (30) days from the date Lessee has to cure such default) then if such Base Rent has not been paid by the Lessee and/or such Leasehold Mortgagee within such ninety (90) day cure period, the Lessor, subject to Lessor's obligation to reasonably mitigate damages associated with Lessee's default, shall have the option and privilege as follows:

1. To accelerate the maturity of the Base Rent installments for the balance of the Term (based on the Base Rent paid in the immediately preceding Lease Year). This option shall be exercised by an instrument in writing signed by the Lessor and transmitted to Lessee notifying of Lessor's election to accelerate all unmatured Base Rent and installments as presently due and payable.

2. In lieu of the election set forth in Section 16.2 (d) 1 may in like manner declare as presently due and payable the unpaid Base Rent installment for such period of Lease Years as may be fixed in the Lessor's notice to the Lessee. The exercise of this option shall not be construed as a splitting of a cause of action nor shall it alter affect the applications of the Lessee to pay rent under the terms of the Lease for the period unaffected by such notice.

3 As to a particular default, the election of Lessor set forth in Section 16.2 d) shall expire and be of no effect at such time as Lessee or the Lessee Mortgagee has cured the default in connection with the payment of Base Rent. The elections provided in Section 16.2 (d) shall be available each time a default in the payment of Base Rent occurs (such that, for example, a decision to not accelerate Base Rent for a prior default will not preclude an election to acceleration of Base Rent upon a subsequent default).

- (e) In addition to the remedies set forth above, if an event of default exists beyond any applicable cure period, then the LESSOR shall be entitled to all other remedies available at law or at equity which are available to LESSOR's in enforcing leases, as such remedies may exist from time to time, but LESSOR shall not have the right to terminate this Lease, other than pursuant to Section 16.2 (a) and may not accelerate the payment of Base Rent, other than as provided in Section 16.2 (d). Notwithstanding the foregoing, to the extent the Lessor seeks damages, the Lessor shall only be able to seek from the Lessee compensatory damages, but the Lessor shall not be entitled to punitive or consequential damages.
- (f) Notwithstanding the existence or adequacy of any remedy provided by law for compensatory damages, the LESSEE agrees that the LESSOR shall have the right of specific performance to compel LESSEE to cure any non-monetary defaults not cured within the applicable cure period.
- (g) The LESSOR may elect to cure any non-monetary default of the LESSEE (which is not cured within the applicable cure period of LESSEE and/or its Leasehold Mortgagee) and, upon such cure taking place, all of the LESSOR's reasonably incurred costs in connection with such cure shall become Additional Rent which shall be due and payable within thirty (30) days of written notice from LESSOR to LESSEE of such costs incurred by LESSOR (together with providing reasonable supporting documents of such expenses). If LESSOR elects to cure a non-monetary default, then LESSEE shall be required to reimburse the LESSOR for such Additional Rent incurred by LESSOR in connection with such acts to attempt to cure within thirty (30) days of written demand, together with reasonable supporting documentation of such expenses.

The liability of Lessee for the payment of Rental and any other sums hereunder shall be expressly subject to the further limitations and provisions of this Article XVI and Section 17.23 hereunder.

Pursuant of any one or more of the foregoing remedies shall not preclude the simultaneous or subsequent pursuit of any other remedy provided herein or any other remedy provided by law or in equity, nor shall the pursuit of any one or more remedies constitute a forfeiture or waiver of any rent or other amount payable by lessee hereunder or of any damages accruing to or suffered by Lessor by reason of any event of default.

ARTICLE XVII.

MISCELLANEOUS

Section 17.1. Rent on Net Return Basis. It is intended that the rent provided for in this Lease shall be a net return to Lessor as provided herein, free of any expenses or charges with respect to the Demised Premises, including, without limitation, maintenance, repairs, insurance, replacement, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate this intention.

Section 17.2. Holding Over. If Lessee, or any of Lessee's successors in interest, fails to surrender the Demised Premises, or any part thereof, on the expiration of the term of this Lease (whether by lapse of time or otherwise), the holding over shall constitute a tenancy from month-to-month terminable at any time by either Lessor or Lessee after 30 days prior written notice to the other, at a monthly rental equal to 150% of the rent paid for the month preceding the expiration of the term of this Lease.

Section 17.3. Waiver of Default. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

Section 17.4. Attorneys' Fees. If, on account of any breach or default by Lessor or Lessee of their respective obligations under this Lease, it becomes necessary for the other to employ an attorney to enforce or defend any of its rights or remedies hereunder, if such party prevails it shall be entitled to collect reasonable attorneys' fees and costs through all appellate proceedings and bankruptcy from the other party.

Section 17.5. Estoppel Certificates. Both parties hereto agree that from time to time, on thirty (30) days prior written request, the non-requesting party will deliver to the requesting party a statement in writing certifying:

- a) if the facts permit, that this Lease is unmodified and in full force and effect (or if there have been modifications, that Lease as modified is in full force and effect and stating the modifications);
- b) the dates to which rent and other charges have been paid;

- c) that the requesting party is not in default under any monetary obligation or other material term or provision of this Lease, and if in default the nature thereof in detail in accordance with an exhibit attached thereto;
- d) if requested by Lessor, Lessee will not pay rent for more than one (1) month in advance, and that this Lease will not be terminated so long as all of the covenants, duties and obligations of Lessor under this Lease are being performed; and
- e) any other information reasonably requested by the requesting party or its mortgagee.

Section 17.6. Approvals and Consents. Wherever in this Lease the approval or consent of any party (including the Lessor's City Manager or other Authorized Representative) is required, it is understood and agreed that unless specifically stated to the contrary, such approval or consent shall be granted or withheld in the Lessor's reasonable discretion and within a reasonable time. Except as may be otherwise specifically provided herein, the following actions under this Lease shall be taken or not taken by the City Manager in the discretion of the City Manager acting reasonably:

- a) The exercise of the Lessor's rights of entry and inspection;
- b) The exercise of the Lessor's right to determine rent (by virtue of authorized adjustments herein) and fair market rent to the extent provided in this Lease;
- c) The exercise of the Lessor's right to approve Subleases and Sub subleases which have been approved as to form by the City Attorney to the extent approval is required by this Lease;
- d) The exercise of the Lessor's right to execute, amend, and release easements and restrictive covenants, and Non-Disturbance and Attornment Agreements which have been approved as to form by the City Attorney;
- e) The exercise of the Lessor's right to review and approve or not approve and specify the basis for disapproval the Lessee's evidence of funding, where such evidence of funding is required under this Lease;

- f) The exercise of the Lessor's right to calculate a payment in lieu of taxes and require the Lessee to pay same;
- g) The exercise of the Lessor's right to execute a joinder in applications for land development approvals which are necessary for the Lessee to obtain from other governmental authorities, and where such applications require evidence of the consent of the property owner;
- h) The exercise of the Lessor's right to receive and approve or not approve and specify the basis for such disapproval the form of Certificates of Insurance, policies, limits, and coverages of insurance, bonds, and environmental assessments;
- i) The exercise on behalf of Lessor, the Lessor's right, upon consultation with the City Attorney, to declare a default, establish a reasonable time to cure the default, determine whether a proposed cure is reasonable, and the right to seek the approval of the City Commission to enforce any provision of this Lease;
- j) The exercise of the Lessor's right to approve adjustments to legal descriptions pursuant to this Lease;
- k) The exercise of the Lessor's rights with respect to hazardous substances as provided in Article 7, including inspections, tests, and procedures as provided therein; and
- l) Other provisions of this Lease where the act of the City Manager is expressly applicable.

All other decisions of the Lessor not listed above, or as may be identified elsewhere herein as being made by the City Manager, shall be made by the City Commission. The City Manager shall, where the City Manager's approval or consent is to be given on behalf of the Lessor, approve, approve with stated conditions, or disapprove and specify with specificity the basis for such stated conditions or disapproval within twenty (20) days of the City Manager's receipt of a written request.

Notwithstanding anything to the contrary contained herein, Lessee acknowledges that when the Lessor acts or exercises any rights or obligations under this Lease, including without limitation the specific approval and consent rights of the Lessor set forth herein, it is doing so in its capacity as the fee owner and Lessor of the

Demised Premises and not in the exercise of its municipal regulatory authority, and that the role of the Lessor as a municipality (including its regulatory and sovereign powers) is separate and distinct from the role of the Lessor as the fee owner and Lessor of the Property under this Lease.

Section 17.7. No Partnership. It is understood and agreed that in leasing and operating the Demised Premises, Lessee is acting independently and is not acting as agent, partner, joint venturer or employee of Lessor.

Section 17.8. Survival. All of the terms, provisions, conditions, agreements and covenants contained in this Lease shall survive the expiration or termination of this Lease with respect to all rights and remedies that have accrued prior to or that accrue on the expiration or termination of this Lease.

Section 17.9. Exhibits. All exhibits, attachments, annexed instruments and addenda-referred to herein shall be considered a part hereof for all purposes.

Section 17.10. Intellectual Property. Lessee shall protect and defend at Lessee's expense, counsel being subject to the Lessor's approval, and indemnify and hold harmless the Lessor from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Lessee's or the Lessor's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Lease. If the Lessee uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Lease are and shall remain the property of Lessor; and Lessee disclaims any copyright in such materials. In the event of and upon termination of this Lease, any reports, photographs, surveys, and other data and documents prepared by Lessee, whether finished or unfinished, shall become the property of Lessor and shall be delivered by Lessee to the Lessor's Contract Administrator within seven (7) days of termination of this Lease by either party. Any compensation due to Lessee shall be withheld until Lessee delivers all documents to the Lessor as provided herein.

Section 17.11. Public Entity Crime Act. Lessee represents that the execution of this Lease will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to Lessor, may not submit a bid on a contract with Lessor for the construction or repair of a public building or public work, may not submit bids on leases of real property to Lessor, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Lessor, and may not transact any business with Lessor in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Lease and recovery of all monies paid by Lessor pursuant to this Lease, and may result in debarment from Lessor's competitive procurement activities.

Section 17.12. Conflicts. Neither Lessee nor any of Lessee's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Lessee's loyal and conscientious exercise of judgment and care related to Lessee's performance under this Lease. Lessee further agrees that none of Lessee's officers or employees shall, during the term of this Lease, serve as an expert witness against Lessor in any legal or administrative proceeding in which he, she, or Lessee is not a party, unless compelled by court process. Further, Lessee agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of Lessor in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Lessee or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Lessee is permitted pursuant to this Lease to utilize subcontractors to perform any services required by this Lease, Lessee agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Lessee.

Section 17.13. Scrutinized Companies. Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or

services of \$1 million or more: The Lessee certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2014), as may be amended or revised. The Lessor may terminate this Contract at the Lessor's option if the Lessee is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2014), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2014), as may be amended or revised.

Section 17.14. Public Records. Each party shall maintain its own respective records and documents associated with this Lease in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law. Lessee and all contractors or subcontractors (collectively the "**Lessee's Contractors**") engaging in services in connection with construction and/or maintenance of the Demised Premises shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by Lessor in order to perform the services rendered.
- (b) Upon request from Lessor's custodian of public records, provide Lessor with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to Lessee for the duration of the Lease and as to Lessee's Contractors for the duration of the contract term and following completion of said contract if Lessee's Contractors do not transfer the records to Lessor.
- (d) Upon completion of said construction or maintenance at the Demised Premises, transfer, at no cost, to Lessor all public records in possession of Lessee or Contractor or keep and maintain public records required by Lessor

to perform the service. If Lessee's Contractors transfer all public records to Lessor upon completion of the Demised Premises, Lessee and Lessee's Contractors shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Lessee or Lessee's Contractors keep and maintain public records upon completion of Demised Premises, Lessee and Lessee's Contractors shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Lessor, upon request from Lessor's custodian of public records, in a format that is compatible with the information technology systems of Lessor.

- (e) If Lessee or any Lessee's Contractors have questions regarding the application of Chapter 119, Florida Statutes, to Lessee or Lessee's Contractors' duty to provide public records relating to its contract, contact the LESSOR's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.

Section 17.15 Use of Language. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

Section 17.16. Captions. The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

Section 17.17. Successors. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest, and successor trustees, heirs, executors, administrators and legal representatives. All rights, powers, privileges, immunities and duties of either party under this Lease, including, but not limited to, any notices required or permitted to be delivered by either party hereunder, may, at such party's option, be exercised or performed by such party's agent or attorney.

Section 17.18. Severability. If any provision herein is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

Section 17.19. Notices. All notices which are required or permitted

hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as by way of example but not limitation, U.S. Express Mail, Federal Express or Purolator), addressed to the party to whom notice is intended to be given at the address set forth below:

Lessor: City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

with copy to: City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

Lessee: Las Olas SMI, LLC
17330 Preston Road, Suite 220A
Dallas, Texas 75252
Attention: Bryan C. Redmond
T: 972-789-1400
F: 972-763-0300
Email: bryan@suntexventures.com

with copy to: Powell Coleman & Arnold LLP
8080 N. Central Expressway, Suite 1380
Dallas, Texas 75206
Attn: Brian DeVoss
Telephone: (214) 890-7122
Fax: (214) 373-8768
Email: bdevoss@pcallp.com

Section 17.20. Fees or Commissions. Each party hereby represents and warrants to the other, that it has neither contacted nor entered into an agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, or taken any action that would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated by this Lease except that Lessee will pay CBRE, Inc. on or before the thirtieth (30th) day after this Lease is executed \$_____. Each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting to the other party from a breach of the representation made by the indemnifying party in this Section 17.20.

Section 17.21. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

Section 17.22. Actions for Nonpayment of Rent and Other Charges. Lessee shall not for any reason withhold or reduce Lessee's required payments of rentals and other charges provided in this Lease, it being agreed that the obligations of Lessor hereunder are independent of Lessee's obligations, except as may be otherwise expressly provided.

Section 17.23. Limitation of Liability. Nothing herein shall be construed as waiver of sovereignty immunity in favor of Lessor, but it is acknowledged by Lessor that it will not have the protections of sovereign immunity in the event that Lessee brings a breach of contract claim arising out of an expressly stated representation or obligation of Lessor under this Lease.. Lessor (and Lessor's officials, directors, constitutional officers and employees, and all of their officers, directors, and employees) shall not be personally liable for recover of any judgments. The limitation of liability contained in this Section 17.23 shall apply equally and inure to the benefit of Lessor, it's their officials, constitutional officers, directors and employees and, successors, and assigns.

Section 17.24. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Lessor, Lessor shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other Unavoidable Delays.

Section 17.25. Short Form Lease. The parties agree not to place this Lease or record, but each party shall, at the request of the other, execute and acknowledge so that the same may be recorded a short form lease or memorandum of lease, stating that Lessee has accepted possession of the Demised Premises, indicating the lease term and any options to extend such term, but omitting rent and other terms, and an agreement specifying the date of commencement and termination of the lease term; provided, however, that the failure to record said short form lease, memorandum of lease or agreement shall not affect or impair the validity and effectiveness of this Lease. Lessee shall pay all costs, taxes, fees and other expenses in connection with or prerequisite to recording.

Section 17.26. Governing Law; Provisions Severable. The laws of the State in which the Demised Premises are situated shall govern the interpretation, validity, performance and enforcement of this Lease. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby. Venue for any lawsuit by either party against the other party or otherwise arising out of this Lease, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

Section 17.27. Interest on Late Payments. In the event any installment of Base Annual Rental, percentage rental or any other sum payable by Lessee to Lessor under the provisions of this Lease is not received by Lessor from Lessee within five (5) days of the date it is due and payable, Lessee shall pay to Lessor an additional sum (Late Charge) equal to five percent (5%) of the amount due. Furthermore, in the event any installment of Base Annual Rental, percentage rental or any other sum payable by Lessee is not received within ten (10) days after its due date for any reason whatsoever, it is agreed that the amount thus due shall bear interest at a rate of twelve percent (12%) per annum, such interest to accrue continuously on any unpaid balance due to Lessor by Lessee during the period commencing with the aforesaid due date and terminating with the date on which Lessee makes full payment of such amounts to Lessor. Any such interest shall be payable as additional rent hereunder, shall not be considered as a deduction from percentage rental, and shall be payable immediately on demand. In addition to any other charges permitted herein, if Lessee makes a payment to Lessor by check and said check is returned to Lessor by Lessee's bank marked NSF (Not Sufficient Funds) , "Account Closed" or is dishonored for some similar reason, then an additional charge of \$25.00 per check shall be paid by Lessee to Lessor.

Section 17.28. AS IS/No Warranties/Covenants of Performance. It is expressly stipulated and agreed that the Demised Premises shall be leased "AS IS," in its present condition, and with all faults and defects, whether known or unknown to either Lessee or Lessor, or both. Lessee acknowledges that its decision to lease the Premises is based solely upon Lessee's comprehensive inspection of the Premises and not upon any warranty or representation of Lessor, or of Lessor's employees, agents, or representatives, with regard thereto. It is expressly stipulated and agreed that none of the obligations to be undertaken hereunder by Lessor shall constitute any form of a warranty, express or implied, all such obligations being contractual covenants of performance. Without limiting the generality of the foregoing, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, and OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE. The parties agree that the herein provision disclaiming warranties, express and implied, and the provisions hereof under which Lessee assumes responsibility for repairs under Section 12.1 hereof, are provisions bargained for by the parties in entering into this Lease. The parties further agree that had warranties been undertaken by the Lessor hereunder or were the Lessor to undertake to perform repairs beyond that contemplated hereunder, the economics of this Lease would have been affected and would have required an increase in rent from that payable hereunder.

Section 17.29. Entire Agreement and Amendments. This Lease embodies the entire agreement between Lessor and Lessee and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or on behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

Section 17.30. Dispute Resolution. If a dispute arises with respect to this Lease, the parties to the dispute shall first attempt to resolve it through direct discussions in the spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute shall be mediated by a mutually acceptable third-party to be chosen by the disputing parties within thirty (30) days after written notice by one of them demanding mediation but any mediation award or order shall not be binding upon the parties unless agreed to in

writing. The disputing parties shall share the costs of the mediation equally. By mutual agreement the parties may postpone mediation until each has completed some specified but limited discovery about the dispute. By mutual agreement the parties may use a nonbinding form of dispute resolution other than mediation.

Section 17.31. Waiver of Jury Trial. LESSOR AND LESSEE WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF THIS LEASE, OR CONSTRUCTION OF THE IMPROVEMENTS OR THE USE AND OCCUPANCY OF THE DEMISED PREMISES OR THE MAINTENANCE THEREOF..

Section 17.32. Bankruptcy or Insolvency. Lessor and Lessee agree that if Lessee becomes the subject of a bankruptcy proceeding under the Federal Bankruptcy Laws, as now enacted or hereinafter amended, then "adequate protection" of Lessor's interest in the Premises pursuant to the provisions of Sections 361 and 363 (or their successor sections of the Bankruptcy Code, 11 U.S.C. §101, et seq.) prior to the assumption and/or assignment of this Lease by Lessee shall include, but not be limited to all (or any part) of the following:

- (1) The continued payment by Lessee of all rent and other sums due and owing under this Lease; the performance of all other covenants and obligations under this Lease by Lessee;
- (2) The hiring of security guards to protect the Premises if Lessee abandons and/or ceases operations; such obligation of Lessee only to be effective so long as Lessee remains in possession and control of the Premises to the exclusion of Lessor.
- (3) The furnishing of a security deposit by Lessee in the amount of three times the then-current monthly Base Annual Rental payable hereunder.

Section 17.33. No Merger of Title. Except upon expiration of the term of this Lease or upon termination of this Lease pursuant to express right to do so set forth herein, there shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in the Demised Premises or any part thereof by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate (including the Building Improvements or any other Improvements hereafter situated upon the Demised Premises), and (b)

the fee estate in the Demised Premises or any part thereof or any interest in such fee estate (including the reversionary interest in the Building Improvements or any other Improvement hereafter situated upon the Demised Premises), unless and until all person having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in the Demised Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

Section 17.34. Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county public health unit.

Section 17.35. Representations. As a material inducement to Lessor entering into this Lease, Lessee hereby covenants, represents and warrants to Lessor as follows:

- (a) **Power and Authority.** Lessee has the full power and authority to make, deliver, enter into and perform pursuant to the terms and conditions of this Lease, and has taken all necessary action or its equivalent, to authorize the execution, delivery and performance of the terms and conditions of this Lease.
- (b) **Good Standing.** Lessee is duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to transact business in the State of Florida.
- (c) **Valid and Binding Obligation.** This Lease is and shall be valid and binding in accordance with their respective terms and conditions.

Section 17.36. No Waiver of Sovereign Immunity. Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity in favor of the City whether at common law or pursuant to F.S. Section 768.28 (2016), but it is acknowledged by Lessor that it will not have the protections of sovereign immunity in the event that Lessee brings a breach of contract claim arising out of the terms and conditions of this Lease.

Section 17.37. Inspection. The Lessor or its Authorized Representative shall have the right to enter the Demised Premises and the buildings, marina slips,

restaurants and improvements constructed thereon, at all reasonable hours and reasonable frequency for the purpose of inspecting the same, or for any other purposes not inconsistent with the terms or spirit of this Lease, provided such inspection shall be performed in a manner to minimize disruption to any business being conducted upon the Demised Premises. Lessor will restore any damage caused to the Demised Premises in connection with its inspections and the Lessor shall provide Lessee reasonable advance notice in order to coordinate such access with operations to be conducted upon the Demised Premises.

Section 17.38. Incorporation. This Lease which comprises the entire Agreement between the Lessor and Lessee supersede any prior negotiations, representations or agreements and consist of the following:

- (1) This Lease and any amendments thereto;
- (2) Las Olas Marina Request for Proposal #264-11791;
- (3) Lessee's Response to RFP #264-11791;

In the event of any conflict between the documents or any ambiguity, the following priority is established:

- (a) This Lease and any amendments thereto;
- (b) RFP #264-11791;
- (c) Lessee's response to RFP #264-11791

Whenever possible, the items listed above shall be taken as a whole, in a complementary and harmonious manner. The general intent is to include all matters necessary for completion of the Improvements on the Demised Premises and to provide for a smooth, efficient operation and management of a Marina, restaurant and ancillary services which provides quality customer service for the boating community and maximizes revenue for the Lessor.

Section 17. 29. Encumbrance of Fee. Notwithstanding anything contained herein, Lessor shall not consent and Lessee shall not encumber the fee interest of Lessor in the Demised Premises.

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EXECUTED as of the day, month and year first written above.

WITNESSES:

CITY OF FORT LAUDERDALE, a
municipal corporation of the State of
Florida.

By _____
John P. "Jack" Seiler, Mayor

Print Name

By _____
Lee R. Feldman, City Manager

Print Name

(SEAL)

ATTEST:

Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:
Cynthia A. Everett, City Attorney

By _____
Lynn Solomon
Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by JOHN P. "JACK" SEILER, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

☒ Personally Known

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by LEE R. FELDMAN, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

☒ Personally Known

WITNESSES:

LAS OLAS SMI, LLC, a Delaware
limited liability company

Print Name

By _____
Name: _____
Title _____

Print Name
(SEAL)

STATE OF TEXAS:
COUNTY OF DALLAS:

The foregoing instrument was acknowledged before me this
____ day of _____, 2017, By _____, in his
capacity as _____ of Las Olas SMI, a Delaware
limited liability company.
(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

**JOINDER AND CONSENT OF THE FORT LAUDERDALE
COMMUNITY REDEVELOPMENT AGENCY TO THE GROUND LEASE
AGREEMENT BETWEEN THE CITY OF FORT LAUDERDALE
AND LAS OLAS SMI, LLC,**

The undersigned agency hereby joins and consents to the Lease and acknowledges its obligations under the definition of Lessor Improvements to demolish and replace the current waterfront support facility with a temporary waterfront support facility through its sunset date of September 30, 2020.

AGENCY:

**Fort Lauderdale Community
Redevelopment Agency**

WITNESSES:

By _____
John P. "Jack" Seiler, Chairman

Print Name

By _____
Lee R. Feldman, Executive Director

Print Name

APPROVED AS TO FORM:
Cynthia A. Everett, General Counsel

ATTEST:

Lynn Solomon, Assistant General Counsel

Jeffrey A. Modarelli, CRA Secretary

Exhibit "A"

Legal Description of the Existing Marina Premises

(See Attached)

DRAFT

Exhibit "B"
Site Plan depicting Demised Premises and Initial Improvements

(See Attached).

DRAFT

Exhibit "C"
Depiction of Lessor Improvements

(See Attached)

DRAFT

Exhibit "D"
Legal Description of Demised Premises

(To be incorporated by amendment upon completion of survey)

DRAFT