

(b) In addition to such other information as may be requested or otherwise set forth in this Agreement, Seven Kings employees assisting the Marina, whether located at the Marina, Seven Kings' corporate offices or elsewhere, may be grouped together or separately provided in the budget and may be increased or decreased as appropriate after the first year of the term of this Agreement, all in Seven Kings' discretion.

2.03 Maintenance, Repairs and Capital Improvements.

(a) Seven Kings shall cause the Marina to be maintained and repaired out of the Operating Account.

(b) In furtherance of Section 2.03(a) Seven Kings shall:

(i) Give attention to preventive maintenance. Seven Kings shall use its reasonable discretion to utilize the services of regular maintenance employees, dock hands, shared maintenance specialists and, as deemed appropriate by Seven Kings, third-party vendors to perform such maintenance at the Marina;

(ii) Systematically and promptly review and investigate all service requests from the City Manager, or designee, and tenants, as applicable; take such action thereon as may be justified in Seven Kings's reasonable discretion and keep records of the same. Emergency requests will be received and serviced as appropriate. Complaints of a material nature will be reported to City after investigation.

(c) Seven Kings will arrange for all necessary Capital Improvements to be made to the Marina (as used in this Agreement, the term "Capital Improvements" shall mean those items which for accounting purposes may not be expensed but must be capitalized according to generally accepted accounting principles in effect on the date hereof); provided, however, that:

(i) Except as provided below and herein, all Capital Improvements where (A) any single expenditure is in excess of Ten Thousand Dollars (\$10,000.00), and up to Twenty-Five Thousand Dollars (\$25,000.00), must have the prior approval of the City Manager, or designee, and (B) any single expenditure in excess of Twenty-Five Thousand Dollars (\$25,000.00) must have prior approval of the City Council (which approval in both such instances shall be deemed to have been received if the Capital Improvement is included in the current approved Operating Plan and Budget);

(ii) All permits, licenses, and authorizations required to be procured in connection with any Capital Improvement shall be procured, or caused to be procured, by Seven Kings, at City's expense;

- (iii) Any Capital Improvements shall be made promptly in a good and workmanlike manner and in compliance with all applicable laws and regulations; and
- (iv) The cost of any Capital Improvements shall be paid promptly, or caused to be paid, by Seven Kings out of the Capital Improvements budget so that the Marina shall, if and to the extent City so desires, at all times be free from any lien, encumbrance or other charge for labor, services, or materials supplied or claimed to have been supplied to the Marina and used or expended for such Capital Improvements.
- (d) Notwithstanding any of the foregoing provisions, no prior notification to City will be required, regardless of the amount of the expenditure, in connection with the maintenance and repair of the Marina for emergency repairs involving immediate danger to the health, safety or welfare of persons or property, or as required to avoid suspension of any necessary service to the Marina, in Seven Kings' reasonable discretion. For all such emergency expenses, Seven Kings will notify City of such emergency expenses as promptly as possible however Seven Kings may immediately proceed with such maintenance and repair work as deemed appropriate by Seven Kings to address the emergency condition.

(e) Seven Kings shall not borrow any money or execute any promissory note, bill of exchange or other obligation, mortgage or encumbrance in the name and on behalf of City to pledge the credit of City without City's prior consent except for purchases made in the ordinary course of business in the management of the Marina within the scope of this Agreement.

2.04 Rentals, Collections and Bank Accounts.

During the term of this Agreement, Seven Kings will endeavor to:

(a) Collect, when due, all rents, membership dues, charges, fees, sales and other applicable taxes and other amounts receivable on the City's account in connection with the management and operation of the Marina. Such receipts will be deposited in a bank account separate from all other accounts and funds, in a bank account chosen by Seven Kings, which shall be a qualified public depository. This account will be carried in Seven Kings' name, as determined appropriate by Seven Kings, and be designated as an operating account ("Operating Account"). Signatory authority on the Operating Account will be given to Seven Kings only. Viewing Access to the Operating Account will be given to City. All of the Marina operating expenses, as well as the Management Fees and other expenses to be paid or reimbursed to Seven Kings in accordance with the terms and provisions of this Agreement, shall be paid out of the Operating Account by Seven Kings.

(b) Collect deposits, and disburse security deposits and advance rents, as applicable, in accordance with the terms of each lease and applicable state law. City shall provide to Seven Kings, in writing, a certified list of all security deposits and advanced rents held by City,