

## MARINA OPERATIONS LEASE AGREEMENT WITH THE CITY OF RIVIERA BEACH

**THIS LEASE AGREEMENT**, (hereinafter referred to as the "Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between **RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY**, a body corporate and politic created pursuant to Chapter 163, Part III, Florida Statutes, (hereinafter referred to as "Landlord" or "Agency") and the **CITY OF RIVIERA BEACH**, a Florida municipal corporation (hereinafter referred to as "City" or "Tenant").

### WITNESSETH:

**WHEREAS**, Landlord is the Lessee of certain real property being, lying and situated in the **CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA**, such real property having a street address of **200 East 13<sup>th</sup> Street, Riviera Beach, Florida 33404** (hereinafter referred to as the "Marina Uplands"); and

**WHEREAS**, Landlord has certain office, shop and/or storage space located on the Marina Uplands available for lease to the City for the City's marine operations; and

**WHEREAS**, Landlord desires to make a portion of the Marina Uplands available for lease to the City for its Marine operations, more specifically described as approximately 4,240 Sq. Ft. of combined ground and conditioned space [hereinafter referred to as the "Premises"]. Breakdown of parcels and/or work areas are set forth in Exhibit "C"; and

**WHEREAS**, City desires to lease the Premises described above from Landlord based on the terms and conditions as set forth herein.

**NOW, THEREFORE**, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the parties hereto hereby agree as follows:

**1. TERM:** This Agreement shall commence on October 1<sup>st</sup>, 2015 ('Commencement Date) and shall continue until a permanent location has been built and occupied by the City's marina department and/ or designated 3<sup>rd</sup> Party Marina Management Company. If at any time Tenant desires to terminate the Agreement, Tenant may do so by providing to Landlord written notice of its intention to terminate at least one hundred twenty (120) days prior to September 30<sup>th</sup> of each year and include the desired date of termination. If at any time Landlord desires to terminate the tenancy, for whatever reason, Landlord may do so by providing to Tenant written notice of intention to terminate at least one hundred twenty (120) days prior to September 30<sup>th</sup> of each year and include the desired dates of termination of the tenancy.

**2. RENT:** Under the terms of this Agreement, "Rent" shall consist of all monetary obligations owed to Landlord by Tenant in accordance with this Agreement, not

including the Security Deposit. Tenant shall pay to Landlord \$ \$44,819.77 per year as Rent for the first year of the Agreement increasing by 3% each subsequent year. The details of the Rent calculation are set forth in Exhibit "A" which reflects the parcels which compromise the Premises and the computation of rental rates. Rent shall be due on the first (1<sup>st</sup>) day of each month and shall be considered late after the third (3<sup>rd</sup>) day of each month. Payment of said rent is not contingent upon Tenant's receipt of an invoice prior to the due date from the Landlord. Payment shall be made to the Riviera Beach Community Redevelopment Agency and mailed or delivered to 2001 Broadway, Suite 300, Riviera Beach, FL 33404, Attention: Accounting Department.

## 2.1 Parking Clause:

- A. During the term of this lease and when the Landlord brings online additional parking resources, i.e. (parking garage structure), the Landlord will be agreeable to leasing parking spaces to the Tenant for Tenant's sole use. Tenant agrees to lease from Landlord and Landlord agrees to lease to Tenant a total of \_\_\_ reserved spaces in the Marine Way parking lot, for the use of Tenant, its employees and or their customers and vendors that they desire. No deductions or allowances shall be made for days when Tenant or any of its employees, customers and vendors do not utilize the parking facilities or for Tenant utilizing less than all of the reserved spaces. Tenant shall not have the right to lease or otherwise use more than the number of reserved spaces set forth above.
- B. During the Term, Tenant shall pay Landlord, as Additional Rent, the sum of \$\_\_\_\_\_ per month, plus applicable tax thereon, if any, for each reserved Space leased by Tenant hereunder. During the term of the lease, such rates may be adjusted from time-to-time to reflect the then current rate for parking in Riviera Beach Marina Village.
- C. Except for particular spaces and areas designated by Landlord for reserved parking, all parking in the surface parking areas, parking garages, including any overflow lot spaces (collectively, the "Spaces"), serving the Riviera Beach Marina Village shall be on an unreserved, first-come, first-served basis.
- D. Landlord shall not be responsible for money, jewelry, automobiles or other personal property lost in or stolen from the Spaces, regardless of whether such loss or theft occurs when the Spaces are locked or otherwise secured. Except as caused by the negligence or willful misconduct of Landlord and without limiting the terms of the preceding sentence, Landlord shall not be liable for any loss, injury or damage to persons using the Spaces or automobiles or other property therein, it being agreed that, to the fullest extent permitted by law, the use of the Spaces shall be at the sole risk of Tenant and its employees.
- E. Landlord shall have the right from time to time to designate the location of the reserved Spaces and to promulgate reasonable rules and regulations

regarding the Spaces, if any, the Spaces and the use thereof, including, but not limited to, rules and regulations controlling the flow of traffic to and from various parking areas, the angle and direction of parking and the like. Tenant shall comply with and cause its employees to comply with all such rules and regulations as well as all reasonable additions and amendments thereto.

- F. Tenant shall not store or permit its employees, customers or vendors to store any vehicles in the Spaces without the prior written consent of Landlord. Except for emergency repairs, Tenant and its employees, customers or vendors shall not perform any work on any automobiles or perform any marine related repair work from their vehicles while located in any of the Spaces or on the Property. If it is necessary for Tenant or its employees to leave an automobile in the Garage or on the surface parking areas overnight, Tenant shall provide Landlord with prior notice thereof designating the license plate number and model of such automobile.
- G. Landlord shall have the right to temporarily close the Spaces or certain areas therein in order to perform necessary repairs, maintenance and improvements, to the Spaces, if any. Landlord shall have the right to temporarily close the Spaces or certain areas to accommodate future development projects and or special events.
- H. Tenant shall not assign or sublease any of the Spaces without the consent of Landlord. Landlord shall have the right to terminate this Parking Agreement with respect to any Spaces that Tenant desires to sublet or assign.
- I. Landlord may elect to provide parking cards or keys to control access to the Spaces, if any. In such event, Landlord shall provide Tenant with one card or key for each Space that Tenant is leasing hereunder, provided that Landlord shall have the right to require Tenant or its employees to place a deposit on such access cards or keys and to pay a fee for any lost or damaged cards or keys.
- J. Landlord hereby reserves the right to enter into a management agreement or lease with an entity for any Parking Garage ("Garage Operator"). In such event, Tenant, upon request of Landlord, shall enter into a parking agreement with the Garage Operator and pay the Garage Operator the monthly charge in accordance with prevailing rates, and Landlord shall have no liability for claims arising through acts or omissions of the Garage Operator unless caused by Landlord's negligence or willful misconduct. It is understood and agreed that the identity of the Garage Operator may change from time to time during the Lease Term. In connection therewith, any parking lease or agreement entered into between Tenant and a Garage Operator shall be freely assignable by such Garage Operator or any successors thereto.

K. Landlord agrees to mark and post the reserved Spaces for use only by the customers of Tenant's marina business, but such exclusive use of the "reserved" Spaces by the customers of Tenant's marina business shall be applicable only during the hours Tenant is open for business to the public. Landlord shall police and enforce the posted limitations and rules regarding the use of such reserved Spaces, including, without limitation, towing of vehicles illegally parking therein. Tenant authorizes Landlord to cause any such illegally parked car to be towed from the building parking areas. The Landlord agrees to cooperate and work closely with the Tenant concerning the removal of illegally parking vehicles in reserved Spaces, for which a monthly rent is paid.

**3. LATE CHARGE:** In the event that any payment required to be paid by the Tenant hereunder is not made within five (5) business days of the due date, Tenant shall pay to Landlord, in addition to such payment, a "late fee" in the amount of five percent (5%) of the total rent or fifty dollars (\$50) whichever is greater.

#### **4. OPERATING COSTS**

##### 4.1 Definitions And Obligation.

4.01 Obligation/Definition. Subject to the other provisions of this Section 4 and the limitation set forth in section 4.03, Tenant agrees to pay to Landlord, as Additional Rent, Tenant's Proportionate Share of all actual costs and expenses (the "Operating Costs") of every kind and nature paid or incurred by Landlord, or for which Landlord is or becomes obligated during the Term, for operating, managing, equipping, securing, policing, protecting, heating, air conditioning, providing sanitation and sewer and other services, lighting, insuring (including self-insurance and the payment of deductible amounts under insurance policies), repairing, replacing, and maintaining (a) the Common Areas, (b) all other areas, facilities, and buildings used in the maintenance and operation of the Marina, whether located within or outside of the Marina, including parking garage facilities, if any. Operating Costs shall include, but not be limited to, the costs and expenses of water, gas, sewage, electricity, refuse disposal, extermination, and other utilities (including all energy costs) including all usage, service, hook-up, connection, availability, and/or standby fees or charges pertaining to same; illumination and maintenance of signs, whether located within or outside the Marina; total compensation and benefits of all management, bookkeeping, secretarial personnel, and other persons involved in the performance or administration of the work specified in this Paragraph (including, without limitation, payroll taxes, premium s for workers' compensation and other insurance, and other employee benefits of all such personnel); Marina directories, electronic or otherwise; cleaning; lighting; gardening and landscaping; uniforms for maintenance, administrative, and security personnel for the Marina; charges of any independent contractor who, under contract with Landlord or its representatives, does any of the work of operating, managing, maintaining, or repairing the Common Areas; maintenance, repair, and replacement of decorations in non-leasable areas; acquisition,

maintenance, repair, and replacement of seasonal decorations; premiums for liability and property damage insurance and all other insurance as provided in Article XIV [Insurance] including, without limitation, insurance against vandalism, plate glass breakage, fire and extended coverage insurance, and related coverage as determined by Landlord; repair and maintenance; personal property taxes; licensing fees and taxes; audit fees and expenses; all costs and expenses of enforcing the rules and regulations established by Landlord for the Marina; operation, maintenance, repair, and replacement of mechanical equipment, including any automatic door openers, elevators, escalators, lighting fixtures (including replacement of tubes and bulbs), fire sprinkler systems, security systems, public address system, life/safety system, energy maintenance system, and all other items of equipment used in connection with such areas or the central mechanical plant serving the Marina; patching, repairing, resurfacing, topping, striping, and marking of all parking and drive areas; reglazing; regulation of traffic; curbs, gutters, sidewalks, drainage and irrigation ditches, conduits, pipes, and canals serving the Marina; professional and technical fees and all other disbursements incurred in connection with the performance of any of the foregoing; and any other expense or charge, whether or not hereinbefore mentioned, which, in accordance with generally accepted management principles, would be considered as an expense of managing, operating, equipping, maintaining, or repairing the Common Areas; and a Landlord's administrative fee shall also be added to the foregoing costs and expenses, which fee shall be the lesser of the management fees incurred by Landlord for the applicable period or an amount equal to 10% of the total of all of the foregoing costs and expenses. However, the management fee shall not be duplicative of charges for the administrative, bookkeeping, etc., costs referred to above which are already included in Operating Costs. Operating Costs shall also include the costs of promoting the Marina Uplands Development, which costs shall be included in the costs charged to Tenants hereunder.

Operating Costs will exclude depreciation on the Marina and the initial construction of the Common Areas, cost of improvements made for other tenants of the Marina, real estate brokers' commissions, costs of enforcing leases, costs that are reimbursed by tenants, compensation paid to persons in commercial, "for profit" concessions operated by Landlord, costs reimbursed by insurance or under warranty coverage, costs of correcting code violations, and mortgage interest. Any expense that would normally be treated as a capital expense under generally accepted accounting principles shall be included in Operating Costs, but shall be amortized in respect to the Lease over the applicable period, according to the Internal Revenue Service guidelines,. Without limiting the generality of the foregoing, the cost of any complete roof replacements and any complete parking lot repaving shall be deemed to be capital expenses and shall be amortized over the applicable period. Notwithstanding the foregoing, the Tenant's obligation to pay the Common Area Expenses shall not exceed \$24,820.79 ("CAM Rate") for the year 2016 and shall not increase by more than 3% annually on the CAM Amount. Any Common Area Expenses in excess of these amounts shall be the responsibility of the Tenant.

In the event the Landlord elects to implement parking charges in Riviera Beach Marina Village and/or enters into a management agreement or lease with an entity for

any Parking Garage ("Garage Operator") the following shall be specifically removed and excluded from Common Area Expenses: parking garage facilities, if any; re-paving, patching, repairing, resurfacing, topping, striping, and marking of all parking and drive areas; reglazing; and regulation of traffic as well as any ancillary and/or management costs incurred by the Landlord in connection with the implementation, oversight and enforcement of any activities taken in connection with the charging of any parking fees and/or performance of any agreements with a "Garage Operator" including but not limited to which, in accordance with generally accepted management principles, would be considered as an expense of managing, operating, equipping, maintaining, or repairing the parking areas.

Anything herein to the contrary notwithstanding, Operating Costs shall NOT include the following (the "Excluded Costs"): (i) the maintenance of Bicentennial Park; (ii) the maintenance and operation of the utility area which is currently owned by the utility district; (iii) the cost of any initial construction incurred by Landlord in developing the Marina or the Common Areas.

#### 4.02 Payment.

(a) Tenant's Proportionate Share of Operating Costs shall be paid, in advance, in monthly installments, on or before the first day of each and every calendar month during the Term, in an amount estimated by Landlord. At any time after receipt of all bills for Operating Costs attributable to any Lease Year during the Term, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's Proportionate Share of Operating Costs for such period. If the total amount paid by Tenant under this Paragraph for any such period shall be less than the actual amount due as shown on the statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, within 10 days after delivery of the statement; and, if the total amount paid by Tenant under this Paragraph for any such period shall exceed the actual amount due as shown on the statement, the excess shall be credited against the next installment(s) of Tenant's Proportionate Share of Operating Costs, or, in respect to the last month of the Term, provided Tenant is not in default and is not indebted to Landlord, the excess shall be refunded to Tenant. Notwithstanding the above, if Landlord at any time determines that the amount of Operating Costs actually being paid or incurred by Landlord exceeds the estimate on which Tenant's Proportionate Share of Operating Costs was computed, then Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of Fixed Rent due an amount sufficient to result in Tenant's paying its full Proportionate Share of Operating Costs as computed on the basis of Landlord's revised estimate of Operating Costs. Tenant's share of Operating Costs shall be prorated for any partial Lease Year under the Lease.

(b) The term "Proportionate Share" means approximately 3.23% subject to adjustment based on the Leasable Building Areas (defined below) of parcels within the Marina. Exhibit "B" shows the initial Proportionate Shares of the spaces in Phase I including the per square foot operating costs. The determination of Leasable Building Area of all parcels, including Parcels noted in Exhibit B, as Golf Cart Storage Area,

Work/Storage Area and Marina Ops Trailer for purposes of calculating Proportionate Share shall be the square footage of area within each retail building, including demised work space and or site storage areas and areas devoted to open air operation usage such as patios and or attached wooden decks, and shall exclude the area of any building not opening on to the plaza or public promenade, basements, and the building roofs unless opened to the public. The Proportionate Share of the spaces within the first phase of the Marina Development ("Phase I") shall be adjusted at the time any new phase is added to the Marina development beyond Phase I (an "Expansion"). The Proportionate Shares of all of the spaces in Phase I and the Proportionate Shares of spaces within the expansion phase shall be equitably established based on Leasable Building Area of all parcels within the applicable area with an equitable share assigned to the City Marina. The Leasable Building Area of any active phase of development shall be calculated based on the potential Leasable Building Area of the applicable parcels whether or not the same are built or occupied.

(c) Audit Rights For Proportional Share.

(1) Tenant shall be afforded, at its request no more than one (1) time each year, reasonable access to Landlord's books and records for the sole purpose of verifying all of the Operating Costs from which Tenant's Proportionate Share is calculated. Within ninety (90) days after the delivery of a year-end statement, Tenant shall notify Landlord 30-days in advance if it intends to examine Landlord's books and records with respect to the Operating Costs shown on each statement. If Tenant so notifies Landlord then Tenant and its representatives shall have the right, at Tenant's expense, during normal business hours, for a period of thirty (30) days after Tenant's notice ("Examination Period") to examine Landlord's books and records relating to the Operating Costs for the previous operating year and make copies thereof. Tenant shall notify Landlord during said Examination Period if it disputes such statement, setting forth the reasons therefor (a "Notice of Dispute"). If Tenant either (i) fails to notify Landlord of Tenant's intent to examine Landlord's books and records within ninety (90) days after receipt of the statement, or (ii) fails to give Landlord a Notice of Dispute within the Examination Period, then Tenant shall be deemed to have accepted such statement as true and correct for all purposes hereof. Tenant acknowledges and agrees that any records reviewed under this clause constitute confidential information of Landlord, which shall not be disclosed without Landlord's written approval.

(2) The examination shall be at the sole cost and expense of Tenant, unless it is finally determined that the disputed statement contains an error in an amount in excess of ten percent (10%) of the total amount of the statement, in which case Landlord shall pay Tenant's reasonable audit costs for the examination, unless the variance is due to a typographical, mathematical or other unintentional error by Landlord. In no event shall Landlord be obligated to pay any of Tenant's costs that are calculated on a percentage of the recovery by Tenant or any other contingency-based fees.

(3) If any audit by Tenant of Landlord's books and records pursuant to the foregoing proves an overstatement of the Operating Costs in excess of the amount set

forth in the statement, Landlord shall pay Tenant the amount of said overstatement to the extent Tenant has paid such amount to Landlord. If the audit proves an understatement, Tenant shall pay the amount of such understatement.

4.03 Limitation of Operating Costs for Initial Years. Notwithstanding any other provision of this Section 4, Tenant shall have no responsibility for payment to Landlord of Operating Costs until the Commencement Date. In addition, Tenant's liability for Operating Costs shall not be increased more than three percent (3%) starting on October 1<sup>st</sup>, 2018 over the prior year. Therefore, Tenant's liability for Operating Costs in any year commencing with the third year subsequent to the Effective Date shall be the lower of (i) the actual costs of Tenant's Proportionate Share for such year as calculated hereunder or (ii) the amount of Tenant's Proportionate Share for the prior year increased by five percent (5%).

#### 4.04 Reimbursable Fees and Expenses

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(a) Expenses. Tenant shall pay to Landlord the sum of \$237,000 for all reasonable out of pocket expenses incurred by Landlord in connection with the extension of use of Newcomb Hall in order to facilitate the installation of needed services at the Temporary Marina Operations Trailer to facilitate the relocation of City personnel as set forth in Exhibit D. Services rendered hereunder and administration and management of the preparation, logistics and management of the relocation efforts, including, among other things: electrical, plumbing, telecommunications, utility expenses, Florida Power and Light expenses, generators and other needed rental equipment expenses, fuel expenses, permitting fees, design fees and any and all associated construction fees including but not limited to delay charges from the Construction Manager relating to interruption of Phase I construction schedule and other reasonable general out-of-pocket expenses and site/trailer improvement allowances that were/are needed to facilitate the extension of use of Newcomb Hall and re-location of the Marina Operations Team into the Temporary Marina Operations Trailer (the "Expenses").

(b) Third Party Expenses. Notwithstanding Section 4.03, in addition to the reimbursement of Expenses, Tenant shall pay to Landlord, within 30 calendar days of delivery of any invoice by Landlord, all out-of-pocket, third party expenses incurred by Landlord, on a dollar-for-dollar basis, in connection with goods and services purchased and or rented by Landlord for the use by or benefit of Tenant. All such third party expenses will be reimbursed up to the extent of actual payments made to third parties or the proportionate share attributable to Tenant on behalf of Tenant.

**5. USE OF PREMISES:** The Premises, including the actual location, listed square footage and any attached site drawings, shall be used by Tenant solely for the



purpose of carrying on the business, profession or trade as outlined by Tenant's valid Occupational License as issued by the City of Riviera Beach and as more particularly set out in Exhibit "A" to this Agreement. No part of the Premises shall be used at any time during the Term of this Agreement for any purpose other than the City's Marine Operation Center. Tenant agrees and understands that the Landlord may need to move the Tenant's leased Premise location, at the Landlord's sole expense, to accommodate the needs of the current on-going construction project at the Marina Uplands. This includes, but is not limited to any future private and or public development that may occur within the Marina Uplands area as defined by the site Master Plan. The terms of this Agreement shall apply to any relocated Premises.

**6. CONDITION OF PREMISES:** Tenant stipulates, represents, and warrants that Tenant has examined the Premises and that they are, at the time of this Lease in good order, repair and in safe, clean and tenantable condition.

**7. ASSIGNMENT AND SUB-LEASING:** Tenant shall not assign this Agreement, or sub-lease or grant any license to use the Premises or any part thereof without the prior written consent of Landlord.

**8. ALTERATIONS AND IMPROVEMENTS:** Tenant shall make no alterations to the buildings or improvements on the Premises without authorization from Landlord. Any and all such alterations shall be owned by Landlord upon Termination of the Lease.

**9. HAZARDOUS MATERIALS:** Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or ultra hazardous by any responsible insurance company.

**10. MARINA RULES AND REGULATIONS:** Tenant acknowledges receipt of a copy of the current Marina Rules and Regulations and agrees to abide by said Marina Rules and Regulations as now existing or hereafter amended. A copy of the Marina Rules and Regulations are attached as Exhibit "B" this Agreement and incorporated by reference. A copy of the Marina Rules and Regulations are also on file as the Landlord's office and posted or available at the Marina uplands. It is the Tenant's sole responsibility to make sure he or she is familiar with the Marina Rules and Regulations by periodically reviewing said Marina Rules and Regulations as they are amended from time to time. Failure to be familiar with the Marina Rules and Regulations shall not relieve Tenant of his or her obligation and responsibility to abide by the Marina Rules and Regulations. The Tenant acknowledges that the Landlord shall have full authority in the interpretation and enforcement of the Marina Rules and Regulations.

**11. UTILITIES:** Tenant shall be responsible for arranging for and paying for all utility services required on the Premises which include electric, water, sewer, and garbage.

**12. MAINTENANCE AND REPAIR, RULES:** Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition during the term of this Agreement.

**13. DAMAGE TO PREMISES:** In the event the Premises are destroyed or rendered wholly uninhabitable by fire, storm, earthquake, or other casualty not caused by the negligence of Tenant, this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder. Should a portion of the Premises thereby be rendered uninhabitable, the Landlord shall have the option of either repairing such injured or damaged portion or terminating this Lease. In the event that the Landlord exercises its right to repair such uninhabitable portion, the rental shall abate in the proportion that the injured part bears to the whole Premises, and such part so injured shall be restored by Landlord as speedily as practicable, after which the full rent shall recommence and the Agreement continue according to its terms.

**14. INSPECTION ON PREMISES:** Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Agreement to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon.

**15. ANIMALS: NO PETS ALLOWED ON THE PREMISES.**

**16. SMOKING: NO SMOKING ALLOWED ON THE PREMISES.**

**17. ABANDONMENT:** If at any time during the term of this Agreement Tenant abandons the Premises or any part thereof, Landlord may, at Landlord's option obtain possession of the Premises in the manner provided by law, and without becoming liable to Tenant for damages or for any payment of any kind. TENANT AGREES AND ACKNOWLEDGES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY CHAPTER 83, FLORIDA STATUTES, LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANTS PERSONAL PROPERTY.

**18. INDEMNIFICATION:** Tenant agrees to indemnify the Landlord against all claims, actions, liability and damages, including attorney's fees whether claimed by the Tenant, its guests, family, employees, agents or other third parties, arising out of the Tenant's possession and/or use of the assigned space and other facilities of the Premises.

Tenant agrees to indemnify the Landlord from and against any claim, suit, loss, liability or costs, including attorney's fees, arising out of, or resulting from, any use, operation or occupancy of the Premises by Tenant or anyone claims by, through or under Tenant.

Nothing contained herein shall constitute or be construed or interpreted as consent by the Landlord to be sued or as a waiver of the Landlord's sovereign immunity beyond the limits provided in Section 768.28, Florida Statutes.

**19. INSURANCE:** Tenant hereby agrees and covenants for the term of this Agreement to maintain the following insurance policy(s) with respect to any Tenant leasing space on the Premises under this Agreement.

(a) General Liability Coverage, with a combined single limit of not less than Three Million Dollars (\$3,000,000.00) naming the Landlord as additional insured. Said policy shall include coverage for all liability which may be incurred by the Tenant in its maintenance and operation of its business on the Premises including its underground fuel tanks and associated fuel lines.

(b) The Insurer(s) must be authorized to do business in the state of Florida. The policies and the insurer must be approved by the Landlord, which approval shall not be unreasonably withheld.

(c) All Insurance policies will require that the Landlord be notified at least thirty (30) days prior to any material alteration, cancellation, or non-renewal of the coverage. A certificate of such insurance with the Landlord being named as an additional insured, and a copy of the insurance policies evidencing that the coverage is in full force and effect on the date hereof and throughout the Term, in a form acceptable to the Landlord, shall be furnished to the Landlord within seven (7) days after the effective date of the term. Renewal certificates shall be furnished by the Tenant to the Landlord thirty (30) days prior to the date of expiration of any of any of the policies on the prior certificate.

**20. TERMINATION:** In addition to the Landlord's ability to terminate this Agreement upon Tenant's default, the Landlord and Tenant, upon mutual consent, may terminate this Agreement immediately upon written notice to Tenant for the following reasons:

A. The Marina Uplands or portion thereof becomes damaged, unserviceable and/or presents a danger to the public safety, health and/or welfare;

B. The Marina Uplands or portion thereof including, but not limited to, its facilities, equipment and/or utilities are to be demolished, upgraded, repaired or renovated;

C. Any other reason determined in the sole discretion of the landlord.

The Landlord may terminate this Agreement as specified above in subparagraphs A, B, or C upon ten (10) days written notice to the Tenant. If the Landlord terminates this Agreement for any of the reasons specified above in subparagraphs A, B, or C, any monthly fee paid by the Tenant shall be refunded to the Tenant, without interest, on a prorated basis within sixty (60) days of said termination. The Tenant may terminate this Agreement upon thirty (30) days written notification to the Landlord. Upon such termination, the Landlord will be excused from further performance under this Agreement and the Landlord shall be entitled to immediately remove Tenant's property from the Marina at Tenant's risk and expense. Nothing in this Agreement or in the event of termination shall the Landlord be deemed a bailee of Tenant's property whether stored or removed pursuant to this Agreement.

**21. VENUE:** This Agreement shall be interpreted in accordance with the laws of the State of Florida and the laws of the United States. Venue for any dispute arising out of this Agreement shall be in Palm Beach County or in the United States District Court for the Southern District of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**22. ENFORCEMENT COSTS:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

**23. SEVERABILITY:** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be not affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**24. JOINT AND INDIVIDUAL OBLIGATION:** The Tenant, if more than one (1) individual or entity, shall be jointly and individually obligated to pay and shall pay all fees, charges and costs, including reasonable attorney's fees, incurred by City under this Agreement including in any non-judicial proceedings or judicial proceedings and appeals therefrom to enforce any and all provisions of this Agreement, including any sums due the City under this Agreement.

**25. WAIVER OF JURY TRIAL:** The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

**26. TIME:** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

**27. CAPTIONS:** The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Agreement, not shall such headings affect the meaning or interpretation of this Agreement.

**28. EXHIBITS:** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

**29. SUBORDINATION TO GOVERNMENT AGREEMENTS:** Tenant acknowledges and agrees that this Agreement is subject to and subordinate to any existing or future agreements of any kind between the Agency and any other public agency of the United States, state,, county or any official board, commission, district or other body politic of the county, state or federal government, now or hereafter created, whether specifically mentioned here or not, pertaining to development, construction, operation or maintenance, or the funding thereof, of the Marina Uplands. The Landlord reserves the right to further develop, improve, maintain, modify and repair the Marina uplands at any time regardless of any impact of the Tenant and without interference or hindrance by the Tenant.

**30. ENTIRETY OF AGREEMENT:** The Agency and the Tenant agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein.

**31. WAIVER AND RELEASE OF CLAIMS ARISING FROM USE OF THE PREMISES FOR TENANT BUSINESS OPERATIONS:** The Tenant acknowledges that the Landlord is not liable for the Tenant's business environment or quality of any provided land based area within the Marina Uplands area as noted on the site Master Plan. Similarly, the Premises and the Tenant's business assets (including but not limited to Tenant associated kiosks, sheds, storage bins, golf carts, etc.) are located within an active construction site, and Tenant acknowledges and agrees to assume full responsibility for protection of its assets and the management of the Tenant's provided customer experience from issues that could arise from operating in this construction environment. The Tenant acknowledges and agrees that the Landlord does not have sufficient control over the provided land based business operation area and the overall Marina Upland's environment (collectively referred to as "Use Risks"), and therefore you agree to waive any claims relating to these Use Risks and fully release the Landlord and their affiliates, employees and agents from any and all liability that could arise from such Use Risks.

[Signatures of following page]

**IN WITNESS WHEREOF**, the Parties to this Agreement have set their hands and seals on the day and date first written above.

LANDLORD

TENANT

By: \_\_\_\_\_

By: \_\_\_\_\_

WITNESS

WITNESS

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