

LEASE AGREEMENT
between
The City of St. Petersburg, Florida, a municipal corporation
and
St Pete Marina LLC

THIS LEASE AGREEMENT ("Lease") made and entered into this 1st day of June, 2021 ("**Effective Date**"), by and between the City of St. Petersburg, Florida, municipal corporation ("**City**") whose post office address is Post Office Box 2842, St. Petersburg, FL 33731-2842, and **St Pete Marina LLC**, whose post office address is 308 Letterman Rd., Knoxville, Tennessee 37919-6328 ("**Lessee**") (collectively "**Parties**").

WITNESSETH:

WHEREAS, the City owns a marina located at 500 1st Ave. SE, St. Petersburg FL 33701; and

WHEREAS, a concept plan for the renovation of the marina, including replacement or reconstruction of a portion of dock components, replacement or remodeling of support facilities, and installation of wave attenuation systems ("**Development Concept Plan**") was prepared and submitted to the City in accordance with the terms set forth in a pre-development agreement; and

WHEREAS, the City reviewed the Development Concept Plan and desires to enter into this Lease with Lessee for Lessee to operate the marina and make the Required Capital Improvements (as defined herein); and

WHEREAS, the City also desires for Lessee to perform certain seawall work as described herein; and

WHEREAS, Lessee represents that it possesses the personnel, skills, experience, and financial resources necessary to operate the marina and make the Required Capital Improvements in accordance with this Lease; and

WHEREAS, the Parties have agreed to the terms and conditions set forth in this Lease for the leasing of the Premises (as defined herein) by Lessee.

NOW THEREFORE, in consideration of the foregoing recitals (which are incorporated herein as an integral part hereof) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and the promises and covenants contained herein, including the exhibits, the Parties agree as follows:

1. **DEFINITIONS.** The following terms shall have the meaning ascribed to them below:

A. "**Additional Rent**" means any and all amounts due to the City pursuant to this Lease that are not included in Base Rent or Percentage Rent, including but not limited to real property taxes, Late Fees (as defined herein), all other taxes and fees payable to the City, as well as any other miscellaneous money due to the City under this Lease.

B. "**Base Rent**" means all money due to the City that is fixed in an absolute amount for the Term (as defined herein) of this Lease, plus all applicable sales tax on said money, as set forth in subparagraph 6.A.

C. "**City Charter**" means Chapter 15505, Laws of Florida, 1931, as amended and as converted into an ordinance by Ordinance 118-F of the City, as amended.

D. "**City Council**" means the City Council of the City established pursuant to the City Charter.

E. "**Claims**" means claims, liens, suits, actions, damages, liability, assertions of liability, losses, costs and expenses in law or in equity, of every kind and nature whatsoever.

F. "**Due Date**" means the fifteenth (15th) day of each month.

G. "**Expended Amount**" means the actual amount expended by Lessee for the Required Capital Improvements as of the Expiration Date if the parties do not enter into a new lease pursuant to paragraph 5.B and a termination fee is owed pursuant to subparagraph 14.A. or as of effective date of earlier termination if a termination fee is owed pursuant to subparagraph 14.A. Such amount includes costs incurred by Lessee to pay (i) Contractors (as defined herein) to construct the Required Capital Improvements (i.e., the cost of work as identified in the ConsensusDocs or AIA documents and set forth in an application for payment), (ii) Contractors to design and provide other pre-construction services for the Required Capital Improvements, (iii) the Owner's Representative; and (iv) other costs associated with the Required Capital Improvements (e.g., permit fees).

H. "**Gross Sales**" means the entire amount of the actual sale price, whether for cash, credit or otherwise, of all sales of goods and services and all other income and receipts whatsoever of all business conducted at, on or from the Premises, as

reported on Lessee's Florida Department of Revenue Form 15 ("DR-15") or any subsequent replacement form utilized for reporting taxable sales to the State of Florida.

1) Notwithstanding what is reported on the DR-15, Gross Sales shall include, without limitation, income and receipts received by Lessee from the following:

(a) mail, telephone, facsimile, and other orders received, placed or filled on or from the Premises,

(b) deposits not refunded to purchasers,

(c) orders taken on or from the Premises although filled elsewhere,

(d) gross receipts from vending and game machines (not to be construed to authorize vending or game machines unless specifically set forth in this Lease and except for vending machines installed solely for use by Lessee's employees),

(e) sale price of gift and merchandise certificates at the time the same shall have been converted into a sale by redemption,

(f) payments from other parties for shelf or advertising space,

(g) the full value of all consideration other than money received,

(h) all other gross income or receipts from any business or operation at, on or from the Premises, and

(i) revenue generated by any sublessee, concessionaire or user of the Premises.

2) Notwithstanding what is reported on the DR-15, Gross Sales shall not include (but Lessee shall keep separate records therefore as part of Lessee Records, as defined herein):

(a) returns to shippers or manufacturers,

(b) proceeds from the sale of Property (as defined herein) not in the ordinary course of business,

(c) any cash or credit refunds upon any sale made at, on, or from the Premises, including orders taken on or from the Premises although filled elsewhere, where the merchandise is returned by the purchaser,

(d) any sales or excise tax imposed by any duly constituted governmental authority (provided that no income or franchise tax,

capital stock tax, tax based upon gross receipts, assets or net worth, or similar tax shall be deducted from Gross Sales),

(e) the exchange of merchandise between the stores and warehouses of Lessee, if any, where such exchange of merchandise is made solely for the convenient operation of the business of Lessee and not for the purpose of consummating a sale that has theretofore been made at, on, or from the Premises or for the purpose of depriving City of the benefit of a sale that otherwise would be made at or from the Premises,

(f) any charges (such as utility charges) which are passed through to users with Licenses,

(g) the discounted portion of sales of Retail Sale Items, not to exceed 10% to employees,

(h) bad debts written off by Lessee for income tax purposes, provided that if later collected, the amount shall be included in Gross Sales in the year in which collected, or

(i) fees paid to third-party issuers of credit cards in connection with credit card transactions included in Gross Sales.

3) Gross Sales shall not be reduced to allow for any reserves or uncollected or uncollectible amounts, nor for cost of products or services sold, or other costs, charges or expenses of purchasing, financing, selling, transportation, overhead or taxes except as expressly provided herein.

4) Gross Sales shall be reduced by trade-ins, but the sale price of an item sold for purposes of layaway, credit and installment sales shall be included in the month in which the goods or services are delivered or provided, or in which any portion of the payment is received, whichever first occurs, regardless of when or whether full payment is received.

I. **“Indemnified Parties”** means the City, its officers, employees, agents, elected and appointed officials, and Volunteers.

J. **“Laws”** has the meaning set forth in paragraph 63.

K. **“Lessee Distributions”** means Gross Sales minus Operating Expenses.

L. **“Mayor”** means the Mayor of the City or Mayor’s designee, as authorized in writing.

M. **"Non-Ad Valorem Revenues"** means all legally available revenues of the City other than ad valorem tax revenues.

N. **"Operating Expenses"** means monies expended by Lessee to operate and maintain the Premises in accordance with this Lease and calculated in accordance with Generally Accepted Accounting Principles, as may be amended from time to time. Operating Expenses include travel expenses associated with the operation of the Premises not to exceed ten thousand dollars (\$10,000) for the first year of the Term and not exceed ten thousand dollars (\$10,000) as adjusted annually pursuant to the Consumer Price Index for All Urban Consumers for Tampa-St. Petersburg-Clearwater each year thereafter, and other expenses that are substantially similar to the categories identified in Lessee's pro forma attached hereto as **Exhibit F**. Operating Expenses shall not include any payment on principal and interest on debt issued for the Required Capital Improvements, other costs or expenses of Lessee's corporate staff, or costs and expenses other than insurance deductibles incurred in connection with any Claims.

O. **"Other Sale Items"** means User Fees (as defined herein) from users with Licenses (as defined herein) (including for boat slips, transient docks, or other subleased or licensable space on the Premises), monies collected from courtesy docks identified in subparagraph 3.C, and any other fees collected by Lessee (e.g., management fees and maintenance fees) for services and work performed at, on or from the Premises.

P. **"Owner's Representative"** means that party hired and authorized by Lessee on a professional services basis (not as a Contractor), to act on Lessee's behalf to oversee the design and construction activities on the Premises. Lessee is responsible for payment of costs and fees associated with the Owner's Representative overseeing design and construction of the Required Capital Improvements. Subject to applicable Laws and subparagraph 10.B, the City will reimburse Lessee for costs and fees associated with the Owner's Representative overseeing design and construction of the Seawall Improvements.

Q. **"Retail Sale Items"** means food, beverage, fuel, oil, merchandise, and sundry items.

R. **"Required Capital Improvements"** means those capital improvements generally depicted and described in the Development Concept Plan attached hereto as **Exhibit E**. The capital improvements, including the budget associated with such improvements (as set forth in the Development Concept Plan), will evolve once the design phase for such improvements begins, and the City will have the right to approve design documents and specifications in accordance with subparagraph 9.C.

S. **"Percentage Rent"** means all money due to the City tied specifically to the Gross Sales of all business conducted at, on or from the Premises, as set forth in subparagraph 6.B.

T. **"Rent"** means all money of any kind due to the City under this Lease, including Base Rent, Percentage Rent, and Additional Rent.

U. **"Trade Fixture"** means a piece of equipment on or attached to the Premises which is used in Lessee's trade or business.

V. **"Volunteer"** means a person performing services for a party, at such party's direction, without compensation provided, however, that a Volunteer may be reimbursed for actual expenses incurred.

2. **PREMISES.** The City hereby leases to Lessee and Lessee leases from City the property illustrated and legally described in the attached **Exhibit A ("Premises")**, subject to the terms, provisions, conditions, and limitations set forth in this Lease. In the event of any discrepancy between a legal description and a graphic depiction of the Premises, the legal description shall control. After the Required Capital Improvements are completed, the Parties will make all necessary changes to Exhibit A to accurately reflect the changes made to the Premises as a result of the Required Capital Improvements, and Exhibit A will be deemed amended accordingly.

3. **USE OF PREMISES; LICENSES; USER FEE SCHEDULE.**

A. **Permitted Use.** Lessee shall use and occupy the Premises for the primary purposes of operating the marina for public use and ancillary functions normally associated with the operation of a marina (including but not limited to administration of the Retail Sale Items and Other Sale Items), and for no other use or purpose, subject to and in compliance with all other provisions of this Lease, including but not limited to applicable Laws (**"Permitted Use"**). Once a Loan (as defined herein) meeting the requirements set forth in subparagraph 38.B.1) is obtained by Lessee, Lessee's rights to monies received from Retail Sale Items and Other Sale Items will be assigned to the Lender (as defined herein) as collateral for the Loan, and the Lender will be entitled to enforce all rights to monies received from Retail Sale Items and Other Sale Items as may exist from time to time without need for further memorialization.

B. **Licenses.** Except for the courtesy docks that Lessee must make available in accordance with subparagraph 3.C, slips that Lessee must make available to

the City in accordance with paragraph 32, and any portions of the Premises that are subleased in accordance with the requirements of subparagraph 39.B, all other areas of the Premises, including but not limited to boat slips, transient docks, or other licensable space on the Premises, shall not be occupied unless there is a signed License and fees collected ("**User Fees**") in accordance with the fee schedule attached hereto as **Exhibit B** ("**User Fee Schedule**"). A new User Fee Schedule shall be provided to the City annually, not less than sixty (60) days prior to the anniversary date of this Lease and may be amended from time to time with the written approval of the City. Lessee shall not discount the User Fees posted on the User Fee Schedule without the express prior written approval of the City in each case, provided, however that prior written approval of the City is not needed for discounts that are under 10% of the applicable fee.

C. Courtesy Docks. Lessee shall make the courtesy docks located east of Bayshore Drive Northeast, between 1st Avenue NE extended and 2nd Avenue NE, available in accordance with St. Petersburg City Code, chapter 7, article VII (Courtesy Docks), as may be amended from time to time.

4. **AGREEMENTS FOR USE OF THE PREMISES**. All agreements for use of boat slips, transient docks, or licensable space on the Premises shall be in the form of a written license or use agreement ("**License(s)**") and shall comply with the following:

A. License Term, Fees. Licenses shall be for a consecutive period of no longer than twelve (12) months but may allow for the automatic renewal, roll-over, or extension of the term of the License. Lessee shall not collect User Fees for more than the License period.

B. Terms and Conditions. In addition to other terms and conditions as Lessee may require, Lessee shall ensure that all Licenses contain terms and conditions that are consistent with the provisions of this Lease, and the following provisions:

- 1) disclose the City as owner and lessor of the Premises;
- 2) provide that the License does not transfer any real property fee interest to the user;
- 3) provide that the License is between the user and Lessee only and all disputes must be resolved between said parties to such License;
- 4) are assignable to the City, at the City's option, and incorporate language to carry out this provision;
- 5) provide that said License is not transferable or sublicensable;
- 6) provide a 30-day termination clause by Lessee; and
- 7) Require the user to:

(a) name the Indemnified Parties as additional insureds on all insurance required to be obtained by the user pursuant to the License,

(b) defend and indemnify the Indemnified Parties against any and all Claims related to the user's use of the Premises (or portion of the Premises identified in the License), and

(c) acknowledge that the City will not be liable in the event Lessee defaults on the License.

C. User Report. Lessee shall provide a report to the City, within sixty (60) days after the Effective Date, containing a complete listing of all users on the Premises with a License and any parties on waiting lists including, but not limited to, identifying whether the party is a permanent resident of the City of St. Petersburg.

1) The initial report shall include, at a minimum:

(a) the slip number or space designation subject to the License, as shown on a map of the Premises;

(b) the name, address and telephone number of the user;

(c) the financial terms of the License; and

(d) vessel name, vessel manufacturer and registration number.

2) Commencing on June 15, 2022, and each year thereafter during the Term, Lessee shall provide the City with an update of the report required in subparagraph 4.C.1).

D. Availability. Except as otherwise set forth herein, Lessee shall make all boat slips available to all interested and financially capable parties on a first-come, first-served basis unless Lessee has a documented, bona fide reason to not make a boat slip available to any particular party.

E. Prepayment. Any boat dockage fees, deposits, or pass-through costs (such as utilities) which have been prepaid to the City, but which are applicable to any period on or after the Effective Date shall within thirty (30) business days following the Effective Date, be transferred to Lessee in immediately available funds. The City shall concurrently provide Lessee with an accounting of the applicability of such funds to each current user, and Lessee agrees to apply such funds accordingly. Upon the Expiration Date or the effective date of earlier termination of this Lease, any User Fees, deposits, or pass-through costs (such as utilities) which have been prepaid to Lessee, but which are

applicable to any period after the Expiration Date or the effective date of earlier termination shall within thirty (30) business days following the Expiration Date or the effective date of earlier termination, be transferred to the City in immediately available funds. Lessee shall concurrently provide the City with an accounting of the applicability of such funds to each user with a License, and the City agrees to apply such funds accordingly or enforce such compliance with the subsequent lessee of the Premises.

F. No Conditions. Licenses shall not be tied to or conditioned upon the purchase, ownership or occupancy of any condominium or other property.

5. TERM AND POTENTIAL NEW LEASE(S).

A. Term. The term of this Lease is for five (5) years commencing on June 1, 2021 and ending at midnight on May 31, 2026 ("**Expiration Date**") ("**Term**"), unless earlier terminated in accordance with this Lease.

B. New Lease(s). Lessee may request a new lease, which would commence on June 1, 2026, with substantially the same terms and conditions (including a termination fee pursuant to paragraph 14 or an acquisition fee (as described herein), and excluding obligations already performed and provisions that this Lease excludes from certain potential future new leases) up to two hundred seventy (270) days prior to the end of the Term. If an agreement on the terms and conditions of a new lease cannot be reached prior to the Loan Expiration Date (as defined herein), then this Lease will expire on the Expiration Date and the City's sole remaining obligation will be to pay the Lender the termination fee pursuant to paragraph 14 for the purpose of acquiring the Required Capital Improvements installed at the marina with monies from the Loan that Lessee obtained from the Lender. In accordance with all the provisions and requirements in paragraph 14, if the amount of the termination fee pursuant to paragraph 14 satisfies the outstanding balance on the Loan, any remaining portion of the termination fee will be paid to Lessee. In accordance with all the provisions and requirements in paragraph 14, if the amount of the termination fee does not satisfy the outstanding balance on the Loan (i.e., if the City owes a termination fee equal to the outstanding amount of the principal on the Loan pursuant to subparagraph 14.B), Lessee, and not the City, will be solely responsible for paying the Lender all amounts due to satisfy the outstanding balance on the Loan. All rights, title and interest of Lessee in the Premises, including those rights assigned to the Lender pursuant to subparagraph 3.A and paragraph 66, will automatically terminate on the Expiration Date. Rights assigned to the Lender pursuant to paragraph 13 (i.e., rights to the Required Capital Improvements made at or to the Premises by Lessee, which are property of Lessee), will terminate on the date of the payment of the termination fee pursuant to paragraph 14. The term of this Lease is

subject to the length of the term limitations of the City Charter. The term of any new lease is subject to the length of the term limitations of the City Charter or any voter-approved City-wide referendum. If City electors by majority vote in a City-wide referendum authorize a lease for operation of the Premises with at least a twenty (20) year term (as described in paragraph 15), a new lease with at least a twenty (20) year term will not include the City's obligation to pay the termination fee pursuant to paragraph 14 but will include an acquisition fee (as described in subparagraph 5.C) if the Loan obtained to finance the Required Capital Improvements has not been fully satisfied. If there is no voter-approved City-wide referendum but the Parties enter into multiple future new leases subject to the length of the term limitations of the City Charter that result in a cumulative lease period of twenty five (25) years (including the five (5) year term of this Lease), any new lease executed after a cumulative period of twenty five (25) years will not include the City's obligation to pay the termination fee pursuant to paragraph 14. Any new lease subject to the length of the term limitations of the City Charter executed after a cumulative period of twenty five (25) years will include an acquisition fee (as described in subparagraph 5.C) if the Loan obtained to finance the Required Capital Improvements has not been fully satisfied.

C. In the event Lessee is in default of a new lease with at least a twenty (20) year term and fails to cure after receiving notice of default from the City or in the event Lessee is in default of any new lease subject to the length of the term limitations of the City Charter executed after a cumulative period of twenty five (25) years and fails to cure after receiving notice of default from the City, the City may terminate such lease subject to the City's payment of an acquisition fee directly to the Lender. The acquisition fee shall be equal to the outstanding amount of the principal on the Loan, provided, however, that in the event such new lease is terminated pursuant to subparagraphs 28.C.2) or 28.C.3), the City will pay an acquisition fee equal to the outstanding amount of the principal on the Loan minus the amount remaining in the Insurance Deposit Account (as defined herein) as of the effective date of termination. If the amount of the acquisition fee does not satisfy the outstanding balance on the Loan, then Lessee, and not the City, will be solely responsible for paying the Lender all amounts due to satisfy the outstanding balance on the Loan. While subject to the covenant to budget and appropriate as described in subparagraphs 14.C.1), 14.C.2), and 14.C.3) of this Lease (and which will also be set forth in such new lease) in all respects in the manner and to the extent described herein, the City's obligation to pay the acquisition fee will be independent of and will be superior to any other provision of such new lease and will be fixed and absolute so long as there is an outstanding balance on the Loan during the term of such new lease in all matters except timing.

6. **BASE RENT, PERCENTAGE RENT, AND ADDITIONAL RENT.** Lessee shall pay Rent to the City as follows:

A. **Base Rent.** For the first year of the Lease, Lessee shall pay Base Rent to City in the amount of two hundred fifty thousand dollars (\$250,000.00) plus applicable sales tax on that amount. Base Rent will increase by two percent (2%) each year during the Term (e.g., for year two of this Lease, Base Rent will be two hundred fifty-five thousand dollars (\$255,000.00) plus applicable sales tax on that amount and for year three of this Lease, Base Rent will be two hundred sixty thousand one hundred dollars (\$260,100) plus applicable sales tax on that amount). Lessee shall pay Base Rent in equal monthly payments by the Due Date. In the event this Lease is terminated and the effective date of termination is not the first day of the month, then Lessee's Base Rent shall be adjusted on a pro rata basis based on the number of days Lessee operates in such month.

B. **Percentage Rent.** In addition to Base Rent, Lessee shall pay Percentage Rent as follows:

1) Lessee shall pay the City two and a half percent (2.5%) of Gross Sales for Retail Sale Items plus applicable sales tax on that amount.

2) Lessee shall pay the City twenty-five percent (25%) of Gross Sales for Other Sale Items plus applicable sales tax on that amount.

3) Except as provided in subparagraph 6.B.4) below, Lessee shall pay Percentage Rent monthly by the Due Date for the immediately preceding month. All Percentage Rent shall be due and payable without demand or notice and shall include an accounting of the amount of Percentage Rent paid in a form agreed upon by the Parties.

4) The City will provide Lessee a Percentage Rent offset ("**Offset**") equal to the cumulative amount of monies expended through the prior month for the Required Capital Improvements, not to exceed \$30 million. Notwithstanding the foregoing, the Offset shall not exceed fifty percent (50%) of the amount of Percentage Rent owed by Lessee pursuant to this Lease. There will be a corresponding reduction in the termination fee owed by the City to Lessee pursuant to subparagraph 14.A to reflect the amount of the Offset.

C. **Additional Rent.** All other money to be paid by Lessee to the City pursuant to this Lease shall be paid as an Additional Rent, which is due and payable by the Due Date of the month following the month in which it was incurred.

D. Late Fees. If any Rent is received by the City after the Due Date, Lessee shall pay the City a late fee of four percent (4%) per annum on the amount due ("**Late Fee**"), which shall immediately become due and payable. In addition, the City may assess a charge equal to the statutory limit allowed by law for any check from Lessee returned to the City for insufficient funds. All charges identified in this subparagraph shall be payable as Additional Rent.

E. Quarterly Reporting. Lessee shall provide to the City without demand or notice by the fifteenth (15th) day of each calendar quarter:

1) An accounting of the previous quarter's Gross Revenues, percentage calculation, and monthly Rent payment due, in a form approved by the City; and

2) Copies of Lessee's DR-15s, or any subsequent replacement form utilized for reporting taxable sales to the State of Florida, that was submitted to the State of Florida for the previous quarter.

F. Payment of Rent. Rent shall be payable to the City of St. Petersburg and Lessee shall remit such payment to the City, Attention: City at the address provided by the City to Lessee.

7. **LESSEE RECORDS.** Lessee shall prepare, keep and maintain all books and records with respect to this Lease ("**Lessee Records**") during the Term and for the retention periods set forth in the most recent General Records Schedule GSI – SL for State and Local Government Agencies. Upon ten (10) business days prior written notice to Lessee, the City shall have the right to audit Lessee Records, including but not limited to Rent records and records related to Operating Expenses, and Lessee shall make Lessee Records available for examination at the Premises. If the City conducts an audit of the Rent and it is found that the Rent is understated by more than ten percent (10%) or the books and records contain any intentional inaccuracies, then, in addition to immediately paying the City the full amount of the understated Rent plus applicable sales tax, Lessee shall pay to the City the cost of the audit.

8. **OPERATIONAL REQUIREMENTS.**

A. Required Operations. Lessee shall conduct its business at all times in a first-class, professional and businesslike manner consistent with the business standards and practices of similarly situated businesses in the marina industry. The foregoing does not prohibit Lessee from temporarily restricting access to portions of the Premises to conduct maintenance and repairs. Lessee agrees that the storage and office

space at the marina shall be limited to that necessary for, and used only in conjunction with, the operation of the marina and the performance of Lessee's obligations under this Lease.

B. Qualified Staff.

1) Lessee shall provide all necessary managers and employees in sufficient force to deliver all patron services properly and efficiently and to meet all standards for operation required by this Lease. Lessee shall employ only duly qualified, competent, professional, and experienced managers to oversee and administer the operation of the Premises.

2) Lessee shall offer interviews to all existing full-time and part-time marina management and staff.

9. **CAPITAL INVESTMENT AND REQUIRED CAPITAL IMPROVEMENTS.**

A. Capital Investment. Lessee shall spend an estimated thirty million dollars (\$30,000,000.00) of Lessee's own monies to fund the Required Capital Improvements during the Term. Subject to subparagraph 38.B.1), Lessee shall obtain financing to fund the Required Capital Improvements by April 30, 2022, or sixty (60) days prior to commencement of construction, whichever comes first. Except in the event the City is required to pay a termination fee as provided in paragraph 14 or the acquisition fee (as described in subparagraph 5.C), the City has no obligation to fund the Required Capital Improvements.

B. Useful Service Life. The useful service life of the components of the Required Capital Improvements must exceed the allowable amortization period for the Loan (as described in subparagraph 38.B.1). Lessee shall submit documentation to the City, which shall include manufacturers warranties, evidencing that the useful service life of the components of the Required Capital Improvements, which commences at Substantial Completion, exceeds the allowable amortization period for the Loan.

C. City Approval Required. Lessee shall submit all design documents (e.g., schematic design documents, detailed design documents and construction documents) and specifications to the City and obtain the prior written approval from the City prior to applying for permits for the Required Capital Improvements.

D. Substantial Completion Deadline. "**Substantial Completion**" shall mean the point at which the Required Capital Improvements or portions thereof are sufficiently completed to the extent that the Parties are able to use them for their intended

purposes. Subject to paragraph 69, Substantial Completion of the Required Capital Improvements must be reached by February 28, 2026.

E. Contract Requirements. Lessee is responsible for procuring and retaining all necessary entities or individuals (each a “**Contractor**”) to design and construct the Required Capital Improvements. Except for as set forth in subparagraph 9.F, it is understood by the Parties that Lessee will not self-perform any design or construction of the Required Capital Improvements but Lessee will supervise and manage such design and construction both directly and through its Owner’s Representative, each acting in a non-Contractor role. Lessee shall ensure that all contracts between Lessee and each Contractor (i) are assignable to the City at the City’s option and (ii) include the following provisions, which are obligations of the Contractor:

1) *Indemnification*. Contractor agrees to indemnify, hold harmless, assume legal liability for, save and defend the City of St. Petersburg, Lessee, and Lessee’s lender (i.e., Commercial Bank, a Tennessee banking corporation), and their officers, directors, principals, representatives, employees, agents, elected and appointed officials, and Volunteers, from and against any and all claims, liens, suits, actions, damages, liability, assertions of liability, losses, costs and expenses in law or in equity, of every kind and nature whatsoever (“Claims”), whether or not a lawsuit is filed, including but not limited to costs, expenses and attorneys’ and experts’ fees at trial and on appeal and Claims for bodily injury or death of persons and or damage to property, which Claims may occur or be alleged to have occurred by or on account of or arising out of, in whole or in part (i) the negligence, recklessness, or intentional wrongful misconduct of Contractor, its subcontractor(s), employees, agents or representatives in the performance of the work (i.e., the Required Capital Improvements); or (ii) the failure of Contractor, its subcontractor(s), employees, agents or representatives to comply with applicable Laws arising out of performance of the work; or (iii) any act, omission, or default of Contractor, its subcontractor(s), employees, agents or representatives arising from Contractor’s or its subcontractor(s)’, employees’, agents’ or representatives’ performance of the work.

2) *Insurance and Bond Requirements*. Contractor, at its cost and expense, shall obtain and maintain the types and amounts of insurance set forth in **Exhibit C-1** and, at its cost and expense, shall also obtain a payment and performance bond required pursuant to Florida Statute section 255.05 in accordance with the requirements set forth in Exhibit C-1. The City, Lessee, and Lessee’s lender (i.e., Commercial Bank, a Tennessee banking

corporation) shall each be named as an obligee under the payment and performance bond.

3) *Compliance with Laws.* Contractor shall comply with all present and future (i) federal, state, and local constitutions, laws, statutes, ordinances, rules, regulations, and codes; (ii) decrees, orders, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedent in the State of Florida; (iii) decisions of federal courts applying the Laws of the State of Florida; and (iv) regulations and orders of quasi-official entities or bodies (e.g., boards, bureaus and public utilities), as the same may be amended or supplemented from time to time ("Laws") applicable to the design, permitting and construction of the work, including but not limited to Title II of the Americans with Disabilities Act of 1990 ("ADA"), Florida Building Code and the National Fire Protection Association Life Safety Code.

F. Self-Performance. Lessee may self-perform certain work with the City's prior written consent; provided, however, that in addition to any requirements set forth in this Lease, there may be additional requirements for such self-performed work (e.g., insurance or bonding requirements), to be determined by the City.

G. Liquidated Damages. The Parties agree that it would be extremely difficult and impractical under known and anticipated facts and circumstances to ascertain and fix the actual damages the City would incur if Lessee does not achieve Substantial Completion of the Required Capital Improvements by the date set forth in subparagraph 9.D Therefore, subject to paragraph 69, Lessee shall be liable for and shall pay to the City an amount equal to one hundred dollars (\$100.00) for each day after that date, until such time as the Required Capital Improvements reach Substantial Completion. This sum is stipulated as fixed, agreed and acknowledged as reasonable liquidated damages, not as a penalty, for delay in completing the Required Capital Improvements. These liquidated damages are the City's sole and exclusive damages for Lessee's delay in completing the Required Capital Improvements.

10. SEAWALL IMPROVEMENTS.

A. Scope of Seawall Improvements. Lessee is responsible for completing the seawall renewal and replacement work, including design and construction, in accordance with the attached Exhibit H (“**Seawall Improvements**”).

B. Payment by the City. Provided Lessee performs its obligations contained in Exhibit H and this paragraph 10 (including but not limited to providing the City with pay applications pursuant to a schedule of values and associated documentation), the City will reimburse Lessee for all Seawall Improvements in an amount not to exceed the budget set by the City.

C. Contract & Solicitation Requirements. Subject to the requirements set forth in Florida Statute sections 255.20 and 287.055 and any other applicable Laws, Lessee is responsible for procuring and retaining all Contractors to design and construct the Seawall Improvements. Lessee shall ensure that all solicitation documents include that any resulting contract will be subject to the applicable requirements described in this paragraph 10. It is understood by the Parties that Lessee will not self-perform any design or construction of the Seawall Improvements but Lessee will supervise and manage such design and construction both directly and, subject to applicable Laws, through its Owner’s Representative, each acting in a non-Contractor role.

1) *All Contracts.* Lessee shall ensure that all contracts between Lessee and each Contractor (i) are assignable to the City at the City’s option and (ii) include the following provisions, which are obligations of the Contractor:

(a) *Compliance with Laws.* Contractor shall comply with all present and future (i) federal, state, and local constitutions, laws, statutes, ordinances, rules, regulations, and codes; (ii) decrees, orders, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedent in the State of Florida; (iii) decisions of federal courts applying the Laws of the State of Florida; and (iv) regulations and orders of quasi-official entities or bodies (e.g., boards, bureaus and public utilities), as the same may be amended or supplemented from time to time (“Laws”) applicable to the design, permitting or construction of the work, including but not limited to Title II of the ADA, Florida Building Code and the National Fire Protection Association Life Safety Code.

(b) *Intown Plan.* Contractor shall ensure that all work it performs for waterfront infrastructure in the City of St. Petersburg (“City”) meets the resiliency and adaptation requirements set forth

in the Intown Redevelopment Plan originally adopted in March 1982 and approved as amended on August 2, 2018, as such plan may be changed, modified, and amended in accordance with Florida Statute Chapter 163. Contractor shall comply with all applicable requirements of the Community Redevelopment Act of 1969 (Florida Statutes, Chapter 163, Part III).

(c) *Clean and Resilient Marina.* Contractor shall incorporate sustainable design practices into the seawall improvements in accordance with the Clean and Resilient Marina Standard.

(d) *Public Records.* Contractor shall (i) keep and maintain public records (as defined in Chapter 119, Florida Statutes) required to perform the services pursuant to the contract; (ii) upon request from the City Clerk's Office, provide the City (at no cost to the City) 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 under Florida laws regarding public records or other applicable Laws; (iii) ensure that public records in Contractor's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws for the term of the contract and after its expiration or earlier termination; and (iv) after the expiration or earlier termination, at the City's request, either transfer, at no cost, to the City all public records in the Contractor's possession within ten (10) days following the City's request and/or keep and maintain any public records required perform the services pursuant to the contract. If Contractor transfers all public records to the City upon the expiration or earlier termination of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon the expiration or earlier termination of the contract, Contractor shall meet all applicable requirements for retaining public records in accordance with the contract and all applicable Laws. At the City's request, Contractor shall provide all electronically stored public records to the City in a format approved by the City. **IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC**

RECORDS RELATING TO THE CONTRACT, CONTACT THE CITY CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.

2) *Contracts for Professional Services.* Lessee shall ensure that all contracts between Lessee and each Contractor performing design services, other professional services, or other pre-construction services also include the following provisions, which are obligations of the Contractor:

(a) ***Indemnification.*** Contractor shall indemnify and hold harmless the City of St. Petersburg, Lessee, and Lessee's lender (i.e., Commercial Bank, a Tennessee banking corporation), and their officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Contractor or any employee, agent, subcontractor, subconsultant, or other representative of Contractor in the performance of the contract.

(b) ***Insurance.*** Contractor, at its cost and expense, shall obtain and maintain the applicable types and amounts of insurance set forth in **Exhibit C-2** and, at its cost and expense.

3) *Contracts for Construction Services.* Lessee shall ensure that all contracts between Lessee and each Contractor performing work that involves building, altering, repairing, improving, demolishing, or replacing any public structure, building, roadway, or other public improvement, also include the following provisions, which are obligations of the Contractor:

(a) ***Indemnification.*** Contractor agrees to indemnify, hold harmless, assume legal liability for, save and defend the City of St. Petersburg, Lessee, and Lessee's lender (i.e., Commercial Bank, a Tennessee banking corporation), and their officers, directors, principals, representatives, employees, agents, elected and appointed officials, and Volunteers from and against any and all claims, liens, suits, actions, damages, liability, assertions of liability, losses, costs and expenses in law or in equity, of every kind and nature whatsoever ("Claims"), whether or not a lawsuit is filed, including but not limited to costs, expenses and attorneys' and experts' fees at trial and on appeal and Claims for bodily injury or death of persons and or damage to property, which Claims may

occur or be alleged to have occurred by or on account of or arising out of, in whole or in part (i) the negligence, recklessness, or intentional wrongful misconduct of Contractor, its subcontractor(s), employees, agents or representatives in the performance of the work (i.e., all work related to the construction of the seawall improvements); or (ii) the failure of Contractor, its subcontractor(s), employees, agents or representatives to comply with applicable Laws arising out of performance of the work; or (iii) any act, omission, or default of Contractor, its subcontractor(s), employees, agents or representatives arising from Contractor's or its subcontractor(s)', employees', agents' or representatives' performance of the work.

(b) ***Small Business Enterprises.*** Contractor shall designate the percentage of the work (including the cost of materials, goods and supplies) identified by the City for City of St. Petersburg-certified Small Business Enterprises ("SBEs") or make a good faith effort to do so.

(c) ***Disadvantaged Workers.*** Contractor shall designate at least 15 percent of all hours of work to be performed by disadvantaged workers employed by Contractor or its subcontractors. Disadvantaged workers means (i) a person who has a criminal record, (ii) a veteran, (iii) a Southside Community Redevelopment Area resident, (iv) a person who is homeless, (v) a person without a GED or high school diploma, (vi) a person who is a custodial single parent, (vii) a person who is emancipated from the foster care system, or (viii) a person who has received public assistance benefits within the 12 months preceding employment by Contractor or its subcontractors. Nothing contained herein may be construed to require the execution of a collective bargaining agreement, project labor agreement or other labor contract.

(d) ***Apprentices.*** Contractor shall designate at least 15 percent of all hours of work to be performed by apprentices employed by Contractor or its subcontractors. Apprentice means any person who is enrolled in and participating in an apprenticeship program for an apprenticeable occupation registered with the State of Florida Department of Education, as the registered agent for the United States Department of Labor. If Contractor certifies that, after a search and review of the Florida Department of Education website, there are not any apprentices available from a State of Florida Department of Education approved apprentice

program that has geographical jurisdiction in any part of Pinellas, Hillsborough, Manatee, Hernando, Pasco and Sarasota counties to perform the work described, then apprentice means any person who is participating in an industry certification training program, company sponsored training program or an on-the-job training program (such as the Florida Department of Transportation On-the-Job Training Program) to perform the work specified in the contract. Industry certification is a process through which persons are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is recognized by the industry. A company sponsored training program shall require that apprentices are employed through a process equivalent to the State of Florida Department of Education, as determined by the City of St. Petersburg. Nothing contained herein may be construed to require the execution of a collective bargaining agreement, project labor agreement or other labor contract.

(e) ***Responsible Wage.*** Contractor shall pay, and ensure that all subcontractors pay, no less than the hourly wage for each craft or trade under the most recent Davis-Bacon Act wage rates listed for Pinellas County to each employee for labor hours performed by that employee. In the event that a craft or trade does not have an hourly wage, Contractor shall submit a request for a wage determination to the United States Department of Labor. Prior to receiving a response from the United States Department of Labor, Contractor shall pay or ensure that all subcontractors pay each employee for each labor hour at the hourly wage for a comparable craft or trade that currently exists as determined by the City.

(f) ***Insurance and Bonds.*** Contractor, at its cost and expense, shall obtain and maintain the applicable types and amounts of insurance set forth in Exhibit C-2 and, at its cost and expense, shall also obtain a payment and performance bond required pursuant to Florida Statute section 255.05 in accordance with the requirements set forth in Exhibit C-2. The City, Lessee, and Lessee's lender (i.e., Commercial Bank, a Tennessee banking corporation) shall each be named as an obligee under the payment and performance bond.

11. **OTHER IMPROVEMENTS TO THE PREMISES.** Except for the Required Capital Improvements and the Seawall Improvements, Lessee shall not make or permit to be made any alterations, additions, improvements or changes ("**Improvements**") at or on the Premises without, in each case, first obtaining the written approval of the City in accordance with this Lease. Such written approval may be conditioned upon a payment and performance bond for relevant contractors (if required pursuant to Florida Statute section 255.05) being obtained and provided to the City for such alternations, additions, improvements, or changes. Additionally, Lessee shall obtain all required permits at its sole cost and expense.

12. **OWNERSHIP OF IMPROVEMENTS.** Except for Property of Lessee that is not permanently attached to the Premises, all Improvements made to the Premises by either party shall immediately become the property of the City and shall remain so during the Term and upon expiration or earlier termination.

13. **OWNERSHIP OF REQUIRED CAPITAL IMPROVEMENTS.** The Required Capital Improvements made at or to the Premises by Lessee are the property of Lessee and will remain so until the City's payment of the termination fee pursuant to paragraph 14, the full satisfaction of the Loan, or the City's payment of an acquisition fee (as described in subparagraph 5.C). Once a Loan meeting the requirements set forth in subparagraph 38.B.1) is obtained by Lessee, Lessee's rights under this paragraph 13 will be assigned to the Lender as collateral for the Loan, and the Lender will be entitled to enforce all of its rights to the Required Capital Improvements as may exist from time to time without need for further memorialization. Upon the City's payment of the termination fee pursuant to paragraph 14, the full satisfaction of the Loan, or the City's payment of an acquisition fee (as described in subparagraph 5.C), any security interest that the Lender may have in the Required Capital Improvements shall be extinguished and Lessee shall execute all documents necessary to effectuate the City's ownership of the Required Capital Improvements free and clear of any and all encumbrances or shall ensure that its Loan documents with the Lender require the Lender to execute any such documents.

14. **TERMINATION FEE.**

A. In the event this Lease is terminated pursuant to subparagraph 28.C.1), subparagraph 29.D, or paragraph 30, or in the event the Lease terminates on the Expiration Date, provided Lessee is not in default (i.e., Lessee has not received a notice of default from the City pursuant to subparagraph 29.B or Lessee received a notice of default from the City pursuant to subparagraph 29.B and Lessee has cured the default identified in the notice) and the Parties do not enter into a new lease, the City shall pay a

termination fee equal to the Expended Amount plus fifteen percent (15%) of the Expended Amount (i.e., providing Lessee with a 15% rate of return) minus Lessee Distributions, as calculated on an annual basis. In the event this Lease is terminated pursuant to subparagraph 28.C.1), the termination fee will be reduced by the amount of insurance proceeds in the Insurance Deposit Account. The maximum termination fee owned by the City pursuant to this subparagraph 14.A is thirty-seven million seven hundred fifty thousand dollars (\$37,750,000.00). An example calculation is set forth in Exhibit I, which is for illustrative purposes only and does not necessarily represent the actual termination fee owed to Lessee pursuant to this subparagraph 14.A.

B. In the event this Lease is terminated pursuant to subparagraph 28.C.2), subparagraph 28.C.3), subparagraph 29.C, or if Lessee is in default (i.e., if Lessee has received a notice of default from the City pursuant to subparagraph 29.B and has not cured the default following notice from the City as required by this Lease) and the Parties do not enter into a new lease, the City will pay a termination fee equal to the outstanding amount of the principal on the Loan obtained to finance the Required Capital Improvements. Notwithstanding the foregoing, (i) in the event this Lease is terminated pursuant to subparagraph 28.C.2), the termination fee will be reduced by the amount of the insurance proceeds in the Insurance Deposit Account and (ii) in the event this Lease is terminated pursuant to subparagraph 28.C.3), the termination fee will be reduced by the remaining amount of the insurance proceeds in the Insurance Deposit Account.

C. In the event the City pays a termination fee pursuant to this paragraph 14, such termination fee will be made directly to the Lender and if the amount of the termination fee satisfies the outstanding balance on the Loan, any remaining portion of the termination fee is payable to Lessee. If the amount of the termination fee does not satisfy the outstanding balance on the Loan (i.e., if the City owes a termination fee equal to the outstanding amount of the principal on the Loan pursuant to subparagraph 14.B), Lessee, and not the City, will be solely responsible for paying the Lender all amounts due to satisfy the outstanding balance on the Loan. The outstanding balance on the Loan will be calculated as of the date of the City's payment of the termination fee to the Lender owed pursuant to this paragraph 14, not as of the Expiration Date or the effective date of earlier termination. If the Lender requests that Lessee confirm the outstanding balance on the Loan, Lessee agrees to confirm the outstanding balance on the Loan or object to the Lender's calculation of same within ten (10) days of the Lender's request by setting forth fully in writing the bases for its objection. In the event Lessee fails to object within such ten (10) day period, Lessee shall be deemed to have confirmed the balance as calculated by the Lender. In the event of confirmation of the amount or failure to object, Lessee will be deemed to have waived any grounds to challenge such amounts, and the City may conclusively rely on such amount for purposes

of paying the Lender the portion of the termination fee amount payable to the Lender pursuant to this paragraph 14. In the event Lessee objects but Lessee and the Lender are unable to agree on the outstanding balance on the Loan, the City may conclusively rely on the Lender's calculation for purposes of paying the Lender the portion of the termination fee amount payable to the Lender pursuant to this paragraph 14. In the event the Lease is terminated or expires pursuant to one of the events described in subparagraphs 14.A or 14.B, the City will have one hundred twenty (120) days after the Expiration Date or the effective date of earlier termination to pay any termination fee owed pursuant to this paragraph 14.

1) Subject to subparagraph 14.C.2) below, the City covenants and agrees and has a positive and affirmative duty to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay the termination fee. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated as provided herein. The City further acknowledges and agrees that the obligations of the City to include the amount of such amendments in each of its annual budgets and to pay such amounts from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

2) Until such monies are budgeted and appropriated as provided herein, such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the City from pledging in the future its Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor does it give Lessee a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a lien on and pledge of specific components of the Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). Anything herein to the contrary notwithstanding, it is understood and agreed that all obligations of the City hereunder shall be payable solely from the portion of Non-Ad

Valorem Revenues budgeted and appropriated as provided for herein and nothing herein shall be deemed to pledge ad valorem tax power or ad valorem taxing revenues or to permit or constitute a mortgage or lien upon any assets owned by the City and Lessee may not compel the levy of ad valorem taxes on real or personal property within the boundaries of the City or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder or to maintain or continue any of the activities of the City which generate user service charges, regulatory fees, or any other Non-Ad Valorem Revenues. Notwithstanding any provisions herein to the contrary, the City shall never be obligated to maintain or continue any of the activities of the City which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. The City is prohibited by law from expending moneys not appropriated or in excess of its current budgeted revenues and surpluses. Until such monies are budgeted and appropriated as provided herein, neither this Lease nor the obligations of the City hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the City, but shall be payable solely as provided herein subject to the availability of Non-Ad Valorem Revenues after satisfaction of funding requirements for obligations having an express lien on or pledge of such revenues and funding requirements for essential governmental services of the City .

3) The termination fee shall not be or constitute a general obligation or indebtedness of the City as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida and nothing herein shall be construed to permit or constitute a mortgage or lien upon any assets owned by the City. Lessee shall not have the right to compel the exercise of any ad valorem taxing power or the use of ad valorem tax revenues to pay the termination fee.

D. The City may incur additional debt secured by all or a portion of the Non-Ad Valorem Revenues only if the total amount of Non-Ad Valorem Revenues for the City's prior fiscal year were at least 2.00 times the maximum annual debt service of all debt to be paid from Non-Ad Valorem Revenues (collectively, "**Debt**"), including any Debt payable from one or several specific revenue sources.

1) For purposes of calculating maximum annual debt service if the terms of the Debt are such that interest thereon for any future period of time is to be calculated at a rate which is not then susceptible of precise determination ("**Variable Rate Debt**"), interest on such Variable Rate Debt shall be computed as follows:

(a) if the principal amount of Variable Rate Debt

(including any Variable Rate Debt proposed to be incurred) is less than or equal to 25% of the principal amount of all Debt (including the Debt proposed to be incurred), an interest rate equal to the higher of 12% per annum or The Bond Buyer 40 Index shall be assumed; or

(b) if the principal amount of Variable Rate Debt (including any Variable Rate Debt proposed to be incurred) is more than 25% of the principal amount of all Debt (including the Debt proposed to be incurred), the maximum rate which could be borne by such Variable Rate Debt shall be assumed.

2) For purposes of calculating maximum annual debt service, balloon indebtedness shall be assumed to amortize in up to 20 years (from the date of calculation) on a level debt service basis. In the event the City is required to fund a reserve fund, the funding of such reserve fund shall be included in the calculation of debt service. For purposes of this paragraph, "balloon indebtedness" includes indebtedness if 25% or more of the principal amount thereof comes due in any one year.

E. The provisions of this paragraph 14 survive the expiration or earlier termination of this Lease for the sole purpose of the City acquiring the Required Capital Improvements installed at the marina with monies from the Loan that Lessee obtained from the Lender, which Required Capital Improvements are the property of Lessee.

F. Once a Loan meeting the requirements set forth in subparagraph 38.B.1) is obtained by Lessee, Lessee's rights to the termination fee under this paragraph 14 will be assigned to the Lender as collateral for the Loan, and the Lender will be entitled to enforce all rights to the termination fee as may exist from time to time without need for further memorialization.

G. While subject to subparagraphs 14.C.1), 14.C.2), and 14.C.3) in all respects, and except as otherwise provided in subparagraph 5.B, paragraph 27, or paragraph 66, in the manner and to the extent described herein, the City's obligation to pay the termination fee is independent of and shall be superior to any other provision of this Lease and is fixed and absolute so long as there is an outstanding balance on the Loan in all matters except timing.

H. In the event that the termination fee required to be paid by the City pursuant to this paragraph 14 does not satisfy the outstanding balance on the Loan, Lessee, and not the City, shall be responsible for paying the Lender all amounts due to satisfy the outstanding balance on the Loan. Lessee's obligation to pay the Lender any outstanding balance on the Loan not covered by the termination fee paid by the City

pursuant to this paragraph 14 is independent of and shall be superior to any other provision of this Lease and is fixed and absolute so long as there is an outstanding balance on the Loan.

15. **FUTURE REFERENDUM.** The Premises is commercially zoned waterfront property, and a lease (described in the City Charter as a non-permanent disposition of an interest in real property) of the Premises is subject to the leasing limitations in City Charter section 1.02. Pursuant to those limitations, approval of any lease term greater than five years requires approval through a City-wide referendum pursuant to City Charter section 1.02. Lessee may request a meeting with the City after March 1, 2023 to discuss the timing and details of a potential City-wide referendum to authorize a lease for operation of the Premises with at least a twenty (20) year term including 10-year renewal options. The timing and details of a potential City-wide referendum are subject to approval by the Mayor and City Council. If the Mayor approves the details of a potential City-wide referendum and City Council adopts an ordinance calling a referendum pursuant to City Charter section 1.02 to authorize a lease for operation of the Premises for a term described above, such referendum will be placed on the ballot for a general municipal election on the first Tuesday following the first Monday in November of 2023 or 2025. In the event the City electors by majority vote in a City-wide referendum authorize a lease for operation of the Premises with at least a twenty (20) year term, such lease is subject to the requirements set forth in subparagraph 5.B and subparagraph 5.C.

16. **PARKING.**

A. **Parking Permits or Decals.** Lessee is responsible for providing parking permits or decals to Lessee's employees, users with Licenses, and sublessees with subleases.

B. **Parking Spaces.** In addition to the parking spaces on the Premises, the City will designate for persons or entities with a parking permit or decal issued by Lessee, the following parking spaces: 15 parking spaces in the St. Pete Pier™ parking lot and 24 parking spaces along Bay Shore Boulevard. The City reserves the right to identify which parking spaces will be available at such locations, change locations where such additional spaces are provided or to reduce the number of available spaces at such locations in the City's sole discretion, provided that the total number of additional parking spaces shall not drop below 35.

17. **UTILITIES.**

A. **Utilities for the Premises.** Lessee shall pay all costs (including but not limited to installation, meters, deposits, and usage) for utilities and all other services, including but not limited to electricity, telephone, internet service, water, gas, cable/satellite, television/communication, sewage, garbage and trash collection, reclaimed water if any, associated with its use of the Premises.

B. **Connections.** For utilities moved or damaged during the construction of the Required Capital Improvements or the Seawall Improvements, Lessee shall only be required to reconnect to the nearest existing connection.

18. **FEES AND TAXES.** Lessee shall pay all fees and taxes, if any, levied at, on, or from the Premises or its use, and its improvements, including but not limited to the Required Capital Improvements and deliver to the City the appropriate receipts which demonstrate payment thereof. It is understood that this shall include, but not be limited to, real and tangible property tax, sales tax, income tax and storm water fees.

19. **CONDITION OF PREMISES.** As of the Effective Date, Lessee has inspected the Premises and accepts the Premises in an "as is" condition. The City has made no representations, statements, or warranties, either expressed or implied, as to the condition of the Premises, or as to its fitness for a particular use.

20. **NO CITY MAINTENANCE OBLIGATIONS.** The City is not responsible for any maintenance or repairs at or on the Premises, including any improvements, facilities, or property thereon.

21. **LESSEE'S REPAIR AND MAINTENANCE OBLIGATIONS.**

A. Lessee shall, at its cost and expense, maintain the Premises, and all improvements located thereon, in good order and repair, in a clean and sanitary condition, and shall make all necessary repairs, including all necessary replacements, alterations and additions, using material and equipment of similar or superior kind and quality to the original improvements.

B. Lessee is not responsible for maintaining any contiguous City-owned property (including but not limited to Demens Landing, streets, sidewalks, and offsite parking areas) or for maintaining the City's public utility system providing utilities to the Premises (e.g., potable water, reclaimed water, sanitary sewer); provided, however,

that nothing contained herein may be construed as excusing Lessee from paying any applicable fees for such utilities.

22. **RETURN OF THE PREMISES.** At the Expiration Date or the effective date of earlier termination of this Lease, subject to the payment of the termination fee pursuant to paragraph 14:

A. **Premises.** Lessee shall give and deliver the Premises, including but not limited to the slips, docks, bathhouses, comfort stations and pilings, to the City in as good condition as they were when they were newly constructed; provided that so long as Lessee maintains a continuous and significant program of maintenance and repair, then ordinary wear and tear shall be excepted.

B. **Personal Property.** Lessee, at its sole expense, shall remove from the Premises all signs, Trade Fixtures, furnishings, personal property, equipment and materials ("**Property**") which Lessee was permitted to install or maintain under the rights granted herein. Any damage to the Premises caused by such removal must be repaired by Lessee at Lessee's expense so that the Premises may be delivered in compliance with this Lease. If any of the Property is not removed within sixty (60) days, the City may, at its option, deem the Property abandoned and take possession of it or the City may effectuate such removal and/or restoration at Lessee's expense, and Lessee shall pay the City such expense promptly upon receipt of an invoice therefor.

23. **PROHIBITED USE.** Lessee shall ensure that the Premises is not used for any use other than the Permitted Use.

24. **ENVIRONMENTAL COMPLIANCE.** As of the Effective Date, the City is unaware of any violation of any Environmental Laws (as defined herein) on the Premises. Lessee is not responsible or liable for any Claims related to a violation of any Environmental Law on the Premises which occurred prior to the Effective Date.

A. **Definitions.** For purposes of this Lease, the following words and phrases shall have the following meaning except where the text clearly indicates a contrary intention:

1) "**Environment**" means soil, surface waters, groundwater, land, stream and sediments, surface or subsurface strata, ambient air, interior and/or exterior of any building or improvement and any environmental medium.

2) "**Environmental Condition**" means any condition of the environment with respect to the Premises that results from Lessee's

possession, use, occupation, construction and/or improvement to or operation of Lessee's business on or from the Premises.

3) "**Environmental Law(s)**" means the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("**RCRA**"); the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended (original act known as "**CERCLA**" or "**Superfund**", the amendments are known as "**SARA**"); the HSWA amendments to RCRA regulating Underground Storage Tanks ("**USTs**"), 42 U.S.C. Sections 6991-6991(I), as amended; the Clean Air Act of 1963 42 U.S.C. Sections 7401, et seq., as amended (Clean Air Act); the Federal Water Pollution Control Act of 1977 and 1987, 33 U.S.C. Sections 1251, et seq., as amended (Clean Water Act); the Toxic Substances Control Act of 1976, 15 U.S.C. Sections 2601, et seq., as amended ("**TSCA**"); the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq., as amended ("**HMTA**"); the Occupational Safety and Health Act, as amended ("**OSHA**"), 29 U.S.C. Sections 651 et seq., the Florida Resource Recovery and Management Act, Section 403.701, et seq., Florida Statutes; the Florida Pollutant Discharge Prevention and Control Act, Section 376.011-376.17 and 376.19-376.21, Florida Statutes, and Chapters 373, 376 and 403, Florida Statutes; and any regulation, rule or ordinance implementing or promulgating the preceding federal and state statutes as well as any future federal, state or local law whose purpose is to protect the Environment, together, in each case, with any amendment thereto.

4) "**Hazardous Material**" means without limitation (i) those substances included within the definitions of "Hazardous Substances", "Hazardous Materials", "Toxic Substance", or "Solid Waste" in any Environmental Law; (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (iii) any materials, waste, or substance which is (A) petroleum, petroleum by-products, residuals of petroleum and petroleum degradation by-products; (B) asbestos; (C) polychlorinated biphenyl's; (D) flammable explosives; or (E) radioactive materials; and (iv) such other substances, materials, and wastes which are or become regulated or controlled under any Environmental Law.

5) "**Release**" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the Environment (including the abandonment

or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

B. Lessee's Obligation. Lessee shall not use, store, generate, transport, dispose, nor cause the release of any Hazardous Material in or upon the Premises, including but not limited to into any open surface water body, ditch, stream, conduit, storm sewer or sanitary sewer connected thereto or located thereon or knowingly permit any sublessees or other persons or entities occupying the Premises to engage in such activities in, upon, or from the Premises. However, the foregoing provision shall not prohibit the use, storage, maintenance, transportation to and from or handling within the Premises of Hazardous Material and other substances customarily used in the operation of the Premises or Lessee's operations, provided: (i) such substances shall be used, stored, maintained, transported, handled and disposed of only in accordance with Environmental Laws, (ii) such substances shall not be released in, upon, or from the Premises in violation of Environmental Laws and the National Fire Protection Association ("NFPA") Code and local fire codes as they may be amended from time to time, and (iii) for purposes of removal and disposal of any such substances, Lessee shall be named as the owner and generator, obtain a waste generator identification number, and execute all permit applications, manifests, waste characterization documents and any other forms required by the appropriate state or federal environmental authority and hold the City harmless.

C. Notification by the City. The City shall promptly notify Lessee of every demand, notice, summons, or other process received as to any environmental Claims or legal proceeding that involves Lessee or the Premises.

D. Notification by Lessee. Lessee shall promptly notify the City of every demand, notice, summons, or other process received as to any environmental Claims or legal proceeding that involves the City or the Premises, including: (i) any investigation or cleanup demanded or threatened by any government or regulatory authority with respect to the release of Hazardous Materials in or upon the Premises or the migration thereof to other property; and (ii) any Claims made or threatened by any party relating to any loss or injury resulting from any Hazardous Material in or upon the Premises. Lessee shall also promptly notify the City of any violation of Environmental Law or incident that may or does result in an illegal release of Hazardous Materials.

E. Cleanup and Remediation. If any Hazardous Materials are released at, on or within the Premises by Lessee or any other occupant of the Premises in violation of Environmental Laws, Lessee shall timely notify the City and immediately, properly and in compliance with Environmental Laws cleanup and remove the Hazardous

Substances from the Premises and any other affected property. Such cleanup and removal shall be at Lessee's sole expense.

F. Lessee Indemnity. Lessee shall defend, pay on behalf of, indemnify and hold harmless the Indemnified Parties from and against all Claims whether or not a lawsuit is filed, including but not limited to Claims for damage to property (real or personal) or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities, and costs, expenses and attorneys' and experts' fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with the violation of any Environmental Laws by Lessee or other occupants of the Premises. The City shall have control over the City's and Lessee's involvement in legal proceedings resulting from an environmental violation and covered by the indemnification obligations contained in this Lease. Lessee's duty to indemnify the City shall survive the expiration or earlier termination of this Lease. Lessee's obligations pursuant to this subparagraph 24.F shall not apply to Claims related to a violation of Environmental Laws attributable solely to actions taken by the City.

G. Access to Premises. Lessee shall allow authorized representatives of the City or state and federal environmental personnel, at a reasonable time and with reasonable notice and at such party's sole expense, access to the Premises for the following purposes:

- 1) Conducting an environmental audit or other inspections of the Premises.
- 2) Reviewing and copying of any records that must be kept under any environmental permit.
- 3) Viewing the facility, equipment, practices, or operations regulated or required under such permit.
- 4) Sampling or monitoring any substances or parameters at any location subject to any environmental permit or Environmental Law.

H. Survivability. The provisions of this paragraph 24 survive the expiration or earlier termination of this Lease.

I. No Limitation. Nothing in this Lease may be interpreted as limiting the City's ability to seek contribution from any potentially responsible parties for any environmental violation.

25. RADON GAS. 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.

26. **REPLACEMENT FACILITY.** The City is under no obligation to locate or provide a replacement facility under any circumstances.

27. **DESTRUCTION OF PREMISES PRIOR TO COMMENCEMENT OF CONSTRUCTION.** From the Effective Date until Lessee obtains the real property insurance pursuant to the requirements set forth in subparagraph 37.A.10)(b), if the Premises are totally destroyed by fire or other casualty or if the Premises are partially destroyed to an extent that the Premises are not suitable, as determined by Lessee in its reasonable discretion, then Lessee shall have the option of terminating this Lease upon written notice to the City, within sixty (60) days after such casualty loss, in which event Rent and all other obligations herein shall cease as of the date of such casualty, and neither the City nor Lessee shall have any further obligations or rights hereunder except for any obligations existing at the time of termination. In the event of termination pursuant to this paragraph 27, the City will not pay a termination fee pursuant to paragraph 14 and Lessee, and not the City, shall be responsible for paying the Lender the outstanding balance on the Loan. Such exception to payment of the termination fee shall not serve to limit or alter any other obligation to pay a termination fee elsewhere in this Lease. Lessee's obligation to pay the Lender is independent of and shall be superior to any other provision of this Lease and is fixed and absolute so long as there is an outstanding balance on the Loan.

28. **DESTRUCTION OF PREMISES AFTER COMMENCEMENT OF CONSTRUCTION.**

A. **Insurance Claim.** Once Lessee obtains the real property insurance pursuant to the requirements set forth in subparagraph 37.A.10)(b), if the Premises are totally or partially destroyed by fire or other casualty, subject to the terms of this Lease, Lessee shall continue to pay Rent and shall timely take all actions necessary to secure its rights to make an insurance claim with its insurance carrier. As soon as reasonably possible after the casualty event, Lessee shall meet with the City and the Lender to prepare to submit a claim for the insurance proceeds for all insurable losses. Lessee shall then timely submit a claim for the insurance proceeds. Insurance proceeds shall be utilized to restore the Premises destroyed by a casualty event for the benefit of the City, Lessee and the Lender. All insurance proceeds received for the insurable losses resulting from the casualty event shall be deposited into the Insurance Deposit Account. Lessee shall obtain prior written approval from the Lender and the City, which approvals will

not be unreasonably delayed or withheld, before making any disbursements from the Insurance Deposit Account. For purposes of this Lease, Insurance Deposit Account shall mean an interest-bearing account established by Lessee for the deposit of insurance proceeds received for the insurable loss resulting from the casualty event which account shall be utilized by Lessee for the sole purpose of restoring the Premises pursuant to a Restoration Plan (as defined herein). Lessee shall prepare, keep, and maintain books, records and documents related to the Insurance Deposit Account, including all expenditures associated with a Restoration Plan. The City and the Lender shall have the right to examine and audit such books, records and documents related to the Insurance Deposit Account.

B. Restoration Plan. Lessee shall present the City with a restoration plan ("**Restoration Plan**") as soon as reasonably possible after the casualty event, but in no event later than sixty (60) days after the date the insurance proceeds are paid or the insurance carrier makes a final determination as to the amount of the insurance proceeds that are payable for the loss, whichever comes first. The City will extend the deadline to submit the Restoration Plan by a period of up to ninety (90) additional days upon a written request by Lessee that outlines the reasons for the additional time along with supporting documentation. The Restoration Plan shall include a scope of work to restore the Premises to a condition comparable to what was originally contemplated in Development Concept Plan, a schedule that includes commencement and completion of the work, and an estimated budget that does not exceed the insurance proceeds. If the Parties mutually agree in writing to the Restoration Plan, Lessee shall complete the restorations in accordance with the Restoration Plan at Lessee's sole cost and expense.

C. Termination by the City.

1) If Lessee timely submits a Restoration Plan that complies with the requirements set forth in subparagraph 28.B but the Parties don't mutually agree to that Restoration Plan, the City may terminate this Lease, subject to the payment of the termination fee pursuant to subparagraph 14.A. If the City opts to terminate this Lease, Lessee shall remit the amount of insurance proceeds in the Insurance Deposit Account to the Lender within ten (10) days after the effective date of termination.

2) Subject to Lessee's right to notice and opportunity to cure specified in subparagraph 29.B of this Lease, Lessee shall be deemed to be in default if Lessee fails to timely submit a Restoration Plan that complies with the requirements set forth in subparagraph 28.B, and the City may terminate this Lease, subject to the payment of the termination fee pursuant to subparagraph 14.B. If the City opts to terminate this Lease, Lessee shall

remit the amount of insurance proceeds in the Insurance Deposit Account to the Lender within ten (10) days after the effective date of termination.

3) Subject to Lessee's right to notice and opportunity to cure specified in subparagraph 29.B of this Lease, in the event the Parties mutually agree in writing to a Restoration Plan but Lessee fails to comply with the Restoration Plan, Lessee shall be deemed to be in default and the City may terminate this Lease, subject to the payment of the termination fee pursuant to subparagraph 14.B. If the City opts to terminate this Lease, Lessee shall remit the remaining amount of insurance proceeds in the Insurance Deposit Account to the Lender within ten (10) days after the effective date of termination.

29. **DEFAULT.**

A. Default by Lessee.

1) *Events of Default.* Subject to Lessee's right to notice and opportunity to cure specified in subparagraph 29.B of this Lease, Lessee shall be deemed to be in default of its obligations under this Lease upon the occurrence of any of the following:

(a) Lessee's failure to pay Rent or any other sums due under this Lease within fifteen (15) days after the Due Date;

(b) Lessee's failure to perform any covenant, promise or obligation contained in this Lease (including but not limited to Lessee's failure to complete the Required Capital Improvements by the date set forth in subparagraph 9.D, subject to paragraph 69);

(c) Lessee's failure to use the Premises as set forth in subparagraph 3.A or failure to operate the Premises as set forth in paragraph 8 at any time during the Term;

(d) The appointment of a receiver or trustee for all or substantially all of Lessee's assets;

(e) Lessee's voluntary petition for relief under any bankruptcy or insolvency law;

(f) The filing of an involuntary petition for relief under any bankruptcy or insolvency law that is not dismissed within sixty (60) days of filing;

(g) The sale of Lessee's interest under this Lease by execution or other legal process;

- (h) The seizure, sequestration, or impounding by virtue or under authority of any legal proceeding of all or substantially all of the Property of Lessee used in or incident to the operation of the Premises;
- (i) Lessee making an assignment of this Lease for the benefit of creditors;
- (j) Any sale, transfer, assignment, subleasing, concession, license, or other disposition prohibited under this Lease;
- (k) Lessee doing or permitting to be done anything that creates a lien upon the Premises and failing to obtain the release of any such lien or bond off any such lien as required herein;
- (l) More than two audits conducted by the City during the Term pursuant to paragraph 7 reveal understatements of Rent by Lessee of more than ten percent (10%);
- (m) Lessee's default of paragraph 24 of this Lease;
- (n) A default described in subparagraph 28.C.2);
- (o) A default described in subparagraph 28.C.3); or
- (p) Lessee's default of its obligations under the Loan documents (described in subparagraph 38.B.1).

B. Remedies for Default; Right to Cure.

1) *Non-monetary Defaults; Right to Cure.* "**Emergency**" shall mean that threat of imminent injury or damage to persons or property or the imminent imposition of a civil or criminal fine or penalty. Provided the default does not involve an Emergency that must be addressed in a shorter time frame or as otherwise provided below in this subparagraph 29.B.1), Lessee shall have a period of thirty (30) days after notice from the City of a non-monetary default in which to cure the default. The City may extend this cure period if the default is of a nature that it cannot be completely cured within such cure period provided that Lessee commences to cure such default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the default; provided, however, the City may pursue any or all of its remedies if the curative period exceeds ninety (90) days. If the City provides Lessee with a notice of a non-monetary default with less than thirty (30) days remaining during the Term, Lessee will only have the remaining period of the Term in which to correct the default.

2) *Statutory Notices for Monetary Defaults.* The notices of defaults to be given under this subparagraph 29.B.2) may be the same as the notice required under Chapter 83, Florida Statutes, or any successor statute, and this Lease shall not be construed to require the City to give two separate notices to Lessee before proceeding with any remedies.

C. City's Options upon Default by Lessee. In the event Lessee is in default and fails to cure as required by this Lease, and subject to the City's obligation to pay the termination fee set forth in subparagraph 14.B, the City may exercise the following options, and Lessee shall execute all documents reasonably requested by the City to provide verification of any such right exercised by the City:

1) Declare this Lease to be terminated, and reenter and take possession of the Premises by any lawful means, whereupon all right, title, and interest of Lessee (including those rights assigned to the Lender pursuant to subparagraph 3.A and paragraph 66) in the Premises shall automatically terminate. Such termination shall be without prejudice to the City's right to collect from Lessee any Rent, together with all damages suffered by the City because of Lessee's default of any covenant contained in this Lease. Upon such termination and re-entry by the City, Lessee and the City shall be forever released from any and all further obligations hereunder, except for those obligations specifically enumerated to survive expiration or termination of this Lease, including the obligation to pay the termination fee set forth in subparagraph 14.B. Rights assigned to the Lender pursuant to paragraph 13 (i.e., rights to the Required Capital Improvements made at or to the Premises by Lessee, which are property of Lessee), will terminate on the date of the payment of the termination fee pursuant to paragraph 14.

2) Exercise any and all rights, remedies, and privileges that the City may have in law or equity, or in this Lease, except that under no circumstances shall the City be entitled to accelerate payment of any Rent due hereunder. All such remedies shall be cumulative and non-exclusive.

D. Default by City. The City shall be in default under this Lease if the City fails to substantially perform any of its obligations or materially defaults any of its covenants contained in this Lease and said failure or default continues for a period of thirty (30) days after written notice from Lessee to the City. This thirty (30) day period shall be extended for such reasonable period of time as is necessary to cure the default, if the alleged default is not reasonably capable of cure within the thirty (30) day period and the City commences and continues diligently to cure said default. Notwithstanding any

provision to the contrary contained herein, Lessee's sole remedy for a default by the City shall be to terminate this Lease.

30. **TERMINATION FOR CONVENIENCE.** After June 1, 2024, and subject to the City's payment of a termination fee pursuant to subparagraph 14.A, the City may terminate this Lease for convenience at any time upon one hundred twenty (120) days written notice to Lessee. In the event the City electors by majority vote in a City-wide referendum authorize a lease for operation of the Premises with at least a twenty (20) year term and the Parties enter into a new lease with at least a twenty (20) year term, then such new lease will not include the City's option to terminate for convenience.

31. **RIGHT OF ENTRY & ACCESS.**

A. **City Access.** The City shall have the right (twenty-four (24) hours a day, seven (7) days a week) to enter and inspect the Premises.

B. **Ingress and Egress to Premises.** The City shall provide ingress and egress, for foot, vehicular, and boat traffic to and from the Premises uninterrupted at the level presently provided. The present level of ingress and egress recognizes the fact that there are at times temporary suspensions of ingress and egress for construction projects, the Race Event described in paragraph 70, or other special events, including but not limited to City authorized events. The number and duration of such interruptions will be determined by the City in its sole and absolute discretion. If ingress and egress to the Premises is unavailable for a period of ten (10) consecutive days for any reasons not specified in this subparagraph 31.B or in paragraph 69, resulting in a documented reduction of monies received from Retail Sale Items or Other Sale Items, the City and Lessee will meet within ten (10) business days after a request from Lessee to meet with the City to review the documentation and discuss a potential amendment to the Lease.

32. **RESERVATION FOR CITY USE.** Lessee shall reserve at least one (1) forty (40) foot and two (2) thirty (30) foot open boat slips dedicated for use by the City at no charge (i.e., no User Fees) to the City. Upon request by the City, Lessee shall also make available up to an additional two (2) boat slips dedicated to the City at the then-current User Fees upon one hundred eighty (180) days' notice from the City.

33. **PUMP OUT SERVICES.** Lessee shall operate pump-out boat services for North Yacht Basin moorings and any other moorings identified by the City in accordance with the requirements set forth in the Florida Clean Vessel Act Program Grant Agreement between the City and Florida Department of Transportation, which is attached hereto as **Exhibit G**. To the extent the Florida Clean Vessel Act Program Grant Agreement sets

forth terms and conditions that are required to be performed by the City as the Grantee under that agreement, Lessee shall comply with such terms and conditions.

34. **INDEMNIFICATION.**

A. **Indemnity.** Lessee shall defend at its expense, pay on behalf of, hold harmless and indemnify the Indemnified Parties from and against any and all Claims, whether or not a lawsuit is filed, including but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities; and costs, expenses and attorneys' and experts' fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:

1) The ownership, occupancy, or use of the Premises by the City or Lessee;

2) The performance of this Lease (including future changes and amendments thereto) by Lessee, its employees, agents, representatives (including the Owner's Representative), Contactors, other contractors, subcontractors or Volunteers, including but not limited to Lessee's duty to maintain and warn of dangerous conditions located at or on the Premises and known to Lessee;

3) The failure of Lessee, its employees, agents, representatives (including the Owner's Representative), Contactors, other contractors, subcontractors or Volunteers to comply and conform with any applicable Laws;

4) Any negligent act or omission of Lessee, its employees, agents, representatives (including the Owner's Representative), Contactors, other contractors, subcontractors or Volunteers, whether or not such negligence is claimed to be either solely that of Lessee, its employees, agents, representatives, contractors, subcontractors or Volunteers or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or

5) Any reckless or intentional wrongful act or omission of Lessee, its employees, agents, representatives (including the Owner's Representative), Contactors, other contractors, subcontractors or Volunteers.

B. **Insurance Obligations.** The provisions of this paragraph are independent of, and shall not be limited by, any insurance obligations in this Lease, and shall survive the expiration or earlier termination of this Lease with respect to any Claims

or liability arising in connection with any event occurring prior to such expiration or termination. The purchase of insurance coverage required by this Lease, or otherwise, shall not relieve Lessee of any duties set forth in this paragraph.

C. Limitations. Lessee's obligations pursuant to this paragraph 34 shall not apply to Claims arising from the City's sole negligence.

35. **DISCLAIMERS**.

A. Risk of Loss. Lessee may store its Property and occupy the Premises at Lessee's own risk.

B. Lessee's Staff Property Damage. The City is not responsible or liable at any time for any damage to Lessee's staff property regardless of the cause.

C. Acts or Omissions of Third Parties. The City is not responsible or liable to Lessee for any damage to either person or property that may be occasioned by or through the acts or omissions of third parties.

D. Notice of Claim. Lessee shall give prompt notice to the City in case of fire or accidents or other casualties on or about the Premises.

E. Defects and Damage. The City and its employees are not responsible or liable at any time for (a) any defects, latent or otherwise, in any of the equipment, machinery, utilities, appliances or apparatus at or within the Premises, or (b) for any loss of life, or injury or damage to any person or to any property or operation of Lessee or those claiming by, through or under Lessee, caused by, or resulting from, the bursting, breaking, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises or caused by or resulting from, acts of God or the elements or the failure of any public utility in supplying utilities to the Premises, or (c) any damage caused by or resulting from any defect or negligence in the occupancy, construction, operation or use of the Premises or of any improvements to the Premises, or any of the equipment, fixtures, machinery, appliances or apparatus therein by any other person or by or from the acts of negligence of any occupant of the Premises.

36. **LIMITATION OF LIABILITY**. In no event will either party be liable for any loss of use, loss of time, inconvenience, lost profits or other special, incidental or consequential damages in any way related to or arising from this Lease, including, without limitation,

any special, incidental or consequential damages alleged or claimed to be related to or arising from any default by such party under this Lease.

37. **INSURANCE.**

A. Lessee shall obtain and maintain at Lessee's cost and expense, the following insurance, written by a firm that is authorized to conduct operations in the State of Florida, and rated "A-" or better by a rating agency such as A.M. Best or its equivalent. The policy or policies shall have following minimum coverages and limits:

1) **Commercial General Liability:** Commercial General Liability policy on an occurrence basis with at least a \$2,000,000 per occurrence limit and \$2,000,000 aggregate limit. Coverage shall include bodily injury and property damage for premises and operations, including but not limited to products and completed operations and personal injury, protecting the City against all Claims that may arise or be claimed on account of Lessee's use of the Premises.

2) **Automobile Liability:** Automobile Liability insurance with a minimum combined single limit of \$1,000,000. Coverage shall include bodily injury and property damage liability arising out of the ownership or use of any automobile, including owned, non-owned, and hired automobiles.

3) **Worker's Compensation:** Workers' Compensation Insurance in compliance with the Laws of the State of Florida. Employer's Liability coverage with minimum limits of \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit for disease. United States Longshore and Harborworker's Act Insurance as required by federal Laws.

4) **Pollution Liability:** Pollution Liability insurance with a minimum limit of \$1,000,000 per occurrence. Coverage shall apply to pollution losses arising from all services performed to comply with this Lease. Coverage shall apply to sudden and gradual pollution conditions including discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water. Coverage shall also include the cost of cleanup and remediation.

5) **Marine Liability:** If any watercraft are operated by Lessee at the Premises, Lessee shall maintain hull coverage on the vessel(s), including wreckage removal, Crew Coverage, and Protection and Indemnity

coverage of at least \$1,000,000 per occurrence, plus Jones Act and maintenance and Cure coverage.

6) Marina Operators Legal Liability: Marine Operators Legal Liability Coverage of at least \$1,000,000 per occurrence shall be provided for damage to vessels in the care, custody, and control of Lessee in both wet and dry storage.

7) Personal Property: Any insurance coverage Lessee may desire on the contents of the Premises.

8) Business Income Insurance: Business Income insurance insuring that all sums payable under this Lease, including but not limited to Rent, shall be paid to City if the Premises are destroyed by a peril which is insurable under a standard ISO Business Income coverage form or other form agreeable to the City.

9) Builder's Risk: Lessee shall maintain or require Contractors or other Lessee's contractor(s) to maintain Builders Risk insurance covering all Required Capital Improvements and Improvements until completion of the Required Capital Improvements and Improvements. The policy shall insure the work at the site to its full insurable value. The policy shall insure the interests of the City, Lessee, Contractors, contractors, and the Lender.

10) Real Property:

(a) From the Effective Date until thirty (30) days prior to commencing construction of the Required Improvements on the Premises, the City will provide commercial property insurance for City-owned property on the Premises at its sole discretion. All insurance proceeds from claims will remain with the City. Upon annual renewal of the City's commercial property insurance, Lessee shall reimburse the City for insurance premiums based on the current insurance valuation of the Premises and the premium rate the City received from its carriers. Lessee shall be responsible for securing, at its own expense, whatever coverage Lessee may desire for any Property on the Premises.

(b) Thirty (30) days prior to commencement of construction of the Required Capital Improvements on the Premises, Lessee shall obtain and maintain commercial property insurance on a full replacement cost basis with deductibles approved by the City and shall name the City and the Lender as a loss payee; provided, however, that upon Lessee's commencement of the destruction and removal of specific structures on the Premises that will be rebuilt, Lessee is not required to provide such coverage on those specific

structures so long as they are covered under Builders Risk as required by subparagraph 37.A.9). Coverage must include all real property at the Premises, including slips, docks, wharfs, and pilings, except as otherwise provided in this subparagraph 37.A.10)(b). Lessee shall have an independent professional real estate appraiser or insurance appraiser conduct a biennial property valuation for insurance purposes. The appraisal must be provided to the City every two years during the Term. The City reserves the right to have an additional appraisal performed by another appropriately licensed or certified real estate appraiser or insurance appraiser. If the appraisal conducted at the direction of the City determines a higher replacement cost value than Lessee's appraisal, such higher replacement cost value shall be used for purposes of determining the insurance required by this subparagraph 37.A.10).

B. All of Lessee's insurance policies, except Workers' Compensation, shall name the Indemnified Parties and the Lender as additional insureds, provide contractual liability coverage, be primary and non-contributory to any insurance maintained by the City, and provide that they shall not be subject to cancellation or any material change which would or could affect the City except for a minimum of thirty (30) days prior written notice to the City at the address set forth in paragraph 48 of this Lease.

C. Lessee shall provide the City with Certificates of Insurance on a standard ACORD form, or similar form acceptable to the City, reflecting all required coverage. At the City's request, Lessee shall provide copies of current policies with all applicable endorsements.

D. Lessee hereby waives all subrogation rights of its insurance carriers in favor of the Indemnified Parties and the Lender. This provision is intended to waive fully, and for the benefit of the Indemnified Parties and the Lender, any rights or claims which might give rise to a right of subrogation in favor of any insurance carrier.

E. The insurance coverages and limits for Lessee, Contractors, and other Lessee contractors are set at the sole discretion of the City and are subject to change or revision as the need arises upon ninety (90) days' written notice to Lessee. Failure of Lessee to comply with any changes or increases within thirty (30) days of receipt of written notice from the City shall be considered a default of this Lease. Approval by the City of any certificate of insurance does not constitute verification by the City that the insurance requirements have been satisfied or that the insurance policy shown on the certificate of insurance is in compliance with the requirements of this Lease. The City

reserves the right to require a certified copy of the entire insurance policy including endorsements. When requested by the City, Lessee shall, within ten (10) days of request, provide copies of current policies of Lessee, Contractors, or any other Lessee contractors.

38. **LIENS.**

A. **No Liens.** Except for a payment and performance bond pursuant to Florida Statute section 255.05, neither Lessee nor anyone claiming by, through or under Lessee shall have the right to file or place any mechanic's or materialman's lien or other lien of any kind or character whatsoever upon the Premises, the improvements made by Lessee, or improvements thereon or upon the interest of Lessee herein.

B. **City Lien.** The City shall have a lien against all Property of Lessee kept on or at the Premises at any time during the Term and the Required Capital Improvements, in the aggregate amount of all Rent, damages and the sums that may at any time be owed by Lessee to the City under this Lease. The City, in the event of any default by Lessee, may foreclose the lien. In that event, Lessee shall be obligated for all court costs and reasonable attorney(s) fee(s).

1) On the date the Loan is obtained by Lessee, the City's lien against all Property and the Required Capital Improvements will automatically subordinate (without the need for further memorialization) to Commercial Bank, a Tennessee banking corporation ("**Lender**") as collateral to secure repayment of the loan (and associated obligations) ("**Loan**") that the Lender is making to Lessee for the purpose of financing the Required Capital Improvements. The total amount of such Loan shall not exceed \$30,000,000 or the cost of the Required Capital Improvements, whichever is less and excluding any amount required to be held in an escrow account pursuant to an escrow agreement between Lessee and the Lender. In the event that a termination fee is owed pursuant to paragraph 14, the amount of the termination fee will be reduced by the amount in the escrow account. The Loan will initially be for a term of four years and six months amortized over three hundred (300) months (the maturity date of such initial term shall be the "Loan Expiration Date") and in the form of a traditional construction loan. Lessee will only pay interest on the outstanding balance on the Loan for the first thirty-six (36) months and thereafter Lessee will be responsible for paying principal and interest on the outstanding balance on the Loan during this initial term. Lessee may request draws from the Lender to cover its costs and expenses for the Required Capital Improvements. The amount of the draws dispersed to Lessee from the Lender shall not exceed the actual costs for the Required

Capital Improvements at the Premises. Provided the City and Lessee enter into a new lease in accordance with the requirements set forth in subparagraph 5.B by the Loan Expiration Date, the Loan will be extended for another term of four years and six months amortized over three hundred (300) months from the date the Loan was originally obtained (i.e., the Loan obtain pursuant to this Lease). Lessee will be responsible for paying principal and interest on the outstanding balance on the Loan. Thereafter, Lessee may refinance the Loan through the Lender (with the Lender's approval) or another third party. Lessee shall ensure that full satisfaction of the Loan or a future loan does not exceed three hundred (300) months from the date the Loan was originally obtained (i.e., the Loan obtain pursuant to this Lease). The City shall have the right to review and approve in writing in advance all of the terms and conditions in the Loan documents required by the Lender before the Loan can be obtained in order for the City to ensure that such documents are consistent with this Lease or any new lease. The City's approval will not be unreasonably delayed or withheld. Lessee shall ensure that the Loan documents do not alter the terms and conditions of this Lease and that they include at least the following: (i) the Loan is prepayable in whole or in part at any time without any premium or penalty, (ii) acknowledgment by the Lender of the City's rights under this Lease and (iii) except to the extent the City must subordinate its lien against the Property and the Required Capital Improvements, the Lender shall subject the Loan documents to all rights the City possesses under this Lease.

39. **ASSIGNMENT OR SUBLEASE.**

A. Assignment.

1) Consent of the City. Except as set forth in subparagraph 3.A, paragraph 13, subparagraph 14.F, or paragraph 66, Lessee shall not delegate performance nor assign this Lease or any of its rights under this Lease without first receiving the authorization of City Council, which shall be granted or withheld in City Council's sole and absolute discretion. Any such purported delegation or assignment shall be null and void and shall constitute a default of this Lease. Any purported involuntary assignment of this Lease or assignment by operation of law, whether by bankruptcy or insolvency, merger (whether as the surviving or disappearing business entity), consolidation, dissolution, reorganization, transfer of Lessee or controlling interest in Lessee, or court order effectuating such assignment or any other method, shall be null and void and shall constitute a default of

this Lease unless such underlying transaction is approved by City Council which approval shall be in the sole and absolute discretion of City Council.

2) Assumption and Release. If City Council approves an assignment of this Lease pursuant to subparagraph 39.A.1), the assignee shall assume all rights and obligations of Lessee under this Lease. Any assignee of Lessee shall deliver to the City an assumption agreement in a form reasonably satisfactory to the City within ten (10) days after approval by City Council of such assignment. Notwithstanding anything to the contrary contained in this Lease, upon a permitted assignment of this Lease, Lessee's liability under this Lease shall not terminate.

B. Sublease. Lessee must obtain City Council's prior written consent to sublease the Premises or any part thereof for a term exceeding one year in duration. City Council's consent may be granted or withheld in City Council's sole and absolute discretion. Lessee must obtain written consent from the Mayor to sublease the Premises or any part thereof for a term of one year or less. The Mayor's consent may be granted or withheld in the Mayor's sole and absolute discretion. Any purported sublease which is not authorized by City Council or the Mayor, respectively, will be void.

40. SUCCESSORS AND ASSIGNS. This Lease shall be binding on the Parties and their successors and assigns.

41. NON-APPROPRIATION. The obligation of the City to fund any expenditures required by this Lease shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding of any expenditures that are due during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available Non-Ad Valorem Revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Lease.

42. CURRENT OFFICERS. Lessee shall provide the City with the name, title, address and telephone number of all of the LLC managers, and officers within thirty (30) days of their election or appointment to office. Should any managers, or officers reside at more than one residence, both addresses and telephone numbers shall be supplied to the City.

43. LESSEE ENTITY. Lessee shall do all things necessary to comply with all the legal requirements to be a business entity authorized to operate within the State of Florida, including but not limited to active registration with the Florida Division of Corporations. If Lessee is a foreign entity, it shall also do all things necessary to comply with all the

legal requirements to be a business entity authorized to operate in its state of domicile, including but not limited to required registrations and filings with that state. Should Lessee at any time fail to be in compliance with those legal requirements, said failure shall constitute a default of this Lease.

44. **DUE AUTHORITY.** Each party to this Lease that is not a natural person represents and warrants to the other party(ies) that (i) it is a duly organized, qualified and existing entity under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the persons executing this Lease to so execute the same and fully bind the party(ies) on whose behalf they are executing.

45. **THIRD PARTY GUARANTEE.** On or before the Effective Date, Lessee shall provide a Third Party Guaranty of Lease, signed by Safe Harbor Development, LLC d/b/a Safe Harbor Development FL, LLC, in a form substantially the same as **Exhibit D**, attached hereto.

46. **RELATIONSHIP BETWEEN THE PARTIES.** The relationship between the Parties is that of landlord and tenant. In conducting its business hereunder, Lessee shall act as an independent contractor and not as an agent of City.

47. **APPLICABLE LAW, VENUE AND JURISDICTION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Florida. Venue for any action brought in state court shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense of improper or inconvenient venue as to either court and consents to personal jurisdiction in either court.

48. **NOTICES.** Any notice, demand, request or other instrument which may be or is required to be given or delivered under this Lease shall be in writing and shall be deemed to be delivered (i) whether or not actually received, five (5) days after deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (ii) when received (or when receipt is refused) if delivered personally or sent by a nationally recognized overnight courier, all charges prepaid, at the addresses of the City, Lessee, and the Lender as set forth in this paragraph 48. Such address may be changed by written notice to the other parties in accordance with this paragraph 48. The parties acknowledge that copies of any notice sent by facsimile or e-mail are for convenience only, and shall not be deemed to be proper notice required hereunder.

- A. If to Lessee, addressed to: **St Pete Marina LLC**
Attn: Darby Campbell, President
308 Letterman Rd
Knoxville, TN 37919
- With a copy to: **Safe Harbor Development**
Attn: Michael Houbre, Chief Legal
Counsel
308 Letterman Rd
Knoxville, TN 37919
- B. If to City, addressed to: City of St. Petersburg
Real Estate & Property Management
Post Office Box 2842
St. Petersburg, FL 33731-2842
- With a copy to: Joseph Zeoli
City of St. Petersburg
P.O. Box 2842
St. Petersburg, FL 33731-2842
- C. If to Lender, addressed to: Kenneth Raff
Executive Vice President
Eastern Regional Executive Officer
Commercial Bank
1616 West Market Street
Johnson City, TN 37601
- With a copy to: Zachary Roth
Ansbacher Law
8818 Goodbys Executive Drive
Jacksonville, FL 32217

Refer to Real Estate & Property Management Lease File No: when making any inquiries to the City concerning this Lease.

49. **SEVERABILITY**. Should any section or any part of any section of this Lease be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination shall not render void, invalid, or unenforceable any other section or any part of any section in this Lease.

50. **NON-DISCRIMINATION.** Lessee shall not discriminate against anyone in the use of the Premises on the basis of race, color, religion, gender, national origin, marital status, age, disability, sexual orientation, genetic information or other protected category.

51. **HEADINGS.** The section headings of the paragraphs of this Lease are inserted herein for convenience and reference only, and shall not be considered or referred to in resolving questions of interpretation.

52. **PARAGRAPH NUMBERS.** The paragraph numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs.

53. **ENTIRE AGREEMENT; AMENDMENTS.** This Lease and all of its exhibits set forth all the covenants, promises, agreements, conditions, and understandings between the City and Lessee concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, other than as herein set forth. No subsequent alteration, amendment, change, or addition to this Lease will be binding upon the City or Lessee until reduced to a writing and signed by the City and Lessee. There shall be no amendments to this Lease that affect any rights assignable to the Lender without the prior written consent of the Lender.

54. **EXHIBITS.** The Exhibits attached to this Lease are, by this reference, made a part of this Lease.

55. **RECORDABILITY.** Either party may, at its absolute discretion, record this Lease or a notice of this Lease in the public records or any other notice in the public record related to this Lease.

56. **CITY CONSENT AND ACTION.**

A. For purposes of this Lease, any required written permission, consent, acceptance, approval, or agreement by the City means the approval of the Mayor, unless otherwise set forth in this Lease or unless otherwise required to be exercised by the City Council pursuant to the City Charter or applicable Laws.

B. For purposes of this Lease, any right of the City to take any action permitted, allowed or required by this Lease, may be exercised by the Mayor, unless otherwise set forth in this Lease or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.

57. **NO CONSTRUCTION AGAINST PREPARER OF LEASE.** This Lease has been prepared by the City and reviewed by Lessee and its professional advisors. The City, Lessee and Lessee's professional advisors believe that this Lease expresses their agreement and that it should not be interpreted in favor of either the City or Lessee or against the City or Lessee merely because of their efforts in preparing it.

58. **AMERICANS WITH DISABILITIES ACT OF 1990.** Lessee assumes all responsibility including but not limited to financial, construction and physical modification costs, provision of auxiliary aids, services and legal costs, for ensuring compliance of the Premises with all aspects of the ADA and any amendments thereto and regulations promulgated thereunder, including, but not limited to, Title II, Structural and Title III, Programmatic Accessibility Standards, as well as any future amendments thereto.

59. **WAIVER.** The waiver by the City or Lessee of any default of any term, covenant, or condition shall not be deemed to be a waiver of any subsequent default of the same or any other term, covenant or condition, nor shall the acceptance or payment of Rent, or other payment be deemed to be a waiver of any such default. No term, covenant or condition of this Lease shall be deemed to have been waived by the City or Lessee, unless such waiver is in writing. No surrender of the Premises for the remainder of the Term shall be valid, unless accepted by the City in writing.

60. **SURVIVAL.** All obligations and rights of any party arising during or attributable to the period prior to Expiration Date or the effective date of earlier termination of this Lease, including but not limited to those obligations related to indemnification, payment of a termination fee pursuant to paragraph 14, and records retention, shall survive such expiration or earlier termination.

61. **NUMBER AND GENDER.** Wherever appropriate herein, the singular includes the plural, and the plural includes the singular, and each gender includes each other gender.

62. **THIRD-PARTY BENEFICIARIES.** This Lease sets forth the agreement between the Parties and all rights and benefits established herein are established solely for the benefit of the Parties and are not intended to establish any rights or benefits in any other person or entity, except that the Lender is deemed a third-party beneficiary of this Lease and is entitled to enforce any rights assignable to the Lender under this Lease. As a third-party beneficiary, the Lender has a right to request the City and Lessee to confirm in writing, within ten (10) days of a request from the Lender, that this Lease has not expired or been terminated and is otherwise in full force and effect.

63. **COMPLIANCE WITH LAWS.** For the purposes of this Lease, "Laws" shall mean all present and future (i) federal, state, and local constitutions, the City Charter, laws, statutes, ordinances, rules, regulations, and codes; (ii) decrees, orders, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedent in the State of Florida; (iii) decisions of federal courts applying the Laws of the State of Florida; and (iv) regulations and orders of quasi-official entities or bodies (e.g., boards, bureaus and public utilities), as the same may be amended or supplemented from time to time. Laws shall include, without limitation, the bonding requirements of Florida Statute section 255.05, Florida Public Records Laws, the ADA, and the City of St. Petersburg's sign code. Lessee shall comply with all applicable Laws, including but not limited to Laws requiring the Premises to be closed on or during any days or hours; health, safety and building codes; any permit or license requirements; and any applicable competitive bidding requirements for public projects. Governmental penalties, fines or damages imposed on any portion of the Premises as a result of the acts of Lessee, its employees, agents, representatives (including the Owner's Representative), Contactors, other contractors, subcontractors or Volunteers shall be paid by Lessee within thirty (30) days after receipt of said notice by Lessee, unless reasonably contested by Lessee. In the event any future Laws are enacted that result in a documented increase to the Operating Expenses, the City and Lessee will meet within ten (10) business days after a request from Lessee to meet with the City to review the documentation and discuss a potential amendment to the Lease.

64. **QUIET ENJOYMENT.** The City covenants that Lessee, on paying all sums due under this Lease and performing all the covenants and agreements herein contained, shall peaceably and quietly have, hold, and enjoy the Premises.

65. **NO REPRESENTATIONS CONCERNING FUTURE USE OF PREMISES.** The City has made no representations to Lessee concerning the use of the Premises after the Expiration Date or effective date of earlier termination of this Lease nor has the City made any representations to Lessee that the City will extend this Lease or enter into any other lease with Lessee in the future.

66. **CONDEMNATION.** If during the Term the Premises is condemned or taken in any manner for public use, the City shall have a duty to cooperate with Lessee and the Lender to present documentation to the condemning authority that establishes the outstanding balance on the Loan as the minimum value of Lessee's respective interest in the Premises pursuant to this Lease. The City will be entitled to that portion of the condemnation award attributable to the City's interest in the Premises, and Lessee will be entitled to that portion of the condemnation award attributable to Lessee's interest in

the Premises. Once a Loan meeting the requirements set forth in subparagraph 38.B.1) is obtained by Lessee, Lessee's rights to that portion of the condemnation award attributable to Lessee's interest in the Premises pursuant to this paragraph 66 will be assigned to the Lender as collateral for the Loan, and the Lender will be entitled to enforce all rights to that portion of the condemnation award attributable to Lessee's interest in the Premises pursuant to this paragraph 66 as may exist from time to time without need for further memorialization. This Lease will automatically terminate as of the date of the vesting of title in the condemning authority. As used in this paragraph 66, a condemnation or taking includes a deed given or transfer made in lieu thereof. In the event this Lease is terminated pursuant to this paragraph 66, the City will have no obligation to pay a termination fee pursuant to paragraph 14, and Lessee, and not the City, will be solely responsible for paying the Lender the outstanding balance on the Loan. Such exception to payment of the termination fee shall not serve to limit or alter any other obligation to pay a termination fee elsewhere in this Lease. Lessee's obligation to pay the Lender the outstanding balance on the Loan is independent of and shall be superior to any other provision of this Lease and is fixed and absolute so long as there is an outstanding balance on the Loan.

67. **CITY AS MUNICIPAL CORPORATION.** Nothing contained in this Lease shall be interpreted to require the City to take any action or refrain from taking any action in its capacity as a municipal corporation, including but not limited to the exercise of its police and taxing powers.

68. **CITY'S BRICK PROGRAM.** Lessee shall not install any brick at the Premises or operate any brick program at the Premises, as the terms "brick" and "program" are defined in St Petersburg City Code chapter 25, article IX, as it may be amended from time to time. If the City provides Lessee with written notice that Lessee has violated this provision, Lessee shall, at its sole expense, remove all bricks from the Premises and restore the Premises to its previous condition. If no deadline for such removal and restoration is provided in the notice, Lessee shall complete such removal and restoration with thirty (30) days of the City's issuance of the notice.

69. **FORCE MAJEURE.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance required hereunder (except for the payment of Rent as required in paragraph 6) by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, public health emergencies, or other reason of like nature not the fault of the party delayed in performing work or doing acts ("**Permitted Delay**"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of

time delivering written notice of such Permitted Delay to the other party within ten (10) days of the event causing the Permitted Delay, and the maximum period of time which a party may delay any act or performance of work due to a Permitted Delay shall be sixty (60) days.

70. **GRAND PRIX.**

A. This Lease is subject to current and future agreements with third parties for the conduct of racing events in downtown St. Petersburg (any such agreement hereinafter referred to as "**Grand Prix Race Agreement**") and all rights (exclusive rights and other rights) and authority granted thereunder, including but not limited to rights related to use of the Premises, including parking lots, and other City-owned properties. Without limiting the generality of the foregoing, Lessee acknowledges and agrees that the Premises and Lessee's operations will be impacted by Race Events and other activities that will occur before, during and after Race Events (e.g., construction, set-up and tear down activities) in connection with Race Events. In the event of a conflict or ambiguity between this Lease and any Grand Prix Race Agreement, the Grand Prix Race Agreement shall prevail. As used herein, the terms "Race Event", "Race Area" and "Race Period" shall have the meanings set forth in the Grand Prix Race Agreement.

B. In the absence of a written agreement between Lessee and Grand Prix Race Event promoter which specifically provides otherwise, Lessee shall comply with the following regulations pertaining to the Premises during Race Events:

- 1) Temporary outdoor uses are prohibited.
- 2) All uses, including but not limited to retail and food uses, operating from temporary or portable structures or vehicles such as semi-trailers, step vans, recreational or other vehicles with cooking facilities, are prohibited.
- 3) Sale or distribution of food or any other item is prohibited.
- 4) Temporary structures, including tents, shall not be erected on or at the Premises and are prohibited.
- 5) Temporary signs, including signs on vehicles and buildings, visible from a street right-of-way and/or the Race Area are prohibited. Any sign erected must be a permanent sign which has received the required permits.
- 6) Streamers, pennants, banners and inflatables, located within the Premises, which are visible from any street right-of-way and/or the Race Area are prohibited.

71. **NO RIGHT TO ENCUMBER.** Lessee shall not be permitted to encumber (i) the fee simple title in the Premises or (ii) the leasehold estate created by this Lease by a mortgage, deed of trust or other security instrument.

72. **REPRESENTATIONS.**

A. As a material part of the consideration under this Lease, the City, to the best of its knowledge after due inquiry, represents to Lessee and the Lender that each of the following statements is presently true and correct:

1) The City is a municipal corporation validly existing under the laws of the State of Florida and the full legal right, power and authority under applicable Laws to enter into, execute and deliver this Lease.

2) The City has all requisite power and authority to carry on its business as now conducted and to perform its obligations under this Lease.

3) Execution of this Lease and compliance by the City with its obligations herein, under the circumstances contemplated herein, will not conflict with or violate existing Laws.

4) This Lease shall constitute a legal, valid and binding obligation of the City enforceable against the City in accordance with the terms and conditions hereof.

5) Subject to subparagraphs 14.C.1), 14.C.2), and 14.C.3) in all respects, the City is fully capable, financially and otherwise, of fulfilling its obligations hereunder.

B. As a material part of the consideration under this Lease, Lessee, to the best of its knowledge after due inquiry, represents to the City and the Lender that each of the following statements is presently true and correct:

1) Lessee is a Florida limited liability company authorized to do business in the State of Florida and the full legal right, power and authority under applicable Laws to enter into, execute and deliver this Lease.

2) Lessee has all requisite power and authority to carry on its business as now conducted and to enter into and perform its obligations under this Lease.

3) Execution of this Lease and compliance by Lessee with its obligations herein, under the circumstances contemplated herein, will not conflict with or violate existing Laws.

4) This Lease constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with the terms hereof.

5) Lessee is fully capable, financially and otherwise, of fulfilling its obligations hereunder.

< < < **SIGNATURE PAGE FOLLOWS THIS PAGE** > > >

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed by their duly authorized representatives on the day and date first above written.

ST PETE MARINA LLC:

By: _____

Print: _____

Title: _____

CITY OF ST. PETERSBURG, FLORIDA: ATTEST

(SEAL)

By: _____

Richard Kriseman

As its: Mayor

City Clerk (Designee)

Reviewed by:

Approved as to Form and Content:

By: _____

Print: _____

Title: _____

City Attorney (Designee)

00561242