

***REAL PROPERTY LEASE***

***AT THE PORT OF  
PENSACOLA***

***BETWEEN***

***PORT WAREHOUSE 4, LLC AND  
CITY OF PENSACOLA, FLORIDA***

***EFFECTIVE DATE: \_\_\_\_\_, 2023***

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**PORT OF PENSACOLA  
REAL PROPERTY LEASE**

**THIS REAL PROPERTY LEASE** (this “Lease”) is hereby made and entered into as of the Effective Date (hereinafter defined), by and between **PORT WAREHOUSE 4, LLC** a Florida limited liability corporation (the “Tenant”), and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipal corporation (“the “City”), in its capacity as owner and operator of **PORT OF PENSACOLA** (the “Port”). The City and the Tenant may, from time to time, be referred to in this Lease individually as a “Party” and collectively as “the Parties.”

**RECITALS**

WHEREAS, the City is the owner and operator of the Port (as hereinafter defined); and

WHEREAS, it is in the best interest of the community for the City to encourage and support local economic development for the City of Pensacola Port of Pensacola, improve and promote the quality of life for all citizens and visitors of Pensacola by providing a wide range of recreational, athletic, social, and educational opportunities, and to efficiently operate the Leased Premises; and

WHEREAS, the City, as lessor, desires to lease to the Tenant, as lessee, and the Tenant desires to lease from the City, the Leased Premises for the use, upon the terms, and subject to the conditions hereinafter set forth; and

WHEREAS, the Tenant will invest a minimum of Two Million Dollars (\$2,000,000) in Capital Improvements additional investment in finish and equip the at the Facility to meet their specific requirements and applicable codes; and

WHEREAS, the Tenant plans to construct Capital Improvements at the Facility that will accommodate a variety of sports to include pickleball, basketball, volleyball, futsal, tennis, and other like entertainment, events, conventions, concerts, expos, etc.;

NOW, THEREFORE, in consideration of the promises, covenants, terms, and conditions herein set forth, the Parties hereby agree as follows:

[THIS SPACE INTENTIONALLY LEFT BLANK]

## ARTICLE 1. DEFINITIONS

### Section 1.01 DEFINITIONS

The following words and phrases, wherever used in this Lease, shall, for purposes of this Lease, have the following meanings:

**“Affiliate”** means any corporation or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the Tenant.

**“Base Rent”** means the annual rent for the Leased Premises as specified or determined in this Lease.

**“Capital Improvements”** means the addition of a permanent structural change or the restoration of some aspect of the Leased Premises that will either enhance the Leased Premises’ overall value, prolong its useful life, or adapt it to new uses which would be retained by the Port at the conclusion of this Lease, and specifically excluding any and all tenant-owned personal property, equipment and trade fixtures.

**“City”** means the City of Pensacola, Florida, and any successor to the City in ownership of the Port.

**“Commencement Date”** means the date this Lease is fully executed by all parties and for purposes of this Lease is also the Effective Date. The parties agree that time is of the essence and each agrees to act with diligence and all due haste to expedite its portion of the execution process.

**“Common Port Facilities”** means all necessary cargo area appurtenances, including, but not limited to, laydown areas, berth aprons, and other common facilities and infrastructure appurtenant to the Port.

**“Tenant”** means the lessee under this Lease as identified in the first paragraph of this Lease, and any assignee of this Lease pursuant to an assignment permitted by this Lease.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

**“Effective Date”** means the date upon which this Lease is executed by the last Party to execute this Lease, as shown by the respective dates set forth after the places provided herein below for the Parties’ execution of this Lease, and is the same as the Commencement Date.

**“Environmental Laws”** means, collectively, all federal, state, water management district, and local environmental, land use, safety, or health laws, rules, regulations, ordinances, and common law, including, but not limited to, the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Toxic Substances Control

Act of 1976 (15 U.S.C. § 2601 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.) (“CAA”); the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j), the Federal Water Pollution Control Act (commonly known as the Clean Water Act) (33 U.S.C. §§ 1251-1387), and Sections 253, 373, 376 and 403, Florida Statutes, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, code, permit or permit condition, order, notice of violation, decree, consent agreement, or directive addressing an environmental, safety, or health issue of or by the federal government, or of or by any state or other political subdivision thereof, or any agency, court, or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The term “Environmental Laws” also shall mean and include the Port of Pensacola’s Storm Water Pollution Prevention Plan (“SWPPP”) and all future amendments thereto.

“**Event of Default**” shall have the meaning assigned in Article 17 below.

“**Exclusive Use Leased Premises**” means the spaces and areas within the Leased Premises for the use and occupancy of the Tenant to the exclusion of all others.

“**Facility/Facilities**” means the presently existing finished steel framed and sided building known as Warehouse #4 consisting of approximately 43,000 square feet, together with all future modifications, additions, and accessions to and replacements of Warehouse #4. The Tenant shall have the non-exclusive right to access, traverse, cross and otherwise utilize all port lands designated for the joint use of all port tenants, users and customers, provided such use does not unreasonably impede, block or otherwise limit the right of other port tenants, users and customers to access, traverse, cross and otherwise use the same port lands. The Tenant may not moor vessels to any of the port’s public docks without first filing and receiving approval from the port of a Vessel Berth Application.

“**Hazardous Substances**” means any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, paint containing more than 0.5% lead by dry weight (“Lead Based Paint”), infectious substances, or raw materials which include hazardous constituents), or any other substances or materials that are included under or regulated by Environmental Laws.

“**Land**” means the land within the Port as depicted on Exhibit A attached hereto and incorporated herein by reference, consisting of a total land area to be estimated based upon the final agreed upon site plan and with the exact total land area to be determined via survey or other agreed upon physical measurement upon completion of Capital Improvements by the Tenant.

“**Leased Premises**” means the Land and all improvements now or hereafter existing on the Land, including without limitation the Facility and any port common areas, as more particularly described hereafter.

“**Lease Term**” shall have the meaning assigned in Section 3.01 below.

“**Lease Year**” means each period of twelve consecutive calendar months that begins on an anniversary of the Effective Date of this Lease or, if the Effective Date of this Lease is not the first day of a month,



each period of twelve consecutive calendar months that begins on the first day of the next month after each such anniversary of the Commencement Date of this Lease; provided, however, that the first Lease Year shall commence on the beginning of this Lease and continue to, but not including, the first day of the next Lease Year.

**“Ordinary Wear and Tear”** means normal deterioration of an improvement to real property that occurs solely from the reasonable and intended use of the improvement over time despite the timely and proper performance of reasonable routine maintenance and preventive maintenance.

**“Port”** means Port of Pensacola located in Pensacola, Florida, as it now exists and as it may exist in the future.

**“Port Director”** means the person who from time to time holds the position of “Port Director” or “Interim Port Director” of the Port. Said term shall also include any person expressly designated by the City to exercise functions with respect to the rights and obligations of the Port enterprise.

**“Port Master Plan”** means the assembly of appropriate documents and drawings addressing development of the Port from physical, economic, social, and political jurisdictional perspectives as designated from time to time by the City and the Port Director as the Port Master Plan. The Port Master Plan includes, without limitation, forecasts of cargo & maritime business activity, a Port land use plan, 2019 Port Vision Plan, 2022 Vision Plan Update, (or any successor plan), a Port layout plan set, a Port access and parking plan, port storm water master plan, a capital improvement plan, and a budget and/or financial plan.

**“Rent”** means, collectively, the Base Rent.

**“Rent Commencement Date”** means the earlier of twelve (12) calendar months after the Commencement Date or upon issuance of a Certificate of Occupancy.

**“Rules and Regulations”** means those ordinances, rules and regulations promulgated from time to time by the City or the Port Director governing conduct on, and operations at, the Port or the use of any of the land and/or facilities at the Port.

**“Subsidiary”** means any corporation or other entity more than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) is, at the relevant time, owned by the Company or by another Subsidiary of the Company.

**“Tariff”** means Port of Pensacola Terminal Tariff No. 5A, as amended and revised from time-to- time, or any successor thereto.

**“Tenant”** means the lessee under this Lease as identified in the first paragraph of this Lease, and any assignee of this Lease pursuant to an assignment permitted by this Lease.

## Section 1.02 **CROSS-REFERENCES**

All references in this Lease to articles, sections, and exhibits pertain to articles, sections, and exhibits

of this Lease unless otherwise specified.

END OF ARTICLE

## ARTICLE 2. LEASED PREMISES

### Section 2.01 LEASED PREMISES

For the Rent, upon the terms, and subject to the conditions set forth in this Lease, the City hereby leases and demises the Leased Premises to the Tenant, and the Tenant hereby leases the Leased Premises from the City, subject, however, to all liens, easements, restrictions and other claims and encumbrances of record, provided that such matters do not prevent the Tenant from conducting its business on the Leased Premises as contemplated herein, and/or otherwise impair its financial structure and future use of the premises.

The Leased Premises consists of the Facility together with that vacant land adjacent to the Facility more particularly identified hereafter on **Exhibit A** to this Lease.

The Tenant shall have the right to post its unique logo on the exterior of the Facility and in other locations on the Land in a tasteful manner consistent with a community recreational site, provided design and placement of same is in compliance with applicable City of Pensacola sign ordinances, if any, and is approved by the Port Director, such approval not to be unreasonably withheld, conditioned or delayed.

### Section 2.02 NON-EXCLUSIVE PARKING AREA

The Tenant shall be entitled to non-exclusive use of any and all Designated Parking Areas located within the Secured, Restricted Port Area (“Port Restricted Area”) as currently situated and designated or as may be situated and designated in the future and/or any and all overflow parking lots as currently situated and designated or as may be situated and designated in the future all at the Port’s sole discretion, at no additional charge to the Tenant. Such areas are made available to all port tenants and users on a first-come-first-served basis. In using such areas, the Tenant and its employees, representatives, agents, contractors, service providers, and invitees shall abide by all applicable rules and regulations of the Port of Pensacola Seaport Security Plan, including if required, but not limited to, the requirement that all personal vehicles entering the Port Restricted Area be registered with the Port’s Facility Security Officer and that all entrants into the Port Restricted Area either possess a current valid Transportation Worker Identification Credential (TWIC) or be properly escorted at all times. In no event shall the Tenant permit parking on the Leased Premises or in the area currently identified as parking zone #94 (more particularly identified on Exhibit B) by the general public or by the Tenant’s guests, invitees, customers, or employees not related to the conduct of the Tenant’s business on the Leased Premises.

During the term of the Lease, the City shall cause the Port to maintain the greater of 200 parking spaces or the minimum legally required number of parking spaces for Tenant’s use of the Leased Premises (“Tenant Guest and Visitor Parking”) within the current Port parking lots adjacent to the west of Warehouse #4 (currently identified as parking Zone #94) located outside the Port Restricted Area and more particularly identified on **Exhibit B** hereto.

All parking in Zone # 94, including the Tenant Guest and Visitor Parking, shall be managed and enforced by the City of Pensacola Parking Department as part of the City’s downtown parking district (as long as such Department and district actively exist). At such time as the City establishes and implements charges for parking in this zone at times that coincide with the Tenant’s normal hours of operation, Tenant shall receive 200 validations per day (up to three hours) for the first twelve months following the certificate of occupancy being issued, with the requirement that Tenant justify the continuation of the number of validations and length of time validated by means of annual report as to the use of the parking referenced herein. Validations may be limited or may not be available on tournament days. Validations shall be available for the use of the Tenant at the Tenant’s sole discretion to provide complimentary parking to its owners, operators, managers, employees, members, patrons, guests, invitees, and licensees. For pickleball, basketball, volleyball, futsal, and tennis tournaments, and other like events, conventions, concerts, and expos, the Tenant shall provide the City’s Parking Director a minimum of seven (7) calendar days advance notice and, in such cases, Special Event Parking rates will be implemented for the duration of the subject tournament or event at rates mutually agreed upon between the City’s Parking Director and the Tenant. All revenue generated from Special Event Parking less the actual costs to administer the Special Event Parking (net Special Event Parking revenue) shall be posted by the Parking Department to the Port Fund within the City of Pensacola financial accounting system and the Port shall cause 50% of the total accrued net Special Event Parking revenue to be paid out to the Tenant on no less than a quarterly basis. All revenue from the enforcement of parking regulations in Zone 94, including but not necessarily limited to revenue from parking tickets and fines, shall be retained by the City of Pensacola Parking Department as compensation for its enforcement efforts. All parking in Zone #94 is non-exclusive and available on a first-come-first-served basis.

Tenant may not undertake any construction or improvements on the parking areas without the consent of the City. The City reserves the right to replace this parking with like kind and quality or better (“Replacement Parking Facility”) at any time during the term of this Lease. Such Replacement Parking Facility shall be available for use by the Tenant in accordance with the terms of this Section 2.02 and any other applicable provisions of this Lease.

END OF ARTICLE

## ARTICLE 3. TERM

### Section 3.01 LEASE TERM

Subject to compliance with the terms and conditions of this Lease, this Lease shall be effective on the Commencement Date. The term of this eLease shall be fifteen Lease Years subject to extension as herein provided, commencing on the Rent Commencement Date and ending on the Expiration Date (the "Lease Term"). Subject to Tenant's option to extend the Lease Term as set forth in Section 3.02, the "Expiration Date" means the last day of the month in which the fifteenth (15<sup>th</sup>) anniversary of the Rent Commencement Date occurs, or such earlier date on which the Term shall sooner end pursuant to any of the terms, covenants, or conditions of this Lease or pursuant to law.

### Section 3.02 RENEWAL

There is no automatic renewal or extension of the Lease Term. Upon expiration of the initial Lease Term, the Tenant shall have four (4) separate, consecutive options (each an "Extension Option") to extend the Lease Term of this Lease for an additional ten (10) years each (herein, sometimes, individually or collectively referred to as an "Extension Term"), subject to the provisions that follow in this Section 3.02.

Provided Tenant is not in default of any provisions of this Lease, each Extension Option shall be exercisable by written notice to the Port Director no less than one hundred eighty (180) days prior to the Expiration Date. Then, and upon mutual agreement of the Parties, this Lease may be extended for ten (10) years commencing upon the Expiration Date the Lease Term, or an Extension Term as the case may be, and expiring ten (10) Lease Years thereafter. The City may elect not to renew for the first Extension Term only if Tenant (a) fails to complete Tenant's Capital Improvements in accordance with Article 4 of this Lease; (b) is in default of any other provision of this Lease; or (c) has not provided commercially reasonable evidence of the Tenant Responsibilities described in Section 12.02(l).

Each Extension Term shall constitute an extension of the Lease Term, and shall be upon all the same terms and condition of the existing Lease Term, except that the Base Rent shall be subject to adjustment on the commencement of the first Extension Term as set forth in Section 5.01(b) hereinbelow. Any extension hereunder shall be memorialized in writing, executed by the Parties in the same formality herewith

### Section 3.03 TENANT'S RIGHTS UPON EXPIRATION OR EARLIER TERMINATION OF LEASE

Upon expiration of the Lease Term or earlier termination of this Lease, all of the Tenant's rights, authority, and privileges to use the Leased Premises, services, facilities and property of the Port as granted herein shall automatically cease without notice to the Tenant except such notice, if any, as is expressly required by this Lease with respect to an earlier termination of this Lease.

### Section 3.04 SURRENDER OF LEASED PREMISES

Upon expiration of the Lease Term or earlier termination of this Lease, the Tenant shall surrender the Leased Premises to the City in its improved condition as referenced in Section 4.01 of this Lease, except for ordinary wear and tear and except for damage caused by an insured casualty for which the

City is fully compensated by insurance proceeds actually received by the City and by deductible amounts actually paid by the Tenant to the City, with respect to an insured casualty loss, or a condemnation or by a condemnation award pursuant to an order of a court of competent jurisdiction or payment in lieu thereof acceptable to the City.

The provisions of this Section 3.04 shall survive the expiration of the Lease Term or earlier termination of this Lease, as the case may be, and shall be fully enforceable by the City against the Tenant notwithstanding the termination of this Lease.

**Section 3.05. RIGHT OF FIRST REFUSAL/RIGHT OF FIRST NEGOTIATION**

City hereby grants to Tenant a right of first negotiation and right of refusal to purchase the Land identified and described on Exhibit C as the “Option Property” subject to the following terms and conditions:

- (a) Right of First Negotiation. If Landlord desires to lease or sell the Option Property to a private party, then City shall, before actively soliciting any offers, notify Tenant in writing of its desire to sell or lease the Option Property. If Tenant desires to lease or purchase the Option Property, Tenant and Landlord shall, during the fifteen (15) calendar day period following Tenant’s receipt of such notice, negotiate in good faith the terms and conditions of a sale or lease. If the Parties are for any reason unable to come to an agreement on the terms of a lease or sale via a written contract within such fifteen (15) day period, then City may proceed to solicit or entertain offers from third party purchasers or lessees through any legal means available to the City including, but not necessarily limited to, direct negotiations or a competitive RFP process. Thereafter, City shall provide Tenant with notice of any offers as required by subparagraph (b) below.
  
- (b) Right of First Refusal. If City receives and accepts a bona fide offer from a private third party for the lease or purchase of the Option Property (an “Offer”), Landlord agrees to deliver a copy of such Offer within seven (7) days following receipt thereof. Tenant shall have seven (7) days after receiving notice of the terms of the Offer within which to elect to lease or purchase the Option Property on financial terms materially identical to those offered by the third party. Such election shall be made by electronic communication (telephone and/or e-mail), followed by written notice to City accompanied by a check for the amount of any lease deposit required in a lease Offer, or an earnest money deposit specified in the Offer, payable to the escrow agent named in the Offer, or an escrow agent selected by Tenant and agreeable to the City, which earnest money deposit shall be applied to the purchase price. Within ten (10) days thereafter, Landlord and Tenant shall enter into a formal contract of lease or sale containing all terms of the Offer except as the parties may otherwise mutually agree. If Tenant fails to either (i) give the notice to elect to purchase the Offered Property and/or (ii) timely tender the earnest money deposit or lease deposit, the right of first negotiation and the right of first refusal in this Section 3.05 shall terminate and be of no further force or effect and Landlord may thereafter dispose of the Option Property in any manner as City sees fit. Any Offer from a third party accepted by Landlord

shall be expressly conditioned upon Tenant not exercising its right of first refusal under this subparagraph (b), so that if Tenant exercises its right of first refusal hereunder, any agreement between Landlord and the third-party purchaser shall be null and void.

- (c) Expiration. Unless sooner terminated as provided in subparagraph (b) above, the right of first negotiation and right of refusal described above shall expire upon the expiration or earlier termination of this Lease.

This section 3.05 shall not be construed to burden City's prerogatives to engage in transactions concerning the property described on Exhibit C within the City among departments and enterprises, or with another governmental entity.

END OF ARTICLE

## ARTICLE 4. USE OF LEASED PREMISES

### Section 4.01 PERMITTED USE OF LEASED PREMISES

Continuously during the Lease Term, the Tenant shall use the Leased Premises solely for athletic, fitness, entertainment, convention, and other supportive activities and other commercial uses not prohibited by law to include, without limitation, special events, expos, tournaments, promotions, food & beverage service, concessions, retail sales, health & wellness facilities, administrative offices, concerts and other functions and uses accompanying the Tenant's business purposes and with the City's expectation that such amenities shall be available to the public via facility rental, tournament play, paid memberships, open play (i.e. pay-to-play), food, beverage, and retail purchase or any combination thereof and that the Leased Premises shall include the back-office uses associated therewith.

Consistent with the permitted use of the Leased Premises stated in this Section 4 and solely in furtherance of such use, Tenant shall, at Tenant's sole cost and expense, complete all required construction activities on the Leased Premises in order to obtain a Certificate of Occupancy from the City of Pensacola Inspection Services Division. Final plans and specifications are subject to review and approval by the City prior to the commencement of construction activities, not to be unreasonably withheld, conditioned, or delayed. As part of City's review process all plans, specifications and construction drawings will be reviewed by the City Engineer (or his designee) and the Port's consulting engineer of record. Prior to commencing construction, Tenant agrees that the Port may use the Facility for short-term storage.

As a condition of this Lease for the Leased Premises, Tenant shall commence construction in accordance with all requirements of this Lease, no later than nine (9) months after the Commencement Date of this Lease. For purposes of this provision, the "Construction Commencement Date" shall be 90 calendar days following the issuance of a construction permit from the City Building Official; further, the Tenant must complete its roof inspection within 90 days of the Commencement Date; further, the Tenant must complete its foundation inspection within 120 days of the Commencement Date. Should Tenant fail to meet any of these requirements, then the City may, in the City's sole discretion, immediately terminate the Lease upon date of written notice to Tenant and, in the event of such termination by the City due to Tenant's failure to perform according to this schedule, the Tenant hereby expressly agrees that upon receipt of such termination notice for failure to perform according to schedule, the Tenant shall within 30 days vacate and surrender the Lease Premises to the City and the Tenant's right to continue its lease of the Lease Premises shall terminate. The City may enter the Lease Premises and exclude the Tenant from possession of the Lease Premises, declare all Rents, fees, taxes and other charges and amounts that are then due and payable and costs of the City to prepare the Lease Premises for reletting to be immediately due and payable. Nothing in this paragraph shall be construed to allow the City to assess accelerated rents as a remedy for Tenant's failure to perform. Notwithstanding the foregoing, any of the aforesaid deadlines of Tenant performance may be extended to the extent of (x) the number of days by which Tenant is prevented from performing as the result of a Force Majeure Event provided Tenant complies with the provisions of Section 23.07 of this Lease and (y) by the number of days Tenant is unable to perform Tenant's work solely as the result of any failure by City and/or Port to timely respond or perform any obligation



of City and/or Port to review and approve Tenant's plans and specifications ("City Delay"). In order for Tenant to claim any City Delay and to enable City to mitigate or avoid in whole or in part any such claim for City Delay, Tenant shall first be obligated to provide prior written notice to City advising of the specific nature of the matter which would give rise to any claim for City Delay which notice, to the extent known, shall also specify the approximate amount of days that any such alleged City Delay would delay the applicable date.

In the event the Tenant complies with commencement of construction by the Construction Commencement Date, Tenant shall complete construction no later than eighteen (18) months after the Commencement Date of this Lease subject to extensions for a Force Majeure Event and/or a City Delay. A Certificate of Occupancy shall evidence such completion of construction. Should Tenant fail to substantially complete construction of Tenant's Capital Improvements within eighteen (18) months after the Commencement Date (without any Force Majeure Event or City Delay), then Tenant may, with reasonable justification for the cause of the delay and upon payment of additional consideration to the City in an amount agreed to between the Parties, receive a 12-month extension. If Tenant fails to substantially complete construction within the applicable timeline or extended timeline as stated above, the Tenant shall have a grace period of sixty (60) days, plus any additional extensions granted by the City at the City's sole discretion, to obtain substantial completion as determined by the Tenant's engineer of record. Otherwise, the City may, in the City's sole discretion, immediately terminate the Lease upon date of written notice to Tenant. In the event of such termination by the City for Tenant's failure to perform according to this schedule, Tenant hereby expressly agrees that upon receipt of such termination notice for failure to perform according to schedule, the Tenant shall within 30 days relinquish and surrender the Leased Premises and any Capital Improvements thereto to the City and Tenant's right to continue the lease of the Leased Premises shall thereafter terminate. The City may enter the Leased Premises (including any Capital Improvements) and exclude the Tenant from possession of the Leased Premises, declare all Rents, fees, taxes and other charges and amounts which are owed to be immediately due and payable. For any repairs or other costs incurred by the City to bring the Facility to minimum code standards required for reletting, the City may "call" any and all applicable construction, performance and/or payment bonds as defined in Article 6 and/or Article 10 herein. Nothing in this paragraph shall be construed to allow the City to assess accelerated rents as a remedy for Tenant's failure to perform.

#### Section 4.02 **ADDITIONAL RESTRICTIONS**

Notwithstanding any contrary provision in this Lease, the Tenant shall not, and the Tenant shall not suffer or permit any of its agents, employees, directors, officers, contractors, customers, guests, invitees, licensees, or representatives to:

(a) Do, suffer, or permit anything that may interfere with the effectiveness or accessibility of any drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, at any time installed or located on or within the premises of the Port.

(b) Do, suffer, or permit anything that may invalidate or conflict with any fire or other property insurance policies covering the Port or any part thereof or Capital Improvements thereon.

(c) Keep or store or suffer or permit to be kept or stored, at any time, flammable or combustible liquids except in storage facilities especially constructed for such purposes in accordance with applicable federal, State, and City laws and ordinances, including the Uniform Fire Code and the Uniform Building Code. For purposes of this Lease, flammable or combustible liquids shall have the same definitions as set forth in the Uniform Fire Code, as that Code may be amended from time to time.

(d) Engage in any business or activity not specifically permitted by this Lease.

**Section 4.03 RESERVED**

**Section 4.04 REVENUE STREAMS.**

The Tenant shall be entitled to all revenue streams, now known or hereafter devised, in connection with its use and operation of the Leased Premise except as otherwise provided herein.

END OF ARTICLE

## ARTICLE 5. RENTS, FEES, CHARGES AND SALES TAX

In consideration for the Tenant's use of the Leased Premises, the rights and privileges granted to the Tenant hereunder, and for the undertakings of City hereunder, the Tenant agrees to pay the City, without invoicing, notice, demand, deduction or set-off, the Base Rent, fees, other charges, and sales and use tax as set forth in this Lease, as from time to time recalculated according to the procedures described herein below.

### Section 5.01 **BASE RENT**

The annual base rent ("Base Rent") payable by the Tenant to the City shall be in accordance with the following schedule:

(a) Lease Rate during the initial Lease Term (Lease Year 1-15). For the first Lease Year, Based Rent shall be \$26,000.00. Commencing on the first day of the second Lease Year of the Lease Term, and on the first day of each succeeding Lease Year thereafter until the Expiration Date (as the same may be extended in accordance with Section 3.02), Based Rent shall be increased cumulatively by the annual increase in the Consumer Price Index All Urban Consumers (CPI-U), not seasonally adjusted, U.S. City Average (current series) for the most recent complete twelve-month (12-month) period prior to the anniversary date of this Lease not to exceed five percent (5%) (a "CPI Adjustment"). In no case shall the Base Rent ever decrease, not even in the event of a negative twelve-month (12-month) CPI, in which event there will be no CPI Adjustment to the Base Rent.

(b) Extension Term.

(i) Commencing on the first Extension Term (Lease Year 16), and every seven Lease Years thereafter (Lease Year 22, 29, 36, 43, and 50) (each a "Base Rent Adjustment Date") the City reserves the right to recalculate Base Rent based upon an appraisal, broker's opinion of value, or other generally accepted method to determine the then current fair market value of the Leased Premises not including the value of the Tenant's Capital Improvements. If the City's valuation evidences an increase has occurred, the Base Rent may be adjusted and increased accordingly (hereinafter the "Adjusted Base Rent"). However, any increase shall not exceed seven and one-half percent (7.5%) of the applicable Base Rent set forth in Section 5.01(a). Any decreases in appraised value will not result in a Base Rent adjustment that would lower Base Rent during any such Extension Term. Following City's election to impose Adjusted Base Rent, each Lease Year thereafter shall be subject to annual increases based on the CPI Adjustment until the next Based Rent Adjustment Date.

(ii) Notwithstanding the City's right to establish Adjusted Base Rent on a Base Rent Adjustment Date, if the Adjusted Base Rent established for the succeeding Lease Year, is determined to be less than the Base Rent that would otherwise result from an annual increase from the Base Rent from the preceding Lease Year based on a CPI Adjustment, City may elect to charge Base Rent plus CPI Adjustment rather than establish an Adjusted Base Rent, and such Base Rent shall adjust annually based on any CPI Adjustment until the next Base Rent Adjustment Date.

### Section 5.02 **SUBMERGED LANDS LEASE RATE**

Tenant shall have a right of first refusal for a submerged land lease over any and all submerged lands

controlled by the Port that are adjacent to the Leased Premises provided that the use is a non-Port/City, or other State or Federal entity (i.e. a port use of the submerged lands for an operational or other maritime use).

**Section 5.03 BASE RENT PAYMENT**

The annual Base Rent shall be paid by the Tenant to the City without invoicing, notice, demand, deduction, or set-off, in equal monthly installments payable in advance on the Rent Commencement Date, and on the first day of each and every calendar month during the Lease Term, and any Extension Term. Should rental payments initiate on any date other than the first (1<sup>st</sup>) of the month, the Rent for that month will be prorated with Rent for all subsequent months then being due and payable on the first (1<sup>st</sup>) of the month. There shall be no prohibition or penalty for prepayment of Base Rent or other fees.

**Section 5.04 OTHER RENTS, FEES AND CHARGES**

All revenue to the City generated by Tenant’s operations and activities, excluding any sales, property or other applicable taxes, shall accrue to the City’s Port Enterprise.

**Section 5.05 SALES TAX**

The Tenant shall pay to City all sales and use taxes imposed by Florida Statutes Section 212.031 and any future amendments thereto, or other applicable Florida law in effect from time to time (collectively, the “Sales Tax”), on the Base Rent due under this Lease and on any other payments required by this Lease to be made by the Tenant to or for the benefit of the City which are taxable under applicable Florida law. Such sales or use tax shall be due and payable concurrently with the payment of the Base Rent, or other payment with respect to which such tax is required to be paid.

**Section 5.06 MODE OF PAYMENT**

The payment of all Base Rent, Sales Tax, fees, and charges that become due and payable by the Tenant under this Lease shall be paid to the City of Pensacola without the City invoicing the Tenant. Payments shall be mailed or delivered to City of Pensacola Treasury Department, PO Box 12910, Pensacola, Florida 32521-0044, or to such other payment address as the City notifies the Tenant in writing. The City reserves the right to require that payment be made by wire transfer.

**Section 5.07 LATE FEE AND INTEREST**

If Base Rent, or any other fee, charge or payment due and payable under this Lease by the Tenant to the City is not paid within thirty (30) calendar days after such Base Rent, or other fee, charge or payment became due, a Late Fee of five percent (5%) of the amount due shall be due and payable to the City to compensate the City for its added expenses due to said late payment. Further, any Base Rent, or other fee, charge or payment due and payable under this Lease by the Tenant to the City that is not paid within thirty (30) calendar days after its date due shall bear Interest at eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is less, from the date due until the date paid in full.

**Section 5.08 PORT TARIFF**

Except as otherwise expressed herein, all provisions of the Port Tariff 5A, as defined herein, shall remain in full force and effect.

**Section 5.09 TICKET SALES SURCHARGE.**

The Tenant shall collect on behalf of and shall pay City during the Term a surcharge of one dollar (\$1.00) per ticket sold for any special events that take place on the Leased Premise plus any applicable taxes associated therewith (the "Ticket Surcharge"). The Ticket Surcharge shall not apply to member play, daily play, pay-to-play, seasonal play, and non-tournament free play, etc. (the "Ticket Surcharge Exclusions"), nor shall it be construed to require the Tenant to charge admission for any events it conducts; however, if the Tenant charges admission to spectators for tournaments, special events, or the like, the Ticket Surcharge shall be collected and remitted to the City. The Ticket Surcharge may, in the Tenant's discretion, be separately charged and identified on each ticket as a "surcharge," "facilities surcharge," or other identifying language.

The Ticket Surcharge will be negotiated every five (5) years commencing on the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, and subject to increase in line with the percentage increase of the 12-month Consumer Price Index All Urban Consumers Rate (Current Series)(All items in U.S. City average, all urban consumers, not seasonally adjusted) over the five (5) previous Lease Years. The Ticket Surcharge will only increase once every five (5) Lease Years during the initial Lease Term.

**Section 5.10 PAYMENT OF NON-RENT REVENUE DUE TO THE CITY.**

All non-rent revenue due to the City shall be remitted to the City quarterly no later than the twentieth (20<sup>th</sup>) day of each month following the end of each of the following months: March, July, October, and January. Payments shall be made by the Mode of Payment described in Section 5.06.

The Ticket Surcharge described in Section 5.09 shall be remitted along with a quarterly ticket sales accounting report in a form and style agreed upon by the Parties with such report to include, at a minimum, the name or other identifier of all events, date(s) and time(s) of each event, total number of tickets sold, and total surcharge collected. This report shall list ALL events except Ticket Surcharge Exclusions, even if no tickets were sold, in which case the tickets sold and surcharge collected columns will both be zero (0).

The Parking Revenue Share described in Section 2.02 shall be remitted along with a quarterly parking sales accounting report in a form and style agreed upon by the Parties with such report to include, at a minimum, the name or other identifier of all events for which parking charges were levied, the date(s) and time(s) of each event, the total number of paid parking spaces sold during the event, the total resulting parking revenue collected, and the total parking revenue to the City for each event.

END OF ARTICLE

**ARTICLE 6. PERFORMANCE GUARANTEE**

Within three (3) days of the Effective Date, Tenant shall deliver to City \$26,000.00 (the “Security Deposit”) as security for Tenant’s full and faithful performance of this Lease including the payment of rent. City may apply the Security Deposit to the extent required to cure any default by Tenant. If City so applies the Security Deposit, Tenant shall deliver to City the amount necessary to replenish the Security Deposit to its original sum within five (5) days after notification from City of the amount due. On the third (3<sup>rd</sup>) anniversary of the Rent Commencement Date, provided Tenant is not in default of this Lease, Landlord shall return the Security Deposit to Tenant.

If the Tenant shall fail to obtain or keep in force the Security Deposit required hereunder, such failure shall be grounds for immediate termination of this Lease by the City without further notice to the Tenant or opportunity to cure such failure except as expressly provided in this Article, notwithstanding any other provision of this Lease. The City's rights under this Article shall be in addition to all other rights and remedies provided to City under this Lease.

END OF ARTICLE

## ARTICLE 7. INSURANCE AND INDEMNIFICATION

### Section 7.01 **REQUIRED INSURANCE**

Prior to the Effective Date, the Tenant shall procure and maintain insurance of the types and to the limits specified herein, all of which shall be in full force and effect as of the Effective Date.

Prior to the Effective Date, the City agrees to procure and maintain property insurance on the Facility including the walls, floors, roof, eaves, etc., against all perils. The Tenant agrees to reimburse the City for the premium paid to procure and maintain this insurance.

As used in this Article, “the City” is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives, and agents.

The Tenant and the City understand and agree that the minimum limits of insurance herein required may become inadequate during the term of this Lease. The Tenant agrees that it will increase such minimum limits to the levels required by the City from time to time, within one hundred eighty (180) days following the receipt of written notice from the Port Director.

Insurance shall be procured from an insurer whose business reputation, financial stability, and claims payment reputation are satisfactory to the City in its sole discretion, for the City's protection only. The amounts, forms, and types of insurance required to be provided and maintained by the Tenant shall conform to the following minimum requirements:

[THIS SPACE INTENTIONALLY LEFT BLANK]

Insurance Requirements			
Type	Party	Amount	
1	Worker’s Compensation and Employer’s Liability	Tenant	The Tenant shall purchase and maintain Worker’s Compensation Insurance Coverage for all Workers’ Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person – accident, \$100,000 each person – disease, \$500,000 aggregate – disease.[RS]
2	Broad Form Commercial General Liability Policy to include coverage for the following (must include liability for marine vessels):	Tenant	Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, contractual liability, and independent Contractors. This policy must be endorsed to include coverage for Abuse/Molestation. If the Contractor will be sponsoring any contest or exhibitions, this policy must be endorsed for Participant Liability. The coverage shall be written on occurrence-type basis (if available, otherwise, claims made). Minimum limits of \$1,000,000 per occurrence and in the aggregate must be provided. Fire Legal Liability must be provided with minimum limits of \$1,000,000 per occurrence.[RS]
3	Property Insurance including flood insurance for physical damage to the existing Facility and City property	City	Tenant
4	Property Insurance for physical damage to all improvements and betterments to the Leased Premises, resulting from fire, theft, vandalism, windstorm, (if and to the extent any of the Facilities are located in a federally-designated special flood hazard area), and other risks commonly insured against for similar port improvements	Tenant	The City will maintain property insurance (which may be self-insured at the sole discretion of the City) on the structural components of the Facility. [RS]
	Liquor Liability. Tenant shall maintain or cause its vendor(s) to maintain Liquor Liability insurance including coverage for bodily injury and property damage arising out of the furnishing of alcoholic beverages. [BW]	Tenant	The Tenant is responsible for the repair, replacement and insurance of all building contents including Contractor-owned personal property, equipment and furnishings.[RS]
			Minimum limits for this coverage are \$1,000,000 each common cause and in the aggregate. The Port and the City of Pensacola shall be listed as an Additional Insured. [BW] When alcoholic beverages are to be furnished, sold or consumed at the Premises, the licensee/operator/business owner shall not furnish, or sell to or permit its employees, servants, subcontractors, or agents to furnish or sell alcoholic beverages to, or to allow such alcoholic beverages to be consumed by any person who is not of lawful drinking age and shall take reasonable actions necessary to avoid serving any person habitually addicted to the use of any or all alcoholic beverages, or any person who is, or who would reasonably be expected to be intoxicated.[RS]



5	Automobile Liability (any automobile)	Tenant	Automobile Liability. Business Automobile Policy must be provided, if applicable, including bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles. Minimum combined single limit of \$300,000 CSL must be provided.
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**Section 7.02 POLICY ENDORSEMENTS; COPIES OF POLICIES; CERTIFICATES OF INSURANCE**

All insurance policies required by this Lease to be furnished by the Tenant shall be endorsed to provide that the insurance carrier shall give the City written notice at least thirty (30) days in advance of any cancellation, nonrenewal, or adverse change or restriction in coverage.

Each policy of property insurance required by this Lease to be furnished by the Tenant shall be endorsed to name the City as an Additional Insured as to the Tenant improvements, and Loss Payee as the Facility structure, as its interest may appear, and each policy of liability insurance shall be endorsed to name the City as an Additional Insured. In addition, this Lease and the Leased Premises shall be separately listed on each insurance policy.

Within five (5) days after the Effective Date (but in any event prior to the Tenant being permitted to take possession of any portion of the Leased Premises), and thereafter within five days after the City’s written requests from time to time, but no more than once annually, the Tenant shall furnish true and complete copies of all of the Tenant’s insurance policies, forms, endorsements, jackets, and other items forming a part of, or relating to, all policies of insurance carried or required by this Lease to be carried by the Tenant with respect to the Leased Premises.

In addition, within five (5) days after the Effective Date (but in any event prior to the Tenant being permitted to take possession of any portion of the Leased Premises), and thereafter within five (5) days after the City’s written requests from time to time, but no more than once annually, the Tenant shall provide to the City Certificates of Insurance evidencing all insurance carried or required by this Lease to be carried by the Tenant with respect to the Leased Premises. Each Certificate of Insurance shall provide that the insurance carrier shall give the City written notice least thirty (30) days in advance of any cancellation, nonrenewal, or adverse change or restriction in coverage. The City shall be named on each Certificate of property insurance as an Additional Insured and Loss Payee, as its interest may appear and identified hereinabove, and on each Certificate of liability insurance as an Additional Insured. In addition, this Lease and the Leased Premises shall be separately listed on each Certificate. Certificates of property insurance shall be provided on the “Certificate of Insurance” form equal to, as determined by the City, the most current ACORD 28 form. Certificates of liability insurance shall be provided on the “Certificate of Insurance” form equal to, as determined by the City, the most current ACORD 25 form. Any wording on a Certificate that would make notification to the City of cancellation, nonrenewal, or adverse change or restriction in coverage an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's authorized agent or employee. The name and address of the City on each policy and certificate of insurance required by this Lease shall be: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, Florida 32521. In addition, a copy of each Certificate of Insurance shall be sent to Port of Pensacola, Attn: Port Director, PO Box 889, Pensacola, Florida 32591.

The Tenant shall immediately replace any cancelled, adversely changed, restricted, or non-renewed policies with new policies acceptable to the City and shall provide to the City copies of all such new policies, as well as Certificates of Insurance regarding the new policies, prior to the effective date of such cancellation, nonrenewal, adverse change, or restriction. The Tenant's required insurance coverages shall be considered primary for all purposes, and all other insurance shall be considered as excess, over and above the Tenant's coverages.

Notwithstanding the primary coverage responsibility of the Tenant, the Tenant shall protect the indirect and direct interests of the City by at all times promptly complying with all terms and conditions of its insurance policies, including without limitation timely and complete notification of claims. All written notices of claims made to carriers that relate to the use, damage, impairment, or condition of the Leased Premises shall be copied to the City's Department of Risk Management at the following address: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, Florida 32521. An additional copy shall be sent to Port of Pensacola, Attn: Port Director, PO Box 889, Pensacola, Florida 32591.

**Section 7.03 INSURANCE OF THE TENANT PRIMARY**

The insurance coverage required of the Tenant shall be considered primary, and all other insurance shall be considered as excess, over and above the Tenant's required coverage.

**Section 7.04 LOSS CONTROL, SAFETY, AND SECURITY**

The Tenant shall retain control over its employees, agents, servants, contractors, customers, guests, and invitees, as well as its and their activities on and about the Leased Premises and the manner in which such activities shall be undertaken; to that end, the Tenant shall not be deemed to be an agent of the City. Precaution shall be exercised by the Tenant at all times regarding the protection of all persons, including employees, and property. The Tenant shall make reasonable effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected. The Tenant and its employees, agents, servants, contractors, customers, guests, and invitees, shall at all times comply with all federal and State laws with respect to Seaport Security, including but not limited to, the Port of Pensacola Seaport Security Plan, current edition as amended from time to time or any successor thereto, as/when applicable to the Tenant's operations upon the Leased Premises and its use of Port facilities.

**Section 7.05 ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers that have a current A.M. Best rating of no less than A: X.

**Section 7.06 HOLD HARMLESS**

The Tenant, for itself and its successors and assigns, shall, and does hereby, covenant and agree to, FULLY AND FOREVER RELEASE, INDEMNIFY, DEFEND, and HOLD HARMLESS the City and its elected officials, employees, officers, directors, volunteers, and representatives, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, arbitration awards, regulatory actions, administrative actions, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal or bodily injury, death, environmental remediation and damage, and property damage, made

upon or suffered or incurred by the City directly or indirectly arising out of, resulting from, or related to any breach or default by the Tenant under this Lease, or the activities, acts or omissions of the Tenant, its successors or assigns under this Lease or at or within the Port, or arising or occurring in, on, under or about the Leased Premises during the Lease Term, including, but not limited to, any acts or omissions of the Tenant, its successors or assigns, including any of its or their respective agents, officers, directors, representatives, employees, consultants, contractors or subcontractors, and their respective officers, agents, employees, directors, and representatives. The indemnity provided for in this Section shall not apply to any liability resulting from negligence of the City, its officers, or employees in instances where such negligence causes personal injury, death, or property damage.

The Tenant shall fully and forever release, hold harmless, defend, and indemnify the City from all such costs, including, but not limited to, expert fees even though a jury may find the Tenant and the City jointly liable. But in the event the City is held liable for a claim, then in that event each of the Parties bears their own costs, legal fees and expert fees for their liability. The City shall, upon notice thereof, transmit to the Tenant every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein.

**Section 7.07 NON-LIABILITY OF THE CITY**

The City shall not, in any event, be liable to the Tenant or to any other person or entity for any acts or omissions of the Tenant, its successors, assigns, or sublessees or for any condition resulting from the operations or activities of the Tenant or any such person or entity.

Without limiting the generality of the foregoing, the City shall not be liable for the Tenant's failure to perform any of the Tenant's obligations under this Lease or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by the City.

**Section 7.08 PAYMENT ON BEHALF OF THE CITY**

The Tenant agrees to pay on behalf of the City, for all claims or other actions or items described in Section 7.06, "Hold Harmless." Such payment on behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

**Section 7.09 NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in this Article shall be deemed a change or modification in any manner whatsoever of the method, conditions, limitations, or restrictions of preserving, asserting, or enforcing any claim or legal liability against the City. This Article shall in no way be construed as a waiver, in whole or in part, of the City's sovereign immunity under the Constitution, statutes and case law of the State of Florida.

END OF ARTICLE

**ARTICLE 8. COMMON PORT FACILITIES; INSPECTION OF FACILITIES**

**Section 8.01 USE OF COMMON FACILITIES**

The City hereby grants to the Tenant, and to the Tenant’s agents, employees, customers, guests, and invitees, the following general, nonexclusive privileges, uses, and rights, subject to the Rules and Regulations, the payment of all applicable fees and charges, and the terms, conditions, and covenants of this Lease:

(a) The general use by the Tenant of all Common Port Facilities outside the Port’s security perimeter as defined in the Department of Homeland Security-approved Port of Pensacola security plan.

(b) The right of ingress to and egress from the Leased Premises over and across public roadways and public parking serving the Port for the Tenant, its agents, employees, customers, guests, invitees, suppliers of services, furnishers of materials, and permitted sublessees/sublicensees.

The privileges, uses, and rights granted or permitted under this Article shall be exercisable only if and to the extent necessary in connection with the Tenant’s business on the Leased Premises permitted under Article 4 above.

**Section 8.02 COMPLIANCE**

The rights and privileges granted pursuant to Section 8.01 above shall be exercised subject to and in accordance with all laws (including without limitation all Environmental Laws), ordinances, Rules and Regulations, and Port policies of the United States, the State of Florida, Escambia County, the City of Pensacola and the Port, including without limitation the rules and regulations promulgated with reference to navigation, security, and all applicable charter provisions, rules, regulations, and ordinances of the City, now in force or hereafter prescribed or promulgated by charter authority or by law.

**Section 8.03 INSPECTION OF FACILITIES AND CAPITAL IMPROVEMENTS**

The City reserves the right to enter the Leased Premises during normal business hours with three (3) business days prior notice to the Tenant, unless in the event of an emergency in which event no prior notice is required, for the purpose of inspecting same or verifying that Environmental Laws, fire regulations, safety regulations, and other applicable laws, rules and regulations, as well as the provisions contained in this Lease, are being adhered to by the Tenant. During its presence in the Leased Premises, the City shall make reasonable efforts to avoid undue interference with the Tenant’s operations.

END OF ARTICLE

ARTICLE 9. ACCEPTANCE AND CONDITION OF LEASED PREMISES

PRIOR TO ACCEPTANCE BY TENANT, THE CITY SHALL CAUSE TO BE REMOVED ALL PROPERTY, TRASH, REFUSE, OR REMANTS OF ACTIVITIES THAT OCCURRED ON THE LEASED PREMISES PRIOR TO THE COMMENCEMENT OF THE LEASE TO INCLUDE ACTIVITIES SUCH AS SANDBLASTING AND STORAGE. THE CITY SHALL TURN OVER THE LEASED PREMISES TO THE TENANT "BROOM CLEAN" AND FREE OF ANY KNOWN ENVIORNMENTAL CONTAMINANTS.

FROM THE TENANT SHALL HAVE THREE MONTHS TO INSPECT AND EXAMINE ALL OF THE LEASED PREMISES, INCLUDING WITHOUT LIMITATION THE FACILITIES AND ALL OTHER BUILDINGS, STRUCTURES, IMPROVEMENTS, FACILITIES, AND INFRASTRUCTURE TO DETERMINE IF THEY ARE SUITABLE FOR TENANT'S PURPOSES. THE PARTIES AGREE THAT THIS LEASE IS GRANTED BY THE CITY, AT THE TENANT'S REQUEST, AND THAT THE LEASED PREMISES AND ALL PORTIONS THEREOF SHALL BE AND HEREBY ARE ACCEPTED BY THE TENANT IN THEIR "AS IS" CONDITION. IF UPON FURTHER EXAMINATION AND INSPECTION THE TENANT DOES NOT BELIEVE THE PREMISES ARE SUITABLE FOR ITS INTENDED PURPOSE IT MAY CANCEL THIS LEASE ANYTIME WITHIN SIX MONTHS OF THE COMMENCEMENT DATE; OTHERWISE, THE TENANT SHALL BE DEEMED TO HAVE ACCEPTED THE PROPERTY IN ITS "AS IS" CONDITION.

THE TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE CITY LEASES THE LEASED PREMISES, INCLUDING ALL PORTIONS, PARTS, AND COMPONENTS THEREOF, TO THE TENANT, AND THE TENANT ACCEPTS THE LEASED PREMISES, AS IDENTIFIED IN EXHIBIT A OF THIS LEASE, FROM THE CITY, "AS IS, WHERE IS AND WITH ALL FAULTS" AS IDENTIFIED BY THE CITY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, OF ANY KIND WHATSOEVER, AND SUBJECT TO ALL DEFECTS, LATENT AND PATENT. THE CITY SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR, MAINTAIN, RENOVATE OR OTHERWISE INCUR ANY COST OR EXPENSE WITH RESPECT TO THE LEASED PREMISES OR ANY PORTION THEREOF UNLESS AND EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE.

UPON THE EXPIRATION OF THREE MONTHS FROM THE COMMENCEMENT DATE OF THE LEASE, SUBJECT TO EXTENSION FOR A FORCE MAJEURE EVENT, THE TENANT'S CONTINUED POSSESSION OF THE LEASED PREMISES SHALL BE CONCLUSIVE EVIDENCE OF THE TENANT'S ACCEPTANCE THEREOF IN AN "AS IS" CONDITION AND THAT THE TENANT DEEMS THE LEASED PREMISES SUITABLE FOR THE PURPOSES FOR WHICH THEY ARE BEING LEASED.

THE CITY MAKES NO REPRESENTATIONS REGARDING THE CONDITION OF THE LEASED PREMISES AND NO PROMISES TO IMPROVE THE SAME. ANY SUCH REPRESENTATIONS OR PROMISES PREVIOUSLY MADE, IF ANY, SHALL NOT BE BINDING UPON THE CITY UNLESS EXPRESSLY CAPTURED AND DETAILED IN THIS LEASE AGREEMENT.

END OF ARTICLE

## ARTICLE 10. CONSTRUCTION BY THE TENANT

### Section 10.01 GENERAL REQUIREMENTS

The Tenant shall not construct, alter, remodel, renovate, remove, or demolish improvements on the Leased Premises without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed; minor non-structural modifications by the Tenant that are in due course of its operations within the Lease Premises, excepted. The Tenant shall further have the right to install and or construct any free-standing improvements within the Leased Premises it wishes provided same are properly permitted.

In the event that the Tenant desires to construct, alter, remodel, renovate, remove, or demolish any improvements on the Leased Premises, it shall submit to the Port Director plans and specifications and a construction time schedule for such work prepared by Florida-registered architects and engineers, such other information and documents as may be required by the Port Director, all of which shall be in sufficient detail for the Port Director, to determine, whether or not the proposed work is consistent with the Tenant's use of the premises as defined in Section 4.01. But in any event, the approval of proposed construction, remodel, renovation, removal or any other improvements for the Tenant business shall not be unreasonably withheld, conditioned or delayed, provided the proposed work is deemed to be consistent with Section 4.01 of this Lease. Upon pre-approval of reasonable estimated expenses as further described below, the Tenant will reimburse the City upon demand for the out-of-pocket expenses incurred by the City to review and act upon the Tenant's request, which expenses may include without limitation the fees and expenses of architects, engineers, attorneys and other professionals. Prior to engaging professionals or incurring other expenses, the City shall provide an estimate of those costs to the Tenant, and should the Tenant wish to continue its request, then the Tenant must approve of the expenses estimated to be incurred prior to incurring any responsibility for City's costs. The Port Director, acting on behalf of the City, shall have a total of thirty (30) days to provide written approval or disapproval of such work.

The Tenant shall not commence any such work unless and until the City, through the Port Director, has given its written approval of such work, and the Tenant has provided to the Port Director any payments, bonds and/or securities as required herein below.

Tenant shall be solely responsible for payment of all hard and soft costs of such work, including but not limited to modifications to the security perimeter as part of Tenant's Capital Improvements, which must be in compliance with all state and federal laws and regulations, and, prior to commencement of any work on the Leased Premises, Tenant shall provide Lessor with reasonably satisfactory evidence of Tenant's ability to pay the costs of such work as and when due. Further, Tenant shall be solely responsible for payment of all hard and soft costs of such work as may be required from time to time to remain in compliance with all applicable state and federal laws and regulations.

Further, prior to the commencement of any such work, the Tenant shall procure and provide to the Port Director any and all additional approvals of such work and/or the plans and specifications for such work required by any federal, state, water management district, county, or municipal government, or authority, agency, officer, department, or subdivision thereof, having jurisdiction

with respect to such work, and shall obtain and provide to the Port Director any and all requisite development, building and construction licenses, orders, permits, and approvals.

The Tenant shall be solely responsible for obtaining and paying the costs of obtaining all required licenses, orders, permits, and approvals for such work.

All such work shall conform to the plans and specifications, construction timetable and other documentations submitted to the City by the Tenant; all conditions and requirements imposed by the City as a condition of its approval, including but not limited to applicable federal, state, and local laws, codes, ordinances, rules, and regulations, including but not limited to the Rules and Regulations and the federal Americans with Disabilities Act and regulations thereunder. In no event shall the approval of the City required by this Article be deemed to be any acknowledgement by the City that such work or any plans, specifications, or other information or documentation submitted to the City complies or will comply with applicable laws, codes, ordinances, rules, and regulations, other than those of the City of Pensacola, and shall not relieve Tenant from obtaining all required governmental authorizations, permits and approvals, including but not limited to authorizations, permits and approvals required by the ordinances, codes, rules and regulations of the City of Pensacola, all of which shall be obtained prior to the commencement of such work. Further, the City, by giving its approval of such work, assumes no liability or responsibility therefor or for any defects in such plans and specifications or for any defects in any of such work.

Upon the commencement of any work permitted under this Article, Tenant shall thereafter diligently and continuously prosecute such work to completion within a reasonable time. Tenant shall cause all work on the Leased Premises to be performed and constructed by appropriately licensed contractors, with high quality, new materials, in a good and workmanlike manner, and pursuant to valid building permits. All Capital Improvements (expressly excluding, however, movable office furniture and trade fixtures, and trade equipment) installed or constructed on the Leased Premises by the Tenant shall be deemed to be the sole property of the Tenant during the term of this Lease. Upon the Expiration Date or early termination, all Capital Improvements shall remain upon and be surrendered with the Leased Premises. Tenant shall indemnify, defend and hold Lessor free and harmless from and against any and all liabilities, claims, demands, lawsuits, administrative proceedings, loss, and damages or any kind, including but not limited to attorneys' fees and costs, arising out of any work done or material supplied to the Leased Premises by or at the request of Tenant.

Prior to commencement of any work on the Leased Premises for a total cost (both hard and soft costs, as estimated by the City) in excess of One Hundred Thousand and NO/100 Dollars (\$100,000.00), Tenant shall provide to the Lessor payment bonds obtained by each general or sub-contractor of Tenant ensuring performance of that general contractor's obligations under the construction contract between that general contractor and the Tenant and payment of that contractor's subcontractors and suppliers with respect to the construction, alteration, removal or demolition of any Capital Improvements. Each of the bonds must (i) be issued by a Qualified Surety (hereinafter defined), be in form and substance satisfactory to the Lessor, (iii) run in favor of the Lessor, (iv) be in the amount of the total cost of constructing, altering, removing or demolishing, as the case may be, the Capital Improvements as approved by the Lessor, as such cost is stipulated in the construction contract between the Tenant and its general contractor, and (v) conform to the

provisions of Section 255.05, Florida Statutes, whether or not such statute applies to such work, and any other statutory requirements. A “Qualified Surety” is a corporate surety or insurer authorized to do business, and to issue bonds for construction payment and performance, in the State of Florida and possessing a rating of A/VIII or better in A.M. Best’s Insurance Reports.

Upon completion of all renovations, construction, alterations, or Capital Improvements on the Leased Premises, the Tenant shall provide to the Port Director an accurate and complete conformed set of “as built” plans and specifications, certified by the appropriate contractor(s) and design professional(s), and a copy of the government-issued Certificate of Occupancy, if required for such work.

**Section 10.02 CONSTRUCTION REQUIREMENTS**

Immediately upon receipt of all approvals by the City required by this Lease and all permits and approvals required by all federal, state, and local governmental units and agencies having jurisdiction, the Tenant shall proceed with construction of said Capital Improvements. Work shall not be performed on days or at times other than those approved in writing by the Port Director, which approval shall not be unreasonably withheld, conditioned or delayed to afford Tenant regular access and opportunity to timely complete its construction.

The Tenant shall construct all Capital Improvements and additions to the Leased Premises at its own expense. Although the City has the right to review proposed improvement plans, and not approve the plans if the plans are inconsistent with the Tenant’s use of the Leased Premises, and construction quality and design control within the norms of the proposed construction or improvements, pursuant to the standards set forth above, if the City does approve the improvement plans, and the Tenant thereafter constructs the improvements, the Capital Improvements shall be commissioned and constructed at the Tenant’s sole initiative and behest, and nothing herein shall be construed as an authorization by City to the Tenant to construct the Capital Improvements, or as an agreement by City to be responsible for paying for the Capital Improvements, and neither the Leased Premises, including those Capital Improvements constructed in compliance with Section 4.01 herein, nor the City’s interest in said Leased Premises, shall be subjected to any construction lien for any Capital Improvements constructed by the Tenant hereunder.

Should the Tenant construct Capital Improvements, alterations, or additions without fulfilling its obligations hereunder, the Tenant shall remove said Capital Improvements, alterations, or additions if so directed by the City, and shall do so at its own expense and within the time limits specified.

The City shall, at any period during construction of the Tenant’s Capital Improvements, alterations, or additions, have the right, but not the obligation, to inspect any or all construction work, workmanship, material and installation involved in, or incidental to, the construction or installation of the Capital Improvements, alterations, or additions, for conformance with the applicable standards set forth in this Lease and within normally acceptable industry practices, provided that such inspection shall not include internal work that is exclusively of an operations (non- structural) nature, and provided further that no such inspections shall be deemed to constitute consent to or approval of any such work.

Upon substantial completion of Tenant’s initial construction, renovations, and Capital



Improvements, and upon completion of any future major permanent renovations or Capital Improvements, the Tenant shall provide the City a complete set of “as-built” project specifications and drawings.

END OF ARTICLE

ARTICLE 11. LIENS PROHIBITED

Notwithstanding any other provision of this Lease, the City's fee simple estate and interest in the Leased Premises shall not be subject to any lien, statutory or otherwise, by reason of any Capital Improvements constructed or altered upon, removed from, or demolished on the Leased Premises or work, labor, services or materials performed upon or supplied to the Leased Premises, by or upon the order or request of the Tenant or its agents, employees or contractors, or any permitted sublessee of the Tenant, or anyone acting by, through or under the Tenant. The Tenant shall include written notice of the foregoing in all contracts for the furnishing of labor, services or materials to or on the Leased Premises. All persons performing labor or service or furnishing materials to the Leased Premises on the order of the Tenant must look solely to the Tenant for payment. The Tenant shall keep the Leased Premises and Capital Improvements free from any construction liens, mechanics liens, vendors liens or any other liens or claims arising out of any work performed, materials furnished or obligations incurred by or at the request of the Tenant or its employees, contractors, or anyone acting by, through or under the Tenant, all of which liens and claims are hereby expressly prohibited, and the Tenant shall defend, indemnify and hold the City harmless from and against any such lien or claim or action thereon, together with costs of suit and reasonable attorneys' fees and costs incurred by the City in connection with any such lien, claim or action. The City may, at any time, post appropriate notices of non-responsibility on the Leased Premises or the Land, and in the public records.

END OF ARTICLE

**ARTICLE 12. MAINTENANCE AND REPAIR**

**Section 12.01 TRIPLE NET LEASE**

This Lease constitutes a triple net lease of the Leased Premises and, notwithstanding any language herein to the contrary, it is intended and the Tenant expressly covenants and agrees that all Base Rent, and other payments herein required to be paid by the Tenant to the City shall be absolutely net payments to the City, meaning that, during the Lease Term, the City is not and shall not be required to expend any money or do any acts or take any steps affecting or with respect to the use, occupancy, operation, maintenance, preservation, repair, restoration, protection, or insuring of the Leased Premises, or any part thereof, notwithstanding any contrary provision in this Lease.

**Section 12.02 TENANT RESPONSIBILITIES**

Notwithstanding the provisions of any previous lease of any of the Leased Premises or any previous course of dealing, course of performance, or understanding between the City and the Tenant, the Tenant shall, throughout the Lease Term of this Lease, be solely and entirely responsible for all costs and expenses for, related to or arising out of the use, operation, repair, maintenance and replacement of the Leased Premises, including but not limited to, the Facilities, all buildings, improvements, pavement, fencing, landscaping, irrigation, foundations, utility lines, doors, locks, windows, ceilings, partitions, walls, interior and exterior lighting, roofs, drainage installations, curbs, islands, sidewalks, driveways, any designated exclusive parking areas, and improvements thereon and all components thereof, whether such repair, maintenance or replacement be ordinary, extraordinary, structural, or otherwise. Additionally, without limiting the foregoing, the Tenant shall:

(a) At all times perform commercially reasonable routine maintenance and preventive maintenance of the Leased Premises, the Facilities, and all buildings, improvements, and pavement on the Leased Premises and all components thereof and maintain all of the foregoing in a good and clean condition, repair and preservation;

(b) Replace or substitute any fixtures, equipment and components that have become inadequate, obsolete, worn out, unsuitable, or undesirable with replacement or substitute new fixtures, equipment and components of equal or greater value, free of all liens and encumbrances, that shall automatically become a part of the buildings and improvements;

(c) At all times keep the Leased Premises' grounds, pavement and exterior of the Leased Premises, its buildings and improvements, fixtures, landscaping, equipment, and personal property in a maintained, clean, and orderly condition and appearance;

(d) Provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions, or regulations of any competent authority, including the City and the Port Director, provided that such rules, regulations, and ordinances shall be applicable in a non-discriminatory manner to all similarly situated parties;

(e) Observe all insurance regulations and requirements concerning the use and

condition of the Leased Premises for the purpose of reducing fire hazards and increasing the safety of the Tenant's operations on the Port;

(f) Repair any damage to paving or other surfaces of the Leased Premises or the Port caused by the Tenant, its employees, agents, sublessees, licensees, contractors, suppliers, guests or invitees as the result of any oil, gasoline, grease, lubricants, flammable liquids, or substances having a corrosive or detrimental effect thereon or as the result of any cause whatsoever; but in no event shall this relieve the City of its' obligations to maintain the land not a portion of the Leased Premises in good working order for the operations of the Tenant's business as defined in Section 2.01;

(g) Comply with the Port's Storm Water Pollution Prevention Plan and plan and take measures to prevent erosion;

(h) Be responsible for the maintenance and repair of all utility services lines upon and serving the Leased Premises, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers, and storm sewers;

(i) Keep and maintain all vehicles and equipment operated on the Port by the Tenant in safe condition, good repair, and insured, as required by this Lease;

(j) Replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises, regularly mow all grass within the Leased Premises, and weed and maintain any landscaping planted or installed by the Tenant on the Leased Premises; and

(k) Provide and use suitable covered metal receptacles for all garbage, trash, and other refuse; assure that boxes, cartons, barrels, or similar items are not piled in an unsightly, unsafe manner on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Port Director, for the adequate sanitary handling and disposal away from the Port, of all trash, garbage, and refuse resulting from operation of the Tenant's business.

(l) Prior to the commencement of the first Extension Term of this Lease and as a condition to such extension, upon providing written notice of an intent to renew, the Tenant shall further provide evidence to the City expenditures of not less than \$2,000,000.00 for "Tenant Responsibilities" as described in this section over the course of the initial Lease Term, to include a demonstration that reasonably adequate tourism dollars have been generated as a result of these expenditures to provide continuing incentive to the City of Pensacola to continue to lease the property to Tenant. As a condition for renewal at each subsequent Extension Term, Tenant shall demonstrate cumulative investment of not less than an additional \$2,000,000.00 and a reasonably adequate generation of tourism dollars as a result of the Tenant's operations at the Leased Premises; alternatively, if the condition stated above cannot be satisfied at the second, third, or fourth Extension Term renewal, or any of them, the Extension Term may be granted so long as Tenant agrees to pay Base Rent at the prevailing market rate as determined by a broker's opinion of value or other generally accepted method to determine the then current fair market value of the Leased Premises not including the value of the Tenant's Capital Improvements.

**Section 12.03 SAFE, CLEAN AND ORDERLY OPERATION**

During the term of this Lease, the Tenant agrees to maintain all portions of the Leased Premises, and any improvements, alterations, or additions thereon, in a safe, clean, and neat condition, and not permit any accumulation of wreckage, debris, or trash. The Tenant agrees to provide for complete, proper and adequate sanitary handling and disposal, away from the Port, of all trash,

garbage, waste and other refuse caused as a result of the Tenant's operations; to provide and use suitable covered metal receptacles, to be approved by the Port Director, for all trash, garbage and other refuse on or about the Leased Premises, and not to pile boxes, cartons, carts, drums, or the like on the outside of the buildings, or dump any waste matter of any nature, in a liquid state or otherwise, on the Leased Premises nor to permit contamination of the Port's stormwater or sanitary sewer systems.

The Tenant agrees to promptly install, without cost or expense to the City, any other device or devices for the handling and disposition of refuse and all manner of waste (liquid or otherwise) as may reasonably be required by the City or the Port Director.

**Section 12.04 OTHER SERVICES**

At its own expense, the Tenant shall provide interior and exterior painting, janitorial, trash removal and all other services necessary or desirable for the operation of the Tenant's business on the Leased Premises permitted under Article 4 above. The Port provides 24/7/365 controlled gate access to the Port secured restricted area as well as a roving patrol of all land at the Port during normal operating hours. Should the Tenant require specialized security services at its Leased Premises, the Tenant must contract for same separately and may engage any properly licensed security services provider for the provision of same.

**Section 12.05 QUARTERLY CONDITION SURVEYS**

The Port's Maintenance Superintendent or other Port representative as designated by the Port Director, together with a representative of the Tenant may, at the City's option, inspect the Leased Premises quarterly to observe and note its condition, cleanliness, and existing damage and to determine required repairs and maintenance, provided that such inspections do not materially interfere with the Tenant's use of the Leased Premises. Neither the City's inspection of the Leased Premises nor the City's failure to inspect the Leased Premises shall relieve the Tenant of any of its obligations under this Lease or applicable law.

**Section 12.06 PERFORMANCE**

In the event that the Tenant refuses or fails to undertake and complete any maintenance, repair or replacements within thirty (30) days after written notice from the Port Director or, in the event of exigent circumstances, such lesser time as the Port Director specifies in such written notice, or for those items that cannot be reasonably cured within 30 days, the Tenant fails to diligently pursue remediation of the failure then and in any such event the City shall have the right, but not the obligation, to perform such maintenance, repair or replacement on behalf of and for the Tenant. The actual costs of such maintenance, repair or replacement, plus twenty-five (25.0%) percent for administration, shall be reimbursed by the Tenant to the City no later than 30 days following receipt by the Tenant of written demand from the City for same.

**Section 12.07 UTILITIES**

The Tenant shall, at no cost to the City or Port, arrange for all utilities necessary to serve the Leased Premises and promptly pay when due all the utilities costs incurred with respect to the Leased Premises. The Tenant shall pay or cause to be paid any and all charges for water, heat, gas, electricity, sewer, telephone, internet, cable, and any and all other utilities used on the Leased Premises throughout the Lease Term, including, but not limited to, any connection fees and any and all additional third-party costs related to utility connection, metering, maintenance, repair, and usage.

The Tenant shall be responsible for the maintenance and repair of all exterior telephone, internet, cable, water, gas, sewer, and electrical utility lines required for the Leased Premises commencing at the point(s) where said utilities enter upon the Leased Premises. The City shall have no obligations related to said maintenance and repair. The Tenant shall coordinate any required maintenance and repair with the appropriate utility company and the office of the Port Director.

The City reserves to itself the right, at its expense, to install, maintain, repair, replace, or remove and replace water and sewer pipes, electrical lines, cable lines, internet lines, gas pipes, and any other utilities or services located on the Leased Premises as necessary or appropriate, in the City's judgment, to make such utilities available to the City or other tenants, together with the right to enter the Leased Premises at all reasonable times in order to accomplish the foregoing, provided, however, that (i) the City shall not disrupt the operations of the Tenant without prior written approval of the Tenant and shall take reasonable precautions to avoid the disruption of the Tenant's authorized activities; (ii) the alteration and additions after installation do not lessen the utilities previously available to the Tenant; (iii) the City and/or the ultimate user of such utilities will be responsible to repair and maintain such utilities; and (iv) such utilities will be separately metered for different users.

Throughout the Lease Term, the Tenant shall not render any utility lines inaccessible.

**Section 12.08 UTILITIES SUPPLY OR CHARACTER**

The City shall not be liable in any way to the Tenant for any failure or defect in the supply or character of electrical energy, internet service, cable service, gas, water, sewer, or other utility service furnished to the Leased Premises by reason of any requirement, act, or omission of the City in its capacity as a utility provider or of any public utility providing such service or for any other reason. The City shall have the right to shut down electrical and other utility services to the Leased Premises when necessitated by fire, safety or emergency exigencies, and in advancement of and consistent with the provisions of Section 12.07 herein above whether the need for such utility work arises with respect to the Leased Premises or any other facility at the Port. Whenever reasonable under the circumstances, the City shall give the Tenant not less than five (5) days' prior notice of any such utility shutdown. In no event shall the planned loss of utility services occur during normal manufacturing hours without the express knowledge and written consent of the Tenant. The City shall not be liable to the Tenant for any losses, including the loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Leased Premises whether said utility supply is controlled by the City or by a public utility provider.

END OF ARTICLE

**ARTICLE 13. TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**

**Section 13.01 TITLE TO IMPROVEMENTS**

Title to all buildings, structures, pavement, and other improvements presently existing upon the Leased Premises or any part thereof is vested in the City. Capital Improvements made upon the Leased Premises by the Tenant, except those structural improvements constructed in compliance with Section 4.01 herein, shall for financial purposes, be owned and claimed by the Tenant during the term of this lease.

Title to all buildings, structures, pavement, and other improvements not considered to be trade fixtures or personal property of the Tenant constructed or installed on the Leased Premises by the Tenant during the Lease Term, shall become vested in the City immediately and automatically upon completion thereof, without notice to the Tenant or any action by the City.

**Section 13.02 TITLE TO PERSONAL PROPERTY**

Except as otherwise provided in this Section 13.02, all trade fixtures and equipment and other business personal property installed or placed by the Tenant, at its sole expense, in the Leased Premises that can be removed without structural damage to the Leased Premises or any other City-owned property shall remain the property of the Tenant, subject, however, to the provisions of this Section 13.02, unless otherwise provided in subsequent agreements between the Tenant and the City. The Tenant shall have the right at any time during the Lease Term and prior to its expiration or earlier termination of this Lease to remove any and all of said property from the Leased Premises. The Tenant shall promptly repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of removal of the Tenant's property by the Tenant shall promptly be restored at the Tenant's expense to substantially the same condition as it was prior to such damage.

Notwithstanding the foregoing, any and all property not removed by the Tenant prior to the expiration of the Lease Term or the earlier termination of this Lease shall become a part of the land upon which it is located and title thereto shall automatically vest in the City with prior written notice to the Tenant within ten (10) days of suggested transfer of ownership. The City reserves the right to remove and dispose of any or all of such property not removed by the Tenant prior to the expiration of the Lease Term or earlier termination of this Lease, without any liability or obligation to the Tenant.

The provisions of this Section shall survive the expiration of the Lease Term or earlier termination of this Lease, as the case may be, and shall be fully enforceable by the City against the Tenant notwithstanding the termination of this Lease.

END OF ARTICLE



## ARTICLE 14. ENVIRONMENTAL COMPLIANCE

### Section 14.01 ENVIRONMENTAL LAWS

The Tenant shall, at all times, abide by all Environmental Laws applicable to, concerning, or arising from the Tenant's actions or inactions resulting directly or indirectly from its occupancy, use, or lease of the Leased Premises, including, without limitation, state and federal laws regulating storm water runoff contamination and pollution prevention, numeric nutrient criteria requirements, state and federal laws regulating soil, water, and groundwater quality, and state and federal laws regulating air quality. Prior to the Rent Commencement Date, the Tenant shall identify in writing to the Port Director and its Fire Department all Hazardous Substances that are or may be used in the course of its occupation of the Leased Premises. This list shall be updated by Tenant in March of each year and include quantities of materials stored on the Leased Premises. The City shall have the right to inspect the Leased Premises at any reasonable time to ensure compliance with Environmental Laws and the provisions of this Article.

The City, acting through its Port Director, has the right to limit the amount of Hazardous Substances used and stored on the Leased Premises that are not reasonably used in the course of manufacturing for the authorized purposes herein.

The Tenant shall comply with the Port's Storm Water Pollution Prevention Plan and all amendments thereto irrespective of whether it has its own Storm Water Pollution Prevention Plan.

The Tenant shall not, directly or indirectly, allow the disposal or discharge of Hazardous Substances on the Leased Premises or other Port property, but in no way does this prohibit material to be properly stored in the Leased Premises consistent with the proposed use of the Leased Premises and consistent with all applicable laws governing storage of same.

The Tenant shall be solely responsible for the payment of any and all fines, fees, penalties, assessments or citations issued as a result of the Tenant's failure to comply with applicable environmental laws whether such fine, fee, penalty, assessment or citation be issued to the Tenant directly or the City or Port as the property owner.

### Section 14.02 ENVIRONMENTAL CONDITIONS

The City represents and warrants to its actual knowledge without independent investigation that:

- (i) it has not received any notice of violation of any Environmental Laws with respect to the Leased Premises.
- (ii) it has not been a party to any actions, suits, proceedings or damage settlements related in any way to contamination in, upon, over or from the Leased Premises; and
- (iii) the Leased Premises is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites, CERCLIS, or any other list of hazardous sites maintained by any federal, state or local government agency; and
- (iv) the Leased Premises contains traces of sandblasted paint which may qualify as a Hazardous Substance as defined herein, and asbestos (collectively, the "Known Environmental Conditions").

**Section 14.03 REMEDIATION OF ENVIRONMENTAL CONDITIONS**

If, following the vacating, abandonment or surrender of the Leased Premises or any portion thereof by the Tenant, an assignee or a sublessee, the City has reason to believe any contamination of the Leased Premises occurred during the Lease Term (expressly excluding the Known Environmental Conditions), the City may at its own cost and expense undertake any environmental site assessment(s) need to verify the existence and extent of any such contamination. Should any contamination attributable to the activities of the Tenant, an assignee or a sublessee be confirmed, the responsible party shall be required to perform any and all assessments, remediation, and/or monitoring activities required by law at its sole cost and expense.

**Section 14.04 ENVIRONMENTAL REPORTS**

The Tenant promptly shall provide to the Port Director, on an ongoing basis and as updates are required, copies of all Tenant environmental permits and reports related to the Leased Premises, as well as any notices, orders, decrees, citations, or inspection reports issued by environmental regulatory authorities.

**Section 14.05 SURVIVAL OF OBLIGATIONS**

The obligations of this Article shall survive the expiration, termination, and full or partial assignment of this Lease, as well as the sublease of all or any portion of the Leased Premises.

**Section 14.06 NPDES AND SWPPP**

The Tenant shall comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) program delegated by the United States Environmental Protection Agency (EPA) to the state of Florida and administered in part by the Florida Department of Environmental Protection (FDEP). The City and the Tenant are required to be covered by a Multi-Sector Generic Permit (MSGP) which is currently identified as “co-located permittees,” and the Tenant shall submit the required Notice of Intent (NOI) to FDEP and provide a copy of the NOI and related Storm Water Pollution Prevention Plans (SWPPP) to the City. The Port Administrative Office maintains copies of the most current SWPPP for tenants. All tenants and users (including the Tenant) are responsible for obtaining and maintaining a current copy of the SWPPP, as well as informing and familiarizing their employees, agents, contractors, and visitors of the SWPPP contents and their responsibilities thereunder. The City has control over the establishment and implementation of all policies relating to storm water associated with port docks and tenant areas, including the Leased Premises. All tenants and users (including the Tenant) shall comply with the most current SWPPP and with the most current Best Management Practices (BMPs) applicable to their facilities and operations contained in the document entitled “Port Pensacola BMPs for Potential Pollutant Sources,” copies of which are available from the Port Director.

END OF ARTICLE

## ARTICLE 15. EVENTS OF DEFAULT; REMEDIES; TERMINATION

### Section 15.01 TENANT EVENTS OF DEFAULT

The occurrence of any one or more of the following events (each such event being referred to in this Lease as an “Event of Default”) shall constitute a material default and breach of this Lease by the Tenant:

- (a) The Tenant fails to make any monetary payment required to be made by the Tenant hereunder, as and when due; or
- (b) The Tenant fails to observe, keep, or perform the terms, covenants, agreements, and conditions of any of Articles 4, 5, 6, 7, 10, 19, or 23, or Section 21 of this Lease; or
- (c) The Tenant fails to observe or perform any covenant, condition or provision of this Lease to be observed or performed by the Tenant, other than as described in subparagraph (a) or (b) above or subparagraphs (d), (e), (f), (g), or (h) below, and such failure shall continue for a period of thirty (30) days after written notice thereof by the City to the Tenant; provided, however, that if the nature of such failure is such that more than thirty (30) days are reasonably required for its remedy or cure, then such 30-day period shall be extended for up to thirty (30) additional days provided that the Tenant begins such remedy or cure within such 30-day period and thereafter diligently and continuously prosecutes such remedy or cure to completion within such additional 30-day period; or
- (d) The Tenant files a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or an order for relief is entered in an involuntary bankruptcy case filed against the Tenant; or the Tenant seeks or consents to or acquiesces in the appointment of any trustee, custodian, receiver or liquidator of itself or of all or any part of its assets or any interest therein; or the Tenant shall make a general assignment for the benefit of its creditors; or the Tenant commits any act providing grounds for the entry of an order for relief under any chapter of the federal bankruptcy code; or
- (e) A petition or case is filed against the Tenant seeking any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, custodian, receiver or liquidator of the Tenant or of all or any part of its assets or any interest therein, and such petition, case or appointment is not dismissed within sixty (60) days after such filing or appointment; or
- (f) The Tenant fails to comply with the Port’s Storm Water Pollution Prevention Plan and all amendments thereto; or

(g) The Tenant abandons all or any material part of the Tenant's business on the Leased Premises permitted under Article 4 above or ceases to conduct all or any material part of the Tenant's business at the Leased Premises permitted under Article 4 above for forty-five (45) days during any period of ninety (90) consecutive days; or

(h) The Tenant, its assignees, sublessees, contractors or subcontractors, employs or contracts with or for work or services performed on or from the Leased Premises, any unauthorized alien as described by Section 274(e) of the federal Immigration and Nationalization Act. Failure to comply with this paragraph (h) shall not constitute a material breach by the Tenant, provided the Tenant has undertaken reasonable efforts to ensure compliance with the Act through its practices and policies.

**Section 15.02 REMEDIES.**

Upon the occurrence of any Event of Default, the City may at any time thereafter, with or without notice or demand (except as expressly specified in Section 15.01 above or elsewhere in this Lease), and without limiting the City in the exercise of any right or remedy that the City may have by reason of such Event of Default:

(a) Terminate the Tenant's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and the Tenant shall surrender possession of the Leased Premises to the City within the provisions of the lease termination. In such event, the City shall be entitled to recover from the Tenant all damages incurred by the City by reason of the Tenant's default, including but not limited to the cost of recovering possession of the Leased Premises; cost of repairs for any and all damages to the Leased Premises, ordinary wear and tear excepted; cost of any repairs or improvements required to bring the Leased Premises up to code and obtain an Certificate of Occupancy, if said Leased Premises is left in an untenable state by the Tenant; and the worth at the time of award by the court having jurisdiction thereof of (i) the amount of unpaid Rent and other unpaid amounts under this Lease which had been earned at the time of termination, (ii) the unpaid Rent and other amounts under this Lease which would have been earned after termination until the time of award. The worth at the time of award of the sums referred to in clauses (i) and (ii) above shall be computed by allowing interest from the due date at the greater of five percent (5%) per annum or the legal rate applicable to money judgments entered by the courts of the State of Florida.

(b) Without terminating this Lease, enter and repossess the Leased Premises, remove the Tenant's property and signs therefrom, and re-let or re-use the same for such rent and upon such terms as shall be satisfactory to the City without such re-entry and repossession working a forfeiture of the Rent and other amounts to be paid prior to the lease termination. For the purpose of re-letting or re-use, the City shall be entitled to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient, and the City shall be entitled to recover from the Tenant the cost of repairs for any and all damages to the Leased Premises, ordinary wear and tear excepted; and, cost of any repairs or improvements required to bring the Leased Premises up to code and obtain an Certificate of Occupancy, if said Leased Premises is left in an untenable state by the Tenant.

(c) Maintain the Tenant’s right to possession, in which case this Lease shall continue in effect whether or not the Tenant shall have abandoned the Leased Premises. In such event the City shall be entitled to enforce all of the City’s rights and remedies under this Lease, including the right to recover Rent and other amounts as they become due hereunder.

(d) Pursue any other remedy now or hereafter available to the City at law or in equity under the laws or judicial decisions of the State of Florida, including without limitation any right or remedy available to a creditor under the Uniform Commercial Code.

**Section 15.03 RIGHTS AND REMEDIES OF THE CITY CUMULATIVE**

All rights and remedies of the City herein created or otherwise existing or arising at law or in equity by reason of any Event of Default are cumulative, and the exercise of one or more rights or remedies shall not operate to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently. Further, failure by the City to take any authorized action upon the occurrence of an Event of Default shall not be construed to be or act as a waiver of said Event of Default or of any subsequent Event of Default. The City’s acceptance of Base Rent, or other amounts or payments by the Tenant for any period or periods after the occurrence of an Event of Default shall not be deemed a waiver of such Event of Default or a waiver of or estoppel to enforce any right or remedy on the part of the City arising or existing by reason of such Event of Default.

END OF ARTICLE

## ARTICLE 16. HOLDING OVER

It is agreed and understood that any holding over by the Tenant, with the City's written consent, after the termination of this Lease, shall not serve to renew and extend same, but shall operate and be construed as a tenancy from month-to-month, subject to all terms and conditions of this Lease, including without limitation all Rent provisions.

Should the Tenant hold over without the City's written consent, the Tenant agrees to pay to the City, as monthly Rent during such period of holding over, for such Leased Premises for each month until the Tenant completely vacates the Leased Premises, two hundred percent (200%) of the sum of (i) Base Rent payable for the last month of the Lease Term, including without limitation applicable taxes and (ii) all and other fees and charges required by this Lease or by City ordinance to be paid by the Tenant.

The Tenant shall be liable to the City for all loss or damage resulting from such holding over against the City's will after the termination of this Lease, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by the City, in the event that the Tenant fails or refuses to surrender possession, shall not serve to grant the Tenant any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by the City of its right to immediate possession thereafter.

END OF ARTICLE

## ARTICLE 17. ASSIGNMENT AND SUBLEASE

### Section 17.01 LEASE ASSIGNMENT

The Tenant shall not assign this Lease or the Tenant's interest in or to the Leased Premises, or any part thereof, without first having obtained the City's prior written consent which consent may be given or withheld in the City's sole and absolute discretion; provided, however, that this section is not intended to apply to or prevent the assignment of this Lease, in its entirety, to any corporation or other entity with which the Tenant may merge or to an Affiliate or Subsidiary. Should there be an internal assignment by the Tenant of the lease to an entity that has common ownership or is otherwise an affiliated entity, then no approval by the City is required, but the Tenant shall provide ten (10) days advance notice of the intent to assign. Nothing in this provision shall impair the responsibilities of the Tenant to the City until the City provides approval of the assignment, when required. Without limiting the foregoing, it is a precondition to City review and approval of a requested assignment of this Lease that there shall then exist no uncured Event of Default nor any event or state of facts which with notice or the lapse of time, or both, would constitute an Event of Default.

In the event that the Tenant requests permission to assign this Lease in whole or in part to an unaffiliated entity, the request shall be submitted to the Port Director not less than thirty (30) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other reasonable and pertinent information requested by the Port Director: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Lease, the type of business to be conducted on the Leased Premises by the assignee, and reasonable financial history and financial information of the Assignee if the purpose of the Leased premises is to be different than the proposed usage in Section 2.01.

### Section 17.02 LEASED PREMISES SUBLEASE

The Tenant is entitled to sublet parts of the Leased Property to complimentary tenants (e.g., retail vendors, ATMs, food and beverage vendors, food trucks, health & wellness providers, travel & promotion services, etc.), provided that the Tenant shall not sublet the Leased Premises or any part thereof, regardless of the time period, without having first obtained the Port Director or the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the generality of the foregoing, it is a precondition to Port Director or City review and approval of a proposed sublease of the Leased Premises that there shall then exist no uncured Event of Default nor any event or state of facts that with notice or the lapse of time, or both, would constitute an Event of Default.

In the event that the Tenant requests permission to sublet the Leased Premises in whole or in part, except to a Tenant affiliated entity, the request shall be submitted to the Port Director not less than sixty (60) days prior to the proposed effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other information requested by the Port Director: the identity and contact information of the sublessee, a description of the

part of the Leased Premises to be subleased, a statement of the entire consideration to be received by the Tenant by reason of such sublease (including but not limited to sublease rent and other fees and charges payable by the sublessee), the type of business to be conducted on subleased premises by the sublessee, and reasonable financial history and financial information of the sublessee.

For purposes of this Section 17.02 and Section 17.03 below, “sublease” and related terms shall include, without limitation, any sublease, license, or agreement, regardless of how denominated, that permits a third party to occupy or use all or any part of the Leased Premises other than those persons who use the Leased Premises in the ordinary course of Tenant’s business for the use permitted under Article 4 above.

**Section 17.03 CONSUMMATION OF ASSIGNMENT OR SUBLEASE**

The City’s consent for the assignment or sublease of the entire Leased Premises for which the City’s consent is required and for which such consent has been given shall be by written instrument, in a form reasonably satisfactory to the Port Director and the City Attorney, and shall be executed by the assignee or sublessee who shall agree, in writing, for the benefit of the City, to be bound by and to perform all the terms, covenants, and conditions of this Lease. Four (4) executed copies of such written instrument shall be delivered to the City. Failure either to obtain the City's prior written consent or to comply with the provisions of this Lease shall serve to prevent any such transfer, assignment, or sublease from becoming effective and shall constitute an Event of Default by the Tenant.

The Tenant agrees and acknowledges that it shall remain fully and primarily liable for all obligations of any subtenant/sublessee under this Lease, absent a full assignment of this Lease or any sublease of all or any portion of the Leased Premises to which the City consents and agrees; provided, however that Tenant shall remain responsible for payment of all monies due to the City under this Triple Net Lease unless the assignment incorporates the entire Leased Premises.

END OF ARTICLE



**ARTICLE 18. DAMAGE OR DESTRUCTION OF LEASED PREMISES;  
TAKING BY EMINENT DOMAIN**

**Section 18.01 LEASED PREMISES -- DAMAGE OR DESTRUCTION**

If at any time during the continuance of this Lease, the Leased Premises shall be so destroyed or so injured by fire or other casualty as to be unfit for full occupancy and use by the Tenant, and such destruction or injury could reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, then the Tenant shall not be entitled to surrender possession of the Leased Premises; provided, however, that the Tenant's obligation to pay Rent shall be equitably reduced to the extent of the diminution in use to the Tenant resulting from such destruction or injury until full use and occupancy is restored to the Tenant. The Tenant shall repair the damage with all reasonable speed at least to the extent of the value of the insurance available from all sources and as nearly as possible to the character and quality of the building and improvements existing immediately prior to such occurrence.

If the Leased Premises shall be so destroyed or injured by fire or other casualty that such destruction or injury could not reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, the Tenant shall have the option, upon written notice given to the City within thirty (30) days from the date of such destruction or injury, to terminate this Lease, and upon giving of such notice this Lease shall be terminated as of the date of such destruction or injury. In the event the Tenant elects not to terminate this Lease in accordance with the foregoing options, the Tenant shall repair the damage and restore or rebuild the building and improvements as promptly as reasonably possible after the one hundred eighty (180) day period. All insurance proceeds received by the City and/or the Tenant for the loss shall be available to the Tenant for rebuilding with disbursement of said funds following the terms to be agreed upon in writing in advance of any construction.

Notwithstanding the foregoing provisions of this Article, in the event of damage or destruction, as aforesaid, such that fifty percent (50%) or more of the total floor area of the Facility is rendered unfit for occupancy and use by the Tenant during the last three (3) years of the Lease Term, then either Party shall have the option, upon written notice given to the other Party within thirty (30) days from the date of such destruction or injury, to terminate this Lease, and upon the giving of such notice this Lease shall be terminated as of the date of such destruction or injury. In such case, each party shall be entitled to retain the proceeds of any insurance paid to it as a result of the Loss.

**Section 18.02 TAKING BY EMINENT DOMAIN**

In the event that the Leased Premises or any portion thereof shall be taken for public or quasi-public use or condemned under eminent domain, the Tenant shall be entitled to claim or have paid to the Tenant compensation, loss of business facilities or damages, but nothing herein contained shall be construed to prevent the Tenant from asserting against the condemnor any separate claim for damages to the Tenant occurring by reason of said condemnation, including without limitation loss or damage to leasehold improvements, personal property, business, fixtures, goodwill, cost of removing fixtures or equipment or loss of future profits.

In the event of any such taking or condemnation referred to in the preceding paragraph, then if and when there is an actual taking, in whole or in part, of physical possession of the Leased Premises which shall render the Leased Premises unfit for the use and occupancy by the Tenant substantially as used and occupied prior to such taking, the Tenant may terminate this Lease. The Leased Premises shall be deemed to be unfit for use by the Tenant if the area of the portion thereof remaining after such taking is less than sufficient to accommodate the operations carried on by the Tenant just prior to such taking. If the Tenant elects to terminate this Lease as provided above, it shall give written notice to the City within thirty (30) days after the later of (a) the entry of the final order of court authorizing the taking or appropriation or the date of settlement, as the case may be, or (b) the taking of physical possession by the condemner.

END OF ARTICLE

## ARTICLE 19. FEDERAL, STATE, AND LOCAL REGULATIONS

### Section 19.01 COMPLIANCE WITH RULES AND REGULATIONS

The Port Director is charged with administering the provisions of this Lease, and is authorized from time to time to promulgate and enforce such Rules and Regulations and policies as the Port Director deems necessary, provided neither will prohibit Tenant from using the Leased Premises for the Permitted Use provided for herein. All such Rules and Regulations and policies so promulgated shall not be inconsistent with any legally authorized rule or regulation of any federal or State of Florida agency, which is binding in law on the Tenant, as the same now are or may from time to time be amended or supplemented, nor inconsistent with the reasonable exercise by the Tenant of any right or privilege granted under this Lease.

The Tenant shall not, and the Tenant shall not suffer or permit any of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers to, violate or to cause another person to violate any of the Rules and Regulations.

### Section 19.02 COMPLIANCE WITH LAW

The Tenant shall not use the Port or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees for any illegal purposes.

At all times during the Lease Term, the Tenant shall, in connection with its activities and operations at the Port:

Comply with and conform to all applicable current and future statutes and ordinances, and regulations promulgated thereunder, of all federal and State of Florida agencies of competent jurisdiction that apply to or affect, either directly or indirectly, the Tenant or the Tenant's operations and activities under this Lease. Without limiting the generality of the foregoing, the Tenant shall comply with the United States of America, United States Department of Homeland Security, United States Citizenship and Immigration Services E-Verify in order to implement the legal requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), as may be amended from time to time, and federal regulations promulgated thereunder that may be applicable as a result of activities conducted by the Tenant.

Subject to the prior written approval of the Port Director, make, at its own expense, all Capital Improvements, repairs, and alterations to the Leased Premises and all buildings and improvements thereon and to its equipment and personal property that are required to comply with or conform to any of such statutes, ordinances, or regulations.

Regarding the City, be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of the Tenant hereunder.

The Tenant, for itself and its successors and assigns, shall, and does hereby, covenant and

agree to FULLY AND FOREVER RELEASE, INDEMNIFY, DEFEND, and HOLD HARMLESS the City and its elected officials, employees, officers, directors, volunteers, and representatives, individually and collectively, from and against any and all penalties, fines, and demands of any kind (including but not limited to costs of investigation, attorneys' fees, court costs, and expert fees) arising out of the Tenant's acts or omissions resulting in any alleged violation of any rule, regulation, statute, order, directive, or mandate of the United States, the State of Florida, Escambia County, or the City of Pensacola.

**Section 19.03 COMPLIANCE WITH ENVIRONMENTAL LAWS**

At all times during the Lease Term, the Tenant shall not cause, permit or allow any Hazardous Substances to be placed, stored, dumped, dispensed, released, discharged deposited, used, transported or located on any portion of the Premises; provided, however, that quantities of such Hazardous Substances may be used or stored by Tenant on the Leased Premises in the ordinary course of business on the condition that such quantities and the use thereof are:

- (a) Identified in the Hazardous Substances listing described in Section 14.01,
- (b) Permitted by or are exempt from applicable governmental regulations, and
- (c) Are transported, stored and utilized in accordance with applicable governmental regulations and the best practices of the Tenant's industry.

To the extent caused by or resulting from the acts of the Tenant, its agents, servants, employees, or contractors, Tenant agrees that it shall, to the extent necessary to bring the Leased Premises into compliance with any and all applicable Environmental Laws regarding Hazardous Substances and clean-up thereof, investigate and promptly (but in any event within the time period permitted by applicable Environmental Laws) clean up Hazardous Substances found in, on, under, around, or within any portion of the Leased Premises and, with respect to such matters as described herein for which Tenant is responsible, to remediate the Leased Premises, and to pay for all reasonable clean-up and remediation costs at no cost to the City. All clean-up and remediation shall be performed to meet pre-existing conditions, and in no instance shall clean-up or remediation or related agreements with state or federal regulators include restrictions placed on the use of the Leased Premises or any part thereof.

Tenant shall perform Environmental Reporting required under this Section as described in Section 14.04.

**Section 19.04 LICENSES AND PERMITS**

The Tenant shall obtain in a timely manner and thereafter maintain in full force and effect during the Lease Term all licenses, permits and other approvals required by the federal, state, county, and municipal authorities in order to engage in the Tenant's business on the Leased Premises as permitted under Article 4 above, and consistent with Section 2.01.

END OF ARTICLE

## ARTICLE 20. TAXES

### Section 20.01 **PAYMENT OF TAXES**

The Tenant shall pay all taxes that may be levied upon, assessed, or charged the Tenant or its property located on the Port by the United States, the State of Florida or any of its political subdivisions, or Escambia County or the City, and shall obtain and pay for all licenses and permits required by law.

### Section 20.02 **REAL PROPERTY TAXES**

The Tenant shall be responsible for all real property taxes applicable to the Leased Premises during the Lease Term. If any such taxes paid by the Tenant shall cover any period of time prior to or after the expiration of the Lease Term, the Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax year during which this Lease shall be in effect, and the City shall reimburse the Tenant to the extent required. If the Tenant shall fail to pay any such taxes, the City shall have the right, but not the obligation, to pay the same, in which case the Tenant shall repay such amount to the City with the Tenant's next Base Rent installment, together with interest at the highest rate allowed by law.

### Section 20.03 **DEFINITION**

As used herein the term "real property tax" shall mean all ad valorem and non-ad valorem taxes and assessments (including interest and penalties thereon) which are imposed against any legal or equitable interest of the City or the Tenant in the Leased Premises or any portion thereof by the City, Escambia County or the State of Florida or by any school, agricultural, lighting, fire, mosquito control, water, drainage or other improvement, benefits or tax district thereof, and which are collected by the Escambia County, Florida, Tax Collector, together with any tax imposed in substitution, partially or totally, of any tax previously included within the definition of "real property tax" and any additional tax the nature of which was previously included within the definition of "real property tax".

### Section 20.04 **CONTEST**

The Tenant may contest the legal validity or amount of any taxes, assessment, or charges for which the Tenant is responsible under this Lease, and may institute such proceedings as the Tenant considers necessary. If the Tenant protests any such tax, assessment or charge, the Tenant may withhold or defer payment or pay under protest but shall indemnify and hold the City and the Leased Premises harmless from and against any claim or lien against the City or the Leased Premises arising out of the Tenant's failure to pay the contested taxes, assessments or charges.

### Section 20.05 **PERSONAL PROPERTY TAXES**

The Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of the Tenant contained in the Leased Premises. When possible, the Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the Land and Leased Premises. If any of the Tenant's said personal property shall be assessed with the Land

or Leased Premises, the Tenant shall pay the taxes attributable to the Tenant within ten (10) days prior to the delinquency date for payment of such taxes.

END OF ARTICLE

## ARTICLE 21. ENCUMBRANCE OF LEASEHOLD ESTATE AND NOTICE TO MORTGAGEES

Tenant shall not encumber by mortgage or other security instrument, by way of collateral assignment, or otherwise, Tenant's interest in this leasehold estate without the prior written consent of City.

Provided that City has given its prior written consent to such encumbrance and that Tenant's lender who has been granted a lien on or security interest in the Tenant's leasehold estate in the Leased Premises ("Lender") has provided City written thereof, including Lender's address for receipt of notices:

(a) Lender shall have the right:

1. To do any act or thing required of Tenant hereunder and all such acts or things done and performed shall be as effective to prevent a forfeiture of Tenant's rights hereunder as if done by the Tenant; and
2. To realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the security documents (hereinafter sometimes collectively referred to as "foreclosure sale") or to acquire by deed-in-lieu, and to transfer, convey, or assign the title of Tenant to the leasehold estate created hereby to any purchaser at any such foreclosure sale or transfer from Lender if Lender acquires by a deed-in-lieu and to acquire and succeed to the interest of Tenant hereunder by virtue of any such foreclosure sale or deed-in-lieu.

(b) In the event of a default by the Tenant under this Lease, the rights of City may not be exercised until written notice of such default is delivered to Lender, or to the person or firm designated by any such Lender, by written notice to City, to accept such notices, and any applicable cure period has expired. Lender shall have the same notice and cure rights as are provided to Tenant under this Lease, except that Lender shall have the right to cure a monetary default as described in Section 17.01(a) within ten (10) days from delivery of said notice.

(c) Lender shall not be liable to the City as an assignee of this Lease unless and until such time as such Lender shall acquire the rights of Tenant hereunder through foreclosure or other appropriate proceedings in the nature thereof, or by deed-in-lieu, or as a result of any other action or remedy provided for by such mortgage, or which may otherwise be provided by law.

(d) No modification or voluntary surrender by the Tenant of this Lease shall be made without the consent of Lender if Lender has requested such authority to consent by written notice delivered to City.

(e) The City agrees to provide an estoppel certificate upon written request of Lender acknowledging that (to the extent true and noting any exceptions) this Lease is in full force and effect; that there are no defaults that exist under the Lease; that the Rent is current; and such other matters as Lender may reasonably require.

(f) Notwithstanding the foregoing, the ultimate transferee of Tenant's leasehold estate under the Lease, in the event of foreclosure, deed-in-lieu or otherwise, is subject to the written approval of the City, such approval not to be unreasonably withheld, conditioned, or delayed. At a minimum, such ultimate successor must be able to demonstrate sufficient financial ability to conduct the operations permitted under Article 4 above and have at least five (5) years' experience in the operation of a business of a similar size and offering similar services as that conducted by the Tenant under this Lease as permitted under Article 4 above.

END OF ARTICLE



## ARTICLE 22. PORT DEVELOPMENT RIGHTS

The City reserves the right to further develop or improve all areas designated as Port property as the City may determine in its sole discretion to be in the best interests of the Port, regardless of the desires or views of the Tenant, and without interference or hindrance from the Tenant, including, but not limited to, the “option property” more particularly described on Exhibit C.

Except as may be required by this Lease or any other agreement between the parties, the City reserves the right, but shall not be obligated to the Tenant, to keep and repair all areas of the Port. All obligations of the City hereunder are subject to annual appropriation. However, this provision shall not excuse the City’s performance of any of its responsibilities or obligations hereunder.

END OF ARTICLE

**ARTICLE 23. GENERAL PROVISIONS**

**Section 23.01 ACKNOWLEDGMENT**

The Parties hereto acknowledge that they have thoroughly read this Lease, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of their rights and obligations hereunder. The Parties further acknowledge that this Lease is the result of extensive negotiations between the Parties and shall not be interpreted against the City by reason of the preparation of this Lease by the City.

**Section 23.02 AUTHORITY OF THE PORT DIRECTOR**

The Port Director or his designee may exercise all rights and obligations of the City under this Lease, unless otherwise specifically provided in this Lease or required by law.

**Section 23.03 CAPACITY TO EXECUTE**

The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting hereunder.

**Section 23.04 DELIVERY OF NOTICES**

Any notices permitted or required by this Lease shall be in writing and delivered personally or sent by registered or certified U. S. mail, postage prepaid, or by courier service, such as FedEx or UPS. Any such notice shall be deemed to have been delivered to and received by the addressee (i) upon personal delivery to the Tenant’s address below between 9:00 a.m. and 5:00 p.m. on any business day (i.e., any day other than a Saturday, Sunday, or a federally-designated official holiday), (ii) the next business day after deposit with a courier service such as FedEx or UPS, or (iii) five (5) business days after deposit in the U. S. mail.

Notices to the City shall be addressed to:

City of Pensacola  
Port of Pensacola  
Attention: Port Director  
700 South Barracks  
Street  
Pensacola, Florida 32502

Notices to the Tenant shall be addressed to:

Port Warehouse 4, LLC  
c/o Clark Partington Attorneys  
P.O. Box 13010  
Pensacola, FL 32591  
Attention: Scott Remington,

Attorney

The parties may from time to time designate, in writing, changes to the addresses stated.

#### **Section 23.05 EMPLOYEES OF THE TENANT**

The Tenant shall require all of its employees, subcontractors, and independent contractors hired by the Tenant and working in view of the public to wear clean and neat attire and to display appropriate identification. Tenant employees shall obtain identification badges from the City. The Tenant shall be responsible for paying the cost of DHS/TSA-required employee background checks and badging to include a Transportation Worker Identification Credential (TWIC).

#### **Section 23.06 ENTIRE AGREEMENT**

This Lease constitutes the entire agreement between the Parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by the City and the Tenant, and all prior and contemporaneous agreements and understandings, written as well as oral, are hereby superseded. The Tenant agrees that no representations or grants of rights or privileges shall be binding upon the City unless expressed in writing in this Lease.

#### **Section 23.07 FORCE MAJEURE**

Neither the City nor the Tenant shall be deemed to be in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, pandemic, disease, any responsive measure or state of emergency declared by a governmental entity in relation to pandemic or disease or any other circumstances for which it is not responsible or which is not in its control (individually and collectively a "Force Majeure Event"); provided, however, that these circumstances shall not excuse the Tenant from making, as and when due, any monetary payment required under this Lease or by the Rules and Regulations, including but not limited to Base Rent, port rentals, fees, and charges, Taxes under Article 20, and insurance premiums. But the Tenant in a Force Majeure Event shall be entitled to deferment of the Base Rent, fees, and charges, listed above for up to one hundred eighty (180) days after the cessation of the Force Majeure Event or until performance under this Lease can be reestablished, whichever occurs first, on election to do so with written notice to the City and/or Port Director.

#### **Section 23.08 RULES OF CONSTRUCTION**

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Lease Agreement: words importing the singular number shall include the plural number and vice versa; captions and headings herein are for convenience but are to be read in unison with the language of the section to include its defined meaning or generally accepted meaning of the header and is otherwise also for reference and should constitute a material part of this Lease, but shall affect and read in toto to its meaning, construction or effect; words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neutral genders, and words of the neutral gender shall be deemed and construed to include correlative words of the masculine and feminine genders; all references in this Lease to particular "articles," "sections," or "paragraphs" are references to articles, sections or paragraphs within this Lease, unless specifically indicated otherwise; and, days are measured

in calendar days unless expressly listed in business days.

Both City and Tenant acknowledge that they have each had meaningful input into the provisions and conditions of this Lease.

**Section 23.09 GENERAL INTERPRETATION**

Insofar as this Lease grants, permits, or contemplates the use of space or facilities or the doing of any other act or thing at the Port by the Tenant, such use or the doing of such act or thing by the Tenant is to be in connection with the permitted use under Section 4.01. Each of the Parties, however, has entered into this Lease solely for its own benefit; and (without limiting the right of either Party to maintain suits, actions, or other proceedings because of breaches of this Lease) this Lease does not grant to any third person (excepting a successor party to the City or the Tenant) a right to claim damages or bring any suit, action, or other proceeding against either the City or the Tenant because of any breach hereof.

**Section 23.10 GOVERNING LAW**

The laws of the State of Florida shall govern this Lease and all disputes arising hereunder, with venue in Escambia County, Florida.

**Section 23.11 INCORPORATION OF EXHIBITS**

All exhibits referred to in this Lease are intended to be and hereby are specifically incorporated and made a part of this Lease.

**Section 23.12 INCORPORATION OF REQUIRED PROVISIONS**

The Parties hereto incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

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**Section 23.13 INVALID PROVISIONS**

In the event that any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either the City or the Tenant in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this Lease.

**Section 23.14 NONLIABILITY OF INDIVIDUALS**

No director, officer, agent, elected official, or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Lease or because of any breach hereof or because of its or their execution or attempted execution.

**Section 23.15 NONINTERFERENCE WITH PORT OPERATIONS**

The Tenant, by executing this Lease, expressly agrees for itself, its successors, and assigns that it will not make use of its Leased Premises in any manner that might interfere with other operations at the Port or otherwise constitute a hazard. In the event that the aforesaid covenant is breached, the City reserves the right to enter the Tenant's Leased Premises and cause the abatement of such interference or hazard at the expense of the Tenant, but the Tenant has a ten (10) day right to cure if the situation is a non-emergency.

**Section 23.16 NOTICE OR CONSENT**

Any notice or consent required herein to be obtained from or given by the City (or the Port Director) may be given by the Port Director unless otherwise provided. Consent of the Tenant when required herein shall not be unreasonably withheld, delayed, or conditioned.

**Section 23.17 NONWAIVER**

The acceptance of rentals, fees, and charges by the City for any period or periods after an Event of Default shall not be deemed a waiver of the Event of Default cured by payments made by the Tenant to the City, and any right on the part of the City to terminate this Lease after the Event of Default is cured and payment is received by the City is waived by the City's acceptance of the money that may be the basis of the event of the default.

**Section 23.18 OTHER LAND AND BUILDINGS EXCLUDED**

It is agreed and understood that this Lease and any exhibit hereto is not intended to provide for the lease of any building, land, space, or area or to set any rental rates for any building, land, space, or area other than that specifically described herein.

**Section 23.19 PATENTS AND TRADEMARKS**

The Tenant represents that it is the owner of, or fully authorized to use, any and all services, processes, machines, articles, marks, names, or slogans used by it in its operations under, or in connection with, this Lease. The Tenant shall indemnify, defend and hold harmless the City, its elected officials, employees, volunteers, representatives and agents from and against any loss, liability, damage, expense, suit, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright, or from any claim of unfair competition or

other similar claim, arising out of the Tenant's operations under or in connection with this Lease.

**Section 23.20 PUBLIC RECORDS LAWS**

The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by the City will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists.

The Tenant is a private Tenant and is not ordinarily subject to Public Records Laws, but shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to the Tenant.

**Section 23.21 REMEDIES TO BE NONEXCLUSIVE**

All remedies provided in this Lease shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the City at law or in equity (to the extent not inconsistent with the express provisions hereof) and the exercise of any remedy or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

**Section 23.22 SIGNS AND LOGOS**

The installation and operation of exterior identifying signs, promotions, advertisements, posters, and live or static graphics on the Leased Premises are subject to the prior written approval of the Port Director. Such signs shall be substantially uniform in size, type, and location with those of other tenants, and consistent with the City's graphics standards for Downtown facilities, and in compliance with all applicable laws and ordinances. The signs shall be for the purpose of assigning Port users with wayfinding. Tenant may display exterior and interior static and electronic signage that advertises its products & services, promotes special events & tournaments, promotes third-party services & products, etc., as long as such advertising and signage is consistent with similarly situated businesses and does not violate any applicable laws and ordinances, subject to the prior written approval of the Port Director, not to be unreasonably withheld conditioned, or delayed.

Sign(s) and location(s) may be changed and altered from time to time with the written approval of the Port Director, said approval not to be unreasonably withheld, conditioned, or delayed. At the expiration of the Lease Term or earlier termination of this Lease the Tenant, upon written request from the City, shall remove, at the Tenant's expense, all lettering and signs so erected on the Leased Premises.

Any Tenant Logo will be permitted to be affixed to the exterior of the Leased Premises provided same is affixed in a manner that is in compliance with applicable City of Pensacola sign ordinances and with the prior written approval of the Port Director, which shall not be unreasonably withheld, conditioned or delayed.

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In addition, Tenant will be permitted to paint its Tenant Logo or Name on the exterior of the Facility and on the leasehold grounds.

**Section 23.23 SUCCESSORS AND ASSIGNS**

The provisions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto; provided, however, that this provision shall in no way whatsoever alter the restriction herein regarding assignment and sublease by the Tenant.

**Section 23.24 NO PARTNERSHIP**

Nothing in this agreement constitutes a partnership or joint venture between the Parties. It is the express intention of the Parties to deny any such relationship.

**Section 23.25 THIRD PARTIES**

Nothing in this Lease, express or implied, is intended to or shall confer upon any person, other than the Parties and their respective permitted successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Lease.

**Section 23.26 TIME IS OF THE ESSENCE**

Time is of the essence of this Lease.

**Section 23.27 MEMORANDUM OF LEASE**

Concurrently with the execution of this Lease, the Parties shall execute a short-form memorandum of this Lease satisfactory to the City Attorney, in form suitable for recording, and in substance sufficient to provide constructive notice to third parties of the material terms and provisions of this Lease. The Tenant shall cause such memorandum to be recorded in the public records of Escambia County, Florida.

**Section 23.28 REPRESENTATIONS AND WARRANTIES OF CITY AND TENANT**

City hereby represents and warrants to the Tenant that as of the Effective Date:

- a. The City is the fee simple owner and record title holder of the Leased Premises.
- b. The City has the full right and authority to make, execute and perform this Lease and grant the rights contained herein to the Tenant.

The Tenant hereby represents and warrants to the City that as of the Effective Date:

- a. The Tenant has the full right, power and authority to make, execute and perform this Lease.
- b. This Lease is binding upon and enforceable against the Tenant in accordance with its terms.

**END OF ARTICLE**

IN WITNESS WHEREOF, the undersigned have duly executed this Lease as of the dates set forth below.

**CITY:**

**TENANT:**

**CITY OF PENSACOLA,**  
a Florida municipal corporation

**PORT WAREHOUSE 4, LLC**  
a Florida limited liability company

By: \_\_\_\_\_ ,  
D.C. Reeves, Mayor

By: \_\_\_\_\_  
Rob Fabbro, Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Signed by Tenant in the presence  
of:

\_\_\_\_\_  
Ericka Burnett, City Clerk

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Signed by Mayor in the presence of:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Approved as to form

\_\_\_\_\_  
Charles V. Pepler, City Attorney

Approved as to content:

\_\_\_\_\_  
Clark Merritt, Port Director