

## AMENDMENT TO LEASE AGREEMENT

This AMENDMENT TO LEASE AGREEMENT ("Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between THE CITY OF PENSACOLA, Florida, a municipal corporation of Florida, hereinafter called the "City" or "Lessor" and JME of NWF, LLC., a Florida limited liability corporation, hereinafter referred to as "JME" or "Lessee," whose address is 711 South Palafox Street, Pensacola, Florida 32501.

### RECITALS

WHEREAS City and Scuba Shack, Inc., JME's predecessor-in-ownership of 711 South Palafox Street, entered into a Lease Agreement on or about May 1, 1997, for submerged real property situated in Pensacola, Escambia County, Florida, which is more particularly described in that Lease Agreement attached hereto as Exhibit "A"; and

WHEREAS, the Lease Agreement is for a twenty-five (25) year term ending on or about May 1, 2022;

WHEREAS, the Lease Agreement contemplates that the parties may extend the Lease Agreement beyond the twenty-five (25) year term;

WHEREAS, Scuba Shack, Inc. gave written notice to the City on March 15, 2021, of its desire to extend the term of the Lease Agreement for an additional twenty-five (25) year term on the same terms and conditions as set forth in the Lease Agreement, except for an increase in the annual lease fee; and

WHEREAS, the parties desire to formally amend the Lease Agreement to provide for an extension of the lease term and an increase in the annual lease fees;

The parties do hereby amend the Lease Agreement as follows:

### AGREEMENT

1. The above recitals are incorporated here by reference.
2. The entire Lease Agreement is amended to replace "Scuba Shack, Inc." with "JME of NWF, LLC" and "Scuba Shack" with "JME".
3. The term of the lease as set forth in section two (2) of the Lease Agreement is extended twenty five (25) years from May 1, 2022, and shall expire on May 1, 2047 ("extended lease term").

4. Section four (4) of the Lease Agreement is amended to read as follows:

JME shall pay to the City, as rent for the Leased Premises, the annual sum of twelve hundred dollars (\$1,200.00) in advance for the first five years of the extended lease term, the first such annual payment of \$1,200.00 being due and payable upon the date of this Amendment. A fair market rent shall be renegotiated every five years prior to the anniversary date of this lease agreement based upon the submerged lands lease policy currently in effect with the Bureau of State Land Management of the Department of Natural Resources for State submerged land leases, or its successor. If the parties fail to negotiate a fair market rent six months prior to such anniversary date, then the rent for the succeeding five-year period shall be determined by the average of the fair market rent recommended by the reports of two independent appraisers, one selected by the City and one selected by JME. If the appraisal reports are not completed prior to the anniversary dates so that such average and fair market rent cannot be determined, then JME shall pay the same annual rent as it paid during the previous five-year period until such time as the fair market rent can be determined, at which time the rent shall be adjusted as of the date of commencement of the five-year period with appropriate refund or additional payment being due. Failure to pay the annual rent when due is considered a material breach of this Lease Agreement.

5. Section seven (7) of the Lease Agreement is amended to add the additional language as follows:

**ENVIRONMENTAL COMPLIANCE:** (a) Lessee shall comply with, and shall cause all sublessees and other persons and entities occupying the Leased Premises or any portion thereof to comply with all federal, state, municipal and county laws, statutes, ordinances, codes, administrative orders, rules and regulations and permits relating to environmental matters, stormwater management, and pollution control applicable to or governing the Leased Premises, the Improvements, the construction, alteration or demolition of the Improvements, or the occupancy, use or operation of the Leased Premises or Improvements by any person or entity. Lessee shall furnish to the Lessor at the time same are filed, received, submitted or tendered, a copy of every permit application, permit, notice, order or other document sent to or received from any regulatory agency responsible for environmental matters, stormwater management, or pollution control. Lessee shall not suffer, allow, cause, condone, license, permit or sanction any activities, conduct, acts, omissions, or operations that enable or result in any pollutants, contaminants, hazardous materials or substances or other waste to be accumulated, deposited, placed, released, spilled, stored or used upon or under an portion of the Leased Premises or Improvements, or any groundwater or any body of water on, touching upon, or adjacent to the Leased Premises, contrary to or in violation of an of said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits. In the event Lessee violates this prohibition, Lessee shall be solely responsible for any and all reporting, cleanup, remediation, damages, fines, and penalties arising therefrom or in connections therewith. (b) Lessee shall fully and promptly pay, perform, discharge, indemnify and hold harmless Lessor and its elected and appointed officials, officers, members, employees, volunteers, representatives and agents from and against any and all claims, orders, demands, causes of action, proceedings, judgements,

suites, fines, penalties, liabilities, damages, losses, remediation costs, response costs, and all other costs and expenses (including without limitation reasonable attorneys' fees, consultant fees, court costs, and expenses paid to third parties) arising out of, as a result of, or in connection with (i) Lessee's failure to observe, perform, satisfy, or comply with an obligation of Lessee under this Section; or (ii) any hazardous substance, contamination, or pollution discharged, released, deposited, dumped, spilled, leached, leaked, or placed into, on under, or from, the Leased Premises, or any portion thereof, or any groundwater, or any body of water on, touching upon, or adjacent to the Leased Premises, by Lessee or any sublessee or other person or entity occupying the Leased Premises or any portion thereof, at any time from the date of the Lease Agreement, until Lessee and all persons and entities occupying the Leased Premises or any portion thereof, by, through or under Lessee have fully vacated the Leased Premises. (c) Notwithstanding the foregoing, Lessee does not indemnify Lessor for claims related to environmental conditions existing on or under the Leased Premises prior to the date of the Lease Agreement, except and only to the extent that such conditions are made worse by the negligent or unreasonable acts or omissions of Lessee, its contractors, employees, agents, or representatives, or any sublessee or other person or entity occupying the Leased Premises, or any portion thereof, by, through or under Lessee.

6. Section thirteen (13) of the Lease Agreement is amended to add the additional language as follows:

JME agrees to notify the City, in writing, of any pending change in ownership at least 30 days prior to the actual transfer of title and/or use of their easterly real property adjacent to the Leased Premises.

7. Section fifteen (15) of the original lease is amended to state as follows:

All notices and invoices to the Lessee shall be sent to JME of NWF, LLC, at 711 South Palafox Street, Pensacola, Florida 32501.

8. Except as amended herein, the terms of the Lease Agreement shall remain in full force and effect throughout the extended lease term.

[signatures on next page]

EXECUTED in original copies to be effective as of the day and year first written above.

CITY OF PENSACOLA

A municipal corporation, Lessor

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

Grover C. Robinson, IV

Mayor

Attest:

\_\_\_\_\_  
Ericka L. Burnett, City Clerk

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Grover C. Robinson, IV, the Mayor of the City of Pensacola, a municipal corporation, for and on behalf of the City, and who is personally known to me.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

NOTARY PUBLIC

\_\_\_\_\_  
Name

\_\_\_\_\_  
[Type or print Name]

My Commission Expires:

Legal in form and valid as drawn:

Approved as to content:

\_\_\_\_\_  
Heather Lindsay, Assistant City Attorney

\_\_\_\_\_  
Deana Stallworth, Property Lease Manager

JME of NWF, LLC  
A Florida Limited Liability Corporation, Lessee

Attest:

By:

\_\_\_\_\_  
James E. English, Manager

\_\_\_\_\_  
Secretary/Authorized Representative

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by James E. English of JME of NWF, LLC, a Florida limited liability corporation, for and on behalf of the corporation and who is personally known to me or has produced \_\_\_\_\_ as identification.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

NOTARY PUBLIC

\_\_\_\_\_  
Name

\_\_\_\_\_  
[Type or print Name]  
My Commission Expires: