

MEMORANDUM

To: President Andy Terhaar and Council Members

From: Susan A. Woolf, City Attorney



CC: Mayor Grover C. Robinson, IV
Chris Holley, City Administrator
Ericka Burnett, City Clerk
Don Kraher, Council Executive

Date: September 26, 2019

Re: Item No. 11
Pitt Slip Amended and Restated Lease

Please find attached the Amended and Restated Lease for Pitt Slip with additional language pursuant to a request made at Agenda Conference on Monday, September 23, 2019. The new language is underlined and found on page 5 in Article 3, paragraph (c). The language has been agreed to by Mr. Fleming on behalf of Seville Harbour.

Attachment: Amended and Restated Lease (redlined)

From: Susan Woolf
Sent: Wednesday, September 25, 2019 1:57 PM
To: Ericka Burnett <EBurnett@cityofpensacola.com>; Robyn Tice <RTice@cityofpensacola.com>
Subject: FW: Amended and Restated Pitt Slip Lease Agreement with additional language

Ladies,

The redlined version I sent below (pdf) and the clean version (Word) of the lease are attached.

Susan

Susan A. Woolf, City Attorney
City of Pensacola
(850) 435-1615
swoolf@cityofpensacola.com

Florida has a very broad public records law. As a result, any written communication created or received by City of Pensacola officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

From: Susan Woolf
Sent: Wednesday, September 25, 2019 1:53 PM
To: Andy Terhaar <aterhaar@cityofpensacola.com>; P.C. Wu <pcwu@cityofpensacola.com>; Jewel Cannada-Wynn <jcannada-wynn@cityofpensacola.com>; Ann Hill <AHill@cityofpensacola.com>; 'jjerralds@cityofpensacola.com' <jjerralds@cityofpensacola.com>; Jared Moore <JMoore@cityofpensacola.com>; Sherri Myers <smyers@cityofpensacola.com>
Cc: Grover C. Robinson, IV <GRobinson@cityofpensacola.com>; Christopher L. Holley <CHolley@cityofpensacola.com>; Don Kraher <DKraher@cityofpensacola.com>; Ericka Burnett <EBurnett@cityofpensacola.com>; 'Ed Fleming' <epfleming@pensacolalaw.com>
Subject: Amended and Restated Pitt Slip Lease Agreement with additional language

Councilmembers,

Please find attached the Amended and Restated Lease for Pitt Slip with the language requested at the agenda conference this past Monday. The new language is underlined and found on page 5 in Article 3, paragraph (c). The language has been agreed to by Mr. Fleming on behalf of Seville Harbour.

(Ericka – I will send you a “clean” version of the document separately.)

Susan

Susan A. Woolf
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STATE OF FLORIDA
COUNTY OF ESCAMBIA

AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (this "Amended Lease") is made and entered into this ____ day of _____, 2019 (the "Lease Effective Date") by and between the CITY OF PENSACOLA, a Florida municipal corporation ("Lessor"), whose address is 222 W. Main Street, Pensacola, Florida 32502, and SEVILLE HARBOUR, INC. (f/k/a South Florida Marine Investors, Inc.), a Florida corporation, ("Lessee"), whose address is 850 S. Palafox Street, Suite 102, Pensacola, Florida 32502. Lessor and Lessee are collectively referred to herein as the "Parties".

W I T N E S S E T H:

WHEREAS, Lessor is the fee simple owner of the land described in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, Lessor and Florida Sun International, Inc., as lessee, entered into that certain Pitt Slip Marina Lease Agreement dated September 18, 1985, and that certain Amendment to Pitt Slip Lease Agreement dated October 17, 1985 (collectively, the "Original Lease"), whereby Florida Sun International leased such real property from Lessor;

WHEREAS, the Original Lease is evidenced by that certain Memorandum of Lease recorded in O. R. Book 2249, Page 859, and re-recorded in O. R. Book 2259, Page 767, Public Records of Escambia County, Florida, and is attached as Exhibit "A" to that certain Absolute Assignment of Lease recorded in O. R. Book 3624, Page 100, Public Records of Escambia County, Florida;

WHEREAS, Lessee is the current lessee under the Original Lease by virtue of instruments recorded, respectively, in O. R. Book 2249, Page 862; O. R. Book 2913, Page 967; O. R. Book 2973, Page 223; O. R. Book 3624, Page 100; O. R. Book 4067, Page 375; and O. R. Book 4551, Page 312; all of the Public Records of Escambia County, Florida;

WHEREAS, Lessor and Lessee acknowledge and agree that the Original Lease has not been amended except as referenced above and that the Original Lease is in full force and effect in accordance with its terms;

WHEREAS, Lessor and Lessee desire to amend and restate the Original Lease in its entirety as set forth hereinbelow;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the covenants and conditions set forth below, the Parties mutually agree, each for itself and its successors, as follows:

1. RECITALS AND AMENDMENT. The foregoing recitals are true and correct and are hereby incorporated herein by reference. This Amended Lease amends and restates the Original Lease in its entirety.

2. LEASED PREMISES. Lessor hereby leases to Lessee, and Lessee hereby rents and takes from the Lessor, those certain parcels of real property described as Parcels I, IA and III in Exhibit "A" attached hereto and incorporated herein by reference, excluding, however, any portion of such real property that is part of the uplands portion of Bartram Park (the "Leased Premises"), upon the terms and subject to the conditions of this Lease. A copy of the most recent survey of a portion of the property is attached as Exhibit _____. In the event that Lessee has not located or obtained a survey of the remainder of the Leased Premises prior to the date of execution of this Lease, then within ninety (90) days after the Lease Effective Date, Lessee, at Lessee's sole cost and expense, shall deliver to Lessor a current survey of the Leased Premises, prepared by a Florida-licensed land surveyor reasonably acceptable to Lessor, and certified by such surveyor as meeting the minimum Florida survey requirements. Within thirty (30) days after Lessor's written approval of such survey, Exhibit "A" hereto shall be amended accordingly by a written instrument executed by Lessor and Lessee and recorded in the public records of Escambia County, Florida. The "Leased Premises" do not include Parcel II as described in Exhibit "A" to the Original Lease, and said Parcel II is hereby expressly deleted from the Original Lease as amended and restated by this Amended Lease.

Notwithstanding anything in this Amended Lease to the contrary, the Leased Premises are leased subject to the following matters:

(a) All matters appearing in the public records of Escambia County, Florida, including but not limited to the matters listed hereinbelow;

(b) All terms, covenants, conditions and restrictions of the following documents to the extent if any they restrict or regulate the Leased Premises:

(1) Florida Department of Natural Resources, Florida Recreation Development Assistance Program, Project No. 1-01-10, including but not limited to:

a. Notice of Limitation of Use / Site Dedication recorded in O. R. Book 2343, Page 763, Public Records of Escambia County, Florida;

b. Florida Department of Natural Resources, Florida Recreation Development Assistance Program, Project Agreement, Project No.

1-01-10, dated November 22, 1983, recorded in O. R. Book 2343, Page 764, Public Records of Escambia County, Florida; and

c. Florida Department of Natural Resources, Florida Recreation Development Assistance Program, Amendment to Agreement, dated July 2, 1985, recorded in O. R. 2343, Page 772, Public Records of Escambia County, Florida.

(2) Federal Land and Water Conservation Fund Project No. 12-00132, William Bartram Memorial Park Project, administered by Florida Department of Environmental Protection, Division of Recreation and Parks, including but not limited to:

a. Land and Water Conservation Fund Project Agreement dated June 22, 1977, between U. S. Department of Interior, Bureau of Outdoor Recreation, and the State of Florida.

(3) Florida Recreation Development Assistance Program, FRDAP Project No. 1-01-8 for development of William Bartram Memorial Park, including but not limited to:

a. State of Florida, Department of Natural Resources, Florida Recreation Development Assistance Program Development Agreement dated October 9, 1979;

b. State of Florida, Department of Natural Resources, Florida Recreation Development Assistance Program Amendment to Development Agreement;

c. Limitation of Use recorded in O. R. Book 1408, Page 909, Public Records of Escambia County, Florida; and

d. Amended Limitation of Use recorded in O. R. Book 1732, Page 102, Public Records of Escambia County, Florida.

(c) Site Specific Development Plan for the Leased Premises;

(d) Permit Agreement recorded in O. R. Book 1073, Page 660, Public Records of Escambia County, Florida;

(e) Easement contained in Ordinance vacating roads recorded in O. R. Book 2332, Page 639, Public Records of Escambia County, Florida;

(f) Underground Easement for Electric Services to Gulf Power Company recorded in O. R. Book 2251, Page 475, Public Records of Escambia County, Florida;

(g) Memorandum of Agreement recorded in O. R. Book 6230, Page 1239, Public Records of Escambia County, Florida;

(h) Any state of facts which an accurate survey or physical inspection of the Leased Premises would show;

(i) The current Site Specific Development (SSD) zoning designation, and all zoning laws, ordinances, resolutions, restrictions, rules and regulations, building and use restrictions, future land use maps, uses, restrictions and provisions, and other laws, rules and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction;

(j) Easements which are hereby reserved by Lessor for the use and benefit of the general public on, over and across all public and private sidewalks, roads, and drives now or hereafter located or constructed upon the Leased Premises or any portion thereof;

(k) Utility easements which are hereby reserved by Lessor for all utilities, if any, located on, over, under or across the Leased Premises or any portion thereof; and

(l) All the terms, covenants, conditions and other provisions of this Amended Lease.

Without limiting the foregoing, Lessor and Lessee expressly acknowledge and agree that neither this Amended Lease nor any of its terms or conditions are intended, nor shall be construed or operate, to affect, terminate, modify, or amend in any respect the sublease currently in effect between Lessee, as sublessor, and Merrill Land, LLC, as sublessee. The sublessee under such sublease shall be an intended third party beneficiary of the covenant in the preceding sentence and shall be entitled to enforce the same against the Parties hereto as to the remaining term of its sublease unless such sublease is amended or replaced.

3. USE OF PREMISES; COMPLIANCE WITH GRANTS.

(a) Lessee shall use the submerged land portions of the Leased Premises solely as a marina complex of approximately 94 boat slips making said slips available for rent by the public on a non-discriminatory, first come first served basis. The Leased Premises also may be used as a harbor master facility, ships store, fuel facilities, parking, restaurants, office space, lounges, and other ancillary, compatible marina uses if and to the extent permitted by the Site Specific Development Plan identified in Section 2(c) above. Notwithstanding any contrary provision of this Amended Lease, in no event shall Lessee use the Leased Premises for any use or purpose that violates the terms, conditions, covenants or restrictions of any permit, grant, or instrument identified in Section 2. Lessee acknowledges that among other terms, conditions, covenants, and restrictions, the permits, grants, and instruments identified in Section 2 above may restrict in perpetuity all or substantial portions of the Leased Premises to use as an outdoor recreation area for the use and benefit of the general public. These facilities will be open and available to the general public, with slips being available to the public for lease by the

day, week, or month, with no lease term exceeding seven (7) months. A reasonable number of slips will be reserved for transient, day use, or other special public purpose.

(b) In no event shall the use of the Leased Premises by Lessee or any other person or entity interfere with the public's use of Bartram Park or any other park or public area adjacent to the Leased Premises or with the use or operation of the Port of Pensacola. Visitors to Bartram Park will have use of Bartram Park unrestricted by any provisions of this Amended Lease, including without limitation full access to the water adjacent to Bartram Park for swimming, fishing, launching kayaks and paddleboards, parking, and other public outdoor recreational uses.

(c) The Parties agree that the Amended Lease does not expand the uses permitted for the Leased Premises, and that those uses are controlled by the site-specific development ("SSD") plan now in place. Any expanded or alternative uses of the Leased Premises beyond or in place of those provided for by the current SSD plan shall require amendment of the SSD plan through the SSD process, which includes an application for the amendment and approval by the Planning Board and City Council. In particular, the Parties agree that "marina" as used in the Amended Lease is to be given its statutory definition, to wit: "a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis." (§372.02, Fla. Stat.) The marina is not to be used as a mooring base for "floating structures" as defined by Florida law, but rather for duly registered vessels meeting all state and federal requirements for registered vessels.

4. IMPROVEMENTS.

(a) No later than January 1, 2020, Lessee shall obtain all required permits for and shall begin actual construction of a breakwater on a portion of the submerged land that is part of the Leased Premises, and Lessee shall thereafter diligently and continuously prosecute such construction until completion, and shall complete such construction no later than December 31, 2021; provided that Lessee shall not commence such construction until Lessor shall have given its written approval of the location, plans, and specifications for such breakwater, such approval not to be unreasonably withheld. Lessee warrants to Lessor that such breakwater shall be constructed in a good and workmanlike manner and that Lessee shall expend not less than Two Million Dollars (\$2,000,000.00) for the construction of the breakwater and marina improvements on the submerged land of the Leased Premises. Lessor shall contribute Three Hundred Fifty Thousand Dollars (\$350,000.00) toward the cost of construction of the breakwater with said amount to be paid directly to the Lessee's breakwater contractor as part of its final payment application and within 30 days of invoicing. The Parties recognize that the breakwater is for the protection of the marina. Upon full execution of this Amended Lease, Lessee shall dismiss with prejudice, including its claim for taxation of costs and attorneys' fees, the pending case styled Seville Harbour, Inc. and Merrill Land, LLC v. The City of Pensacola, Case No. 2014-CA-000081, in the Circuit Court in and for Escambia County, Florida. The time deadlines for commencement and completion of such breakwater shall

be extended day for day to the extent of delays resulting from a Force Majeure Event (as defined in Section 16 below), provided that Lessee shall be conclusively deemed to have waived its right to extend such time deadlines by reason of a Force Majeure Event if Lessee fails to give Lessor written notice of such Force Majeure Event within thirty (30) days after the first occurrence of such Force Majeure Event, and provided that in no event shall either of such deadlines be extended for more than one hundred eighty (180) days. In the event that Lessee fails to comply with its obligations under this paragraph (a), then in addition to all other remedies available to Lessor, Lessor shall be entitled to collect, as rent, the amount of additional real property ad valorem taxes that it would have received had Lessee complied with such obligations, and Lessor shall be entitled to continue to receive said amount until Lessee complies with such obligations. For the avoidance of doubt, such breakwater is part of the "Improvements" as defined in paragraph (b) below and is subject to the provisions of paragraphs (b), (c), (d) and (e) below.

(b) The aforesaid breakwater and all other buildings, improvements, and signage now existing or hereafter constructed or placed on the Leased Premises at any time and from time to time during the Term of this Amended Lease are referred to in this Amended Lease as the "Improvements". Lessee shall be solely responsible to ensure that all Improvements and all design, construction, alteration, removal, and demolition of any Improvements shall at all times comply with all applicable laws, codes, ordinances, rules, and regulations, including but not limited to the federal Americans with Disabilities Act and regulations thereunder, and shall be maintained in good repair. Lessee shall not construct, alter, remove, or demolish any Improvements, in whole or in part, without first having obtained the written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed. No Improvements shall be constructed, altered, removed, or demolished except in strict accordance with architectural design, site plan, construction contracts, construction budget, construction schedule, and plans and specifications approved in writing by Lessor prior to commencement of such work, such approvals not to be unreasonably withheld, conditioned, or delayed; provided, however, that the approval of Lessor required by this paragraph shall not be deemed to be any acknowledgement by the Lessor that such plans and specifications, other approved items, or the proposed Improvements or other work complies or will comply with applicable laws, codes, ordinances, rules, and regulations, and shall not relieve Lessee from obtaining all governmental authorizations, permits and approvals required by applicable laws, codes, ordinances, rules, and regulations, all of which shall be obtained prior to commencement of construction, alteration, removal or demolition of any Improvements. Without limiting the generality of the foregoing, the materials, architectural design, and plans and specifications of any Improvements shall conform with any applicable published design criteria established by the City of Pensacola as in effect from time to time and shall be compatible with the materials and architecture of other then-existing buildings and improvements within the vicinity of the Leased Premises.

(c) Lessee shall be solely responsible for payment of all hard and soft costs of construction, alteration, removal, and demolition of any Improvements and, prior to commencement of any work on the Leased Premises, Lessee shall provide Lessor with reasonably satisfactory evidence of Lessee's ability to pay the costs of such work as and

when due. Lessee shall cause all work and Improvements on the Leased Premises to be performed and constructed with new materials and in a good and workmanlike manner, pursuant to valid building permits and in conformance with this Amended Lease, all applicable federal, state, county and municipal laws, codes, ordinances, rules and regulations, and Lessor's reasonable construction rules and regulations. Lessee shall indemnify, defend and hold Lessor free and harmless from all liens and claims of lien, and all other liability, claims and demands arising out of any work done or material supplied to the Leased Premises by or at the request of Lessee. All Improvements (expressly excluding, however, movable office furniture and trade fixtures, trade equipment, and houseboats) shall be deemed to be a part of the real estate and shall remain upon and be surrendered with the Leased Premises upon the termination of this Amended Lease. Except to the extent otherwise provided in paragraph (a) above with respect to the breakwater, upon commencement of any permitted construction, alteration, removal or demolition, Lessee shall thereafter diligently and continuously prosecute such work to completion within a reasonable time.

(d) Lessor shall have the right, but not the obligation, to require Lessee to post a payment and performance bond for any construction contract exceeding \$1,000,000, said bond to be posted on an American Institute of Architect form, naming Lessor as the intended beneficiary, and complying with any applicable statutory requirements.

(e) Notwithstanding the foregoing or any other provision of this Amended Lease, neither Lessor's interest in the Leased Premises nor the Improvements shall be subject to any lien, statutory or otherwise, by reason of any 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 Lessee or its employees or contractors or anyone acting by, through or under Lessee. All persons performing labor or service or furnishing materials to the Leased Premises on the order of Lessee must look solely to Lessee for payment. Lessee shall keep the Leased Premises and 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 Lessee or its employees, contractors, or anyone acting by, through or under Lessee, all of which liens and claims are hereby expressly prohibited, and Lessee shall defend, indemnify and hold Lessor 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 Lessor in connection with any such lien, claim or action.

In the event that any claim or lien shall be recorded against the Leased Premises or Improvements in violation of this paragraph and such claim or lien shall not be removed or discharged within ninety (90) days of filing, Lessee shall, within ten (10) days of Lessor's written demand, either transfer such lien to a transfer bond or deposit with Lessor 150 percent of the amount of said lien, at Lessor's option. Nothing within this Amended Lease shall be deemed to subject the Lessor's property to a construction lien, and any such lien shall be deemed invalid.

(f) During the Term of this Amended Lease, Lessee shall permit the representatives of Lessor access to the Leased Premises and Improvements at all reasonable times deemed necessary for the purpose of confirming Lessee's compliance with this Amended Lease, including but not limited to inspection of all work being performed in connection with the construction, alteration, removal, or demolition of Improvements.

5. **TERM.** The term of this Amended Lease (the "Term") shall commence on the Lease Effective Date and shall end on August 31, 2118.

6. **RENT.**

(a) **Base Rent.** Beginning on the Lease Effective Date and continuing to and including February 1, 2045, and as compensation for the use of the Leased Premises, Lessee shall pay the Lessor annual base rent in the amount of \$46,161.60 (the "Base Rent"), payable in twelve (12) equal monthly installments of \$3,846.80 each in accordance with paragraph (b) below (each such monthly installment being referred to herein as a "Monthly Rent Payment"). Beginning on March 1, 2045 and continuing to and including August 31, 2118, and as compensation for the use of the Leased Premises, Lessee shall pay the Lessor annual base rent in the amount of \$96,016.20 (the "Base Rent"), payable in twelve (12) equal monthly installments of \$8001.35 in accordance with paragraph (b) below (each such monthly installment being referred to herein as a "Monthly Rent Payment"), subject to adjustment as provided in paragraph (c) below.

(b) **Base Rent Payment Terms.** Each Monthly Rent Payment shall be due and payable in advance, without invoicing, notice, demand, deduction or set-off, on the first (1st) day of each calendar month beginning on the Lease Effective Date and continuing during the remainder of the Term; provided that the first Monthly Rent Payment shall be pro-rated according to the Lease Effective Date and the number of days remaining in the month in which the Lease Effective Date occurs, and shall be due and paid by Lessee to the Lessor on the Lease Effective Date.

(c) **Automatic Periodic Adjustments to Base Rent.** The term "Lease Year" as used in this Amended Lease shall mean each period of twelve (12) consecutive months that commences on March 1 of any calendar year; provided that the first Lease Year shall commence on the Lease Effective Date and shall end on February 29, 2020. Effective on and as of March 1, 2050 and on and as of the first day of every fifth (5th) Lease Year thereafter, the annual Base Rent shall be increased in direct proportion to the increase, if any, of the CPI (hereinafter defined) for the third month prior to such date (the "New CPI") over the CPI for the same month five (5) years earlier (the "Base CPI") as follows: The Base Rent for the Lease Year immediately preceding March 1, 2050, or the first day of every fifth (5th) Lease Year thereafter, as the case may be, shall be multiplied by a fraction, the numerator of which shall be the New CPI and the denominator of which shall be the Base CPI. The product of such multiplication shall be the new annual Base Rent for the new Lease Year that commences on March 1, 2050, or the first day of every fifth (5th) Lease Year thereafter, as the case may be, and such adjusted Base Rent shall be in

effect during the remainder of the Term, subject to further adjustments in accordance with this paragraph (c) and paragraph (d) below. In no event, however, shall the annual Base Rent for such new Lease Year be less than the annual Base Rent for the immediately preceding Lease Year. As used herein, "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, 1982-84 = 100 reference base, published by the Bureau of Labor Statistics of the United States Department of Labor. If the Bureau of Labor Statistics of the United States Department of Labor ceases publishing the CPI or materially changes the method of its computation, components, base year, consumers whose experiences are included therein or other features thereof, a comparable index published by a governmental agency, responsible financial periodical, trade association or educational institution selected by the Lessor, in its sole discretion, shall be substituted for the CPI and used in making the computations required herein. Lessor shall calculate and provide written notice to Lessee for each increase. Any delay in the notice being provided to Lessee does not constitute a waiver of the increase in rent or waiver of the start date of the rent increase.

(d) General. The term "Rent" when used in this Amended Lease shall include Base Rent and all other amounts payable by Lessee to or on behalf of Lessor under this Amended Lease.

(e) Sales Tax. Lessee shall pay 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 (the "Sales Tax") on the Rent due under this Amended Lease and on all other payments required by this Amended Lease to be made by the Lessee which are taxable under applicable Florida law. Such sales or use tax shall be due and payable concurrently with the payment of the Rent or other payment with respect to which such tax is required to be paid.

(f) Late Charges and Interest. If Rent or any other charge due under this Amended Lease by Lessee to Lessor is not paid within ten (10) calendar days after such Rent or other charge became due, a late charge of five percent (5%) of the amount due shall be due and payable to Lessor to compensate Lessor for its added expenses due to said late payment. Further, any Rent or other charge due under this Amended Lease that is not paid within 30 days of the date due shall bear interest at fifteen percent (15%) per annum, or the highest rate allowed by law, whichever is less, from the date due until the date paid in full.

7. TAXES. Lessor and Lessee shall cause the Leased Premises and Improvements to be separately assessed for Taxes (hereinafter defined). Commencing on the Lease Effective Date, Lessee shall directly pay, prior to delinquency, all Taxes imposed against or with respect to the Leased Premises and Improvements with respect to any time period during the Term. As used herein the term "Taxes" shall mean all ad valorem and non-ad valorem taxes, fees, assessments and special assessments (including interest and penalties thereon), including without limitation real property ad valorem taxes and stormwater fees and assessments, which are, at any time and from

time to time during the Term, assessed or imposed against any legal or equitable interest of Lessor or Lessee in the Leased Premises, or in any Improvements now or hereafter situated thereon, by the City of Pensacola, Escambia County or 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 Tax Collector (or comparable agency), together with any tax imposed in addition to or in substitution of, partially or totally, any such tax, fee or assessment. If at any time during the Term all or any part of the Leased Premises or any Improvements thereon are deemed exempt and not subject to Taxes, in whole or in part, Lessee, upon Lessor's request, shall pay to the City of Pensacola amounts equivalent to the Taxes that would have otherwise been due and payable to the City of Pensacola in the absence of such exemption.

8. RENT DEPOSIT. Upon execution of this Amended Lease by all parties, Lessee shall deposit \$10,000.00 as a security deposit for its obligations under this Amended Lease. This deposit shall be released at the five-year anniversary of this Amended Lease provided that the Lessee has complied with all obligations, including timely payment of Rent, and completion of the Improvements contemplated by this Amended Lease.

9. ASSIGNMENT AND SUBLEASE.

(a) Assignment. The Lessee shall not assign this Lease (in whole or in part) or the Lessee's interest in or to the Leased Premises or any part thereof without first having obtained the Lessor's prior written consent, which consent shall not be unreasonably withheld. Without limiting the foregoing, it is a precondition to Lessor review and approval of a requested assignment 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 Lessee requests permission to assign this Amended Lease, in whole or in part, the request shall be submitted to the Lessor not less than sixty (60) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement and of all agreements collateral thereto, together with the following information and any other information requested by the Lessor: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Amended Lease, a statement of the entire consideration to be received by the Lessee by reason of such assignment, the type of business to be conducted on the Leased Premises by the assignee, and history and financial information of the Assignee. In addition, Lessee shall be entitled to assign the Amended Lease or any portion thereof to any corporate entity in which Ray Russenberger is the majority equity owner and is in operational control, to any immediate family member, or to any trust for use and benefit of immediate family members as part of his Estate Planning, without requiring advance approval. In such event, Lessee shall timely notify Lessor of such change, and provide evidence that said assignment was in compliance with the requirements of this Amended Lease.

(b) Sublease. Excepting the current sublease between Lessee and Merrill Land, LLC, the Lessee shall not further sublease the Leased Premises or any part thereof without having first obtained the Lessor's prior written consent, which consent shall not be unreasonably withheld. Without limiting the generality of the foregoing, it is a precondition to Lessor 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 Lessee requests permission to sublease the Leased Premises in whole or in part, the request shall be submitted to the Lessor 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 and of all agreements collateral thereto, together with the following information and any other information requested by the Lessor: 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 Lessee by reason of such sublease (including but not limited to sub-sublease rent and other charges payable by the sublessee), the type of business to be conducted on subleased premises by the sublessee, and history and financial information of the sublessee.

(c) Consummation of Assignment or Sublease. The Lessor's consent for the assignment or sublease for which the Lessor's consent is required and for which such consent has been given shall be by written instrument, in a form satisfactory to the Lessor and the Lessor's legal counsel, and shall be executed by the assignee or sublessee who shall agree, in writing, for the benefit of the Lessor, to be bound by and to perform all the terms, covenants, and conditions of this Amended Lease. Failure either to obtain the Lessor's prior written consent or to comply with the provisions of this Amended Lease shall serve to prevent any such transfer, assignment, or sublease from becoming effective. The Lessee agrees and acknowledges that it shall remain fully and primarily liable for all obligations of the lessee under this Amended Lease, notwithstanding any full or partial assignment of this Amended Lease or any sublease of all or any portion of the Leased Premises, and notwithstanding Lessor's consent to any such assignment or sublease. Receipt by Lessor of Rent or any other payment from an assignee, sublessee, or occupant of the Leased Premises shall not be deemed a waiver of any covenant in this Amended Lease against assignment and subletting or as acceptance of the assignee, sublessee, or occupant as a tenant or a release of the Lessee from further observance or performance of the covenants contained in this Amended Lease. No provision of this Amended Lease shall be deemed to have been waived by the Lessor, unless such waiver is in writing, signed by the Lessor.

10. **OWNERSHIP OF IMPROVEMENTS.** This Amended Lease represents a ground lease only. During the Term, Lessee shall own all Improvements existing or constructed on the Leased Premises, but Lessee shall not alter, remove, or demolish any Improvements except in accordance with Section 4 above. Upon the expiration or termination of this Amended Lease for any reason, the Improvements on the Leased

Premises shall automatically be and become the sole property of Lessor, and Lessee shall have no further right, title or interest therein.

11. CONDITION OF LEASED PREMISES AND IMPROVEMENTS. LESSEE HEREBY ACKNOWLEDGES AND AGREES THAT THE LESSOR LEASES THE LEASED PREMISES AND LESSEE ACCEPTS THE LEASED PREMISES AND IMPROVEMENTS "AS/IS, WHERE IS AND WITH ALL FAULTS" WITHOUT ANY REPRESENTATION OR WARRANTY OF THE LESSOR, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER. LESSEE ACKNOWLEDGES THAT THE LESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES RELATING TO THE SUITABILITY OF THE LEASED PREMISES OR IMPROVEMENTS FOR ANY PARTICULAR USE OR PURPOSE (INCLUDING WITHOUT LIMITATION THE USE SET FORTH IN SECTION 3 ABOVE) AND THAT THE LESSOR SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR, MAINTAIN, RENOVATE OR OTHERWISE INCUR ANY COST OR EXPENSE WITH RESPECT TO THE LEASED PREMISES OR IMPROVEMENTS UNLESS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LESSOR SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE LEASED PREMISES OR IMPROVEMENTS, AND LESSOR SHALL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO LESSEE FOR ANY LOSS, DAMAGE OR EXPENSE INCURRED BY LESSEE OCCASIONED BY THE CONDITION OR CHARACTERISTICS OF THE LEASED PREMISES OR IMPROVEMENTS. FURTHER, LESSOR HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE CONDITION OF THE LEASED PREMISES AND IMPROVEMENTS, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, HABITABILITY OR TENANTABILITY.

12. MAINTENANCE.

(a) This Amended Lease constitutes a triple net lease of the Leased Premises and, notwithstanding any language herein to the contrary, it is intended, and Lessee expressly covenants and agrees, that all rent and other payments herein required to be paid by Lessee to Lessor shall be absolutely net payments to Lessor, meaning that, during the Term, Lessor 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 Improvements, or any part thereof. Further, Lessee shall be solely and entirely responsible for all costs and expenses for, related to or arising out of the use, operation, repair, maintenance and/or replacement of the Leased Premises and Improvements, and all components thereof, whether such repair, maintenance, or replacement is ordinary, extraordinary, foreseen, unforeseen, structural, aesthetic, or otherwise.

(b) Lessee, at Lessee's sole cost and expense, shall keep and maintain the entire Leased Premises and the Improvements, and every part and component thereof, interior and exterior, including without limitation the grounds, landscaping and parking

facilities on the Leased Premises, in good condition, appearance and repair and shall promptly make all repairs and replacements thereto, interior and exterior, structural and non-structural, ordinary as well as extraordinary, and foreseen as well as unforeseen, as needed in order to maintain the Leased Premises and the Improvements in good condition, appearance and repair. Lessee shall not do or suffer any waste, damage, disfigurement or injury to the Leased Premises, the Improvements or any portion thereof. Further, Lessee shall at all times maintain the Leased Premises and the Improvements in a safe, neat and orderly manner and condition, and free from trash, debris and other unsafe, unsightly or unsanitary matter. Without limiting the generality of the foregoing, Lessee shall not construct, demolish, remove or alter any Improvements or any portion thereof except in accordance with Section 4 above.

(c) Without limiting the foregoing, Lessee shall also:

(1) at all times perform commercially reasonable routine maintenance and preventive maintenance of the Leased Premises and all Improvements, and all components thereof, and maintain all of the foregoing in a good and clean condition, repair and preservation;

(2) replace or substitute any fixtures, equipment and components that have become worn out with replacement or substitute fixtures, equipment and components, free of all liens and encumbrances, that shall automatically become a part of the Improvements;

(3) at all times keep the Leased Premises' grounds and the interiors and exteriors of all Improvements, fixtures, landscaping, equipment, and personal property in a good, clean, and orderly working condition and appearance;

(4) at all times observe all insurance regulations and requirements concerning the use and condition of the Leased Premises and Improvements for the purpose of reducing fire hazards and increasing the safety of Lessee's operations on the Leased Premises;

(5) at all times be responsible for the maintenance and repair of all utility services lines upon and serving the Leased Premises and/or Improvements, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers, and storm sewers;

(6) replace broken or cracked plate glass, paint/repaint Improvements, and mow the grass and keep landscaped areas weeded; and

(7) 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 Lessor, for the adequate sanitary handling and disposal of all trash, garbage, and refuse resulting from the

use and operation of the Leased Premises.

(d) Representatives of Lessor, together with a representative of Lessee, may, at Lessor's option, inspect the Leased Premises and Improvements quarterly to observe and note its condition, cleanliness, and existing damage, and to determine repairs and maintenance required pursuant to the terms of this Amended Lease, provided that such inspections do not materially interfere with the use of the Leased Premises by Lessee or others. Neither Lessor's inspection of the Leased Premises or Improvements nor Lessor's failure to inspect the Leased Premises or Improvements shall relieve Lessee of any of its obligations under this Amended Lease or applicable law.

(e) Should Lessee refuse, fail or neglect to undertake any maintenance, repairs, or replacements required pursuant to the terms of this Amended Lease within thirty (30) days after written notice, then Lessor shall have, in addition to all other rights and remedies under this Amended Lease, at law, or in equity, the right, but not the obligation, to perform such maintenance, repair, or replacement on behalf of and for Lessee. The costs of such maintenance, repair or replacement, plus fifteen (15.0%) percent for administration, shall be reimbursed by Lessee to Lessor no later than 30 days following receipt by Lessee of written demand from Lessor for same.

(f) Upon the expiration or termination of this Amended Lease for any reason, Lessee shall surrender to Lessor the Leased Premises and the Improvements in good condition, appearance and repair, excepting only such ordinary wear and tear as could not have been prevented by reasonable routine and preventive maintenance and by Lessee's compliance with its obligations under this Section. Notwithstanding the foregoing, however, if requested by the Lessor in writing, within ninety (90) days after termination of this Amended Lease for any reason, Lessee shall demolish and remove the Improvements and all trash and debris, grade the Leased Premises, and deliver the Leased Premises to the Lessor in a neat, clean, graded, level and safe condition.

(g) Lessor's rights and Lessee's obligations under this Section shall survive the expiration or termination of this Amended Lease.

13. UTILITIES. All utilities now or hereafter located or installed on the Leased Premises, including but not limited to electricity, telephone, cable, and internet, shall be underground, and Lessee shall be solely responsible for all costs and fees charged by each utility provider with respect to the underground installation, maintenance, repair, and replacement of such utilities. Lessee shall arrange for direct billing to Lessee from all entities providing utility services to the Leased Premises or Improvements, and shall pay when due all invoices for such utility services.

14. DAMAGE AND DESTRUCTION. In the event that the Improvements or any portion thereof, excluding the Marina and its ancillary structures, shall be damaged or destroyed by fire or other casualty, Lessee shall give immediate notice thereof to Lessor and the same shall be repaired, restored and/or rebuilt by Lessee at its sole cost and

expense, to the condition at least equal to that which existed prior to its damage or destruction and in compliance with all laws and regulations applicable at the time of repair and/or restoration of any improvements constructed thereon, and in accordance with and subject to all terms and conditions of Section 4 above. The City shall be named as an additional insured as to any policies of insurance in place to provide compensation for casualty loss to the Improvements, including, without limitation, wind, flood, and fire coverages. Lessee shall, at its sole expense, restore any damage to the breakwater regardless of whether such damage is covered by insurance.

15. *This section left intentionally blank.*

16. **FORCE MAJEURE EVENT.** Subject to compliance with Section 4(a) above and except for Lessee's obligations to pay Rent and other sums of money pursuant to the terms of this Amended Lease, each party's obligations under this Amended Lease shall be abated or excused if and to the extent that performance of such obligations is rendered impossible or impracticable for a period of more than 30 days by reason of strikes, riots, acts of God, shortages of labor or materials, theft, fire, public enemy, injunction, insurrection, court order, requisition of other governmental body or authority, war, governmental laws, regulations or restrictions, or any other causes of any kind whatsoever which are beyond the control of the Parties hereto (each a "Force Majeure Event"), until such Force Majeure Event is eliminated or ceases to exist; provided however, that the Party claiming such Force Majeure Event shall use all due diligence to eliminate or mitigate such Force Majeure Event or the effects thereof as soon as possible.

17. **PARKING.** Lessee, at its sole cost and expense, shall provide vehicular parking spaces on the Leased Premises and/or secure off-premises vehicular parking spaces that are at all times adequate to the permitted use of the Leased Premises by Lessee and other occupants, if any, of the Leased Premises or Improvements and their respective agents, representatives, employees, contractors, guests and invitees, and, at a minimum, is sufficient to meet applicable zoning regulations, codes, ordinances and regulations of the City of Pensacola.

18. **COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Lessee, in the use and enjoyment of the Leased Premises and Improvements, shall comply with all governmental regulations, statutes, ordinances, rules, ordinances and directives of any federal, state, county or municipal governmental units or agencies having jurisdiction over the Leased Premises, the Improvements, or any business being conducted thereon.

19. **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 any 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 any 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 connection therewith, in accordance with said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits.

(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, judgments, suits, 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, any 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 and after September 18, 1985 (the effective date of the Original Lease) 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 September 18, 1985, 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.

(d) The provisions of this Section shall survive the expiration or termination of this Amended Lease.

20. SPECIAL PROVISIONS.

(a) The Lessee, its transferees, grantees, sublessees, successors and assigns, shall irrevocably release, indemnify, defend, and hold harmless Lessor and its elected and appointed officials, officers, members, employees, volunteers, representatives and agents, from any and all claims for damages of whatever nature resulting from any dredging by the Lessee, including but not limited to the incidental depositing of dredged materials resulting from dredging, bulkheading, and/or riprapping, and other incidental damage resulting from the dredging operations and the like which might occur. The Lessor and the Lessee, their successors and assigns, agree to cooperate with each other in connection with the securing of periodic dredging of the marina, and in this connection, agree to execute such applications, releases and other documents necessary or incidental to the approval of the U.S Army Corps of Engineers, or other public agency, to undertake and execute such dredging as shall be requested by either party. The Lessor and the Lessee, their successors and assigns, further release each other from any and all claims for damage occasioned or arising from any disturbance of the Bay bottom, which results as a natural consequence, from normal, non-negligent, periodic maintenance, bulkheading, riprapping or dredging by such party, either in the maintenance and repair of the marina on the Leased Premises or the use, maintenance, and employment of the rights of the marina waterways.

(b) It shall be the Lessee's responsibility to provide maintenance dredging within the boundaries of the submerged land within the Leased Premises as deemed necessary for the operation of the public marina. The Lessee shall dredge only to depths permitted by the Florida Department of Environmental Protection and U. S. Army Corps of Engineers regulations and permits. It shall be the Lessor's responsibility to provide maintenance dredging of the Bay approach to the boundaries of the submerged land within the Leased Premises in accordance with maintenance schedules of the Port of Pensacola, or as otherwise necessary to maintain navigable access to the marina facility. The Lessor's responsibility to maintain navigable access to the marina shall be governed by permits issued for such work.

21. SEVERABILITY. If any clause or provision of this Amended Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Amended Lease, then and in that event, it is the intention of the Parties hereto that the remainder of this Amended Lease shall not be affected thereby.

22. SURRENDER AND HOLDING OVER.

(a) With Lessor's Consent. If Lessee shall, with the written consent of the Lessor, hold over after the expiration or sooner termination of the Term of this Amended Lease, the resulting tenancy shall, unless otherwise mutually agreed in writing, be on a month-to-month basis until such time as Lessee shall terminate this Amended Lease and surrender the Leased Premises and Improvements to Lessor upon not less than sixty (60) days' prior written notice to Lessor, or Lessor shall terminate this Amended Lease upon not less than sixty (60) days' prior written notice to Lessee. During such month-to-month tenancy, Lessee shall continue to pay Rent and other charges as established in

accordance with the provisions of this Amended Lease, and shall be bound by all of the other provisions of this Amended Lease.

(b) Without Lessor's Consent. If Lessee shall, without the written consent of the Lessor, hold over after the expiration or sooner termination of the Term of this Lease, the resulting tenancy privilege shall, unless otherwise mutually agreed in writing, be a tenancy at sufferance. During such tenancy at sufferance, Lessee shall pay Rent equal to two hundred percent (200%) of the Rent in effect at the time of expiration or termination, and shall be bound by all of the other provisions of this Amended Lease. At Lessor's option, at the termination of the Amended Lease, Lessee shall vacate Leased Premises upon delivery of thirty days (30 days) written notice. Failure of Lessee to vacate the Leased Premises shall be deemed a default under Section 27.

23. CORPORATE TENANCY. If Lessee is not a natural person, the undersigned representative of Lessee hereby warrants and certifies that Lessee is an entity in good standing and is authorized to do business in the State of Florida. The undersigned representative of Lessee hereby further warrants and certifies that he or she, as such representative, is authorized and empowered to bind the entity to the terms of this Amended Lease by his or her signature thereto. Lessor, before it accepts and delivers this Amended Lease, may require Lessee to supply it with a certified copy of the entity resolution or such other document authorizing the execution of this Amended Lease by Lessee.

24. INTEGRATION, MERGER AND AMENDMENT. This Amended Lease contains the entire agreement of the Parties with respect to the subject matter of this Amended Lease, and fully substitutes, replaces, and supersedes any prior letter of intent, memorandum of understanding, and other prior negotiations, agreements and understandings with respect thereto. This Amended Lease may not be altered, changed or amended, except by written instrument signed by all Parties hereto and executed in the same formality as this Amended Lease.

25. NO WAIVER. No provision of this Amended Lease shall be deemed waived by Lessor by any act, omission, conduct or course of dealing by Lessor. Rather, a provision of this Amended Lease may be waived by Lessor only by a written instrument duly authorized and executed by Lessor which specifically identifies the provision being waived. The terms, provisions, covenants, and conditions contained in this Amended Lease shall apply to, inure to the benefit of, and be binding upon the Parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise expressly provided herein and except that Lessor shall have no liability to Lessee under this Amended Lease except as otherwise expressly stated herein.

26. INSURANCE. Lessee shall procure and maintain at all times during the term of this Amended Lease, insurance of the types and to the limits specified herein issued by insurer(s) qualified to do business in Florida whose business reputation, financial stability and claims payment reputation is reasonably satisfactory to Lessor.

Notwithstanding any provisions to the contrary, only liability insurance is applicable to the Marina portion of the property.

Lessee acknowledges and agrees that the types and minimum limits of insurance herein required may become inadequate following during the Term of this Amended Lease, and, therefore agrees that the minimum limits may be increased to commercially reasonable limits and/or additional types of insurance may be required by the Lessor from time to time during the Term of this Amended Lease, but in no event more than once every two (2) Lease Years. Notwithstanding any provisions to the contrary, only liability insurance is applicable to the Marina portion of the property.

Subject to the foregoing and unless otherwise agreed by the Lessor in writing, the amounts, form and type of insurance shall conform to the following minimum requirements:

WORKER'S COMPENSATION

Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations if legally required. 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, and \$500,000 aggregate – disease.

COMMERCIAL GENERAL LIABILITY COVERAGE

Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability forms filed by the Insurance Services Office. Lessor shall not be considered liable for premium payment or entitled to any premium return or dividend or be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policy coverage and the total amount of coverage required. Coverage must be provided for bodily injury and property damage liability for premises and operations. Fire Legal Liability shall be endorsed onto this policy in an amount of at least \$300,000 per occurrence. The coverage shall be written on occurrence-type basis and the Lessor must be listed as an additional insured. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

MARINA OPERATORS LEGAL LIABILITY

Coverage shall be provided with Lessor listed as an Additional Insured. This policy is to cover the liability exposures associated with the operation of a marina including those related to the care, custody, and control (CCC) of watercraft. The coverage shall cover both land and waterborne exposures located at the marina. This policy shall not insure the docks or ancillary facilities adjacent to the docks from flood or

wind damages, but rather is provided to protect the Lessor against potential liability claims associated with Marina operations.

LIQUOR LIABILITY COVERAGE

Lessee shall maintain coverage for bodily injury and property damage arising out of the furnishing of alcoholic beverages of \$1,000,000.00 per occurrence. Lessor shall be listed as an Additional Insured.

POLLUTION/ENVIRONMENTAL IMPAIRMENT COVERAGE

Lessee shall maintain coverage for pollution/environmental impairment with minimum limits of \$1,000,000.00 per occurrence. Lessor shall be listed as an Additional Insured.

BUSINESS AUTOMOBILE POLICY

Lessee shall purchase and maintain coverage with minimum limits of \$1,000,000 per accident combined single limits covering bodily injury and property damage liability arising out of operation, maintenance or use of owned, non-owned and hired automobiles and employee non-ownership use, with umbrella insurance coverage making up any difference between the policy limits of underlying policy coverage and the total amount of coverage required. The coverage shall be written on occurrence-type basis and the Lessor must be listed as an additional insured. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

BUILDER'S RISK

Lessee shall require any contractor constructing, altering, removing or demolishing Improvements on or from the Leased Premises to provide builder's risk insurance on an Inland Marine "All Risk" type form which includes, without limitation, collapse coverage and windstorm coverage. The amount of such insurance shall be 100% of the completed value of the work being done by such contractor. Such builder's risk policy shall contain a "Waiver of Subrogation" clause in favor of Lessor. The Lessor must be listed as an additional insured. Notwithstanding any language to the contrary, the Marina parcel shall not be subject to this provision.

PROPERTY INSURANCE

Lessee shall maintain in force at all times, property insurance coverage which insures any Improvements on the Leased Premises against fire, extended coverage and Standard Insurance Office (ISO) defined "Special Perils" of physical damage, together with coverages or endorsements for ordinance or law, vandalism, malicious mischief, earthquake, windstorm, hail and storm surge and flood. Lessor shall be named as an additional insured and loss payee, as its interest may appear, under all such policies of insurance. The amount of coverage will be 100% of the replacement cost. The

deductibles under such policies shall be subject to the prior written approval of Lessor, such approval not to be unreasonably withheld. Such policy shall contain a "Waiver of Subrogation" clause in favor of Lessor. Notwithstanding any language to the contrary, such insurance shall not be required for marina docks, vessels (including without limitation houseboats), or other property located on the water above the submerged land that is part of this Lease.

CERTIFICATES OF INSURANCE

Lessee's required insurance shall be documented in Certificates of Insurance furnished to Lessor that list this Amended Lease and provide that Lessor shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. If requested by Lessor, Lessee shall furnish copies of Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form reasonably acceptable to the Lessor. Lessee shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies reasonably acceptable to Lessor and shall file with Lessor Certificates of Insurance under the new policies at least fifteen (15) days prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner reasonably acceptable to Lessor, Lessee shall, upon instructions of Lessor, cease all operations on the Leased Premises under this Amended Lease until authorized by Lessor, in writing, to resume operations.

REQUIRED INSURANCE PRIMARY

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

LOSS CONTROL AND SAFETY

Lessee shall retain control over its employees, agents, servants and contractors, as well as control over its guests and invitees, and its activities on and about the Leased Premises and the manner in which such activities shall be undertaken and to that end, Lessee shall not be deemed to be an agent of Lessor. Reasonable precaution shall be exercised at all times by Lessee for the protection of all persons, including employees, and property.

INDEMNITY

(a) Lessee shall indemnify and hold harmless Lessor and its elected and appointed officials, officers, members, employees, volunteers, representatives and agents from any and all fines, claims, suits, actions, demands, losses, damages, liabilities, costs and expenses (including, without limitation, attorney's fees) in connection with any loss of life, bodily or personal injury, or damage to or loss of property arising from

or out of any occurrence in, upon, at or about the Leased Premises or Improvements; arising from or out of any occurrence in, upon at or about the Park Property or any part thereof occasioned or caused in whole or in part, either directly or indirectly, by the act omission, negligence, misconduct or breach of this Amended Lease by Lessee, its employees, agents, customers, clients, guests, invitees or by any other person entering the Park Property under express or implied invitation of Lessee; or arising out of this Amended Lease, Lessee's violation of any provision of this Amended Lease, or the use of the Leased Premises or Improvements by Lessee or any other person or entity; provided, however, that nothing contained herein shall be construed as a waiver, in whole or in part, of the sovereign immunity of the Lessor under the Constitution, statutes and case law of the State of Florida, nor as a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Lessor. Further, Lessee's indemnity obligations under this paragraph shall not be limited by the availability or extent of any insurance coverage required to be maintained by Lessee under this Section.

(b) Further, and without limiting the foregoing, Lessee shall observe, perform, satisfy, and comply with, and shall be solely responsible for the costs of observing, performing, satisfying, and complying with, all terms, conditions, covenants, and restrictions to be observed, performed, satisfied, or complied with by Lessor or Lessee under the permits, grants, and instruments identified in Section 2 above as they relate to the Leased Premises, and shall indemnify, defend, and hold harmless Lessor and Lessor's elected officials, employees, attorneys, volunteers, agents and representatives (collectively, the "Indemnified Parties"), from and against any and all claims, causes of action, loss, liability, damage, cost and expense, suffered or incurred by any of the Indemnified Parties by reason of any claim, dispute, lawsuit, administrative proceeding or enforcement action arising out, by reason or with respect to any such permit, grants, and instruments; or any violation or alleged violation of any such permit, grant, or instrument by Lessor or Lessee with respect to the Leased Premises.

LIMITATION OF LESSOR LIABILITY

In not event shall Lessor shall be liable or responsible to Lessee for any loss or damage to any property or the death of or injury to any person resulting from theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, from acts or omissions of Lessee or any licensee, occupant, user, sublessee, or sub-sublessee of the Leased Premises or any portion thereof, or from any other matter beyond the control of Lessor.

27. DEFAULT and REMEDIES.

(a) Events of Default. Each of the following events shall constitute a default by Lessee under this Amended Lease (each, an "Event of Default"), to wit:

- (1) Lessee's failure to pay when due any Rent or other sum of money at any time payable by Lessee under this Amended Lease, and such

failure is not cured by payment of rent and a five (5) percent late fee within 30 days of written demand by Lessor;

- (2) Lessee's abandonment of any substantial portion of the Leased Premises or Improvements, or failure to substantially use and operate the Leased Premises for the uses and purposes permitted pursuant to Section 2 above for a ninety days less and except Marina in the event the Marina is destroyed or substantially damaged by a named storm event; however, in such event, the Marina property shall continue to be made available to the general public;
- (3) Lessee's failure to observe, keep or perform the terms, covenants, agreements and conditions of this Amended Lease and failure to cure any such breach within 30 days of written notice stating with particularity the nature of the breach. Notwithstanding any provisions to the contrary, this 30-day notice requirement shall not apply to a violation of Chapter 119, or any other statutory obligation of the Lessee that requires a less-than-30 days cure period.
- (4) The filing of a voluntary petition in bankruptcy by Lessee, or the filing of an involuntary petition in bankruptcy against Lessee which involuntary petition is not dismissed with sixty (60) days after filing;
- (5) Lessee making a voluntary assignment for the benefit of creditors;
- (6) A receiver or trustee being appointed for Lessee or a substantial portion of Lessee's assets;
- (7) Lessee's interest under this Amended Lease being sold or transferred under execution or other legal process; and
- (8) Lessee's use of the Leased Premises or any portion thereof being determined by the State of Florida as violating the terms, conditions, covenants or requirements of any permit, grant or instrument identified in Section 2 above or as constituting a "conversion" within the meaning of any such permit, grant or instrument or related federal or state statutes, rules or regulations.

(b) Remedies. Following any Event of Default, Lessor, in its sole discretion, may exercise any and all rights and remedies available under this Amended Lease, at law or in equity, and, without limiting the foregoing, may exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions:

- (1) Terminate this Amended Lease, in which case Lessee shall immediately surrender possession of the Leased Premises and Improvements to the Lessor. Failure to surrender the premises without a written agreement to extend or renew shall cause rent to accrue at 200 percent of the lease amount, and shall subject the Lessee to an immediate action for eviction. In such event, the Lessee shall be liable for all damages incurred by Lessor by reason of Lessee's default, including but not limited to the cost of recovering possession of the Leased Premises and Improvements; expenses of re-letting, including necessary renovation and alteration of the Leased Premises and Improvements, reasonable attorney's fees and any real estate commission actually paid; and the worth at the time of award by the court having jurisdiction thereof of (i) the unpaid Rent under this Amended Lease which had been earned at the time of termination, and (ii) the unpaid Rent which would have been earned after termination until the property is surrendered (voluntarily or by court order) to Lessor.
- (2) In the event of such termination and eviction, the Lessee shall be deemed to have forfeited any and all rights to improvements constructed at the Lessee's expense.

(c) Rights Cumulative; No Waiver. The respective rights of Lessor under this Amended Lease shall be cumulative and shall be in addition to rights as otherwise provided at law or in equity, and failure on the part of Lessor to exercise promptly any such rights afforded it shall not operate to forfeit any such rights. No forbearance by Lessor of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions, and covenants herein contained. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any other violation or Event of Default. Further, the acceptance by the Lessor of Rent or other charges or payments by the Lessee 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 Lessor arising or existing by reason of such Event of Default, whether or not Lessor has or had knowledge of such Event of Default. Legal actions to recover for loss or damage that Lessor may suffer by reason of termination of this Amended Lease or the deficiency from any reletting as provided for above shall include the expense of repossession or reletting and any repairs or remodeling undertaken by the Lessor following repossession.

28. **QUIET ENJOYMENT.** Provided Lessee has performed all of the terms, covenants, agreements and conditions of this Amended Lease, including the payment of Rent and all other sums due hereunder, Lessee shall peaceably and quietly hold and enjoy the Leased Premises subject to the provisions and conditions of this Amended Lease.

29. NOTICES. Any notices required or permitted by this Amended Lease or by law to be sent to Lessor shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Lessor as follows:

City of Pensacola
Attn: City Administrator
222 West Main Street, 7th Floor
Pensacola, Florida 32502

with copy to:

City Attorney
City of Pensacola
222 West Main Street, 7th Floor
Pensacola, Florida 32502

Any notices required or permitted by this Amended Lease or by law to be sent to Lessee shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Lessee as follows:

Seville Harbour, Inc.
850 S. Palafox Street, Suite 102
Pensacola, Florida 32502

with copy to:

Edward P. Fleming, Esq.
R. Todd Harris, Esq.
719 S. Palafox Street
Pensacola, Florida 32502

Either Party may change the above address by providing written notice to the other Party.

30. VENUE. Venue for any claim, action or proceeding arising out of this Amended Lease shall be Escambia County, Florida.

30-A ATTORNEYS' FEES AND COSTS: In any action arising from or related to the enforcement of rights and remedies created by this Amended Lease the prevailing party shall be entitled to recovery of all costs, including without limitation taxable costs,

together with a reasonable attorneys' fee, including without limitation fees and costs incurred in establishing entitlement to or amount of such attorneys' fees or costs.

31. GOVERNING LAW. The laws of the State of Florida shall be the law applied in resolution of any action, claim or other proceeding arising out of this Amended Lease.

32. MEMORANDUM OF LEASE. Contemporaneously with the execution of this Amended Lease, the Parties shall execute a Memorandum of this Amended Lease in recordable form, which shall be sufficient to give constructive notice of this Amended Lease and its material terms. Lessee, at Lessee's expense, shall record such memorandum in the Public Records of Escambia County, Florida. Notwithstanding the foregoing, in lieu of such Memorandum, Lessor, at its option, may require Lessee to record this Amended Lease in the Public Records of Escambia County, Florida.

33. ESTOPPEL CERTIFICATES. Within ten (10) business days after a written request from Lessee, Lessor shall certify, by a duly executed and acknowledged written instrument, to any mortgagee or proposed mortgagee of Lessee's leasehold estate in the Leased Premises as to the validity and force and effect of this Amended Lease, the existence of any default on the part of any Party hereunder, and the existence of any offset, counterclaim or defense thereto on the part of Lessor, as well as to any other matters as may be reasonably requested by Lessee, up to but not more than three (3) times during any Lease Year. Lessee shall pay to Lessor the reasonable costs and attorney's fees incurred by Lessor in connection with each such estoppel certificate.

34. NON-DISCRIMINATION. Lessee agrees that it will not discriminate upon the basis of race, creed, religion, color, national origin, age, disability, sex, or any legally protected class in the construction, alteration or demolition of the Improvements or the subleasing, use, occupancy, or operation of the Leased Premises or Improvements. and that each contract, sublease or agreement with respect thereto shall specifically contain the following provision:

"EQUAL OPPORTUNITY PROVISION:

1. In the construction and operation of the Improvements, neither the Lessee nor any contractor or manager employed by Lessee shall discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, age, disability, sex, or any legally protected class, and they shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, religion, color, national origin, age, disability, sex, or any legally protected class. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Lessee setting forth the

provisions of this Equal Opportunity Clause, and to cause any contractor, subcontractor or manager to do likewise.

2. The Lessee, its sublessees and any contractor or manager shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, color, national origin, age, disability, sex, or any legally protected class. They shall send to each labor union or representative of workers with which they, or any of them, have a collective bargaining agreement or other contract or understanding, a notice, to be provided by Lessee, advising the labor union or workers' representative of their commitments under this Equal Opportunity Clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Any sublessee, contractor or subcontractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor and shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by Lessee and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders."

Lessee certifies it does not maintain or provide for its employees any segregated facilities at any of its establishments and it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Lessee certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. Lessee further agrees that it will obtain identical certificates from proposed sublessees, contractors, subcontractors and managers prior to the award of any contracts or subleases, and that it will retain such certificates in its files.

35. SIGNAGE. Except as otherwise permitted pursuant to Section 4 above, Lessee shall not construct, operate or maintain any signage on the Leased Premises or Improvements without the prior the written approval of Lessor in its sole and absolute discretion. Notwithstanding any such approval, all signage shall comply with applicable codes, ordinances and regulations imposed by the City of Pensacola, including but not limited to the requirement of the Site Specific Development classification of the Leased Premises.

36. LEASEHOLD MORTGAGES BY LESSEE. The Lessor consents to the Lessee's mortgaging of its leasehold interest in the leased property, but such mortgage shall not be of the fee simple interest held by the Lessor. Any mortgagee's interest shall be limited to, and governed by, the interests created by the Amended Lease. The mortgagee must be a reputable, institutional lender doing business in the State of Florida.

37. *This section left intentionally blank.*

38. SUCCESSORS AND ASSIGNS. The terms and provisions of this Amended Lease are binding upon and shall inure to the benefit of the Lessor and Lessee, and their respective successors and assigns.

39. CONTRACT INTERPRETATION. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Amended Lease and shall not negate or invalidate any provision of this Amended Lease.

40. *This section left intentionally blank.*

41. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. Any other provision of this Amended Lease to the contrary notwithstanding, in no event shall the Lessor or Lessee be liable to the other Party, directly or indirectly, for special, indirect, punitive, or consequential damages of any kind whatsoever (including without limitation lost profits, loss of business, or damage to reputation), even if Lessor or Lessee, as the case may be, has been advised of the possibility of such losses or damages and regardless of the form of action.

42. NO WAIVER OF SOVEREIGN IMMUNITY. Notwithstanding any contrary provision of this Amended Lease, except to the extent of the contractual obligations of Lessor expressly set forth in this Amended Lease, nothing in this Amended Lease shall be construed as a waiver, in whole or in part, of the Lessor's sovereign immunity under the Constitution, statutes and case law of the State of Florida, nor shall any provision of this Amended Lease be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Lessor.

43. FLORIDA PUBLIC RECORDS LAW. The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication or other public record created or received by Lessor will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Lessee 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 Lessee. Notwithstanding any contrary provision in this Amended Lease, any failure by Lessee to comply with the Florida Public Records Law, if and to the extent that it is applicable to Lessee, that continues for seven (7) days after written notice from the Lessor shall constitute an Event of Default by Lessee.

~~[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES ON FOLLOWING PAGE.]~~

IN WITNESS WHEREOF, the Parties have set their respective hands and seals hereto as of the date first written above.

Signed, sealed and delivered
in the presence of:

Print Name: _____

Print Name: _____

SEVILLE HARBOUR, INC.
a Florida corporation

By: _____
Ray Russenberger, Its President

CITY OF PENSACOLA
a Florida municipal corporation

By: _____
Grover C. Robinson, IV, Mayor

(AFFIX CITY SEAL)

Attest:

Ericka L. Burnett, City Clerk

Signed, sealed and delivered by Mayor
in the presence of:

Print Name: _____

Print Name: _____

Legal in form and valid as drawn:

Approved as to content:

Susan A. Woolf, City Attorney

Chris Holley
City Administrator

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Ray Russenberger, as President of Seville Harbour, Inc., a Florida corporation, on behalf of said corporation. Said person is personally known to me or presented his current Florida driver's license as identification.

AFFIX NOTARY SEAL

Notary Public
Print Name: _____
My Commission Expires: _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Grover C. Robinson, IV, as Mayor of the City of Pensacola, a Florida municipal corporation, on behalf of said municipal corporation. Said person is personally known to me or presented his current Florida driver's license as identification.

AFFIX NOTARY SEAL

Notary Public
Print Name: _____
My Commission Expires: _____