

**DISPOSITION AND DEVELOPMENT AGREEMENT**

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By and Among

the

**CITY OF RIVIERA BEACH, FLORIDA,**  
a Florida municipal corporation

and

**THE RIVIERA BEACH  
COMMUNITY REDEVELOPMENT AGENCY,**  
a body corporate and politic created pursuant to  
Part III, Chapter 163, Florida Statutes

and

**RYBOVICH PORTSIDE, RIVIERA BEACH LLC,**  
a Florida limited liability company

**DISPOSITION AND DEVELOPMENT AGREEMENT**

This Disposition and Development Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by and among THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY, created by the City of Riviera Beach pursuant to Chapter 163, Part III of the Florida Statutes (referred to as the "Agency"), THE CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation (referred to as the "City"), and RYBOVICH ~~PORTSIDE, RIVIERA BEACH~~ LLC, a Florida Limited Liability Company, its successors and assigns (and referred to as either "RPBL" or "Developer").

**WITNESSETH:**

WHEREAS, the Agency and City seek the redevelopment of certain property located at the City of Riviera Beach's City Marina as a community redevelopment project ("Project") pursuant to the City's Community Redevelopment Plan ("CRA Plan"); and

WHEREAS, the Project is comprised of approximately 1,481,000 square feet of submerged land, docks, and upland located in the Marina District of the Riviera Beach Community Redevelopment Area ("Marina District"); and

WHEREAS, the Project is located on Premises owned by the City, the Agency and Viking Developers LLC ("Viking"); and

WHEREAS, on June 30, 2008, the Agency and the City issued Request for Proposals No. CRA 2008-001 ("RFP") soliciting a developer or developers to develop, lease, construct, operate, and manage the Project; and

WHEREAS, only one (1) developer (Viking) responded to the RFP; and

WHEREAS, on September 10, 2008, the Agency and the City, after a public review process, approved Viking as the developer for the Marina District, accepted Viking's Conceptual Master Development Plan, and directed Agency and City staff to negotiate the terms under which Viking would lease and/or acquire certain premises from the Agency and the City to develop the Project in accordance with the general requirements of the RFP; and

WHEREAS, the Project is located in the Marina District approximately bordered by the East by the Intracoastal Waterway, bordered to the West by Broadway/U.S. Highway 1, bordered to the South by East 11<sup>th</sup> Street, and bordered to the North by East 15<sup>th</sup> Street and the Northern boundary by Bicentennial Park; and includes the City's Marina (docks and upland) and additional property that includes streets, sidewalks, parking areas, improved and unimproved premises, and recreation areas (the additional property includes properties owned by City,

collectively, "City Property," properties owned by CRA, collectively, "CRA Property," as well as properties owned by Viking, together are collectively called the "Project Site"); and

WHEREAS, the Agency and City accepted and approved an amended Conceptual Master Development Plan ("Master Concept Plan," attached as Exhibit "A") at duly called public meetings held on February 10, 2010 and February 17, 2010, and authorized staff to negotiate and finalize the necessary and appropriate definitive agreements; and

WHEREAS, the Master Concept Plan is comprised of nineteen (19) separate project elements as shown on the attached Exhibit "B", which includes Element 13: "Working Waterfront Phase I" and Element 3: "Public Marina Phase I." The Phase I Project (as defined below) to be developed by RPLRRB pursuant to this Agreement includes portions of Element 3 and portions of Element 13; and

WHEREAS, in contemplation of the multi-phased, mixed-use development of elements of the Marina District, Viking has the right to transfer and assign its development rights to another bona fide developer for any and all development elements of the Project, subject to acceptance and approval by the City and the Agency; and

WHEREAS, Viking has irrevocably assigned to RPLRRB its right to develop the Phase I Project (as defined below) and the City has agreed to such assignment; and

WHEREAS, RPLRRB proposes to develop the Phase I Project (as defined below) by making the improvements identified in the Plans and Specifications (attached as Exhibit "C"); and

WHEREAS, the City and RPLRRB intend to make the slips in this Phase I Project open to the public on a first come first served rental basis; and

WHEREAS, the City and the Agency have agreed that the Improvement Funds (as defined below and identified on the "Grant and Developer Funding Schedule," attached as Exhibit "D") shall be used for development of the Improvements (as defined below); and

WHEREAS, the City and the Agency propose that the premises for the Working Waterfront Phase I (Element 13) will be leased to RPLRRB, under the terms and conditions contained in the Lease (the form of which is attached as Exhibit "E"); and

WHEREAS, the City and the Agency hereby find and determine that the Project and the Phase I Project (as defined below) will be beneficial to tourism and recreation by providing additional services, retail opportunities and economic development in the waterfront area of the City; and

WHEREAS, the City and Agency have authorized the negotiation of a definitive agreement to set forth the respective duties and responsibilities of the Parties pertaining to the development of the Phase I Project (as defined below); and

WHEREAS, the Parties have concluded negotiations for said definitive agreement, which negotiations have resulted in this Agreement.

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the Parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth.

**ARTICLE 1  
RECITALS**

**1.01 Recitals.** The foregoing recitals are true and correct and incorporated herein as a part of this Agreement.

**ARTICLE 2  
DEFINITIONS AND MEANING OF TERMS**

**2.01** For all purposes of this Agreement, the following terms shall have the following meanings:

- (a) "Actual Damages" has the meaning provided in Article 12.02.
- (b) "ADA" means The Americans with Disabilities Act of 1990, as amended, together with any rules or regulations promulgated thereunder, or any successor act thereto.
- (c) "Affiliate" or "Affiliates" means with respect to a Person, any other Person that directly or indirectly Controls (as defined below), is controlled by, or is under common Control with, the specified Person.
- (d) "Agency" means the Riviera Beach Community Redevelopment Agency.
- (e) "Agreement" means, collectively, this Disposition and Development Agreement and all exhibits and attachments hereto, as any of the same may hereinafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with this Agreement or by mutual consent agreement of the Parties.
- (f) "Architect" or "Engineer" means any architect or engineer, designated by Developer and reasonably approved by City and Agency, having responsibility for the design and/or inspection of the Improvements within the Phase I Project.

(g) "Business Day" means a day other than Saturday, Sunday, or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

(h) "City and Agency's Project Representatives" has the meaning provided in Article 8.

(i) "City Indemnified Party or Parties" means, collectively, the Agency, the City and their respective elected and appointed officials (including the Agency's chair and members, the Mayor and the City Council members) and the respective heirs, legal representatives, successors, and assigns of any of the foregoing.

(j) "Construction Agreements" means all agreements executed by the Developer or its general contractor in connection with any construction work on the Phase I Project.

(k) "Construction Commencement Date" has the meaning provided in Article 5.02(b).

(l) "Completion Date" has the meaning provided in Article 5.02(b).

(m) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Ownership of more than 50% of the: (a) beneficial interests of a Person shall be conclusive evidence that control exists, or (b) voting interests of a Person shall be conclusive evidence that control exists.

(n) "Council" means the City Council.

(o) "County" means Palm Beach County, Florida.

(p) "Default" or "Event of Default" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice, lapse of time or both, constitute (in accordance with the terms of this Agreement), an Event of Default of this Agreement.

(q) "Developer" means RPLRRB (and any assignee or transferee of RPLRRB that is permitted under this Agreement).

(r) "Developer's Project Representatives" has the meaning provided in Article 8.

(s) "Effective Date" means the date on which the last of the Parties execute this Agreement.

(t) "Escrow Account" means that certain escrow bank account created by the mutual consent of the Parties for the purpose of segregating the pre-paid rent pursuant to section 2(a) of the Lease.

(u) "Expiration Date" shall mean the issuance of a Final CO for the Phase I Project or the termination of this Agreement, whichever is earlier.

(v) "Final CO" means a final certificate(s) of occupancy issued by the City's Building Department for all of the Improvements.

(w) "Governmental Authority or Authorities" means the United States of America, the State, the City, the County, Agency and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or over or under the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises, or airspace over the Premises.

(x) "Improvements" means the improvements included in the Phase I Project (as defined below) and as more particularly described in the Plans and Specifications, attached as "Exhibit C."

(y) "Improvement Funds" means the monies obtained or to be obtained by the City and/or the Agency from the grants identified on the "Grant and Developer Funding Schedule" (attached as Exhibit "D") to be used for the development and construction of the Improvements.

(z) "Mayor" means the Mayor of the City.

(aa) "Lease" means the "Submerged and Upland Lands Lease" (the form of which is attached as Exhibit "E") between the Parties and all exhibits and attachments thereto, as any of the same may thereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of such Lease or by mutual agreement of the Parties.

(bb) "Member" means a member of the City Council of the City.

(cc) "Owner" means the City of Riviera Beach, Florida, and any assignee or transferee of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer (by operation of law or otherwise) pursuant to which the entire Owner's interest in the Premises was assigned or transferred to such assignee or transferee; provided, however, that any such assignment or transfer of the Owner's interest in the Premises shall be permitted only if such assignee or transferee is a governmental or quasi-governmental body or entity (including, without limitation, the City or any Agency thereof).

(dd) "Party" means Developer, City, or Agency as indicated by the context. "Parties" means collectively Developer, City, and Agency.

(ee) "Person" means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(ff) "Phase I Project" means those portions of Element 3 of the Master Concept Plan to which the Improvements to the Harbor Dredging, Seawall and Finger Piers, and North Docks and Element I3 that are being performed by the Developer pursuant to this Agreement, as particularly described in the Plans and Specifications.

(gg) "Plans and Specifications" is the document reflecting the Improvements attached to this Agreement as Exhibit "C".

(hh) "Premises" has the same meaning as the definition of the real property described in the Lease.

(ii) "Requirement" has the meaning provided in Article I3.

(jj) "State" means the State of Florida.

(kk) "Substantial Completion" shall mean the stage in the progress of the Improvements that is sufficiently complete in accordance with the Plans and Specifications so that the Premises can be occupied or utilized for its intended use.

(ll) "Term" means the term commencing on the Effective Date and, subject to earlier termination as provided hereunder, expiring at 11:59 p.m. on the Expiration Date.

(mm) "Unavoidable Delays," as used herein means any delay which arises, directly or indirectly, from any strike, lockout, labor dispute, inability to obtain materials or labor (in each case outside the reasonable control of the Developer), governmental restrictions, inability to obtain all applicable permits, acts of war, act of public enemy, riot, insurrection, terrorist attack, governmental regulation, fire or other acts of God, abnormal weather conditions, litigation which causes a delay (other than litigation among and between the Developer and its Affiliates) or other cause, similar or dissimilar to those enumerated above, beyond the control of Developer (all of the causes set forth above being herein called "Unavoidable Delays").

## **2.02 Use of Words and Phrases.**

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall

include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

### **2.03 Florida Statutes.**

All references herein to Florida Statutes are to Florida Statutes (2010), as amended from time to time.

## **ARTICLE 3 OBLIGATIONS DURING THE PRE-DEVELOPMENT PERIOD; EFFECTIVENESS AND TERMINATION.**

### **3.01 Effectiveness and Termination.**

(a) This Agreement shall be effective as of the Effective Date and shall terminate on the Expiration Date, unless sooner terminated pursuant to the terms of the Agreement, but subject to all provisions of this Agreement which specifically survive any such termination of the Agreement.

(b) Subject to the provisions of Article 4.04(c), below, the City and the Agency agree that during the term of this Agreement, the City and the Agency will take no action, nor exercise any power or authority in any way which would prevent the design and development of the Phase I Project, unless required to do so by a court of competent jurisdiction.

(c) Notwithstanding anything to the contrary contained in this Agreement, in the event that the Lease is not entered into, then this Agreement is terminated. If this Agreement is terminated, then the Developer shall have no further obligations under this Agreement. The Lease, the form of which is attached hereto as Exhibit "E", shall be executed simultaneously with the execution of this Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, in the event that all conditions precedent as outlined herein (including without limitation, those conditions identified in ¶3.01(f) below) are not satisfied or waived within 365 days of the Effective Date, then either Party may terminate this Agreement. If the Developer terminates this Agreement because it is unable to obtain all required permits, then the Developer shall have no further obligations under this Agreement and the Developer shall be entitled to reimbursement from the Improvement Funds, if any, for the costs that it incurred in the design and permitting process. This paragraph is not a limitation on the Developer's ability to seek reimbursement of all costs in the event that the City fails to reimburse Developer, as provided for in Article 6.

(e) Prior to the Construction Commencement Date, as part of the Developer's cost of the Improvements, the Developer may obtain an environmental impact study of the Premises that are included in the Phase I Project. If, as a result of that study, material adverse environmental conditions are discovered with respect to any of the Premises that is subject to the Phase I Project, then the City shall be responsible (at its cost) to mitigate those adverse environmental conditions, or either Party (after providing written sixty (60) day notice to the other party of its intent to terminate), may terminate this Agreement. In case of termination pursuant to these grounds, neither Party shall have any further obligations under this Agreement, except that the Developer shall be entitled to reimbursement from the Improvement Funds for the costs that it incurred after the effective date of this Agreement in the design and permitting process.

(f) Other Conditions Precedent. In addition to any other conditions precedent to any Party's obligations under this Agreement, the following shall also be conditions precedent that must be satisfied or waived in writing before either Party is obligated to commence construction of the Improvements.

~~(1) The City shall seek confirmation from the State of Florida that the City shall retain full rights under the dedication from the State of Florida of the submerged lands that are part of the Project Site, and further, that the State of Florida does not impose fees or charges that are unacceptable to the City and/or the Developer. The City shall obtain written confirmation from the State of Florida Board of Trustees that the City shall retain (or be able to reinstate after expiration or termination of the Lease) the State of Florida dedication which references the Submerged Premises;~~

~~(2) The Developer provides written confirmation to the City accepting the fee charged by the State of Florida, Department of Environmental Protection ("DEP"), for the lease of the Submerged Premises or any easement fee or any other fee charged by the State of Florida;~~

~~(3) The City shall file a joint application for an environmental resource permit and authorization to use state-owned sovereignty submerged lands with DEP's Southeast District Office, and the District Office recommends issuance of both the permit required under Part IV, Chapter 373, Florida Statutes, and the authorization to use sovereignty submerged lands under Chapter 253, Florida Statutes;~~

~~(4) The City retains a fee simple interest in the Upland Premises (depicted on Exhibit A-1) and, the City shall maintain the right to lease the Premises, grant easements on and/or through the Premises, and grant the right to develop the Premises; The City shall retain a fee simple interest in the Premises, or alternatively, the City shall maintain the absolute right to lease the Premises, grant easements on and/or through the Premises, and grant the right to develop the Premises;~~

~~(5) The issuance of all permits by DEP the Florida Department of Environmental Protection ("DEP") necessary for the Phase I Project. The permits shall not be~~

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considered to be issued until all applicable challenge periods have run and final permits have been issued or, if the permits are challenged within the applicable challenge period, until the challenges are fully resolved and final permits are issued. Any modifications to the construction and/or activities authorized herein that may be required by the DEP shall require consideration by and the prior written approval of the Parties prior to the commencement of construction and/or any activities on submerged and/or upland lands;

(64) The issuance of all permits by the U.S. Army Corp of Engineers (“ACOE”) necessary for the Phase I Project. Any modifications to the construction and/or activities authorized herein that may be required by the ACOE shall require consideration by and the prior written approval of the Parties prior to the commencement of construction and/or any activities on submerged and/or upland lands;

(75) The issuance of a building permit by the City, subject to the provisions of section 4.04 below;

(86) The award and the funding of the grants and credits as identified on Exhibit D (Grant and Developer Funding Schedule) (as to timing and amounts), and their applicability to the Phase I Project;

(97) The grant funds awarded by Palm Beach County (as identified on Exhibit D) are confirmed by the County as eligible for application to the Phase I Project, such confirmation and construction procurement process being subject to the satisfaction of the Parties;

(108) Florida Inland Navigation District (FIND) acceptance of dredge spoils materials on Peanut Island at no current cost to the Parties; and

(119) The Lease is fully executed by all Parties.

#### ARTICLE 4 CONCEPT AND PLANS AND SPECIFICATIONS

##### 4.01 Plans and Specifications.

With the execution of this Agreement, the Agency and the City hereby approve the Plans and Specifications (attached as Exhibit “C”), said approval subject to the provisions of Sections 4.02 and 4.04 below. The Developer agrees that it shall not apply for any building permit for major components of the Phase I Project that is not in substantial conformity with the Plans and Specifications, unless the Plans and Specifications are modified in the manner hereinafter provided.

##### 4.02 City Authority Preserved.

The City's duties, obligations, or responsibilities under any section of this Agreement, shall not affect the City's right, duty, obligation, authority and power to act in its governmental police power or regulatory capacity in accordance with applicable laws, ordinances, codes or other building regulations. Notwithstanding any other provision of this Agreement, any required permitting, licensing or other regulatory approvals by the City shall be subject to the established procedures and requirements of the City with respect to review and permitting of a project of a similar or comparable nature, size and scope. In no event shall the City, due to any provision of this Agreement, be obligated to take any action concerning regulatory approvals except through its established processes and in accordance with applicable provisions of law.

#### **4.03 Preparation of Plans and Specifications.**

In accordance with the reimbursement provisions of sections 3.01(d) and (e) and Article 6, Developer is responsible for and shall pay the cost of preparing, submitting and obtaining approval of any version of the Plans and Specifications and any revisions or modifications thereto as part of the Developer's cost of the Improvements.

#### **4.04 Development Approvals, Permits, and Building Permits.**

(a) Applications for Development Approval. Developer shall prepare and submit to the appropriate governmental authorities, including the City, applications for all required permits, and shall bear all costs of preparing such applications, applying for and obtaining such permits, including payment of any and all applicable application, inspection, regulatory and impact fees or charges (whether imposed by the City or another Governmental Authority) as part of the Developer's cost of the Improvements.

(b) City and Agency Cooperation and Assistance. The City and the Agency shall cooperate with Developer in obtaining all necessary permits required for the construction, completion and opening for business of the Phase I Project. If requested by ~~RPL~~RRB and authorized by law, the City will join in any application for any permit, or, alternatively, recommend to and urge any governmental authority to which application for any permit has been made that such permit be issued or approved.

(c) City Authority Preserved. The City's duties, obligations, or responsibilities under any section of this Agreement, specifically including, but not limited to, this section 4.04, shall not affect the City's right, duty, obligation, authority and power to act in its governmental police power or regulatory capacity in accordance with applicable laws, ordinances, codes or other building regulations. Notwithstanding any other provision of this Agreement, any required permitting, licensing or other regulatory approvals by the City shall be subject to the established procedures and requirements of the City with respect to review and permitting of a project of a similar or comparable nature, size and scope. In no event shall the City, due to any provision of

this Agreement, be obligated to take any action concerning regulatory approvals except through its established processes and in accordance with applicable provisions of law.

(d) Review and Approval. The City and the Agency agree that they will take final action on all applications for development approval within the normal process after submission of complete applications and all supporting material. In no event shall the City, due to any provision of this Agreement, be obligated to take any particular action with regard to regulatory approvals, except to promptly review any applications submitted by the Developer through its established processes and in accordance with applicable provision of law.

**4.05 Approval of Modifications or Revisions to Plans and Specifications.**

(a) Proposed modification(s) of or revision(s) to the Plans and Specifications do not require review or approval of the Council, but must be regularly communicated to the City's and Agency's Project Representative, in the following instances:

(1) Alterations of the number of wet slips, lineal feet of dock and/or lineal feet of bulkhead that do not result cumulatively in more than a ten (10%) percent modification as found in the Plans and Specifications and this Agreement;

(2) Minor cosmetic alterations of the external façade of proposed structures;  
and

(3) Structure locations may be adjusted or rotated.

(b) In the event the City Manager, or the City Attorney, is in doubt as to whether a proposed modification or revision conflicts with the express terms of this Agreement, the proposed modification or revision may be acted upon by the Council.

**ARTICLE 5  
CONSTRUCTION, OPERATION AND MANAGEMENT REQUIREMENTS**

**5.01 Development of the Phase I Project**

Developer shall develop the Phase I Project in accordance with this Agreement and the Plans and Specifications.

**5.02 Obligations With Respect to Construction.**

(a) To the extent that the Developer is entitled to a rebate, refund and/or reduction of sales tax for the purchase of materials for the construction of the Phase I Project because the

Improvements are being constructed in an Enterprise Zone, the City and the Agency shall assist and cooperate with the Developer to obtain that rebate, refund or reduction.

(b) Developer shall be obligated (subject to Unavoidable Delays) to:

(1) Commence construction of the Phase I Project (such date of commencement being defined as the "Construction Commencement Date") within 30 days from the date that all required permits are issued and all conditions precedent identified in paragraph 3.01(f) have either been satisfied or waived; and

(2) Achieve Substantial Completion of the Phase I Project by March 15, 2011, or 270 days after the Construction Commencement Date, whichever is later; subject, however, to Unavoidable Delays; and further subject to a ninety (90) day extension upon payment by the Developer of the sum of twenty five thousand dollars (\$25,000.00) to the City (the "Completion Date").

(c) The Developer shall construct the Phase I Project in such manner as not to inhibit reasonable access to the park for City residents desiring to utilize the City's waterfront park.

(d) The Developer shall be responsible for obtaining a certified survey of the real property included within the Phase I Project as part of the Developer's cost of the Improvements.

### **5.03 Phase I Project Components.**

(a) Each element or component of the Phase I Project shall contain (without material deviation, except as expressly permitted hereby) the square footages set forth in the Plans and Specifications and the description of the Phase I Project set forth therein. The requirements set forth on the Plans and Specifications may be varied or adjusted as follows:

(1) Any individual deviation of ten percent (10%) or greater from the requirements of the Plans and Specifications must be approved in advance in writing by the City Council; and

(2) Any individual deviation of less than ten percent (10%) from the applicable requirements need not be approved in advance in writing by the Council; provided that Developer shall communicate regularly with the City's and Agency's Project Representative as to such deviations, as provided for in Article 4.05.

### **5.04 Regulatory and Design Requirements.**

(a) Developer shall construct the Phase I Project (and each element or component of the Phase I Project) in accordance with all Requirements, including, without limitation, ADA.

(b) Developer will meet as reasonably required with the City and Agency's Project Representative and will take such other actions as are reasonably required to ensure that the Phase I Project (and each element or component of the Phase I Project) is being developed in accordance with this Agreement.

**ARTICLE 6**  
**FINANCING OF IMPROVEMENTS; DESIGN AND CONSTRUCTION OF THE**  
**IMPROVEMENTS**

**6.01 Financing of the Improvements.**

(a) The Parties have agreed that the cost of the Improvements will be incurred by the Developer and those costs shall be reimbursed pursuant to paragraph (b) below.

In addition, the Developer agrees to make on-site improvements valued at \$250,000, which may include improvements to the existing dry stack storage facility (identified on Exhibit A), which shall be at Developer's sole cost and shall not be entitled to reimbursement as outlined in paragraph (b) below.

(b) To the extent that the Developer has incurred grant eligible costs for the Improvements that have not yet been reimbursed from the Improvement Funds and the Developer provides reasonable proof that it has incurred those grant eligible costs, the Developer shall be reimbursed for its cost of the Improvements. Subject to section 6.01(e), if such funds have not been paid to the Developer within thirty (30) days from the City's receipt of the Developer's payment application, then, in addition to any remedies available to the Developer in the Lease or this Agreement, the Developer shall be entitled to pursue all of its remedies at law or in equity against the City and/or the Agency as a result of such failure to pay to the Developer the Improvement Funds, including without limitation, termination of this Agreement and reimbursement for all of its unreimbursed costs contemplated by this Agreement.

(c) The Developer agrees that any costs to construct the Phase I Project, in excess of Improvement Funds identified in Exhibit D, shall be paid by the Developer through cash or other direct or indirect valuable consideration. Notwithstanding the above, the Developer shall not be obligated to pay for excess costs until it has received all the Improvement Funds.

(d) Subject to section 6.01(e), the monies in the Escrow Account shall only be withdrawn and used for the following limited purposes: (i) payments on bond payments owed by the City on the Premises, when due; (ii) the construction of the Parking Garage (Element 12 of the Master Concept Plan); (iii) to ~~RPLRRB~~, upon the mutual consent of the Parties, to reimburse it for costs of the Improvements, to the extent not already reimbursed by the City; and (iv) the construction of Element 2 (Newcomb Hall), but limited to no more than Three Hundred Thousand Dollars (\$300,000.00) and further limited to hard construction costs only (i.e., design

and professional fees are not permitted). Both parties shall have the authority to make withdrawals from the Escrow Account, but strictly limited for the purposes described above.

(e) As a condition precedent to any court action by the Developer to pursue its rights and remedies under section 6.01(b) and (d), the Parties agree to attend non-binding mediation within twenty (20) days after a party's written demand. The Parties shall choose a mutually acceptable mediator, or if the Parties cannot agree upon a mediator, then the Parties shall request that the American Arbitration Association appoint a mediator. It is the intent of the Parties that the mediation be completed within twenty (20) days after demand, time being of the essence. Any request from one Party to another regarding the mediation shall be adequately responded to in writing within forty-eight (48) hours. If any Party fails to cooperate to timely complete the mediation, then the other parties may consider this condition precedent waived.

## **6.02 Design and Construction of the Improvements.**

(a) Developer shall design and construct or cause the design and construction of the Improvements. In connection with the design and construction of the Improvements, Developer shall:

(1) Comply with all Requirements, including without limitation, ADA; and

(2) Meet as reasonably required with the City and Agency's Representative and will take such other actions as are reasonable required to ensure that the Improvements are being constructed in accordance with this Agreement.

(b) In no event shall any City Indemnified Party have any liability in connection with the construction of the Improvements as a result of or arising from any approvals relating thereto given or withheld (or the right to give or withhold such approvals) pursuant to this Agreement, or as a result of or arising from any other right to review, comment on or evaluate any plans, drawings, specifications or other documents in connection with the construction or operation of the Improvements. In no event shall any such review, approval, comment or evaluation by any City Indemnified Party relieve Developer of any liability or responsibility under this Agreement.

(c) The Improvements shall be constructed in good and workmanlike manner; shall be free of liens and defects (subject to Developer's right to contest and resolve liens provided herein) and utilizing materials of construction consistent with the proposed scope, magnitude and location of the Phase I Project as outlined in the Plans and Specifications; and shall conform to all Requirements. Upon Completion of the Improvements, Developer shall furnish the City and Agency with the following:

(1) A certification of the Architect or Engineer that, in his or her professional judgment, after diligent inquiry, the Improvements have been completed and substantially comply with the Requirements and the Plans and Specifications;

(2) Either (A) lien waivers in form and substance reasonably satisfactory to the City from each contractor, subcontractor, supplier or materialman retained by or on behalf of Developer in connection with the construction of the Improvements, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the construction of the Improvements; or (B) evidence reasonably satisfactory to the City that the Developer has provided a bond or other security of equivalent effect providing for all liens to be removed of record and is diligently pursuing appropriate legal action to discharge such liens (or to contest and resolve such liens in accordance with applicable provisions of this Agreement); and

(3) A complete set of "as built" plans and a survey showing the Improvement(s).

(d) Nothing contained herein shall be construed to limit the right of Developer to contest any claim made against Developer by any contractor, subcontractors, materialman, workmen and/or other third persons arising out of or in connection with or because of the construction of the Improvements. Developer shall have final responsibility for resolving, and shall use reasonable efforts to resolve; any such claims and shall consult with the City and Agency and keep the City and Agency fully informed of its actions with respect thereto. However, nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of City, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or to furnishing of any materials for any specific improvement of, alteration to, or repair of, the site where the Improvements are located or any part thereof, nor as giving the Developer any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the City or against assets of the City. NOTICE IS HEREBY GIVEN, AND DEVELOPER SHALL CAUSE ALL CONSTRUCTION AGREEMENTS RELATING TO THE IMPROVEMENTS TO PROVIDE, THAT TO THE EXTENT ENFORCEABLE UNDER FLORIDA LAW, CITY SHALL NOT BE LIABLE FOR ANY WORK PERFORMED OR TO BE PERFORMED WITH RESPECT TO THE IMPROVEMENTS OR ANY PART THEREOF FOR DEVELOPER OR ANY SUBTENANT OR FOR ANY MATERIALS FURNISHED OR TO BE FURNISHED TO THE PHASE I PROJECT OR ANY PART THEREOF FOR ANY OF THE FOREGOING, AND NO MECHANIC'S, LABORER'S, VENDOR'S, MATERIALMAN'S OR OTHER SIMILAR STATUTORY LIEN FOR SUCH WORK OR MATERIALS SHALL ATTACH TO OR AFFECT CITY OR ANY ASSETS OF CITY. The foregoing shall not require Developer to request advance waivers of lien from contractors or subcontractors.

(e) Any warranties in any Construction Agreement entered into by Developer for the construction of the Improvements shall be for the benefit of the City as well as Developer.

(f) Developer shall process permit applications for Improvements for review and approval by the applicable Governmental Authority. Subject to the provisions of Article 4.02

and 4.04, the City will use all reasonable efforts to cause any Governmental Authority with jurisdiction over the Phase I Project to review such permit applications for the purpose of determining compliance with applicable ordinances and code requirements, and will make all reasonable efforts to complete such review within fifteen (15) days.

(g) Nothing contained in this Agreement shall grant or be deemed to grant to any contractor or any other Person engaged by Developer with any right of action or claim against the City Indemnified Parties with respect to any work any of them may do in connection with the Improvements. Nothing contained herein shall create or be deemed to create any relationship between the City and Agency and any contractor or any such Person engaged by Developer and the City Indemnified Parties shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased in connection with the Improvements.

#### **ARTICLE 7 NON-DISCRIMINATION**

##### **7.01 Non-Discrimination.**

(a) Developer shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person because of race, creed, national origin, sex, age, disability, marital status or sexual orientation. Developer shall act in compliance with all Federal, state and local anti-discrimination laws.

#### **ARTICLE 8 PHASE I PROJECT REPRESENTATIVES; KEY PERSONNEL; PROJECT ADMINISTRATION**

##### **8.01 Phase I Project Representatives.**

(a) Developer may, from time to time, designate up to two persons as its project representatives. In this regard the Developer initially hereby designates Carlos Vidueira and Alex Muxo as the "Developer's Project Representatives" to represent Developer in all of its dealings with City and Agency and the City and Agency's Project Representative relating to the Phase I Project. City and Agency shall direct all communications regarding the Phase I Project to Developers' Project Representatives.

(b) Within thirty (30) days after execution hereof, City and Agency will designate an individual (or his successor appointed for such purpose) as the "City's and Agency's Project Representative" to represent City and Agency in all of its dealings with Developer and Developer's Project Representative relating to the Phase I Project. Developer shall direct all communications regarding the Phase I Project to the City and Agency's Project Representatives.

##### **8.02 Phase I Project Administration.**

(a) The Project Representatives will meet regularly with each other and with other representatives of the Parties throughout the implementation of the Phase I Project and the Improvements. The frequency and scope of such meetings shall be determined mutually by the Project Representatives, in their reasonable judgment, based on the then-current status of Phase I Project implementation.

(b) Developer shall maintain appropriate records concerning the progress of the Phase I Project, including information with regard to design and construction of the Phase I Project. In addition, Developer shall maintain detailed records with regard to the design and construction of the Improvements, including contracts and subcontracts. The Phase I Project progress documents and the Improvements records shall be available for inspection by the City and/or the Agency at an office of the Developer located within Palm Beach County during normal business hours.

## **ARTICLE 9 INSURANCE**

### **9.01 Insurance With Respect to the Improvements.**

(a) The Developer shall, in any event and without prejudice to any other rights of the City, bear all risk of loss of or damage to the Premises arising from any causes whatsoever with or without the fault of the City including, but not limited to, fire; lightning; hurricane; storm; tempest; explosion; impact; aircraft; vehicles; smoke; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes; boiler and machinery coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed; flood; labor disturbances; earthquake; malicious damage; or any other casualty or act of God, and shall maintain, at the Developer's expense, commencing with the Construction Commencement Date, and at all times during the term of this Agreement an "All Risk" insurance policy against the risks enumerated above with a reputable insurance company authorized to do business in the State of Florida and of recognized responsibility. Such insurance shall be maintained in an amount and form specified below in this section. Provided always, however, that the Developer shall bear all risk of loss of or damage to the Premises throughout the term of this Agreement for any and all liabilities and, work or responsibilities required to be performed under the covenants and conditions of this Agreement. In addition, the Developer shall maintain at its sole expense, all that insurance further required in accordance with this section.

(b) Developer's Insurance: The Developer at its own expense shall carry and maintain from the Construction Commencement Date and throughout the term of this Agreement, with regard to the use of the Premises, construction, maintenance and operation of the Improvements, the following insurance:

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(1) All Risk Property and Casualty Insurance against the risk enumerated above in an amount at all times equal to at least ninety percent (90%) of the full replacement value of the Improvements; provided however, the limits of coverage need not exceed \$1,000,000.00.

(2) Public Liability and Property Damage Insurance including, but not limited to, insurance against assumed or contractual liability under this Agreement with respect to the Premises, and the Improvements to afford protection with limits of liability in amounts, but not less than \$1,000,000 in the event of bodily injury and death to any one persons in any one accident (\$2,000,000 aggregate), and not less than \$1,000,000 in property damage.

(3) Worker's Compensation or similar insurance in the form and amounts required by Florida law.

(4) All other types of insurance imposed by applicable legal requirements or customarily carried and maintained by owners and operators of similar facilities including, but not limited to business automobile liability insurance, liquor license liability insurance (if applicable) and employer's liability insurance.

(c) Contractor Insurance: After the Construction Commencement Date and during the entire term of this Agreement, Developer shall require any general contractor performing any work on the Premises to carry and maintain at no expense to the City:

(1) Comprehensive General Liability Insurance including, but not limited to, contractor's liability coverage and contractual coverage of at least \$1,000,000 with respect to personal injury or death, and \$1,000,000 with respect to property damage;

(2) Worker's compensation or similar insurance in the form and amounts required by Florida law.

(d) Policy Provisions: All insurance policies required hereunder shall be written by insurance companies with a minimum rating of "A" or its equivalent as per A.M. Best, Moody's or other nationally recognized rating agency. Further, all policies or certificates issued by respective insurers for public liability and all-risk property and casualty insurance will name the City as an additional insured and shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Developer, the City or any other person; provide that no cancellation, reduction in amount or material change in coverage thereof shall be in effect until at least ten (10) days after receipt by the City of written notice thereof; and, shall be reasonably satisfactory to the City in all other respects. In no circumstances will the Developer be entitled to assign to any third party rights of action which the Developer may have against the City.

(e) Delivery of Policies: The Developer shall deliver promptly to the City a certificate of

insurance or a certified copy of each policy of insurance required by this Agreement at least ten (10) days prior to the date said insurance is required herein and shall also deliver no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks, together with appropriate evidence of payment or the premiums therefore.

#### **ARTICLE 10 TRANSFER AND ASSIGNMENT**

This Agreement shall not be assigned, or otherwise transferred by the Developer, except that the Developer may, at any time, assign or otherwise transfer this Agreement to an affiliated entity of Developer.

#### **ARTICLE 11 EVENTS OF DEFAULT**

**11.01 Each of the following events shall be an “Event of Default”:**

- (a) if the Developer has not commenced construction within ~~thirty (30)~~ days after the Construction Commencement Date as such date may be extended in accordance with this Agreement; or
- (b) if the Developer has not achieved Substantial Completion of the Phase I Project by the Completion Date as such date may be extended in accordance with this Agreement; or
- (c) if Developer fails to observe or perform in any material respect any other term, covenant or condition of this Agreement on Developer’s part to be observed or performed and Developer shall fail to remedy such Default within thirty (30) days after notice of such Default is given by City or Agency with respect to such Default or, if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure, it being understood that Developer shall have no further grace or cure period with respect to any matter(s) not so susceptible to cure), Developer shall fail (1) within thirty (30) days after the giving of such notice of Default to institute all reasonable steps (and from time to time, as reasonably requested by City or Agency, Developer shall advise City and Agency of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) diligently prosecute to completion the remedy of such Default, provided however that if such default has not been cured within (1) year then the City and the Developer shall meet to discuss how best to complete the cure of such default and to set a timeframe in which such default will attempt to be fully cured; or
- (d) if Developer makes or suffers a transfer which is not expressly permitted under Article 10; or

(e) if Developer admits, in writing, that it is generally unable to pay its debts as such become due; or

(f) if Developer makes an assignment for the benefit of creditors; or

(g) if Developer and if as a result thereof Developer's performance or ability to perform any of Developer's obligations under this Agreement is materially adversely affected: (a) files a voluntary petition under Title 11 of the United States Code, (b) files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or (c) seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Premises, and any of the foregoing are not stayed or dismissed within ninety (90) days after such filing or other action; or

(h) if: (a) within ninety (90) days after the commencement of a proceeding against Developer (if as a result thereof Developer's performance or ability to perform any of Developer's obligations under this Agreement is materially adversely affected) which seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state, or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, vacated or stayed on appeal, or (b) within ninety (90) days after the appointment, without the consent or acquiescence of Developer (if as a result thereof Developer's performance or ability to perform any of Developer's obligations under this Agreement is materially adversely affected), of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Premises, such appointment has not been dismissed, vacated or stayed on appeal.

## **ARTICLE 12 REMEDIES, DAMAGES AND TERMINATION**

**12.01** If an Event of Default occurs under any provision of this Agreement, either Party may elect to do all or some of the following: (i) enforce performance against the defaulting Party; or (ii) recover from defaulting party Actual Damages (as defined herein below); or (iii) terminate this Agreement.

**12.02** "Actual Damages" means an amount equal to the sum of (i) any and all amounts paid by the non-defaulting Party to cure any Default; and (ii) any and all costs, fees and expenses incurred by the non-defaulting Party, whether through direct personnel cost or through engaging third-party consultants, to pursue the rights and remedies of the non-defaulting Party, as a result

of or in connection with an Event of Default under this Agreement; provided, however, that the non-defaulting Party has taken all reasonable actions to mitigate its damages, including offering the opportunity to defaulting Party to mitigate any damages.

**12.03 Strict Performance.**

(a) No failure by City or Agency to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of Developer's Default or an Event of Default, and no partial payment of any amounts due under this Agreement during the continuance (or with City's or Agency's knowledge of the occurrence) of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party, or no Default by either party, shall be waived, altered or modified except by performance or by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. Partial payment by City and Agency to Developer of any amounts due under this Agreement shall be without prejudice to, and shall not constitute a waiver of, any rights of Developer against City and Agency provided for under this Agreement. Developer's compliance with any request or demand made by City and Agency shall not be deemed a waiver of Developer's right to contest the validity of such request or demand.

**12.04 Right to Enjoin Defaults.**

(a) In the event of City or Agency's Default or Event of Default, Developer shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise.

**12.05 Remedies Under Bankruptcy and Insolvency Codes.**

(a) If an order for relief is entered or if any stay of proceeding or other act becomes effective against Developer, or in any proceeding which is commenced by or against Developer, under the present or any future federal bankruptcy code or in a proceeding which is commenced by or against Developer, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable Federal, state, or other bankruptcy or insolvency statute or law, City and Agency shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law, or this Agreement.

**12.06 Separate and Independent Agreement.**

(a) The City, Agency, and Developer agree that the Phase I Project is a separate development from the remainder of the Master Concept Plan and that this Agreement is separate from any other Agreement that the City has entered into with regard to the Master Concept Plan.

**ARTICLE 13  
REQUIREMENTS**

**13.01 Requirements.**

(a) In connection with its performance of each and every one of its obligations hereunder, Developer shall comply promptly with any and all applicable Requirements.

(b) For purposes hereof, the term "Requirement" means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all Governmental Authorities having jurisdiction over Developer or the Premises, or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Premises, or any vault in, or under the Premises (including, without limitation, ADA and any of the foregoing relating to handicapped access or parking, the building code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) the Final COs issued for the Premises as then in force; (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations or other indentures, documents or instruments of record.

(c) Developer shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person because of race, creed, national origin, sex, age, disability, marital status, or sexual orientation.

**ARTICLE 14  
LIABILITY**

**14.01 INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS**

The Developer shall investigate all claims arising out of this Agreement at its expense. Further, Developer covenants and agrees from the Effective Date and throughout the Term of this Agreement that Developer shall indemnify City Indemnified Parties from and against any and all claims, debts, suits, actions, demands, damages, obligations and/or causes of action which may be made against or upon the City Indemnified Parties arising after the Effective Date and during the Term of this Agreement by reason of or in connection with any alleged act or omission of Developer or any person claiming by, through or under Developer; provided however, such indemnity shall not apply to any negligence or acts of City Indemnified Parties. If

it becomes necessary for City to defend any action seeking to impose such liability, Developer shall pay City all court costs and reasonable attorney's fees incurred by City in effecting such defense (including all appellate levels), as and when said costs and fees become due and payable, in addition to any other sums which the City may be called upon to pay by reason of the entry of a judgment against City in the litigation in which such claim is asserted.

As to any claim, action or lawsuit brought by a third party to challenge the validity or enforceability of this Agreement, or to enjoin this Agreement arising solely from a claim that Developer lacks capacity to sign or enter into, or improperly executed this Agreement, each party shall cooperate with each other as to jointly defending the claim, action or lawsuit. In any such claim, action or lawsuit, City and Developer (as to each other) shall bear their own attorney fees and costs. Nothing in the Agreement shall constitute a waiver of sovereign immunity of City nor shall the same be construed as an agreement by the City to be sued by third parties. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in section 768.28, Fla. Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

**ARTICLE 15**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.**

**15.01 Representations and Warranties.**

Developer represents and warrants to the City and the Agency that each of the following statements is currently true and accurate and agrees the City and the Agency may rely upon each of the following statements:

(a) Developer is a Florida limited liability company duly organized and in good standing and has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida.

(b) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which ~~RPLRRB~~ is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, Developer, and neither the execution and delivery thereof by Developer, nor compliance by the Developer with the terms and provisions thereof or hereof: (1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (2) to the best of the Developer's knowledge contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Developer, (3) contravenes or results in any breach of,

default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of Developer under any indenture, mortgage, deed of trust, bank loan or credit agreement, Developer's Articles of Organization, or, any other agreement or instrument to which Developer is a party or by which the Developer may be bound.

(c) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which Developer is or will be a party, constitutes (or when entered into will constitute) a legal, valid and binding obligation of Developer enforceable against Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) There are no pending or, to the knowledge of Developer, threatened actions or proceedings before any court or administrative Agency against Developer, or against any controlling shareholder, officer, employee or agent of Developer, which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of Developer.

(e) Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by ~~RPLRRB~~, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against Developer.

(f) The principal place of business and principal executive offices of Developer are in Palm Beach County, Florida, and Developer will keep all records concerning the Phase I Project (such as construction contracts, financing documents and corporate documents) and all contracts, licenses and similar rights relating thereto at its principal place of business.

(g) Developer has the experience, expertise, and capability to develop, cause the construction, and complete the Phase I Project and, oversee and manage the design, planning, construction, completion and opening for business of the Phase I Project.

(h) Developer shall indemnify the City and Agency against any claim for brokerage commissions, fees or other compensation by any Person alleging to have acted for or dealt with the Developer in connection with this Agreement or the transactions contemplated hereby

## **15.02 Covenants.**

Subject to the City's and the Agency's satisfaction of its obligations under this Agreement:

(a) Developer shall timely perform or cause to be performed all of the obligations contained herein which are the responsibility of Developer to perform.

(b) During the period this Agreement and the obligations of Developer under this Agreement shall be in effect, Developer shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals and shall cause to occur those events contemplated by this Agreement that are applicable to, and that are the responsibility of Developer.

(c) Developer shall assist and cooperate with the City and the Agency to accomplish the development of the Phase I Project by Developer in accordance with this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.

(d) Developer shall promptly cause to be filed when due all federal, state, local and foreign tax returns required to be filed by it, and shall promptly pay when due any tax required thereby.

**ARTICLE 16  
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY AND  
AGENCY**

**16.01 Representations and Warranties.**

The City and Agency represent and warrant to Developer that each of the following statements is currently true and accurate and agrees that Developer may rely on each of the following statements:

(a) The City and Agency are validly existing bodies under the laws of the State of Florida, the Agency is a duly created community redevelopment Agency for the City pursuant to the Community Redevelopment Act of 1969, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.

(b) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which the City and the Agency are or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the City and the Agency, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City and the Agency, (3) contravenes or results in any breach of, or default under or, other than as

contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the City and the Agency under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the City and the Agency are parties, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City and the Agency outstanding on the Effective Date.

(c) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which the City and the Agency are or will be Parties constitute, or when entered into will constitute, legal, valid and binding obligations of the City and the Agency enforceable against the City and the Agency in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) There are no pending or threatened actions or proceedings before any court or administrative Agency against the City and the Agency, or against any officer of the City or the Agency, which question the validity of this Agreement, the Lease or any document contemplated hereby or thereby, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder, thereunder or the financial condition of the City and Agency.

(e) City and Agency represent that they have not dealt with any broker, finder of like entity in connection with this Agreement of the transaction contemplated hereby, and shall indemnify the Developer against any claim for brokerage commissions, fees or other compensation by any Person alleging to have acted for or dealt with the City and Agency in connection with this Agreement or the transactions contemplated hereby.

(f) The City represents that, as of the date of the execution of this Agreement, it does not know or have any reason to know of any existing material adverse environmental conditions now existing in or on the Premises or the Land that is subject to the Phase I Project.

#### **16.02 Covenants.**

Subject to the Developer's satisfaction of its obligations under this Agreement:

(a) The City and the Agency shall timely perform, or cause to be performed all of the obligations contained herein which are the responsibility of the City and the Agency to perform.

(b) During the period this Agreement and the obligations of the City and the Agency under this Agreement shall be in effect, the City and the Agency shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and

approvals, and shall cause to occur those events contemplated by this Agreement that are applicable to and are the responsibility of the City and the Agency.

(c) The City and the Agency shall assist and cooperate with Developer to accomplish the development of the Phase I Project in accordance with this Agreement, and the Plans and Specifications and will carry out their duties and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, and, to the extent permitted by law, the City and the Agency will not enact or adopt or urge or encourage the adoption of any ordinances, resolutions, rules, regulations or orders, or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.

**ARTICLE 17  
GOVERNMENT INVESTIGATIONS, ETC.**

**17.01** The Parties shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry. In addition, Developer shall promptly report in writing to the City Attorney any solicitation, of which Developer's officers or directors have knowledge, of money, goods, requests for future employment, or other benefit or thing of value, by or on behalf of any employee of Agency or the City relating to the procurement or obtaining of this Agreement by Developer or affecting the performance of this Agreement.

**ARTICLE 18  
NOTICES, CONSENTS AND APPROVALS**

**18.01 Service of Notices and Other Communications.**

(a) Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication (referred to in this Article as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by certified or registered U.S. mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or by a recognized national courier service, addressed as follows:

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If to Developer: Rybovich ~~Portside~~, Riviera Beach LLC  
450 East Las Olas Boulevard, Suite 1500  
Fort Lauderdale, Florida 33301  
Attn: Alex Muxo, Senior V.P.  
-Richard Handley, General Counsel

with a copy to: Bruce E. Loren, Esq.  
2000 Palm Beach Lakes Blvd., Suite 501  
West Palm Beach, Florida 33409

If to Owner: The City of Riviera Beach, Florida  
600 W. Blue Heron Boulevard  
Riviera Beach, Florida 33404  
Attn: City Manager &  
\_City Attorney

With a copy to: The Riviera Beach Community  
Redevelopment Agency  
2001 Broadway, Suite 300  
Riviera Beach, Florida 33404  
Attn: Executive Director

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Any such Notice may be given, in the manner provided in this Article on either Party's behalf by its attorneys designated by such Party by notice hereunder.

(b) Every Notice shall be effective on the date actually received, as indicated on the receipt or on the date delivery thereof is refused by the recipient thereof. All references in this Agreement to the "date" of a Notice shall mean the effective date, as provided herein.

#### 18.02 Consents and Approvals.

(a) All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the contrary.

(b) Unless expressly provided or otherwise, all consents and approvals which may be given by a Party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed or conditioned by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a

reasonable time. Upon disapproval of any request for a consent or approval, the disapproving Party shall, together with notice of such disapproval, submit to the requesting Party a written statement setting forth with specificity its reasons for such disapproval.

**ARTICLE 19  
MISCELLANEOUS**

**19.01 Governing Law and Venue.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida.

**19.02 References.**

(a) The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) The use herein of the words “successors and assigns” or “successors or assigns” of City and Agency or Developer shall be deemed to include the heirs, legal representatives and assigns of any individual City and Agency or Developer.

(c) Nothing in this Agreement or in the Parties’ acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of Agency or the City in the discharge of its police or governmental powers.

(d) All references in this Agreement to the terms “herein,” “hereunder” and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

**19.03 Entire Agreement.**

(a) This Agreement, together with the attachments hereto and thereto, contains all of the promises, agreements, conditions, inducements and understandings between City, Agency and Developer concerning the Phase I Project and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein, therein and in such attachments hereto or thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto.

(b) No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by City, Agency and Developer. No waiver of any

Default or Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect.

**19.04 Invalidity of Certain Provisions.**

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**19.05 Remedies Cumulative.**

Each right and remedy of either Party provided for in this Agreement, shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a Party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Agreement, shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Agreement.

**19.06 Successors and Assigns.**

(a) The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of City, Agency, and Developer, and their respective successors and assigns.

(b) The City has required that: (i) the Developer under this Agreement be maintained as a single asset entity, owning no assets other than its interest in the Premises as defined in the Agreement.

(c) Notwithstanding any provision in this Agreement to the contrary, nothing shall prevent or limit Developer's right to contract with a general contractor (licensed in the State of Florida) to perform the construction portion of the Phase I Project.

**19.07 Recording of Agreement.**

Promptly after the Effective Date, the Parties shall cause a memorandum of this Agreement, and promptly after the execution of any amendments hereto (including, without

limitation, to include or exclude portions of the Premises as provided herein), the Parties shall cause a memorandum of any such amendments, to be recorded in the Public Records of Palm Beach County, Florida; and Developer shall pay and discharge all costs, fees and taxes in connection therewith.

**19.08 No liability of Officials and Employees.**

(a) No member, official or employee of the Agency, the City (including, without limitation, the Mayor or Members of the City Council, the Agency or its member) shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City and Agency or for any amount or obligation which may become due to Developer or successor under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the City and the Agency.

(b) No member, shareholder, officer, director, member of management committee, employee, agent or representative of the Developer or any their respective members, shareholders, officers, directors, members of management committee, employees, agents or representatives shall be personally liable to the City, the Agency or any of the City Indemnified Parties, or any successors in interest, in the event of any default or breach by the Developer or successor under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the Developer.

**19.09 Conflict of Interest.**

Developer represents and warrants that, to the best of its actual knowledge, no member, official or employee of the Agency, the City or any other governing body has any direct or indirect financial interest in this Agreement, nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City, the Agency or any other governing body has received any payment or other consideration for the making of this Agreement, directly or indirectly from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. Developer acknowledges that City and Agency are relying upon the foregoing representations and

warranties in entering into this Agreement and would not enter into this Agreement absent the same.

**19.10 Time Periods.**

Any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

**19.11 No Third Party Beneficiaries.**

Nothing in this Agreement shall confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

**19.12 No General Obligation.**

In no event shall any obligation of the City or the Agency under this Agreement be or constitute a general obligation or indebtedness of the City or the Agency, a pledge of the ad valorem taxing power of the City or the Agency or a general obligation or indebtedness of the City or the Agency within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither Developer nor any other Party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, or any other governmental entity to pay the City's or the Agency's obligations or undertakings hereunder.

**19.13 Disclaimer As To Governmental Authority.**

Nothing in this Agreement shall be construed, interpreted or applied in such a manner as will constitute contracting away or waiver of any governmental police power by the Agency or the City.

**19.14 Conflict With RFP.**

Notwithstanding anything contained herein to the contrary, in the event of any conflict in the terms, conditions, obligations and/or remedies between the RFP and this Agreement, this Agreement shall govern.

**[SIGNATURES ON FOLLOWING PAGE]**

**EXECUTION**

IN WITNESS WHEREOF, City and Agency and Developer, intending to be legally bound, have executed this Agreement as of the day and year first above written.

ATTEST:

**CITY OF RIVIERA BEACH, FLORIDA**

By: \_\_\_\_\_  
Carrie E. Ward, City Clerk

By: \_\_\_\_\_  
Thomas A. Masters, Mayor

As to Form and Legal Sufficiency

As to Terms and Conditions

By: \_\_\_\_\_  
Pamala H. Ryan, City Attorney

By: \_\_\_\_\_  
Ruth C. Jones, City Manager

**RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Dawn S. Pardo, Chairperson

As to Terms and Conditions

As to Form and Legal Sufficiency

By: \_\_\_\_\_  
Scott Evans  
Interim CRA Executive Director

By: \_\_\_\_\_  
J. Michael Haygood  
Interim CRA Attorney

LLC

**RYBOVICH PORTSIDE, RIVIERA BEACH**

a Florida limited liability company

By: \_\_\_\_\_  
Carlos E. Vidueira  
Vice President

Redlined new changes 6.15.10

**LIST OF EXHIBITS  
DDA**

- A. CONCEPTUAL MASTER DEVELOPMENT PLAN
- B. PROJECT ELEMENTS
- C. PLANS AND SPECIFICATIONS
- D. GRANT AND DEVELOPER FUNDING SCHEDULE
- E. FORM OF SUBMERGED AND UPLAND LANDS LEASE

Redlined new changes 6.15.10

**EXHIBIT A**  
**CONCEPTUAL MASTER DEVELOPMENT PLAN**

Redlined new changes 6.15.10

**EXHIBIT B**  
**PROJECT ELEMENTS**

**EXHIBIT C**  
**PLANS AND SPECIFICATIONS**

**EXHIBIT D**  
**GRANT AND DEVELOPER FUNDING SCHEDULE**

**EXHIBIT E**  
**FORM OF SUBMERGED AND UPLAND LANDS LEASE**

CITY OF RIVIERA BEACH

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SUBMERGED AND UPLAND LANDS LEASE

THIS LEASE is hereby issued by the City Council of the City of Riviera Beach, Palm Beach County, Florida, who shall hereinafter be referred to as the "City" or "Lessor."

RECITALS

The Parties to this lease make the following recitals, and agree that each are true and correct and incorporated into this lease:

- A. This lease is being executed simultaneously with that certain Disposition and Development Agreement ("Development Agreement") by and among the City, Rybovich Portside, LLC ("Lessee" or "RPLRRB"), and The Riviera Beach Community Redevelopment Agency. (The Development Agreement is attached as Exhibit B).
- B. The City and The Riviera Beach Community Redevelopment Agency accepted and approved an amended Conceptual Master Development Plan at duly called public meetings held on February 10, 2010 and February 17, 2010. The Master Conceptual Plan is comprised of nineteen (19) separate development elements, including Element 3: "Public Marina Phase I" and Element 13: "Working Waterfront Phase I."
- C. Pursuant to the terms and conditions of the Development Agreement, RPLRRB has agreed to develop that portion of Element 3 that includes the Harbor Dredging, Seawall and Finger Piers, and North Docks and portions of Element 13. In turn, pursuant to this lease, the City has agreed to lease the Premises (as defined below) to the Developer.
- D. Defined terms in this lease have the same meaning as those terms are defined in the Development Agreement. To the extent that the terms, obligations and provisions of this lease are inconsistent or contradict the terms, obligations and provisions of the Development Agreement, this lease shall govern.

WITNESSETH:

That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to Rybovich Portside, LLC, a Florida liability company, hereinafter referred to as the Lessee, the property specifically depicted and described in Exhibit "A" of this lease (the "Premises").

TO HAVE THE USE OF the Premises from the Effective Date (as defined in paragraph 1(C) below) of this lease for a period of twenty five (25) years (except as provided for in this lease), at which time this lease shall expire. The terms and conditions on and for which this lease is granted are as follows:

1. USE OF PROPERTY AND EFFECTIVE DATE:

A. Use of Property. The Lessee is hereby authorized to operate a marine vessel docking, fueling, haul out and repair facility, as well as ancillary parking for the operation's use. The facility will provide dockage and fuel as well as perform metal, carpentry, electrical, mechanical, plumbing, air conditioning, paint, fiberglass, and other associated marine work on commercial and noncommercial recreational vessels as well as government and/or research vessels. Lessee shall not use or permit or suffer the use of the Premises for any other purpose. The lease area consists of approximately 121,050 square feet of upland and approximately 164,389 square feet of submerged land (collectively referred to as the "Premises") described in Exhibits "A-1 (Upland)" and A-2 (Submerged Land) attached hereto. Lessor shall deliver the Premises with the Improvements. As to the dry stack storage facility on the Premises, Lessee shall either ensure that the facility complies with the applicable building code, or shall demolish that facility within ninety (90) days of the Effective Date of this lease.

B. Easement to Lessor. Lessor is granted an easement for ingress and egress to the fuel tank (depicted on the Plans and Specifications) for the purpose of operating its fueling facility, said easement to be presented to the City in a separate document and recorded in the Public Records.

C. Effective Date. The effective date of this lease shall be March 15, 2011, or such date as a Final CO is issued for the Improvements, whichever is later (the "Effective Date").

2. INITIAL RENT, ANNUAL RENT, AND RENT CALCULATION:

(A) Initial Rent for First Five Years of Lease: Within fifteen (15) days after all conditions precedent contained in the Development Agreement have been satisfied or waived (including without limitation those conditions identified in Section 3.01(f) of the Development Agreement), Lessee shall pay to Lessor the sum of \$2,178,900, which reflects a pre-payment of the first five years of rent at the annual rate of \$435,780. This pre-paid rent shall be segregated in an interest-bearing escrow account to be created by the mutual consent of the parties (the "Escrow Account") and shall only be disbursed pursuant to section 6.01(d) of the Development Agreement. The annual rate is calculated as follows: Square footage of the Premises [approximately 121,050] to be leased, multiplied by the current appraised value [\$60.00 per square foot], multiplied by a Cap Rate of six percent (6%).

(B) Annual Rent: To allow the City to participate in the potential revenue from the Premises, the annual rate is reduced by 50% in years six (6) through twenty-five (25) of the lease. Provided that this lease does not terminate as provided for in paragraph 16 below, then the annual rent for years six (6) through twenty five (25) shall be the greater of: (i) six percent (6%) of the first Ten Million Dollars (\$10,000,000) of Annual Income (as defined below in paragraph 3(B)) and six and one half percent (6.5%) of the Annual Income in excess of Ten Million Dollars (\$10,000,000); or (ii) a Minimum Annual Rent of \$217,890, as adjusted by the Index pursuant to paragraph 2(C) ("Annual Rent"). The Minimum Annual Rent has been calculated as follows: Square footage of the Premises to be leased, multiplied by the current appraised value, multiplied by a Cap Rate of six percent (6%), multiplied by .5 (50%) (the "Minimum Annual Rent Calculation").

(C) The Minimum Annual Rent shall be adjusted beginning on the sixth anniversary of the Effective Date, and each annual anniversary of the Effective Date thereafter to reflect changes in the cost of living. The cost of living adjustment shall be calculated upon the basis of the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index of All Urban Consumers (CPI\_U), "All Items" U.S. Cities Average, unadjusted data (1982-1984=100) (the "Index"), but in no event shall any one adjustment exceed five percent (5%) (the "Adjustment Limit"). The Index published for the month prior to the sixth anniversary of the Effective Date shall be considered the initial "base" and each comparison Index used pursuant to the next sentence shall thereafter be the new "base" for the next succeeding adjustment, all subject to the Adjustment Limit. The then current Minimum Annual Rent for each lease year or partial lease year shall be adjusted by the percentage increase, if any, in the Index published for the last calendar month of the preceding lease year over the base, subject to the Adjustment Limit. The Minimum Annual Rent shall be paid in equal monthly installments, beginning in the sixth year of this lease and continuing each year thereafter until this lease terminates or expires. Lessee shall pay monthly to Lessor any sales, use, or other tax (excluding state and federal income tax) now or hereafter imposed by the United States of America, the State of Florida, or any political subdivision of them, including the city or municipality in which the Premises is located, on any form of rent due under this Lease, or in substitution for any rent, notwithstanding the fact that the law imposing the tax may endeavor to impose it on Lessor.

(D) After the conclusion of each annual anniversary of the Effective Date, beginning with the conclusion of the sixth anniversary of the Effective Date and for each remaining lease year during the term of this lease, Lessee shall pay the difference, if any, in the amount due when six percent (6%) (or six and one half percent (6.5%), as the case may be) of the Annual Income (as defined below in paragraph 3(B)) exceeds the Minimum Annual Rent, for each remaining lease year during the term of this lease.

(E) Notwithstanding anything to the contrary in this paragraph 2, at the beginning of the sixth year of the lease, Lessee shall make a single advance Annual Rent payment to Lessor in the amount of Two Hundred Seventeen Thousand Eight Hundred Ninety

Dollars and 00/100 (\$217,890.00) ("Advance Rent"). The Advance Rent shall be credited against Lessee's next Annual Rent payment or any monies due to Lessor pursuant to paragraph 2(D), whichever is due earlier.

(F) Pursuant to paragraph 2(B)(i) above, as part of Annual Rent, this lease grants to the City the right to receive six and one half percent (6.5%) of Annual Income for the amount of Annual Income in excess of \$10,000,000 (Ten Million Dollars and no cents) (according to the definition of Annual Income in paragraph 3(B) below). Provided that the Lessee pays to the City the additional one-half percent (.5%) of Annual Rent, then the City agrees to use those additional monies for the creation and/or operation of an employment program designed to provide career opportunities in the working waterfront for Riviera Beach residents and/or the creation and/or operation of a "Community Boating Program" for Riviera Beach residents.

3. REVENUE CERTIFICATION/SUPPLEMENTAL PAYMENT:

(A) The Lessee shall provide upon request by the Lessor all information needed to calculate the Annual Rent specified in paragraph 2, including the income, derived directly or indirectly from the use of the submerged and upland lands which are subject to the terms of this lease on an annual basis.

(B) "Annual Income" as used in this Lease means: All gross revenue received by the Lessee directly from the use of the "Premises," except that revenue from the following sources shall not be included: (i) revenue or fees collected from the use of any utilities; (ii) sales tax; (iii) revenue or fees collected from subcontractors, independent contractors and sub-lessees (collectively, "Third Parties"), except that "Lessee's Profit" from these Third Parties shall be included in Annual Income; and (iv) revenue or fees collected from Third Parties directly received from the sale of fuel, except that "Lessee's Profit" from these Third Parties shall be included in Annual Income. "Lessee's Profit," as used herein, means all revenue from the stipulated source actually received by the Lessee less the corresponding vendor invoices, including all taxes and external fees, directly associated with that revenue.

4. LATE FEE ASSESSMENTS: The Lessee shall pay a late charge equal to interest at the rate of twelve percent (12%) per annum from the due date until paid on any lease fees due hereunder which are not paid within 10 days of their due dates.

5. EXAMINATION OF LESSEE'S RECORDS: For purposes of this lease, the Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any extensions thereto plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraphs two and three above.

6. **MAINTENANCE OF LESSEE'S RECORDS:** The Lessee shall maintain separate accounting records for: (i) the gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, (iii) Lessee's Profit collected from Third Parties, and (iv) all other gross revenue derived from the Lessee's operations on the submerged land and upland property. The Lessee shall secure, maintain, and keep all records for three years.

7. **AGREEMENT TO EXTENT OF USE:** This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by any applicable permits.

8. **PROPERTY RIGHTS:** Except as provided for in section 23(B) below, the Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

9. **INTEREST IN UPLAND PROPERTY:** During the term of this lease, the Lessor shall maintain a fee simple title interest in the Premises, or alternatively, the Lessor shall maintain the absolute right to lease the Premises, grant easements on and/or through the Premises, and grant the right to develop the Premises.

10. **ASSIGNMENT OF LEASE:** This lease shall not be assigned, sublet or otherwise transferred by the Lessee during the first five (5) years from the Effective Date. Thereafter, until the expiration of this lease, Lessee may assign or transfer this lease (but not sublet) with the prior written consent of the Lessor or its duly authorized agent, which shall not be unreasonably withheld. Such assignment or other transfer shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect. Notwithstanding any other provision of this section, Lessee may assign or otherwise transfer this lease any time to an affiliated entity of Lessee.

11. **INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS:** Lessee covenants and agrees from the Effective Date and throughout the Term of this Lease that Lessee shall indemnify Lessor's Indemnified Parties (as defined below) from and against any and all claims, debts, suits, actions, demands, damages, obligations and/or causes of action which may be made against or upon the Lessor's Indemnified Parties, arising after the Effective Date and during the Term of this Lease by reason of or in connection with any alleged act or omission of Lessee or any person claiming by, through or under Lessee; provided however, such indemnity shall not

apply to any negligence or acts of Lessor or its officers, agents or employees; and if it becomes necessary for Lessor to defend any action seeking to impose such liability, Lessee shall pay Lessor all court costs and reasonable attorney's fees incurred by Lessor in effecting such defense (including all appellate levels), as and when said costs and fees become due and payable, in addition to any other sums which the Lessor may be called upon to pay by reason of the entry of a judgment against Lessor in the litigation in which such claim is asserted.

As to any claim, action or lawsuit brought by a third party to challenge the validity or enforceability of this lease, or to enjoin this lease arising solely from a claim that Lessee lacks capacity to sign or enter into, or improperly executed this Lease, each party shall cooperate with each other as to jointly defending the claim, action or lawsuit. In any such claim, action or lawsuit, Lessor and Lessee (as to each other) shall bear their own attorney fees and costs. Nothing in the lease shall constitute a waiver of sovereign immunity of Lessor nor shall the same be construed as an agreement by the Lessor to be sued by third parties. Further, nothing contained in this Section or elsewhere in this lease is in any way intended to be a waiver of the limitation placed upon Lessor's liability as set forth in section 768.28, Fla. Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

12. UTILITIES: Lessor shall execute, upon request by Lessee, such easements and rights of way as Lessee shall reasonably require for the purpose of connection to and use of existing and future drainage and utility facilities (including, but not limited to, water, gas, telephone, electric lines, cable, internet, telephone, storm drainage, sanitary sewer systems and surface drainage) located over, under, and across the Premises. Lessee shall pay, directly to the provider thereof, when due, all bills for water, sewer rents, sewer charges, heat, gas, electricity, storm water, cable, internet and telephone or any other utility service used in the Premises from the commencement of the Term until the expiration of the Term. The source of supply and vendor of each such commodity shall be the local public utility company or municipality commonly serving the area. If Lessee shall require additional service line capacity of any of such utilities and if same are available on the Premises, Lessee, at Lessee's expense, shall have the right to the use of the same.

13. REPAIRS, INDEMNIFICATION, CONFORMITY WITH THE LAW:

Subject to the limitations contained in subparagraphs (h) and (i) below:

(a) Repairs. Lessee shall take good care of, and keep and maintain, the Premises in good and safe order and condition, and shall make or cause to be made all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe, first class condition, however the necessity or desirability may arise. Lessor shall not have any duty or obligation to make any alteration, change, improvement, replacement, restoration or repair

with respect to the Premises. Lessee shall be responsible for all code violations imposed against the Premises, as if it was the owner of the Premises.

(b) Hazardous Conditions. In the event that any Hazardous Substances are discovered at any time in, under or on the Premises, regardless of whether caused by the Lessee or invitee, the presence of which was not the result of migration of such Hazardous Substances from off of the Premises into, under or on the Premises, Lessee shall, at Lessee's expense, remove and dispose of the same in accordance with applicable law; except that, Lessee's obligations under this section shall not apply to any Hazardous Substances in, under or on the Premises existing prior to the execution of this Lease.

(c) Indemnification. Lessee hereby indemnifies and defends Lessor Indemnified Parties from and against any claims, liability, obligation, damage, cost, expense, fines and penalties, including, without limitation, reasonable attorneys' fees and costs and reasonable and applicable consultants and contractors' fees and costs, resulting directly or indirectly from the presence, removal or disposal of any Hazardous Substances in, under or on the Premises, the presence of which was not the result of migration of such Hazardous Substances from off of the Premises into, under or on the Premises. Such obligation of Lessee shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to Lessor), and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Lessor Indemnified Parties resulting directly or indirectly from the presence, removal or disposal of any Hazardous Substances in, under or on the Premises, the presence of which was not the result of migration of such Hazardous Substances from off of the Premises into, under or on the Premises. Lessee's obligations shall not apply with respect to Hazardous Substances in, under or on the Premises existing prior to the execution hereof. Without limiting the foregoing, if the presence or release of any Hazardous Substance on or from the Premises caused or permitted by Lessee results in any violation of Environmental Laws or material contamination of the Premises, Lessee shall promptly take all actions at its sole cost and expense as are necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Material; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld. The foregoing indemnifications shall survive the termination or expiration of this Lease for any reason.

(d) Notices. If Lessee receives any notice of, or otherwise becomes aware of, a release, threat of release, or written notice with regard to air emissions, water discharges, noise emissions, recycling, violation of any Environmental Law or any other environmental, health or safety matter affecting Lessee or the Premises (an "Environmental Complaint") independently or by written notice from any governmental authority having jurisdiction over the Premises, including the Environmental Protection Agency (the "EPA"), or with respect to any litigation regarding environmental conditions at or about the Premises, then Lessee shall give prompt oral and written notice of same to the Lessor detailing all relevant facts and circumstances.

(e) Lessor's Remedies. If Lessee does not diligently commence to remediate the environmental conditions it is required to remediate in accordance with the foregoing provisions, promptly after becoming aware of the same and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Requirements), Lessor shall have the right, but not the obligation, to enter onto the Premises or to take such actions as it deems necessary or advisable and practicable to cleanup, remove, resolve or minimize the impact of or otherwise deal with any such environmental conditions upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person (as defined below), including the EPA.

(f) Definitions.

"Hazardous Substances" shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including, without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or by-product thereof), underground storage tanks, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled or regulated by any Environmental Law.

"Environmental Law" shall mean any federal, state, regional, county or local governmental statute, law, regulation, ordinance, order or code or any consent decree, judgment, permit, license, code, covenant, deed restriction, common law, or other requirement presently in effect or hereafter created, issued or adopted, pertaining to protection of the environment, health or safety of Persons, natural resources, conservation, wildlife, waste management, and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. 2601 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., National Environmental Policy Act of 1975, 42 U.S.C. 300(f) et seq., and all amendments as well as any similar state or local statute or code and replacements of any of the same and rules, regulations, guidance documents and publications promulgated thereunder.

"Environmental Damages" shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation, and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature,

contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the remediation or mitigation of an Environmental Condition, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work;

“Lessor Indemnified Party or Parties” means, collectively, the Community Redevelopment Agency of the City of Riviera Beach (the “CRA”), the Lessor and their respective elected and appointed officials (including the CRA’s chair and members, the Mayor and the City council members) and their respective heirs, legal representatives, successors, and assigns of any of the foregoing.

(g) Survival. The provisions of Section 13(b) - (e) shall survive the termination or expiration of this Lease for any reason.

(h) Notwithstanding any other provision in this Lease, Lessee shall have no obligation, liability or responsibility with regard to any Hazardous Substances in, under or on the Lease Premises existing prior to the execution of this Lease.

(I) Notwithstanding any other provision of this Lease, Lessee may to obtain any environmental impact study of the submerged lands and the upland that are included in the Premises. If, as a result of that study, material adverse environmental conditions are discovered with respect to any of submerged lands or the upland that is subject to this lease, then the City shall be responsible (at its cost) to mitigate those adverse environmental conditions, or either party (after providing written sixty (60) day notice to the other party of its intent to terminate), may terminate this lease. In case of termination pursuant to these grounds, neither Party shall have any further obligations under this Agreement. The City represents that, as of the date of the execution of this Agreement, it does not know or have any reason to know of any existing material adverse environmental conditions now existing in any of the submerged lands or the upland that is subject to the Premises.

#### 14. INSURANCE:

(A) All Risk: The Lessee shall, in any event and without prejudice to any other rights of the Lessor, bear all risk of loss of or damage to the Premises arising from any causes whatsoever with or without the fault of the Lessor including, but not limited to, fire; lightning; hurricane; storm; tempest; explosion; impact; aircraft; vehicles; smoke; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes; boiler and machinery coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed; flood; labor disturbances; earthquake; malicious damage; or any other casualty or act of God, and shall maintain, at the Lessee’s expense, at all times during the Term of this Lease (beginning on the Commencement Date) an “All Risk” insurance policy

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against the risks enumerated above with a reputable insurance company authorized to do business in the State of Florida and of recognized responsibility. Such insurance shall be maintained at all times from the Commencement Date of this Lease in an amount and form specified below in this section. Provided always, however, that the Lessee shall bear all risk of loss of or damage to the Premises from the Effective Date of this Lease throughout the Term of this Lease for any and all liabilities and, work or responsibilities required to be performed under the covenants and conditions of this Lease. In addition, the Lessee shall maintain at its sole expense, all that insurance further required in accordance with this section.

(B) Lessee's Insurance: The Lessee at its own expense shall carry and maintain from the Commencement Date of this Lease and throughout the Term of this Lease, with regard to the use of the Premises, construction, maintenance and operation of the Improvements and Alterations, the following insurance:

(1) All Risk Property and Casualty Insurance against the risk enumerated above in this Section 6.01 in an amount at all time equal to at least ninety percent (90%) of the full replacement value of the Improvements and Alterations to the Premises; provided however, the limits of coverage need not exceed \$1,000,000.00.

(2) Public Liability and Property Damage Insurance including, but not limited to, insurance against assumed or contractual liability under this Lease with respect to the Premises, the Improvements and the Alterations, to afford protection with limits of liability in amounts approved from time to time by the Lessor, but not less than \$1,000,000 in the event of bodily injury and death to any one persons in any one accident (\$2,000,000 aggregate), and not less than \$1,000,000 in property damage.

(3) Worker's Compensation or similar insurance in the form and amounts required by Florida law.

(4) All other types of Insurance imposed by applicable legal requirements or customarily carried and maintained by owners and operators of similar facilities including, but not limited to business automobile liability insurance, liquor license liability insurance (if applicable) and employer's liability insurance. It shall be Lessee's sole responsibility to determine whether any or all of the above insurance should be obtained and maintained from the Effective Date of this Lease. Lessee's failure to obtain and maintain insurance from the Effective Date of this Lease shall be at its sole risk and expense.

(C) Contractor Insurance: After the Effective Date and during the entire Term of this Lease, Lessee shall require any general contractor performing any work on the Premises to carry and maintain at no expense to the Lessor:

(1) Comprehensive General Liability Insurance including, but not

limited to, contractor's liability coverage and contractual coverage of at least \$1,000,000 with respect to personal injury or death, and \$1,000,000 with respect to property damage;

(2) Worker's compensation or similar insurance in the form and amounts required by Florida law.

(D) Policy Provisions: All insurance which this Lease requires the Lessee to carry and maintain or causes to be carried or maintained pursuant to this section shall be in such forms, for such amounts, for such periods of time. All insurance policies required hereunder shall be written by insurance companies with a minimum rating of "A" or its equivalent as per A.M. Best, Moody's or other nationally recognized rating agency. Further, all policies or certificates issued by respective insurers for public liability and all-risk property and casualty insurance will name the Lessor as an additional insured and shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee, the Lessor or any other person; provide that no cancellation, reduction in amount or material change in coverage thereof shall be in effect until at least ten (10) days after receipt by the Lessor of written notice thereof; and, shall be reasonably satisfactory to the Lessor in all other respects. In no circumstances will the Lessee be entitled to assign to any third party rights of action which the Lessee may have against the Lessor.

(E) Delivery of Policies: The Lessee shall deliver promptly to the Lessor a certificate of insurance or a certified copy of each policy of insurance required by this Lease at least ten (10) days prior to the date said insurance is required herein and shall also deliver no later than ten (10) days prior to the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks, together with appropriate evidence of payment or the premiums therefore.

15. VENUE: Lessee waives venue as to any litigation arising from matters relating to this lease and any such litigation between Lessor and Lessee shall be initiated and maintained only in Palm Beach County, Florida.

16. TERMINATION/NOTICES:

(a) Termination. In the event the Lessee fails or refuses to comply with any nonmonetary provisions and conditions herein, or fails or refuses to comply with the provisions and conditions herein set forth within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) additional days written notice to Lessee. Notwithstanding any other term, condition, or provision in this lease, Lessee shall have the right to terminate this lease (and any lease entered into pursuant to the option exercised pursuant to paragraph 23 below) after the expiration of five (5) years from the Effective Date under any of the following conditions: (i) the City has not completed and opened for use a public parking garage with a minimum capacity of 400 vehicles as depicted in the Master Concept Plan;

or (ii) the City has discontinued further development consistent with the uses set forth in the current Master Concept Plan; or (iii) the City has not obtained a Final CO for at least five elements of the Master Concept Plan (including the Working Waterfront and Public Marina Phase I). Notwithstanding any other term, condition, or provision in this lease, Lessor shall have the right to terminate this lease after the expiration of five (5) years from the Effective Date if Lessee has not installed facilities to lift a vessel (in excess of 100 feet) out of the water. For Lessor or Lessee to terminate this lease under these grounds, the terminating party shall give written notice of its intent to terminate not later than thirty (30) days following the expiration of five (5) years from the Effective Date. If this lease is terminated or canceled, all of the Premises shall revert to the Lessor.

(b) Notices. All notices required to be given by either party under this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following addresses:

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

If to Lessee: Rybovich Portside, LLC  
450 East Las Olas Boulevard, Suite 1500  
Fort Lauderdale, Florida 33301  
Attn: Alex Muxo, Senior V.P.  
Richard Handley, General Counsel

with a copy to: Bruce E. Loren, Esq.  
2000 Palm Beach Lakes Blvd., Suite 501  
West Palm Beach, Florida 33409

If to Lessor: The City of Riviera Beach, Florida  
  
600 W. Blue Heron Boulevard  
Riviera Beach, Florida 33404  
  
Attention: City Manager  
City Attorney

With a copy to: The Riviera Beach Community  
Redevelopment Agency  
2001 Broadway, Suite 300  
Riviera Beach, Florida 33404  
Attention: Executive Director

17. **TAXES AND ASSESSMENTS:** The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description, which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

18. **NUISANCES OR ILLEGAL OPERATIONS:** The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

19. **MAINTENANCE OF FACILITY /RIGHT TO INSPECT:** The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

20. **NON-DISCRIMINATION:** The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area.

21. **ENFORCEMENT OF PROVISIONS:** No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

22. **PERMISSION GRANTED:** Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

23. **RENEWAL PROVISIONS AND OPTION TO LEASE LAND FOR FUTURE ELEMENTS OF THE CONCEPTUAL MASTER PLAN:**

(A) **Renewal.** Renewal of this lease shall be at the sole option of the Lessor.

(B) **Lessee's Option.** Beginning on the Effective Date and continuing for a period of five (5) years (the "Option Period"), ~~RPLRRB~~ is granted an option, in its absolute and sole discretion, to lease (for a period no greater than the remaining term of the Lease) all or part of the land for the working waterfront, including without limitation, all land as currently described in Elements 13, 14 and 15 of the Conceptual Master Plan (which may be exercised multiple times

during the Option Period) (the "Option") for which the City and/or the Agency has the authority to lease, currently and in the future. The lease terms for the Option shall be consistent with the terms and obligations in the lease. Should the City breach any obligations regarding or relating to the Option, in addition to other damages, Lessee shall be entitled to equitable relief (including without limitation, injunctive relief and specific performance) to enjoin the City to comply with the Option.

(C) ~~RPLRRB~~ may exercise the Option by giving written notice to the City to be received no later than sixty (60) days prior to the expiration of the Option Period. If ~~RPLRRB~~ exercises the Option, then the annual rent for the premises to be leased pursuant to the Option shall be calculated according to the same terms and conditions contained in paragraphs 2(B-D), including the rent calculation in those subparagraphs, except that the City shall obtain a new appraisal of the fair market value of the property to be leased pursuant to the Option.

24. The interest of the Lessor in the Premises shall not be subject in any way to any liens, including construction liens, for improvements to or other work performed in the premises by or on behalf of Lessee. This exculpation is made with express reference to Section 713.10, Florida Statutes. Lessor and Lessee acknowledge and agree that there is no requirement under this Lease that Lessee make any alterations or improvements to the Premises and no improvements to be made by Lessee to the Premises constitute "the pith of the lease" as provided in applicable Florida law. If any lien is filed against the Premises for work or materials claimed to have been furnished to Lessee, Lessee shall cause it to be discharged of record or properly transferred to a bond under Section 713.24, Florida Statutes, within 10 days after notice to Lessee. Furthermore, Lessee, shall indemnify, defend, and save Lessor harmless from and against and damage or loss, including reasonable attorney's fees, incurred by Lessor as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of the Lessee. Lessee shall notify every contractor making improvements to or other work performed in the Premises by or on behalf of the Lessee.

25. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: All fixtures, installations, additions, alterations, and improvements made by Lessee will remain the property of Lessor on termination of this Lease without compensation to Lessee.

26. REMOVAL COSTS/LIEN ON UPLAND PROPERTY: If, at any time, Lessee constructs a permanent structure to the Premises (with the City's consent, which shall not be unreasonably withheld), that structure shall become the property of the City at the termination or expiration of this Lease, unless agreed upon in writing in advance between the Parties.

27. RECORDATION OF LEASE: The Lessee, at its own expense, shall record a memorandum of this lease in the public records of the county within which the lease site is located within fourteen (14) days after receipt of an executed copy from the Lessor, and shall provide to the Lessor within ten (10) days following the recordation a copy of the recorded

memorandum which contains the O.R. book and pages at which the lease is recorded.

28. **RIPARIAN RIGHTS/FINAL ADJUDICATION:** In the event that any part of an authorized structure is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

29. **AMENDMENTS/MODIFICATIONS:** This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment.

30. **ADVERTISEMENT/SIGNS /NON-WATERDEPENDENT ACTIVITIES, ADDITIONAL ACTIVITIES, MINOR STRUCTURAL REPAIRS:** No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased area. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over dedicated submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over dedicated submerged lands without prior written consent from the Lessor.

31. **COMPLIANCE WITH FLORIDA LAWS:** On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder, and the ordinances, rules and regulations of the City of Riviera Beach. Any material unlawful activity, which occurs on the leased premises or in conjunction with the use of the leased premises, as a result of Lessee's negligence, after thirty (30) day written notice and opportunity to cure, may be grounds for the termination of this lease by the Lessor.

32. **LIVEBOARDS:** The term "liveaboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. In no event shall such "liveaboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

33. **SPECIAL LEASE CONDITIONS:**

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(A) The Lessee and marina operations staff shall inform all slip occupants in writing of the availability and requirement to use the sewage pump out facilities provided at the marina.

(B) During the term of this lease and all subsequent renewal periods, the Lessee shall maintain the manatee informational display and manatee awareness signs as required by the State of Florida Wetland Resource Permit.

(C) Lessor shall cooperate with Lessee in obtaining all necessary permits and applications for grant monies for the continued expansion of the Improvements.

(D) The terms and conditions herein may be modified or additional conditions may be imposed as required for the following reasons:

(1) to conform to the adoption or revision of Florida Statutes (F.S.), rules, and standards that require the modification of the lease for compliance;

(2) to ensure compliance with the Federal Endangered Species Act, 16 USC, s. 1531, et seq., and the Florida Endangered and Threatened Species Act of 1977, section 372.072, F.A.; and

(3) to conform to any modification to terms and conditions of a permit from the Department of Environmental Protection or the U.S. Army Corps of Engineers.

34. In any action, litigation or proceeding related to, connected with, or arising under this Lease, the prevailing party shall be entitled to reimbursement of its costs, including reasonable attorney's fees, including those costs and fees incurred on appeal, if any.

#### 35. CONDEMNATION:

(A) For purposes of this section, any of the following three events shall be deemed a "Taking": (1) if any part of the Premises is taken or condemned through the exercise of the power of eminent domain by any governmental or private board, body, or agency having the right to exercise such power, (2) if any part of the Premises is conveyed to any condemning authority under threat of condemnation before or after proceedings have been commenced to acquire the property by the condemning authority, or (3) if a "Taking" is judicially declared in any proceeding involving the Premises in which Lessor is a party.

(B) Allocation of Award. Lessor and Lessee agree that any award or compensation on account of any Taking of any of the Premises which is the subject of this Lease shall be allocated as follows:

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(1) Lessee shall receive that portion of the Award or compensation allocable to its leasehold estate so Taken and all awards for any improvements located on the Premises, subject to Lessor's right to receive the reversionary estate interest in such improvements; and

(2) Lessor shall be entitled to receive that portion of the award or compensation allocable to its reversionary estate, as encumbered by the Lease.

(3) Condemnation Proceedings. Both Lessor and Lessee may appear in any such proceeding or action, to negotiate, prosecute, and adjust any claim for any award or compensation on account of any Taking as it relates to their respective interest in the Premises. All amounts paid in connection with any Taking of the Premises shall be applied pursuant to this section, and all such amounts are defined as the "Award." Lessor shall have no interest in any Award or any portion of it made in respect of Lessee's leasehold estate or the improvements, except as to its reversionary interest in them, all of which shall belong to and be paid to Lessee.

36. Conditions Precedent. In addition to any other conditions precedent to either Party's obligations under this Lease, the following shall also be conditions precedent that must be satisfied or waived in writing. Otherwise, either Party shall be entitled to terminate this Lease upon ten (10) days written notice to Lessee.

(A) The City shall seek confirmation from the State of Florida that the City shall retain full rights under the dedication from the State of Florida of the submerged lands that are part of the Project Site, and further, that the State of Florida does not impose fees or charges that are unacceptable to the City and the Developer;

(B) The City shall retain a fee simple interest in the Premises, or alternatively, the City shall maintain the absolute right to lease the Premises, grant easements on and/or through the Premises, and grant the right to develop the Premises;

(C) The issuance of all permits by the Department of Environmental Protection ("DEP") necessary for the Phase I Project. The permit(s) shall not be considered to be issued until all applicable challenge periods have run and final permits have been issued or, if the permit(s) are challenged within the applicable challenge period, until the challenges are fully resolved and final permits are issued. Any modifications to the construction and/or activities authorized under the Development Agreement that may be required by the DEP shall require consideration by and the prior written approval of the Parties;

(D) The issuance of all permits by the U.S. Army Corp of Engineers ("ACOE") necessary for the Phase I Project. Any modifications to the construction and/or activities authorized under the Development Agreement that may be required by the ACOE shall require consideration by and the prior written approval of the Parties; and

(E) The issuance of a building permit by the City, subject to the provisions of

section 4.04 of the Development Agreement.

37. The Lessee shall be maintained as a single asset entity, owning no assets other than its interests in the Premises.

38. Governing Law and Venue. This Lease shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida.

39. Entire Agreement.

(a) This lease, and the attachments hereto and thereto, contains all of the promises, agreements, conditions, inducements and understandings between City, the Agency and ~~RPLRRB~~ and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein, therein and in such attachments hereto or thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto.

(b) No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by all Parties.

**SIGNATURES ON FOLLOWING PAGE**

**EXECUTION**

IN WITNESS WHEREOF, Lessor and Lessee, intending to be legally bound, have executed this Submerged and Upland Lands Lease as of the day and year first above written.

**“LESSOR”**

**CITY OF RIVIERA BEACH, FLORIDA**

WITNESSES:

\_\_\_\_\_  
Print/Type Name of Witness

By: \_\_\_\_\_  
Thomas A. Masters, Mayor

\_\_\_\_\_  
Print/Type Name of Witness

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by this \_\_\_\_ day of \_\_\_\_\_, 2010, by Thomas A. Masters, as Mayor of the City of Riviera Beach, Florida, who is personally known to me.  
(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Typed, printed or stamped name  
My Commission Expires: \_\_\_\_\_

As to Form and Legal Sufficiency:

As to Terms and Conditions:

By: \_\_\_\_\_  
Pamala H. Ryan, City Attorney

By: \_\_\_\_\_  
Ruth C. Jones, City Manager

ATTEST:

By: \_\_\_\_\_  
Carrie E. Ward, City Clerk

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**“LESSEE”**

**RYBOVICH PORTSIDE, LLC**  
a Florida limited liability company

\_\_\_\_\_  
Print/Type Name of Witness

By: \_\_\_\_\_  
Carlos E. Vidueira, Vice President

\_\_\_\_\_  
Print/Type Name of Witness

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by this \_\_\_\_ day of \_\_\_\_\_, 2010, by Carlos E. Vidueira, as Vice President of Rybovich Portside, LLC, who is personally known to me.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Typed, printed or stamped name  
My Commission Expires: \_\_\_\_\_

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EXHIBIT A-1- LEGAL DESCRIPTION OF UPLAND

EXHIBIT A-2 – LEGAL DESCRIPTION OF SUBMERGED LANDS

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EXHIBIT B TO LEASE

DISPOSITION AND DEVELOPMENT AGREEMENT