

CITY OF RIVIERA BEACH

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, Riviera Beach LLC ("Lessee" or "RRBPL"), 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, ~~RPL~~RRB 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, Riviera Beach~~ 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, as defined below, 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, as defined below for any other purpose. The lease area consists of approximately 121,050 square feet of upland ("Upland Premises") and approximately 164,389 square feet of submerged land ("Submerged Premises"). The entire area shall (collectively be referred to as the "Premises"). The Premises is 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 Upland Premises, Lessee shall either ensure that the facility complies with the applicable building code, or shall demolish that facility. Compliance or demolition must occur 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 this lease and 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 (the "Annual Rate"). 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 aAnnual Rrate is calculated as follows:

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Square footage of the Upland 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 Option One"). The Minimum Annual Rent under this option has been calculated as follows: Square footage of the Upland 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").

Alternatively, the City, at its option, may choose to provide that the annual rent for years six (6) through twenty five (25) of this lease shall be the greater of: (a) three and one-quarter percent (3.25%) of Annual Income (as defined below in paragraph 3(B)); or (b) a Minimum Annual Rent of \$435,780, as adjusted by the Index pursuant to paragraph 2(C) ("Annual Rent Option Two"). The Minimum Annual Rent under this option 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%). As to the alternative methods of calculating annual rent above, the City must unequivocally declare in writing which annual rent calculation that it has chosen 365 days after the date that this lease is executed by all parties, or ten (10) business days after the date that DEP's Southeast District Office recommends issuance of both the permit required under Part IV, Chapter 373, Florida Statutes, and the authorization to use sovereignty lands under Chapter 253, Florida Statutes, whichever is earlier. The City's declaration shall be binding upon the parties for the remaining term of the lease. However, if the City fails to timely and unequivocally declare which annual rent calculation shall apply, then Annual Rent Option Two shall govern the parties to this lease for the remaining term of this lease.

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(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 ~~L~~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 (under Annual Rent Option One or Two, as the case may be), 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 ~~a~~Annual ~~r~~Rent payment to Lessor in the amount of the applicable Minimum Annual Rent 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 ~~A~~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~~ A part of Annual Rent (under Annual Rent Option One or Two, as the case may be), this lease grants to the City, under certain circumstances, the right to receive some percentage 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 If the Lessee pays to the City a percentage of Annual Income as Annual Rent (rather than the Minimum Annual Rent) the additional one half percent (.5%) of Annual Rent, then the City agrees to use one-half of one percent (.5%) of Annual Income these 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.~~

(G) In addition, as part of Annual Rent, but subject to the condition precedent contained in paragraph 36(B) below, Lessee agrees to pay any fee charged by the State of Florida, Department of Environmental Protection, for the lease of the Submerged Premises or any easement fee or any other fee charged by the State of Florida directly arising from this lease. In no event shall Lessor have its net rent (as described in section 2(A) through 2(F)) reduced because of payments to the State of Florida.

3. REVENUE CERTIFICATION/SUPPLEMENTAL PAYMENT:

(A) The Lessee shall provide upon request by the Lessor all information, including the information referenced in section 6 below, 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 ten (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 ~~p~~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 (3) years.

7. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased ~~p~~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 Upland Premises, ~~or alternatively, and 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.~~ In that regard, the parties expect that, upon satisfaction or waiver of the conditions precedent in this lease, the parties may be required to amend this lease so that the City may enter into a lease with the State of Florida for the Submerged Lands, and then in turn, the City will enter into a sublease with RRB for the Submerged Lands portion of the Premises. The sublease, if required, shall contain all of the terms and conditions of this lease.

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 ~~L~~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 ~~L~~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 Upland 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 Upland 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 Upland Premises, as if it was the owner of the Upland 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 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 vessels ~~which are at least 150 feet (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~~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 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, property taxes or taxes or assessments 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:**

(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:

(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, the lease will not become effective. Otherwise, either Party shall be entitled to terminate this Lease upon ten (10) days written notice to Lessee.~~

(A) ~~The City shall seek 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 this lease) full rights under the State of Florida dedication which references the Submerged Premises, 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;~~

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~~(B) 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 as referenced in paragraph 2(G);~~

~~(C) 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;~~

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~~(BD) The City shall retains a fee simple interest in the Upland Premises (depicted on Exhibit A-1) and, 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;~~

~~(CE) The issuance of all permits by DEP 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;~~

~~(F)~~ 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

~~(G)~~ 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. BUSINESS INCUBATION PROGRAM AND COMMUNITY BOATING PROGRAM:

A. Business Incubation Program. Lessee agrees to participate in a business development program designed to stimulate economic energy, promote business diversity, and enrich the vitality of Riviera Beach through the incubation of new businesses that are owned and operated by individuals who were residents of Riviera Beach prior to the execution of this lease. Lessee agrees to solicit the assistance and to work cooperatively with organizations such as Palm Beach County's Business Development Board, Workforce Alliance, Black Chamber of Commerce of Palm Beach County and any other similar organizations, as necessary to help establish the program. Initially, the program will target seven (7) to ten (10) businesses that can provide subcontractor and other support services to the Rybovich facility in West Palm Beach, Florida. Lessee's role will be to provide business opportunity, work contracts and trade-specific training to the program.

B. “Shake-A-Leg” or Similarly Qualified Community Boating Program. Lessee agrees to provide the following support to the “Shake-A-Leg” program (or a similarly qualified community boating program), subject to the Lessee's approval; provided that, within 365 days from the date that all parties execute this lease, such program is approved by the City and the City is operating such program as a funded community boating program primarily for the direct benefit of Riviera Beach residents:

(i) Dockage for one boat not to exceed 70 feet in length for one year at no charge; and

(ii) For a period of five (5) years from the start of operations of the community boating program, the Lessee shall provide a \$50,000 (at retail) non-transferable annual boat repair labor credit for

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vessels used primarily for the direct benefit of Riviera Beach residents operating under a contract with the City and utilizing the City marina as its primary base of operation. The credit may be used only during the period of June 15 to September 15 each year and the credit expires each year if unused.

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398. ~~Governing Law and Venue~~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.

~~4039. Entire Agreement~~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 PAGES

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”
LLC

RYBOVICH RIVIERA BEACH PORTSIDE,

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 Riviera BeachPortside, 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