

February 19, 2024 FINAL

**REAL PROPERTY LEASE
AND DEVELOPMENT
AGREEMENT**

**AT THE PORT OF
PENSACOLA**

BETWEEN

BELLA MENTE QUANTUM RACING ASSOCIATION

AND

CITY OF PENSACOLA

Effective Date: _____, 2024

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Exhibit “C” – Estimated Funding Sources

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**PORT OF PENSACOLA
REAL PROPERTY LEASE
AND DEVELOPMENT
AGREEMENT**

THIS REAL PROPERTY LEASE AND DEVELOPMENT AGREEMENT (this “Lease”) is hereby made and entered into as of the Effective Date (hereinafter defined), by and between **BELLA MENTE QUANTUM RACING ASSOCIATION**, a Delaware nonprofit corporation qualified to do business in Florida as Bella Mente Quantum Racing Association Corp. (the “Tenant”), and **CITY OF PENSACOLA**, a Florida municipal corporation (“the “City”), in its capacity as owner and operator of PORT OF PENSACOLA (the “Port”). The City and the Tenant may, from time to time, be referred to in this Lease individually as “a “Party” and collectively as “the “Parties.”

RECITALS

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

WHEREAS, the Tenant is a 501(c)(3) nonprofit corporation whose primary business activity is the development and operation of sail racing teams that compete in the America’s Cup and other sail races, as well as the design and manufacture of sail racing boats, including but not limited to the sail racing boat known as Patriot and its successor boats and prototypes and models thereof, for both training and competition;

WHEREAS, the Tenant desires to re-locate its headquarters and operations to Pensacola, Florida, as hereinafter provided;

WHEREAS, the City and the Tenant desire for the City to design, renovate, and finish out partially-completed Warehouse 10 at the Port of Pensacola (to include a 50’ warehouse extension) and to design and construct a dock and boat ramp at the Port of Pensacola;

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

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

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

ARTICLE 1. DEFINITIONS

Section 1.01 DEFINITIONS

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

“**Additional Rent**” has the meaning set forth in Section 6.04 of this Lease.

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

“**Base Rent**” means the annual base rent for the Leased Premises as specified or determined in Article 6 of this Lease.

“**Capital Improvements**” means the addition of a permanent structural change or the restoration of some aspect of the Leased Premises that will (i) materially enhance the Leased Premises’ overall value, (ii) have a useful life of at least five (5) years or prolong the useful life of then-existing capital improvements on the Leased Premises by at least five (5) years, and (iii) the cost of which will be classified as a capital expense under generally accepted accounting principles consistently applied. “Capital Improvements” specifically excludes any and all tenant-owned personal property, equipment and trade fixtures.

“**CCEI**” means the Consultant Construction Engineering Inspector required by the Florida Department of Commerce grant identified in Exhibit “C” and retained by the City, which CCEI shall have all responsibilities required by applicable federal, state and local statutes, rules and regulations, including any other applicable standards and specifications, and shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the City..

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

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

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

“**Construction Contract**” means the construction contract entered into between the City and the CMAR for the construction of the Project.

“**Construction Manager at Risk**” or “**CMAR**” means the construction manager at risk selected by the City, pursuant to a competitive process as required by applicable law, to construct the Project.

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

“Date of Beneficial Occupancy” means the date that the Program Manager certifies that the Facilities have been substantially completed in substantial compliance with the Final Project Plans (as defined in Article 4 below), a Certificate of Occupancy has been issued for the Facilities, and Tenant may use and occupy the Leased Premises for the permitted use described in Section 5.01.

“Design Professionals” means Muller & Muller, Ltd., being the architect and engineer selected by the City, pursuant to a competitive process as required by applicable law, to design the Project and to furnish other professional design services in connection with the Project.

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

“Environmental Laws” means, collectively, all federal, state, water management district, and local environmental, land use, safety, or health laws, rules, regulations, ordinances, and common law, including, but not limited to, the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.) (“CAA”); the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j), the Federal Water Pollution Control Act (commonly known as the Clean Water Act) (33 U.S.C. §§ 1251-1387), and Sections 253, 373, 376 and 403, Florida Statutes, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, code, permit or permit condition, order, notice of violation, decree, consent agreement, or directive addressing an environmental, safety, or health issue of or by the federal government, or of or by any state or other political subdivision thereof, or any agency, court, or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The term “Environmental Laws” also shall mean and include the Port of Pensacola’s Storm Water Pollution Prevention Plan (“SWPPP”) and all future amendments thereto.

“Event of Default” shall have the meaning assigned in Article 18 below.

“Exclusive Use Space” means the spaces and areas within the Leased Premises for the use and occupancy of the Tenant to the exclusion of all others. The current Exclusive Use Space is existing Warehouse #10 itself and the twenty (20) exclusive use parking spaces to be designated by the City pursuant to Section 6.03, but does not include any outdoor space on the exterior of Warehouse #10 other than such 20 exclusive parking spaces; provided, however, that in the event that an extension to Warehouse #10 up to fifty (50) feet in length is added to Warehouse #10 pursuant to Article 4, then such extension up to fifty (50) feet in length shall automatically be added to and included in the Land and the Leased Premises as Exclusive Use Space without modification of the Base Rent or any other terms of this Lease. Even though the preceding sentence is self-operative, in such event, for the avoidance of doubt, the Parties shall enter into an appropriate written amendment to this Lease.

“Facilities” means all improvements now or hereafter existing on the Land during the Lease Term, which may include without limitation (i) the presently existing partially finished steel-framed and sided building known as Warehouse #10 at the Port, together with all future modifications, additions, and accessions to and replacements of Warehouse #10, including without limitation those modifications, additions, and accessions that are made by the City pursuant to this Lease, (ii) the 50-foot extension to Warehouse #10 and the other improvements to Warehouse #10 made by the City and/or the Tenant pursuant to this Lease, and (iii) the dock, boat ramp and appurtenant improvements made by the City pursuant to this Lease.

“Final Project Plans” means the 100% complete, issued for construction plans and specifications for the Project developed in accordance with Article 4 below.

“Final Project Schedule” means the final schedule for the design and construction of the Project developed in accordance with Article 4 below.

“Guaranteed Maximum Price” means the maximum all-inclusive price for which the CMAR agrees to construct the Facilities.

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

“Land” means the sum of the land for the Exclusive Use Space and the land for the Preferential Use Space. Exhibit “A” hereto depicts the current Land, subject to expansion as provided in “Exclusive Use Space” and “Preferential Use Space” as defined in this Section 1.01.

“Leased Premises” means the Land and all improvements now or hereafter existing on the Land, including without limitation the Facilities.

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

“Lease Year” means each period of twelve consecutive calendar months that begins on an anniversary of the Rent Commencement Date of this Lease or, if the Rent Commencement Date is not the first day of a month, each period of twelve consecutive calendar months that begins on the first day of the next month after each such anniversary of the Rent Commencement Date of this Lease; provided, however, that the first Lease Year shall commence on the Rent Commencement Date and continue to, but not including, the first day of the next Lease Year

“New Job” shall have the meaning of a full-time equivalent position paid through the Tenant’s or its related parties’ Florida-based entities.

“120 New Jobs” shall have the meaning of 120 full-time equivalent positions paid through the Tenant’s or its related parties’ Florida-based entities.

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

“Preferential Use Space” means that portion of the Leased Premises being for the Tenant’s non-exclusive use in common with other users, provided that the Tenant’s use thereof shall have preference over all other users, subject to the provisions of this Lease. The Preferential Use Space shall be the land for Phase 2 of the Project (to-wit: the dock, boat ramp, and/or wet slip, and appurtenant improvements), as ultimately designed and constructed pursuant to Article 4. Upon completion of construction of Phase 2, such space shall automatically be added to and included in the Land and the Leased Premises as Preferential Use Space without modification of the Base Rent or any other terms of this Lease. Even though the preceding sentence is self-operative, upon completion of construction of Phase 2, for the avoidance of doubt, the Parties shall enter into an appropriate written amendment to this Lease.

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

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

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

“Program Manager” means Erica Grancagnolo, Economic Development Director of the City, or such other person or program management firm designated by the City, who shall act as the City’s representative with responsibility for Project delivery.

“Project” means the entire project to be constructed on the Land and upon certain other areas of the Port pursuant to plans and specifications approved by both the City and the Tenant in accordance with Article 4 below, including without limitation (i) the design and construction of modifications, additions, and accessions to, and finishing and upfitting of, Warehouse #10, (ii) the design and construction of a 50-foot extension to Warehouse #10, and (iii) the design and construction of a boat dock, boat ramp or slip, and appurtenant improvements, all as more particularly described in Article 4.

“Project Cost” means the actual total, all-inclusive cost of construction of the Project, including without limitation permitting fees, professional fees, appropriate contingencies, and hard and soft costs of construction.

“Rent” means, collectively, the Base Rent and the Additional Rent.

“Rent Commencement Date” means the Date of Beneficial Occupancy.

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

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

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

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

“Value Engineering” means an organized effort directed at analyzing the function of facilities for the purpose of achieving the required function at the lowest cost consistent with requirements for performance, reliability, quality, and maintainability.

“Warehouse #10” means the presently existing partially finished steel-framed and sided building known as Warehouse #10 at the Port, together with all future modifications, additions, and accessions to and replacements of Warehouse #10, including without limitation those modifications, additions, and accessions that are made by the City pursuant to this Lease, which include, without limitation, an extension of up to fifty (50) feet if constructed pursuant to Article 4.

Section 1.02 **CROSS-REFERENCES**

All references in this Lease to articles, sections, and exhibits pertain to articles, sections, and exhibits of this Lease unless otherwise specified.

END OF ARTICLE

ARTICLE 2. LEASED PREMISES

Section 2.01 LEASED PREMISES

For the Rent, upon the terms, and subject to the conditions set forth in this Lease, the City hereby leases and demises the Leased Premises to the Tenant, and the Tenant hereby leases the Leased Premises from the City, subject, however, to all liens, easements, restrictions, and other claims and encumbrances of record, provided that such matters do not prevent or materially interfere with the Tenant's conducting its business on the Leased Premises as permitted by Section 4.01 below without additional cost to the Tenant. During the Term of this Lease, the Tenant shall have and is hereby granted the exclusive use and possession of the Exclusive Use Space during the Lease Term. During the Term of this Lease, the Tenant shall have and is hereby granted the use, in common with other users, of the Preferential Use Space during the Lease Term, provided that the Tenant's use of the Preferential Use Space shall have preference over all other uses, and provided, further, that both the City and the Tenant must consent to the use of the Preferential Use Space by other users, which consent by the Tenant shall not be unreasonably withheld, conditioned, or delayed if such use by others does not interfere with the Tenant's operations on the Leased Premises or the Tenant's use of the Preferential Use Space.

Section 2.02 NON-EXCLUSIVE ACCESS AND PARKING AREA

During the Term of this Lease, the Tenant shall have access to the Leased Premises on, over, and across the drives and roads in the Port as they now exist and as they may exist in the future; provided that the City reserves the right in its sole discretion to close and/or relocate such drives and roads so long as the Tenant at all times during the Lease Term has access to the Leased Premises sufficient for the Tenant's operations on the Leased Premises. Further, the Tenant shall be entitled to non-exclusive use of any and all designated parking areas located within the Secured, Restricted Port Area ("Port Restricted Area") as currently situated and designated or as may be situated and designated in the future in the Port's sole discretion and any and all overflow parking lots as currently situated and designated or as may be situated and designated in the future all in the Port's sole discretion, at no additional charge to the Tenant. Such areas are made available to all port tenants and users on a first-come-first-served basis. In using such areas and the roads and drives in the Port, the Tenant and its employees, representatives, agents, contractors, service providers, customers, guests, and invitees shall abide by all applicable Rules and Regulations of the Port of Pensacola Seaport Security Plan, including, but not limited to, the requirement that all personal vehicles entering the Port Restricted Area be registered with the Port's Facilities Security Officer and that all entrants into the Port Restricted Area either possess a current valid Transportation Worker Identification Credential (TWIC) or be properly escorted by a Port representative at all times. In no event shall the Tenant permit parking on the Leased Premises by the general public or by anyone not related to the conduct of the Tenant's business on the Leased Premises.

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

The Tenant shall provide the City with notice of its parking uses, needs, and expectations not less frequently than annually. The Parties agree to work together collaboratively to meet their respective goals of (1) maintaining adequate parking for Tenants customers, employees, sub-tenants, guests, and invitees, and (2) producing revenue for the City pursuant to its parking plan.

Section 2.03 EXCLUSIVE PARKING

No later than the Date of Beneficial Occupancy, the City shall provide to Tenant, for Tenant's exclusive use during the Lease Term, twenty (20) standard size, paved or unpaved, automobile parking spaces within the Port as determined by the City after consultation with Tenant.

END OF ARTICLE

ARTICLE 3. TERM

Section 3.01 **INITIAL TERM**
This Lease shall be effective on the Commencement Date. The initial term of this Lease shall be for a period of ten (10) Lease Years commencing on the Rent Commencement Date (the “Initial Lease Term”).

Section 3.02 **RENEWAL TERMS**

The Tenant shall have one option (“Extension Option”) to extend the Lease Term for an additional ten (10) years (“Extension Term”), subject to the provisions that follow in this Section 3.02. Tenant may exercise the Extension Option if and only if (a) on both (i) the date the Extension Notice (hereafter defined) is given and (ii) the last day of the Initial Lease Term there exists no Event of Default nor any event or circumstance which with the lapse of time or the City’s giving of notice to the Tenant, or both, would become an Event of Default and (b) not less than one hundred eighty (180) days prior to the last day of the Initial Lease Term Tenant delivers to the Port Director written notice that the Tenant thereby exercises the Extension Option (the “Extension Notice”). The Extension Term resulting from the Tenant’s exercise of the Extension Option in compliance with the terms and conditions of this Section 3.02 shall be upon the terms and conditions set forth in this Lease but excluding the terms of this Section 3.02. The Initial Term and the Extension Term, if any, resulting from the Tenant’s exercise of the Extension Option in compliance with the terms and conditions of this Section 3.02, are hereinafter referred to collectively as the “Lease Term”.

Section 3.03 **TENANT’S RIGHTS UPON EXPIRATION OR EARLIER TERMINATION OF LEASE**

Upon expiration of the Lease Term or earlier termination of this Lease, all of the Tenant’s rights, authority, and privileges to possess or use the Leased Premises and the services, facilities, and property of the Port as granted herein shall automatically cease without notice to the Tenant.

Section 3.04 **SURRENDER OF LEASED PREMISES UPON EXPIRATION OR EARLIER TERMINATION OF LEASE**

Upon the expiration of the Lease Term or the earlier termination of this Lease, the Tenant shall surrender the Leased Premises to the City in the same condition as on the Date of Beneficial Occupancy, except for Ordinary Wear and Tear, except for loss or damage caused by casualty which Tenant is not required by other provisions of this Lease to repair or restore, and except for loss or damage caused by a condemnation which Tenant is not required by other provisions of this Lease to repair or restore.

All equipment, trade fixtures, and other personal property installed or placed by the Tenant in the Leased Premises that is not paid for by the City or by grant funds obtained by the City shall remain the property of the Tenant unless otherwise provided in subsequent written agreements between the Tenant and the City. The Tenant shall have the right at any time during the Lease Term to remove any and all of said property from the Leased Premises. The Tenant agrees to repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of the removal of the Tenant's property by the Tenant shall be promptly restored at the Tenant's expense to substantially the same condition as, or better condition than, it was prior to such damage.

Notwithstanding any contrary provision of this Lease, the City shall automatically be and become the sole owner of any and all property not removed by the Tenant within 30 days after the expiration or earlier termination of this Lease. The City reserves the right to remove, retain, and/or dispose of any or all of such property not so removed by the Tenant, without any liability or obligation to the Tenant, and if such removal is accomplished by the City within the 60-day period following such 30-day period, such removal by the City shall be at the Tenant's expense, and the Tenant shall reimburse the City for such expenses promptly upon demand. In any event, Tenant shall be obligated to pay Base Rent, payable on the first day of each month, following such 30-day period until all of Tenant's property is removed from the Leased Premises.

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

Section 3.05 EARLY TERMINATION BY TENANT.

Notwithstanding anything contained herein to the contrary, Tenant may terminate this Lease by giving the City not less than ninety (90) days' written notice of termination to City in the event that) the Date of Beneficial Occupancy for Phase 1 does not occur on or before December 31, 2025, as extended day-for-day due to delays caused by Force Majeure Events. Further, in the event that Phase 2 has not been substantially completed on or before December 31, 2025, the City, at no charge to the Tenant other than the Base Rent, shall provide a berth at the Port reasonably acceptable to the Tenant and/or another accommodation reasonably acceptable to the Tenant for access to Pensacola Bay, for the Tenant's non-exclusive use in common with other users of the Port.

END OF ARTICLE

ARTICLE 4. PROJECT DEVELOPMENT AND CONSTRUCTION

Section 4.01 DESIGN

The City has entered into a contract with the Design Professionals to design the Project and to perform other design professional services related to the Project (“Design Professionals Agreement”). The City also intends to select, and enter into a contract with, the CCEI. Notwithstanding any conflicting or contrary provision in this Lease, the Parties agree that at all times during the design process the estimated Project Cost, as determined by the Design Professionals from time to time, must be equal to or less than the Available Funds (as defined in Section 4.02 below), and the Parties shall from time to time in good faith engage in Value Engineering when necessary to align the Project Cost with the Available Funds. If, despite good faith efforts, the City and Tenant are unable to reach agreement on the resolution of Value Engineering to align the Project Cost with the Available Funds, either the City or the Tenant may terminate this Lease by written notice to the other Party.

The Tenant and/or the Design Professionals have developed certain conceptual designs and layouts for the completion and upfitting of Warehouse 10 (collectively, the "Preliminary Project Plans"). Such Preliminary Project Plans are attached as, or identified in, composite Exhibit “B” which is hereby incorporated herein by reference. Such Preliminary Project Plans form the basis of the Parties’ understanding of the scope of the Project with respect to Warehouse #10; provided that the Parties understand and agree that the Preliminary Project Plans may change significantly during the design process. The Preliminary Project Schedule as agreed to between the Parties is attached hereto as Exhibit “D”. The Parties shall adhere to the Preliminary Project Schedule as closely as feasible as the Final Project Schedule is developed by the Parties in collaboration with each other, the Design Professionals, the Program Manager, and the CMAR.

The Parties agree that the Project shall be constructed in two phases and that the following describes the general scope of work for the Project:

Phase 1, Warehouse and 50-foot addition: Complete the partially constructed Warehouse 10 at the Port of Pensacola, to include a 50-foot addition. Transform Warehouse #10 into a High-Performance Maritime Center of Excellence.

The finish-out of Warehouse #10 to include work centers, offices, large manufacturing areas, restrooms/locker rooms, cranes (to be determined what type i.e., gantry/overhead), a kitchen and dining facility, simulator/IT rooms, and other spaces specific to advanced sailing and maritime activities. A mezzanine for non-manufacturing functions will also be incorporated into the design.

Phase 2, Dock and Boat Ramp or Wet Slip: A dock and boat ramp or wet slip to support various watercraft (powered and non-powered).

The Parties will develop the plans and specifications for the Project in collaboration with each other, the Design Professionals, the CMAR, and the Program Manager. The Design Professionals, the CMAR, and the City shall meet with the Tenant at appropriate stages of development of the design documents to discuss progress, content, format, options for architectural, structural, mechanical, electrical, and finish systems, and other options consistent with the Tenant's requirements for the

Project. The Design Professionals, in collaboration with the Tenant, the City, the CMAR and the Program Manager, shall prepare the Final Project Plans and the Final Project Schedule. Each Party shall at all times act in good faith and in a commercially reasonable manner in exercising such Party's rights under this Article 4. If, despite good faith efforts, the City and Tenant are unable to reach agreement on the plans and specifications for the Project, either the City or the Tenant may terminate this Lease by written notice to the other Party.

The Tenant's review and approval of the design documents, including the Final Project Plans, shall not relieve the Design Professionals of responsibility for full compliance of same with applicable laws, regulations, and codes.

The City agrees that the design and construction of the Project will be in accordance with all applicable laws, building codes, ordinances, regulations, and orders of any public authority or private party having jurisdiction of the design and/or construction of the Project. The Construction Contract shall contractually obligate the CMAR to cause the Project to be constructed in a good and workmanlike manner, with high quality new materials and free from defective materials, and in substantial compliance with the design documents prepared pursuant to the Design Professionals Agreement and approved by Tenant. The Construction Contract shall require the Project to be performed and constructed by appropriately licensed contractors pursuant to valid building permits. The Construction Contract shall contain other commercially appropriate protections for the City and the Tenant (e.g. shall require CMAR to promptly complete all punch list items, obtain a final certificate of occupancy for the Project, and provide to Tenant all manuals, as-built plans and specifications, etc.). The City shall provide to the Tenant a copy of the proposed Construction Contract no later than March 1, 2024, and shall give due consideration to any comments and requests by the Tenant; provided that the Tenant understands and agrees that material changes to such proposed Construction Contract may be made during the course of the City's negotiations with the CMAR.

Section 4.02 CONSTRUCTION

Subject to the terms and conditions of this Lease, the City shall cause the Project to be constructed pursuant to the Construction Contract, the Final Project Plans, and the Final Project Schedule, provided that the Project Cost does not exceed the Available Funds. The Parties acknowledge and agree that the total funds available to pay the Project Cost for Phase 1 is Eleven Million Five Hundred Eighty-Eight Thousand One Hundred Twenty and 00/100 Dollars (\$11,588,120.00) and for Phase 2 is Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) (in each case, the "Available Funds") and that in no event may or shall the Project Cost for Phase 1 or Phase 2 exceed the Available Funds for such Phase. For the avoidance of doubt, the Parties understand that the funding source for Phase 2 requires that its funds be used only for Phase 2, not for Phase 1. The Parties further acknowledge and agree that there is no express or implied obligation for the City to provide any additional funding for the Project in the event that the Project Cost exceeds the Available Funds for any reason.

The City shall select the CMAR pursuant to a competitive process that complies with applicable federal, state, and local statutes, rules, regulations, and ordinances and the requirements of each entity or agency that provides funding for the Project. The City shall endeavour to enter into a Construction Contract with the contractor CMAR selected by the selection committee and approved by the Mayor and the City Council of the City of Pensacola, provided that the Guaranteed Maximum Price or Stipulated Sum in the Construction Contract does not cause the Project Cost to exceed the Available Funds. If necessary, the Parties shall in good faith engage in Value Engineering to attempt to cause

the Guaranteed Maximum Price to be within the budget for each of Phase 1 and Phase 2. In the event that the Guaranteed Maximum Price or Stipulated Sum proposed by the CMAR selected by the selection committee, despite such good faith Value Engineering, would cause the Project Cost to exceed the Available Funds, then this Lease shall automatically terminate unless within thirty (30) days after its receipt of written notice from the City of the Guaranteed Maximum Price or Stipulated Sum proposed by the CMAR selected by the selection committee, the Tenant notifies the City in writing that it desires to continue with the Lease and construction of the Project at the Guaranteed Maximum Price or Stipulated Sum proposed by such CMAR and, within such thirty-day period, pays into an escrow account created pursuant to an escrow agreement satisfactory to both Parties the amount by which such Guaranteed Maximum Price or Stipulated Sum causes the Project Cost to exceed the Available Funds.

If the Tenant elects to move forward with construction of the Project in accordance with the preceding paragraph, then this Lease shall continue in full force and effect in accordance with its terms, and the City, in reliance upon the Tenant's election, shall enter into a Construction Contract with the contractor selected by the selection committee and approved by the Mayor and the City Council of the City of Pensacola and will proceed with construction of the Project pursuant to the Construction Contract and this Lease.

Section 4.03 ASSIGNMENT OF GUARANTEES AND WARRANTIES

On the Date of Beneficial Occupancy, the City shall assign to Tenant all guarantees and warranties provided to the City related to the Project.

Notwithstanding any contrary provision in this Agreement, it is expressly understood and agreed that the City makes, and shall make, no warranties, express or implied, to the Tenant with respect to the design or construction of the Facilities, any and all such warranties being hereby expressly disclaimed.

END OF ARTICLE

ARTICLE 5. USE OF LEASED PREMISES

Section 5.01 PERMITTED USE OF LEASED PREMISES

Continuously during the Lease Term, the Tenant may use the Leased Premises solely for the Tenant's headquarters and the development and operation of sail racing teams that compete in the America's Cup and other sail races, as well as the design and manufacture of sail racing and other boats and boat products and services, other products and services that use the Tenant's capabilities, boat storage, boat maintenance and repair, office and training uses, competition preparation, periodic team-related public and private dining and events (but not for a restaurant, bar, or other full-time food or beverage service), and other related uses, including but not limited to, operations of the sail racing team for the boat known as Patriot and its successors, and prototypes and models thereof, for both training and competition.

Section 5.02 TENANT HEADQUARTERS AND OPERATIONS

Subject to the provisions of this Section 5.02, on or before the date that is thirty (30) days after the Date of Beneficial Occupancy, the Tenant shall relocate the Tenant's headquarters and operations for the uses permitted by Section 5.01 to the Leased Premises and shall thereafter maintain such headquarters and operations at the Leased Premises during the Lease Term. Without limiting the generality of the foregoing, all payroll for Tenant shall be conducted in and from the Tenant's headquarters located on the Leased Premises. Further, at no time during the Lease Term may or shall Tenant have or maintain a permanent facility or operation serving substantially the same purpose as the Leased Premises that is located within the United States of America and has more on-site employees than the Leased Premises except during sail racing competitions located in the United States of America. In the event that the requirements and conditions of the preceding sentence are violated, annual Base Rent, as designated in Section 6.01, shall automatically increase to Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) per annum commencing on the date that the violation first occurs and shall continue at that amount during the remainder of the Lease Term; provided, however, that if the violation first occurs during the Initial Lease Term, then for ninety (90) days Tenant and the City shall attempt in good faith to negotiate and agree upon an alternative cure for such violation. In addition, the Tenant shall make capital investments and provide documentation of expenditures related to the Project and acceptable to Triumph Gulf Coast in the amount of not less than \$32 million in accordance with the terms and conditions of the Triumph Gulf Coast grant agreement and in the amount of not less than \$2 million in accordance with the terms and conditions of the Florida Department of Commerce grant agreement, each of which is identified in Exhibit "C" hereto. The Tenant acknowledges and agrees that it has received and reviewed copies of the Triumph Gulf Coast grant agreement and the Florida Department of Commerce grant agreement.

Section 5.03 ADDITIONAL RESTRICTIONS

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

- (a) Do, suffer, or permit anything that may interfere with the effectiveness or accessibility of any drainage or sewage system, electrical system, air conditioning system, fire protection

system, sprinkler system, alarm system, fire hydrants and hoses, if any, at any time installed or located on or within the premises of the Port; or

(b) Do, suffer, or permit anything that may invalidate or conflict with any fire or other property insurance policies covering the Port or any part thereof or the Leased Premises; or

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

(d) Engage in any business or activity not specifically permitted by Section 5.01 above.

END OF ARTICLE

ARTICLE 6. BASE RENT, ADDITIONAL RENT, SALES TAX, AND OTHER CONSIDERATION

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

Section 6.01 BASE RENT

During the Lease Term (i.e., both the Initial Lease Term and the Extension Term, if timely exercised), commencing on the Rent Commencement Date, Tenant shall pay to the City annual Base Rent in the amount of Two Hundred Ninety-One Thousand Two Hundred and 00/100 Dollars (\$291,200.00) per year, payable in monthly installments as provided in Section 6.02 below and subject to adjustment as provided in Section 5.02 above. For the avoidance of doubt, Base Rent of \$291,200 per annum is rent only for the Leased Premises as defined in Section 1.01. Any addition to the Leased Premises or to the rights granted to the Tenant under this Lease, whether by amendment to this Lease, pursuant to a STOA, or otherwise, will be upon mutually agreed terms and conditions, for an annual base rent of \$0.35 per square foot of any space in excess of the Leased Premises.

Section 6.02 MONTHLY BASE RENT PAYMENT

The annual Base Rent shall be paid by the Tenant to the City without invoicing, notice, demand, deduction, or set-off (except as specifically provided herein), in twelve equal monthly installments of Twenty-Four Thousand Two Hundred Sixty-Six and 67/100 Dollars (\$24,266.67) each and shall be payable in advance on the Rent Commencement Date and on the first day of each and every calendar month during the Lease Term. Should the Rent Commencement Date be any date other than the first (1st) day of a calendar month, the Base Rent payable for such partial initial month shall be one-twelfth (1/12) of the annual Base Rent payable during the Initial Lease Term multiplied by a fraction the numerator of which is the number of days remaining in such month from and including the Rent Commencement Date to and including the last day of such month and the denominator of which is the number of days in such month. There shall be no prohibition or penalty for prepayment of Base Rent or other fees.

Section 6.03 SALES TAX

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

Section 6.04 ADDITIONAL RENT

All fees and charges payable by the Tenant under this Lease, other than Base Rent, shall be deemed to be Additional Rent. Unless otherwise provided in this Lease, Additional Rent shall be due and

payable monthly in advance, without invoicing, notice, demand, deduction, or set-off (except as specifically provided herein), on the same dates as Base Rent is due and payable under Section 6.02

Section 6.05 MODE OF PAYMENT

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

Section 6.06 LATE FEE AND INTEREST

If Rent or any other fee, charge, or payment due and payable under this Lease by the Tenant to the City is not paid within ten (10) calendar days after such Rent or other fee, charge, or payment became due, liquidated damages equal to five percent (5%) of the amount due shall be due and payable to the City. The Parties agree that such liquidated damages are intended by the Parties to be liquidated damages and not a penalty or forfeiture, and the Parties further agree that the actual damages that would be incurred by the City in the event of a late payment would be impossible to ascertain. Further, any Rent, or other fee, charge, or payment due and payable under this Lease by the Tenant to the City that is not paid within thirty (30) calendar days after its date due shall bear interest at eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less, from the date due until the date paid in full.

Section 6.07 PORT TARIFF

To the extent the Port Tariff does not conflict with the spirit or letter of the terms of this Lease said Port Tariff is incorporated herein by reference to be applicable if, as, and when appropriate.

Section 6.08 Other Consideration AND REMEDIES

- (a) If the Tenant or an Affiliate of Tenant wins an America's Cup during the Lease Term, the Tenant shall thereafter host one (1) preliminary regatta in the America's Cup in Pensacola within three years (3) of Tenant's win so long as the City of Pensacola is prepared to host a preliminary regatta and commits to covering costs normally provided by host cities, including for example providing space at the Port required by competitors, security (both on land and in the water), required on-water infrastructure, and required people management. In the event that the requirements and conditions of the preceding sentence are violated, annual Base Rent shall automatically increase to Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) per annum commencing on the date that the violation first occurs and shall continue at that amount during the remainder of the Lease Term. If the City of Pensacola is selected to host an America's Cup, then the requirement to host a preliminary regatta in Pensacola during that Cup cycle is eliminated.
- (b) During the Lease Term, at least one day each Lease Year Tenant shall hold a "Pensacola/American Magic Open House" at Tenant's facility on the Leased Premises which shall be open to the public at no charge. In the event that the requirements and conditions of the preceding sentence are violated, annual Base Rent shall automatically increase to Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) per annum commencing on the date that the violation first occurs and shall continue at that amount during the remainder of the Lease Term.

- (c) During the Lease Term, Tenant shall use its best efforts to host at least two (2) international sailing events or regattas each Lease Year in Pensacola Bay and/or the Gulf of Mexico near Pensacola.
- (d) The Tenant, or its Affiliates and partners, shall create 120 New Jobs, on or before the earlier of (i) three (3) years after the Date of Beneficial Occupancy or (ii) December 31, 2029, and thereafter maintain for four (4) consecutive years the 120 New Jobs. In the event that prior to the end of the first four (4) Lease Years, the Tenant, or its Affiliates, and/or its partners (i) have not created and maintained for four (4) years such 120 New Jobs and (ii) has substantially vacated the Leased Premises, then within thirty (30) days after the Tenant substantially vacates the Leased Premises, the Tenant shall pay to the City the sum of Three Million and 00/100 Dollars (\$3,000,000.00) as liquidated damages (and not as a penalty or forfeiture) as the City's sole and exclusive remedy for the Tenant's failure to create such 120 New Jobs, the Parties hereby agreeing that under such circumstances the actual damages suffered or incurred by the City will be impossible to ascertain. However, in the event that after the end of the first four (4) Lease Years, the Tenant (i) has not created and maintained for four (4) years such 120 New Jobs and (ii) is substantially operating in the Leased Premises, then the \$3,000,000.00 liquidated damages will not apply. In this case, the Tenant shall still have the opportunity to create and maintain for four (4) years such 120 New Jobs. If the Tenant then fails to create and maintain for four (4) years such 120 New Jobs, then within thirty days after the end of such second 4-year period the Tenant shall pay to the City the sum of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) as liquidated damages (and not as a penalty or forfeiture) as the City's sole and exclusive remedy for the Tenant's failure to create such 120 New Jobs, the Parties hereby agreeing that under such circumstances the actual damages suffered or incurred by the City will be impossible to ascertain. For the avoidance of doubt, no such liquidated damages shall be payable by the Tenant once the Tenant has created and maintained for four (4) years such 120 New Jobs. Also, for the avoidance of doubt, the periods of time that the American Magic team is competing away from Pensacola shall count for purposes of the four-year New Jobs maintenance period so long as the New Jobs for such team members were timely created pursuant to this paragraph. The provisions of this paragraph shall survive the expiration or termination of this Lease.

(e) At no cost to the City, the City shall be deemed to be a VIK sponsor, with all of the benefits and privileges appurtenant thereto, at the following levels each Lease Year:

Lease Year 1	300,000	Lease Year 11	550,000
Lease Year 2	325,000	Lease Year 12	575,000
Lease Year 3	350,000	Lease Year 13	600,000
Lease Year 4	375,000	Lease Year 14	625,000
Lease Year 5	400,000	Lease Year 15	650,000
Lease Year 6	425,000	Lease Year 16	675,000
Lease Year 7	450,000	Lease Year 17	700,000
Lease Year 8	475,000	Lease Year 18	725,000
Lease Year 9	500,000	Lease Year 19	750,000
Lease Year 10	525,000	Lease Year 20	775,000

In the event that the requirements and conditions of the preceding sentence are violated, annual Base Rent shall automatically increase to Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) per annum commencing on the date that the violation first occurs and shall continue at that amount during the remainder of the Lease Term. The Tenant expressly agrees that the City shall be deemed to be a VIK sponsor, with all of the benefits and privileges appurtenant thereto, as provided above, regardless of any increase in the Base Rent pursuant to this paragraph (e) and regardless of the expiration or earlier termination of this Lease, it being expressly agreed that the provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

For the avoidance of doubt, the Parties acknowledge and agree that whenever in this Lease the Base Rent increases from \$291,200 per year to \$450,000 per year, such increase constitutes liquidated damages, not a penalty or forfeiture, for the Lease violation by the Tenant that results in such increase, the Parties hereby agreeing that the actual damages suffered or incurred by the City in the event of any such Lease violation will be impossible to ascertain.

END OF ARTICLE

ARTICLE 7. PERFORMANCE GUARANTEE

Within five (5) days of the Date of Beneficial Occupancy, Tenant shall deliver to City an amount equal to the initial annual Base Rent (the “Security Deposit”) as security for Tenant’s full and faithful performance of this Lease including the payment of Rent. City may apply the Security Deposit to the extent required to cure any default by Tenant. If City so applies the Security Deposit, Tenant shall deliver to City the amount necessary to replenish the Security Deposit to its original sum within five (5) days after notification from City of the amount due. City shall return the unapplied amount of the Security Deposit to Tenant within thirty (30) days after the expiration or earlier termination of this Lease.

END OF ARTICLE

ARTICLE 8. INSURANCE AND INDEMNIFICATION

Section 8.01 REQUIRED INSURANCE

Prior to taking possession of any part of the Leased Premises, the Tenant shall procure and thereafter maintain at all times during the Lease Term insurance of the different types and to the limits specified herein.

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

The Tenant and the City understand and agree that the minimum limits of insurance herein required may become inadequate during the term of this Lease. The Tenant agrees that it will increase such minimum limits to the levels reasonably required by the City from time to time, within ninety (90) days following the receipt of written notice from the Port Director.

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

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Insurance Requirements			
Type	Party	Amount	
1	Worker's Compensation and Employer's Liability	Tenant	The Tenant shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person – accident, \$100,000 each person – disease, \$500,000 aggregate – disease.
2	Broad Form Commercial General Liability Policy to include coverage for the following): (a) Premises Operations (b) Independent Contractors (c) Products/Completed Operations (d) Personal Injury (e) Contractual Liability (f) Damage to Leased Premises	Tenant	The coverage shall be written on occurrence-type basis (if available, otherwise, claims made). Minimum limits of \$1,000,000 per occurrence and in the aggregate must be provided. Fire Legal Liability must be provided with minimum limits of \$1,000,000 per occurrence
3	Umbrella Coverage written on an occurrence basis that is no more restrictive than the underlying insurance policy coverages.	Tenant	\$10,000,000
4	Property Insurance including flood insurance for physical damage to the property of the Tenant, including Tenant improvements and betterments to the Leased Premises	Tenant	Coverage for full replacement value.
5	Property Insurance for physical damage to the Facilities and all other improvements and betterments to the Leased Premises, resulting from fire, theft, vandalism, flood, named windstorm, wind, and other risks commonly insured against for similar Port improvements	Tenant or Landlord (see Section 8.10)	Coverage for full replacement value.
6	Liquor Liability. If alcoholic beverages are furnished, sold, or consumed on the Leased Premises, Tenant shall maintain or cause its vendor(s) to maintain Liquor Liability insurance including coverage for bodily injury and property damage arising out of the furnishing of alcoholic beverages.	Tenant	Minimum limits for this coverage are \$1,000,000 each common cause and in the aggregate. The Port and the City of Pensacola shall be listed as an Additional Insured, whether the policies are maintained by Tenant or its vendors. When alcoholic beverages are to be furnished, sold or consumed at the Premises, the licensee/operator/business owner shall not furnish, or sell to or permit its employees, servants, subcontractors, or agents to furnish or sell alcoholic beverages to, or to

			allow such alcoholic beverages to be consumed by any person who is not of lawful drinking age and shall take reasonable actions necessary to avoid serving any person habitually addicted to the use of any or all alcoholic beverages, or any person who is, or who would reasonably be expected to be intoxicated.
7	Motor Vehicle Liability (any motor vehicle)	Tenant	Automobile Liability. Business Automobile Policy must be provided, if applicable, including bodily injury and property damage arising out of operation, maintenance, or use of owned, non-owned, and hired automobiles. Minimum primary combined single limit of \$1,000,000 which together with umbrella coverage will provide combined single limit of not less than \$5,000,000.
8	Marine Vessel Protection and Indemnity	Tenant	Minimum combined single limit of \$1,000,000 in excess of umbrella coverage.
9	Sexual Abuse and Molestation	Tenant	If the Tenant sponsors any event whose participants are minors, the Tenant shall procure a Sexual Abuse and Molestation policy with minimum limits of \$1,000,000 which policy shall name the City as an additional insured.

Section 8.02 POLICY ENDORSEMENTS; COPIES OF POLICIES; CERTIFICATES OF INSURANCE; DEDUCTIBLES

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

Each policy of property insurance required by this Lease to be furnished by the Tenant shall be endorsed to name the City as a Loss Payee, as its interest may appear, and each policy of liability insurance shall be endorsed to name the City as an Additional Insured.

Prior to the date that Tenant takes possession of any part of the Leased Premises, and thereafter within five days after the City’s written requests from time to time, but no more than once annually, the Tenant shall furnish true and complete copies of all of the Tenant’s insurance policies, forms, endorsements, jackets, and other items forming a part of, or relating to, all policies of insurance carried or required by this Lease to be carried by the Tenant with respect to the Leased Premises.

Prior to the date that Tenant takes possession of any part of the Leased Premises, and thereafter within five (5) days after the City’s written requests from time to time, but no more than once annually, the Tenant shall provide to the City Certificates of Insurance evidencing all insurance carried or required by this Lease to be carried by the Tenant with respect to the Leased Premises. Each Certificate of Insurance shall provide that the insurance carrier shall give the City written notice least thirty (30)

days in advance of any cancellation, nonrenewal, adverse change, or restriction in coverage. The City shall be named on each Certificate of property insurance as an Additional Insured and Loss Payee, as its interest may appear, and on each Certificate of liability insurance as an Additional Insured. In addition, this Lease and the Leased Premises shall be separately listed on each Certificate. Certificates of property insurance shall be provided on the “Certificate of Insurance” form equal to, as determined by the City, the most current ACORD 28 form. Certificates of liability insurance shall be provided on the “Certificate of Insurance” form equal to, as determined by the City, the most current ACORD 25 form. Any wording on a Certificate that would make notification to the City of cancellation, nonrenewal, adverse change, or restriction in coverage an option shall be deleted or crossed out and initialed by the insurance carrier or the insurance carrier's authorized agent or employee. The name and address of the City on each policy and certificate of insurance required by this Lease shall be City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, Florida 32521. In addition, a copy of each Certificate of Insurance shall be sent to Port of Pensacola, Attn: Port Director, PO Box 889, Pensacola, Florida 32591.

The Tenant shall immediately replace any cancelled, adversely changed, restricted, or non-renewed policies with new policies acceptable to the City and shall provide to the City copies of all such new policies, as well as Certificates of Insurance regarding the new policies, prior to the effective date of such cancellation, nonrenewal, adverse change, or restriction.

All deductibles shall be subject to the prior written approval of the City, such approval not to be unreasonably withheld, conditioned, or delayed.

Section 8.03 INSURANCE OF THE TENANT PRIMARY

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

Section 8.04 LOSS CONTROL, SAFETY, AND SECURITY

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

Section 8.05 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers that have a current A.M. Best rating of no less than A- and minimum financial size of VII.

Section 8.06 HOLD HARMLESS

The Tenant, for itself and its successors and assigns, shall, and does hereby, covenant and agree to, FULLY AND FOREVER RELEASE, INDEMNIFY, DEFEND, and HOLD HARMLESS the City and its subsidiaries and affiliates, elected and appointed officials, employees, officers, directors, volunteers, agents, and representatives, individually and collectively, from and against any and all

costs, claims, liens, damages, losses, expenses, fees, fines, penalties, arbitration awards, regulatory actions, administrative actions, proceedings, actions, demands, causes of action, liabilities, and suits of any kind and nature, including, but not limited to, personal or bodily injury, death, environmental remediation and damage, and property damage, made upon or suffered or incurred by the City directly or indirectly arising out of or resulting from any breach or default by the Tenant under this Lease, or the activities, acts, or omissions of the Tenant, its successors or assigns under this Lease or at or within the Leased Premises or other areas of the Port, including, but not limited to, any acts or omissions of the Tenant, its successors or assigns, including any of its or their respective agents, officers, directors, representatives, employees, consultants, contractors or subcontractors, and their respective officers, agents, employees, directors, and representatives. The indemnity provided for in this Section shall not apply to any liability resulting from negligence of the City, its agents, officers, contractors, or employees.

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

Section 8.07 NON-LIABILITY OF THE CITY

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

The City shall not be liable for the Tenant's failure to perform any of the Tenant's obligations under this Lease or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by the City.

Section 8.08 PAYMENT ON BEHALF OF THE CITY

The Tenant agrees to pay on behalf of the City and to provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims and other actions and items described in Section 8.06, "Hold Harmless," with respect to which Tenant is obligated to indemnify the City. Such payment on behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

Section 8.09 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Article or elsewhere in this Lease shall be deemed a change or modification in any manner whatsoever of the method, conditions, limitations, or restrictions of preserving, asserting, or enforcing any claim or legal liability against the City. Nothing in this Article or elsewhere in this Lease shall in any way be construed as a waiver, in whole or in part, of the City's sovereign immunity under the Constitution, statutes and case law of the State of Florida.

Section 8.10 PROPERTY INSURANCE

The Tenant may elect either (i) to provide its own property insurance or (ii) for the City to provide property insurance. The Tenant shall deliver to the City written notice of such election no later than thirty (30) days prior to the estimated Date of Beneficial Occupancy and thirty (30) days prior to each insurance renewal date. If Tenant elects to provide its own property insurance, the insurance carrier and the deductible amounts shall be subject to the City's prior written approval, such approval not to be unreasonably withheld, conditioned, or delayed. If the Tenant elects for the City to provide property insurance, the Tenant shall pay when due the premium(s) therefor and shall be solely responsible for, and shall indemnify and hold the City harmless for, all deductibles. Not less than ninety (90) days prior to the estimated Date of Beneficial Occupancy and, if requested by the Tenant, not less than thirty (30) days prior to any insurance renewal date, the City shall deliver to the Tenant, in writing, the best information then available that the Tenant shall reasonably request in writing in order to evaluate the Tenant's options under this Section 8.10, which information shall include, at a minimum, the coverages and endorsements that the City would provide if elected by the Tenant and the premiums and deductibles for such coverages and endorsements. The Tenant's election under this Section 8.10 shall be memorialized in an amendment to this Lease executed by both Parties prior to the Date of Beneficial Occupancy or prior to the insurance renewal date, as the case may be. The City and the Tenant agree to negotiate in good faith insurance requirements from time to time should future market conditions change.

END OF ARTICLE

ARTICLE 9. COMMON PORT FACILITIES; INSPECTION OF FACILITIES

Section 9.01 USE OF COMMON FACILITIES

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

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

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

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

Notwithstanding the foregoing or any other provision of this Lease, the Tenant may not moor vessels to any of the port's public docks without first filing and receiving approval from the Port of a Vessel Berth Application.

Section 9.02 COMPLIANCE

The rights and privileges granted pursuant to Section 9.01 above shall be exercised subject to and in accordance with all laws (including without limitation all Environmental Laws), ordinances, Rules and Regulations, and Port policies of the United States, the State of Florida, Escambia County, the City of Pensacola and the Port, including without limitation the rules and regulations promulgated with reference to navigation, security, and all applicable charter provisions, rules, regulations, and ordinances of the City, now in force or hereafter prescribed or promulgated by charter authority or by law.

Section 9.03 INSPECTION OF FACILITIES AND CAPITAL IMPROVEMENTS

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

END OF ARTICLE

ARTICLE 10. ACCEPTANCE AND CONDITION OF LEASED PREMISES

SUBJECT TO TENANT’S RIGHTS UNDER THE DESIGN PROFESSIONALS AGREEMENT AND THE CONSTRUCTION CONTRACT AND ALL WARRANTIES ASSIGNED TO TENANT HEREUNDER, AND EXCEPT AS SPECIFICALLY PROVIDED HEREIN, TENANT HEREBY ACCEPTS THE LEASED PREMISES “AS IS, WHERE IS, AND WITH ALL FAULTS” ON THE EFFECTIVE DATE.

PRIOR TO THE DATE OF BENEFICIAL OCCUPANCY, THE CITY SHALL CAUSE TO BE REMOVED ALL PROPERTY, TRASH, REFUSE, OR REMNANTS OF ACTIVITIES THAT OCCURRED ON THE LEASED PREMISES PRIOR TO THE DATE OF BENEFICIAL OCCUPANCY, INCLUDING ACTIVITIES SUCH AS SANDBLASTING AND STORAGE. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE TENANT SHALL BE DEEMED TO HAVE ACCEPTED THE LEASED PREMISES AND ALL IMPROVEMENTS “AS IS, WHERE IS, AND WITH ALL FAULTS” ON THE DATE OF BENEFICIAL OCCUPANCY.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, THE CITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE LEASED PREMISES AND NO PROMISES TO IMPROVE THE SAME EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE. ANY SUCH REPRESENTATIONS OR PROMISES PREVIOUSLY MADE, IF ANY, SHALL NOT BE BINDING UPON THE CITY UNLESS EXPRESSLY INCLUDED IN THIS LEASE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL IMPLIED WARRANTIES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF TENANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED BY THE CITY.

END OF ARTICLE

ARTICLE 11. CONSTRUCTION BY THE TENANT

Section 11.01 GENERAL REQUIREMENTS

The Tenant shall not construct, alter, remodel, renovate, remove, or demolish improvements on the Leased Premises without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed; minor non-structural modifications by the Tenant that are in due course of its operations within the Lease Premises, excepted (for which no consent shall be required). The Tenant shall further have the right to install and or construct any free-standing improvements within the Leased Premises it wishes provided same are properly permitted.

In the event that the Tenant desires to construct, alter, remodel, renovate, remove, or demolish any improvements on the Leased Premises, it shall submit to the Port Director plans and specifications and a construction time schedule for such work prepared by Florida-registered architects and engineers, such other information and documents as may be required by the Port Director, all of which shall be in sufficient detail for the Port Director, to determine, whether or not the proposed work is consistent with the Tenant's use of the premises as defined in Section 4.01. But in any event, the approval of proposed construction, remodel, renovation, removal, or any other improvements for the Tenant's business shall not be unreasonably withheld, conditioned or delayed, provided the proposed work is deemed to be consistent with Section 5.01 of this Lease. Upon pre-approval of reasonable estimated expenses as further described below, the Tenant will reimburse the City upon demand for the reasonable, out-of-pocket expenses incurred by the City to review and act upon the Tenant's request, which expenses may include without limitation the fees and expenses of architects, engineers, attorneys, and other professionals. Prior to engaging professionals or incurring other expenses, the City shall provide an estimate of those costs to the Tenant, and should the Tenant wish to continue its request, then the Tenant must approve of the expenses estimated to be incurred prior to incurring any responsibility for City's costs. The Port Director, acting on behalf of the City, shall have a total of thirty (30) days to provide written approval or disapproval of such work.

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

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

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

development, building and construction licenses, orders, permits, and approvals.

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

The Tenant shall not entered into an contract for the performance of any portion of the work unless and until the City shall have given its written approval of the proposed contractor and the proposed contract, which approval shall not be unreasonably withheld, conditioned, or delayed; provided that each contract for any portion of the work shall conform to the requirement of this Article 11 and shall include, without limitation, a requirement for the contractor to provide builder's risk insurance reasonable satisfactory to the City.

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

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

Prior to commencement of any work on the Leased Premises for a total cost (both hard and soft costs, as estimated by the City) in excess of One Hundred Thousand and NO/100 Dollars (\$100,000.00), Tenant shall provide to the City payment bonds obtained by each general or sub-contractor of Tenant ensuring performance of that general contractor's obligations under the construction contract between that general contractor and the Tenant and payment of that contractor's subcontractors and suppliers with respect to the construction, alteration, removal or

demolition of any Capital Improvements. Each of the bonds must (i) be issued by a Qualified Surety (hereinafter defined), be in form and substance satisfactory to the City, (iii) run in favor of the City, (iv) be in the amount of the total cost of constructing, altering, removing or demolishing, as the case may be, the Capital Improvements as approved by the City, as such cost is stipulated in the construction contract between the Tenant and its general contractor, and (v) conform to the provisions of Section 255.05, Florida Statutes, whether or not such statute applies to such work, and any other statutory requirements. A “Qualified Surety” is a corporate surety or insurer authorized to do business, and to issue bonds for construction payment and performance, in the State of Florida and possessing a rating of A/VIII or better in A.M. Best’s Insurance Reports.

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

Section 11.02 CONSTRUCTION REQUIREMENTS

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

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

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

The City shall, at any period during construction of the Tenant's Capital Improvements, alterations, or additions, have the right, but not the obligation, to inspect any or all construction work, workmanship, material and installation involved in, or incidental to, the construction or installation of the Capital Improvements, alterations, or additions, for conformance with the applicable standards set forth in this Lease and within normally acceptable industry practices, provided that such inspection shall not include internal work that is exclusively of an operations (non- structural) nature,

and provided further that no such inspections shall be deemed to constitute consent to or approval of any such work.

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

END OF ARTICLE

ARTICLE 12. LIENS PROHIBITED

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

END OF ARTICLE

ARTICLE 13. MAINTENANCE AND REPAIR

Section 13.01 **TRIPLE NET LEASE**

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

Section 13.02 **TENANT RESPONSIBILITIES**

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

- (a) At all times perform commercially reasonably routine maintenance, preventive maintenance, and inspections (including without limitation inspections of the fire suppression systems and any elevators, it being further agreed that the Tenant shall promptly provide such inspection reports to the City) of the Leased Premises, the Facilities, and all buildings, improvements, and pavement on the Leased Premises and all components thereof and maintain all of the foregoing in a good and clean condition, repair and preservation;
- (b) Replace or substitute any fixtures, equipment and components that have become inadequate, obsolete, worn out, unsuitable, or undesirable with replacement or substitute new fixtures, equipment and components of equal or greater value, free of all liens and encumbrances, that shall automatically become a part of the buildings and improvements;
- (c) At all times keep the Leased Premises' grounds, pavement and exterior of the Leased Premises, its buildings and improvements, fixtures, landscaping, equipment, and personal property in a maintained, clean, and orderly condition and appearance;
- (d) Provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions, or regulations of any

competent authority, including the City and the Port Director, provided that such rules, regulations, and ordinances shall be applicable in a non-discriminatory manner to all similarly situated parties;

(e) Observe all insurance regulations and requirements concerning the use and condition of the Leased Premises for the purpose of reducing fire hazards and increasing the safety of the Tenant's operations on the Port;

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

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

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

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

(j) Replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises, regularly mow all grass within the Leased Premises, and weed and maintain any

(k) landscaping planted or installed by the Tenant on the Leased Premises; and

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

Section 13.03 SAFE, CLEAN AND ORDERLY OPERATION

During the term of this Lease, the Tenant agrees to maintain all portions of the Leased Premises, and any improvements, alterations, or additions thereon, in a safe, clean, and neat condition, and not permit any accumulation of wreckage, debris, or trash. The Tenant agrees to provide for complete, proper and adequate sanitary handling and disposal, away from the Port, of all trash, garbage, waste and other refuse caused as a result of the Tenant's operations; to provide and use suitable covered metal receptacles, to be approved by the Port Director, for all trash, garbage and other refuse on or about the Leased Premises, and not to pile boxes, cartons, carts, drums, or the like on the outside of the buildings, or dump any waste matter of any nature, in a liquid state or otherwise, on the Leased Premises nor to permit contamination of the Port's stormwater or sanitary

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

Section 13.04 OTHER SERVICES

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

Section 13.05 QUARTERLY CONDITION SURVEYS

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

Section 13.06 PERFORMANCE

In the event that the Tenant refuses or fails to undertake and complete any maintenance, repair or replacements within thirty (30) days after written notice from the Port Director or, in the event of exigent circumstances, such lesser time as the Port Director specifies in such written notice, or for those items that cannot be reasonably cured within 30 days, the Tenant fails to diligently pursue remediation of the failure then and in any such event the City shall have the right, but not the obligation, to perform such maintenance, repair or replacement on behalf of and for the Tenant. The actual costs of such maintenance, repair or replacement, plus fifteen (15.0%) percent for administration, shall be reimbursed by the Tenant to the City no later than 30 days following receipt by the Tenant of written demand from the City for same.

Section 13.07 UTILITIES

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

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

required maintenance and repair with the appropriate utility company and the office of the Port Director.

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

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

Section 13.08 UTILITIES SUPPLY OR CHARACTER

The City shall not be liable in any way to the Tenant for any failure or defect in the supply or character of electrical energy, internet service, cable service, gas, water, sewer, or other utility service furnished to the Leased Premises by reason of any requirement, act, or omission of the City in its capacity as a utility provider or of any public utility providing such service or for any other reason. The City shall have the right to shut down electrical and other utility services to the Leased Premises when necessitated by fire, safety or emergency exigencies, and in advancement of and consistent with the provisions of Section 13.07 herein above whether the need for such utility work arises with respect to the Leased Premises or any other facility at the Port. Whenever reasonable under the circumstances, the City shall give the Tenant not less than five (5) days' prior notice of any such utility shutdown. In no event shall the planned loss of utility services occur during normal manufacturing hours without the express knowledge and written consent of the Tenant. The City shall not be liable to the Tenant for any losses, including the loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Leased Premises whether said utility supply is controlled by the City or by a public utility provider. Notwithstanding the foregoing, in the event of an interruption of utilities to the Leased Premises, the City will use commercially reasonable efforts, at no cost to the City except for natural gas service supplied by the City, to restore such utility as soon as reasonably possible.

END OF ARTICLE

ARTICLE 14. TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY

Section 14.01 TITLE TO IMPROVEMENTS

Title to all buildings, structures, pavement, and other improvements presently existing upon the Leased Premises or any part thereof is vested in the City.

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

Section 14.02 TITLE TO PERSONAL PROPERTY

Except as otherwise provided in this Section 14.02, all trade fixtures and equipment and other business personal property installed or placed by the Tenant in the Leased Premises that is not paid for by the City or by grant funds obtained by the City shall remain the property of the Tenant, subject, however, to the provisions of this Section 14.02, unless otherwise provided in subsequent written agreements between the Tenant and the City. The Tenant shall have the right at any time during the Lease Term and prior to its expiration or earlier termination of this Lease to remove any and all of said property from the Leased Premises. The Tenant shall promptly repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of removal of the Tenant's property by the Tenant shall promptly be restored at the Tenant's expense to substantially the same condition as it was prior to such damage.

Notwithstanding the foregoing, any and all property not removed by the Tenant within thirty (30) days after the expiration of the Lease Term or the earlier termination of this Lease shall become a part of the land upon which it is located, and title thereto shall automatically vest in the City with prior written notice to the Tenant within ten (10) days of suggested transfer of ownership. The City reserves the right to remove and dispose of any or all of such property not removed by the Tenant within third (30) days after the expiration of the Lease Term or the earlier termination of this Lease, without any liability or obligation to the Tenant. In any event, Tenant shall be obligated to pay Base Rent, payable on the first day of each month, following such 30-day period until all of Tenant's property is removed from the Leased Premises.

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

END OF ARTICLE

ARTICLE 15. ENVIRONMENTAL COMPLIANCE

Section 15.01 ENVIRONMENTAL LAWS

The Tenant shall, at all times, abide by all Environmental Laws applicable to, concerning, or arising from the Tenant's actions or inactions resulting directly or indirectly from its occupancy, use, or lease of the Leased Premises, including, without limitation, state and federal laws regulating storm water runoff contamination and pollution prevention, numeric nutrient criteria requirements, state and federal laws regulating soil, water, and groundwater quality, and state and federal laws regulating air quality. Tenant shall not, nor shall it permit its employees, business invitees, or contractors (collectively "Tenant's Agents"), to bring upon, keep, store, use, or dispose of any Hazardous Substances on, in, under, or about the Leased Premises, except for the following: (i) gas, diesel fuel, oil, and other petroleum products and petroleum by-products which drip in normal amounts from motor vehicles on parking and truck loading areas surrounding the Premises; (ii) Hazardous Substances contained within Tenant's equipment and personal property and which do not pose any significant threat of being released into the environment; or (iii) general office or warehouse supplies (including, without limitation, ordinary cleaning chemicals and solutions) used for their intended purpose and not posing any significant threat of contamination of the Leased Premises. Tenant shall cause the presence, use, storage, and/or disposal of any Hazardous Substances on, in, under, or about the Leased Premises by Tenant or Tenant's Agents to be in compliance with all applicable laws, rules, regulations, orders, and the like. Prior to the Rent Commencement Date, the Tenant shall identify in writing to the Port Director and its Fire Department all Hazardous Substances that are or may be used in the course of its occupation of the Leased Premises. This list shall be updated by Tenant in March of each year and include quantities of materials stored on the Leased Premises. The City shall have the right to inspect the Leased Premises at any reasonable time upon reasonable advance notice to ensure compliance with Environmental Laws and the provisions of this Article.

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

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

The Tenant shall not, directly or indirectly, cause or permit the disposal or discharge of Hazardous Substances onto the Leased Premises or other Port property, but in no way does this prohibit material to be properly stored in the Leased Premises consistent with the provisions of this Section 15.01, consistent with the proposed use of the Leased Premises, and consistent with all applicable laws governing storage of same.

The Tenant shall be solely responsible for the payment of any and all fines, fees, penalties, assessments or citations issued as a result of the Tenant's failure to comply with the provisions of this Section 15.01 whether such fine, fee, penalty, assessment or citation be issued to the Tenant directly or the City or Port as the property owner.

Section 15.02 ENVIRONMENTAL CONDITIONS

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

- (i) it has not received any notice of violation of any Environmental Laws with respect to the Leased Premises.
- (ii) it has not been a party to any actions, suits, proceedings, or damage settlements related

- in any way to contamination in, upon, over or from the Leased Premises; and
- (iii) the Leased Premises is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites, CERCLIS, or any other list of hazardous sites maintained by any federal, state, or local government agency; and
- (iv) the Leased Premises contains traces of sandblasted paint which may qualify as a Hazardous Substance as defined herein, and asbestos (collectively, the "Known Environmental Conditions").

Section 14.03 REMEDIATION OF ENVIRONMENTAL CONDITIONS

If, following the vacating, abandonment or surrender of the Leased Premises or any portion thereof by the Tenant, an assignee or a sublessee, any contamination by Hazardous Substances of the Leased Premises or other portions of the Port (expressly excluding the Known Environmental Conditions) occurred during the Lease Term that is attributable to the activities of the Tenant, an assignee or a sublessee, the Tenant shall perform any and all assessments, remediation, and/or monitoring activities required by law at its sole cost and expense.

Tenant shall defend, indemnify, protect, and hold City harmless from and against all claims, costs, fines, judgments, and liabilities, including attorney fees and costs, arising out of or in connection with the presence, storage, use, or disposal of Hazardous Substances in, on, under, or about the Leased Premises or other portions of the Port caused by the acts, omissions, or negligence of Tenant and/or Tenant's agents. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease. Neither City nor City's employees, business invitees, agents, contractors, or subcontractors (collectively "City's Agents") shall bring upon, keep, store, use, or dispose of any Hazardous Substances in, on, under, or about the Leased Premises. Tenant shall have no liability associated with and City shall reimburse Tenant for any and all claims, costs, fines, judgments, and liabilities, including attorney fees and costs, arising out of or in connection with the presence of Hazardous Substances in, on, under, or about the Leased Premises upon the date this Lease commences or introduced in, on, under, or about the Leased Premises subsequent to commencement of this Lease due to the acts, omissions, or negligence of City or City's agents. City's obligations hereunder shall survive the termination of this Lease.

Section 15.04 ENVIRONMENTAL REPORTS

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

Section 15.05 SURVIVAL OF OBLIGATIONS

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

Section 15.06 NPDES AND SWPPP

The Tenant shall comply with the requirements of the National Pollutant Discharge Elimination

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

Section 15.07 PHASE 1 ENVIRONMENTAL REPORT

The City, at the City’s sole cost and expense shall cause a Phase 1 environmental report of the Land to be completed by a licensed professional and shall provide a copy of such Phase 1 to the Tenant within fifteen (15) days after receipt by the City. The Phase 1 shall have an effective date within thirty (30 days) before the Date of Beneficial Occupancy but in any event prior to Tenant's occupancy of any portion of the Leased Premises The City shall indemnify, defend, and hold harmless the Tenant from and against all claims, damages, liabilities, costs, and expenses, including without limitation reasonable attorneys’ fees, suffered or incurred by the Tenant as a result or arising out of any environmental condition identified in such Phase 1. The Tenant shall indemnify, defend, and hold harmless the City from and against all claims, damages, liabilities, costs, and expenses, including without limitation reasonable attorneys’ fees, suffered, or incurred by the City as a result or arising out of any environmental condition arising or occurring after the Date of Beneficial Occupancy.

END OF ARTICLE

ARTICLE 16. EVENTS OF DEFAULT; REMEDIES; TERMINATION

Section 16.01 TENANT EVENTS OF DEFAULT

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

- (a) The Tenant fails to make any Base Rent payment required to be made by the Tenant hereunder, as and when due, and such failure continues for ten (10) days; or
- (b) The Tenant fails to make any monetary payment, other than Base Rent, required to be made by the Tenant hereunder, as and when due and such failure continues for 15 days after Tenant received written notice of such failure; or
- (c) The Tenant fails to observe, keep, and perform the terms, covenants, agreements, and conditions of any of Articles 8 or 18 of this Lease; or
- (d) The Tenant fails to observe or perform any covenant, condition or provision of this Lease to be observed or performed by the Tenant, other than as described in subparagraphs (a), (b), and (c) above or subparagraphs (e), (f), (g), (h), or (i) below, and such failure shall continue for a period of thirty (30) days after written notice thereof by the City to the Tenant; provided, however, that if the nature of such failure is such that more than thirty (30) days are reasonably required for its remedy or cure, then such 30-day period shall be extended for up to thirty (30) additional days provided that the Tenant begins such remedy or cure within such 30-day period and thereafter diligently and continuously prosecutes such remedy or cure to completion within such additional 30-day period; or
- (e) The Tenant files a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or an order for relief is entered in an involuntary bankruptcy case filed against the Tenant; or the Tenant seeks or consents to or acquiesces in the appointment of any trustee, custodian, receiver or liquidator of itself or of all or any part of its assets or any interest therein; or the Tenant shall make a general assignment for the benefit of its creditors; or the Tenant commits any act providing grounds for the entry of an order for relief under any chapter of the federal bankruptcy code; or
- (f) A petition or case is filed against the Tenant seeking any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, custodian, receiver or liquidator of the Tenant or of all or any part of its assets or any interest therein, and such petition, case or appointment is not dismissed within sixty (60) days after such filing or appointment; or

(g) The Tenant fails to comply with the Port's Storm Water Pollution Prevention Plan and all amendments thereto; or

(h) The Tenant abandons all or substantially all of the Leased Premises or ceases to conduct all or substantially all of the Tenant's business on the Leased Premises permitted under Article 4 above; or

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

Section 16.02 **REMEDIES.**

Upon the occurrence of any Event of Default, the City may at any time thereafter, with or without notice or demand (except as expressly specified in Section 16.01 above or elsewhere in this Lease), and without limiting the City in the exercise of any right or remedy that the City may have by reason of such Event of Default:

(a) Terminate the Tenant's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate, and the Tenant shall surrender possession of the Leased Premises to the City within the provisions of the lease termination. In such event, the City shall be entitled to recover from the Tenant all damages incurred by the City by reason of the Tenant's default, including but not limited to the reasonable cost of recovering possession of the Leased Premises; cost of repairs for any and all damages to the Leased Premises, ordinary wear and tear excepted; cost of any repairs or improvements required to bring the Leased Premises up to code and obtain an Certificate of Occupancy, if said Leased Premises is left in an untenable state by the Tenant; and the worth at the time of award by the court having jurisdiction thereof of (i) the amount of unpaid Rent and other unpaid amounts under this Lease which had been earned at the time of termination, (ii) the unpaid Rent and other amounts under this Lease which would have been earned after termination until the time of award, and (iii) the amount by which the Rent that would have become due and payable under this Lease after the time of award during the remainder of the Lease Term exceeds the amount for the same period that the Tenant proves could be reasonably avoided. The amounts due under clauses (i) and (ii) above shall accrue interest from the termination date until paid in full at the greater of eight percent (8%) per annum or the legal rate applicable to money judgments entered by the courts of the State of Florida on the termination date.

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

improvements required to bring the Leased Premises up to code and obtain an Certificate of Occupancy, if said Leased Premises is left in an untenable state by the Tenant.

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

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

Section 16.03 RIGHTS AND REMEDIES OF THE CITY CUMULATIVE

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

END OF ARTICLE

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ARTICLE 17. HOLDING OVER

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

Should the Tenant hold over without the City's written consent, the Tenant agrees to pay to the City, as monthly Rent during such period of holding over, for such Leased Premises for each month until the Tenant completely vacates the Leased Premises, one hundred fifty percent (150%) of the sum of (i) Base Rent payable for the last month of the Lease Term, including without limitation applicable taxes and (ii) all and other fees and charges required by this Lease or by City ordinance to be paid by the Tenant.

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

END OF ARTICLE

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ARTICLE 18. ASSIGNMENT AND SUBLEASE

Section 18.01 LEASE ASSIGNMENT

The Tenant shall have the right to assign this Lease and the Tenant's interest in or to the Leased Premises, or any part thereof. The Tenant will need the City's prior written consent which shall not be unreasonably withheld. Should there be an internal assignment by the Tenant of the lease to an entity that has common ownership or is otherwise an affiliated entity, then no approval by the City is required, but the Tenant shall provide ten (10) days advance notice of the intent to assign. Nothing in this provision shall impair the responsibilities of the Tenant to the City until the City provides approval of the assignment, when required.

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

Section 18.02 LEASED PREMISES SUBLEASE

The Tenant is entitled to sublet parts of the Leased Property, provided that the Tenant shall not sublet the Leased Premises or any part thereof, regardless of the time period, without having first obtained the Port Director or the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

In the event that the Tenant requests permission to sublet the Leased Premises in whole or in part, except to an Affiliate, the request shall be submitted to the Port Director not less than thirty (30) days prior to the proposed effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto, together with the following information: the identity and contact information of the sublessee, a description of the part of the Leased Premises to be subleased, a statement of the entire consideration to be received by the Tenant by reason of such sublease (including but not limited to sublease rent and other fees and charges payable by the sublessee), and the type of business to be conducted on subleased premises by the sublessee.

For purposes of this Section 18.02 and Section 18.03 below, "sublease" and related terms shall include, without limitation, any sublease, license, or agreement, regardless of how denominated, that permits a third party to occupy or use all or any part of the Leased Premises other than those persons who use the Leased Premises in the ordinary course of Tenant's business for the use permitted under Article 4 above.

Section 18.03 CONSUMMATION OF ASSIGNMENT OR SUBLEASE

The City's consent for the assignment or sublease of the entire Leased Premises for which the City's consent is required and for which such consent has been given shall be by written instrument, in a form reasonably satisfactory to the Port Director and the City Attorney, and shall be executed by the assignee or sublessee who shall agree, in writing, for the benefit of the City,

to be bound by and to perform all the terms, covenants, and conditions of this Lease. Four (4) executed copies of such written instrument shall be delivered to the City. Failure either to obtain the City's prior written consent or to comply with the provisions of this Lease shall serve to prevent any such transfer, assignment, or sublease from becoming effective and shall constitute an Event of Default by the Tenant.

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

END OF ARTICLE

**ARTICLE 19. DAMAGE OR DESTRUCTION OF LEASED PREMISES;
TAKING BY EMINENT DOMAIN**

Section 19.01 LEASED PREMISES -- DAMAGE OR DESTRUCTION

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

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

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

Section 19.02 TAKING BY EMINENT DOMAIN

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

In the event of any such taking or condemnation referred to in the preceding paragraph, then if and when there is an actual taking, in whole or in part, of physical possession of the Leased Premises

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

END OF ARTICLE

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ARTICLE 20. FEDERAL, STATE, AND LOCAL REGULATIONS

Section 20.01 COMPLIANCE WITH RULES AND REGULATIONS

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

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

Section 20.02 COMPLIANCE WITH LAW

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

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

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

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

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

The Tenant, for itself and its successors and assigns, shall, and does hereby, covenant and agree to FULLY AND FOREVER RELEASE, INDEMNIFY, DEFEND, and HOLD

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

Section 20.03 COMPLIANCE WITH ENVIRONMENTAL LAWS

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

- (a) Identified in the Hazardous Substances listing described in Section 15.01,
- (b) Permitted by or are exempt from applicable governmental regulations, and
- (c) Are transported, stored and utilized in accordance with applicable governmental regulations and the best practices of the Tenant's industry.

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

Tenant shall perform Environmental Reporting required under this Section as described in Section 15.04.

Section 20.04 LICENSES AND PERMITS

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

END OF ARTICLE

ARTICLE 21. TAXES

Section 21.01 **PAYMENT OF TAXES**

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

Section 21.02 **REAL PROPERTY TAXES**

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

Section 21.03 **DEFINITION**

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

Section 21.04 **CONTEST**

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

Section 21.05 **PERSONAL PROPERTY TAXES**

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

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

END OF ARTICLE

[THIS SPACE INTENTIONALLY LEFT BLANK]

ARTICLE 22. ENCUMBRANCE OF LEASEHOLD ESTATE AND NOTICE TO MORTGAGEES

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

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

(a) Lender shall have the right:

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

(b) In the event of a default by the Tenant under this Lease, the rights of City may not be exercised until written notice of such default is delivered to Lender, or to the person or firm designated by any such Lender, by written notice to City, to accept such notices, and any applicable cure period has expired. Lender shall have the same notice and cure rights as are provided to Tenant under this Lease, except that Lender shall have the right to cure a monetary default as described in Section 16.01(a) within ten (10) days from delivery of said notice.

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

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

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

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

END OF ARTICLE

[THIS SPACE INTENTIONALLY LEFT BLANK]

ARTICLE 23. PORT DEVELOPMENT RIGHTS

The City reserves the right to further develop or improve all areas designated as Port property as the City may determine in its sole discretion to be in the best interests of the Port, regardless of the desires or views of the Tenant, and without interference or hindrance from the Tenant.

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

END OF ARTICLE

ARTICLE 24. GENERAL PROVISIONS

Section 24.01 **ACKNOWLEDGMENT**

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

Section 24.02 **AUTHORITY OF THE PORT DIRECTOR**

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

Section 24.03 **CAPACITY TO EXECUTE**

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

Section 24.04 **DELIVERY OF NOTICES**

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

Notices to the City shall be addressed to:

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

Notices to the Tenant shall be addressed to:

Michael Cazer, CEO American Magic
c/o Continuum Ventures,
1035 Spauling Ave SE
Grand Rapids, MI 49546

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

Section 24.05 **EMPLOYEES OF THE TENANT**

The Tenant shall require all of its employees, subcontractors, and independent contractors hired by the Tenant and working in view of the public to wear clean and neat attire and to display

appropriate identification. Tenant employees shall obtain identification badges from the City. The Tenant shall be responsible for paying the cost of DHS/TSA-required employee background checks and badging to include a Transportation Worker Identification Credential (TWIC).

Section 24.06 ENTIRE AGREEMENT

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

Section 24.07 FORCE MAJEURE

Neither the City nor the Tenant shall be deemed to be in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, pandemic, disease, any responsive measure or state of emergency declared by a governmental entity in relation to pandemic or disease or any other circumstances for which it is not responsible or which is not in its control (individually and collectively a “Force Majeure Event”); provided, however, that these circumstances shall not excuse the Tenant from making, as and when due, any monetary payment required under this Lease or by the Rules and Regulations, including but not limited to Base Rent, port rentals, fees, and charges, Taxes under Article 21, and insurance premiums. But the Tenant in a Force Majeure Event shall be entitled to deferment of the Base Rent, fees, and charges, listed above for up to one hundred eighty (180) days after the cessation of the Force Majeure Event or until performance under this Lease can be reestablished, whichever occurs first, on election to do so with written notice to the City and/or Port Director.

Section 24.08 RULES OF CONSTRUCTION

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

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

Section 24.09 GENERAL INTERPRETATION

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

Section 24.10 GOVERNING LAW

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

Section 24.11 INCORPORATION OF EXHIBITS

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

Section 24.12 INCORPORATION OF REQUIRED PROVISIONS

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

Section 24.13 INVALID PROVISIONS

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

Section 24.14 NONLIABILITY OF INDIVIDUALS

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

Section 24.15 NONINTERFERENCE WITH PORT OPERATIONS

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

Section 24.16 NOTICE OR CONSENT

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

Section 24.17 NONWAIVER

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

Section 24.18 OTHER LAND AND BUILDINGS EXCLUDED

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

Section 24.19 PATENTS AND TRADEMARKS

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

Section 24.20 PUBLIC RECORDS LAWS

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

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

Section 24.21 REMEDIES TO BE NONEXCLUSIVE

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

Section 24.22 SIGNS AND LOGOS

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

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

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

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

Section 24.23 SUCCESSORS AND ASSIGNS

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

Section 24.24 NO PARTNERSHIP

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

Section 24.25 THIRD PARTIES

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

Section 24.26 TIME IS OF THE ESSENCE

Time is of the essence of this Lease.

Section 24.27 MEMORANDUM OF LEASE

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

Section 24.28 REPRESENTATIONS AND WARRANTIES OF CITY AND TENANT

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

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

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

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

END OF ARTICLE

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

CITY:

CITY OF PENSACOLA,
a Florida municipal corporation

By: _____,
D.C. Reeves, Mayor

Date: _____

Attest:

Ericka Burnett, City Clerk

Signed by Mayor in the presence of:

Print Name: _____

Print Name: _____

Approved as to form:
Beggs & Lane, RLLP,
a Florida registered limited liability partnership,
Outside Legal Counsel

TENANT:

BELLA MENTE QUANTUM RACING ASSOCIATION, a Delaware nonprofit corporation qualified to do business in Florida as Bella Mente Quantum Racing Association Corp.

By: _____
Print Name: _____
Title: _____

Date: _____

Signed by Tenant in the presence of:

Print Name: _____

Print Name: _____

Approved as to content:

Clark Merritt, Port Director

EXHIBIT “A”

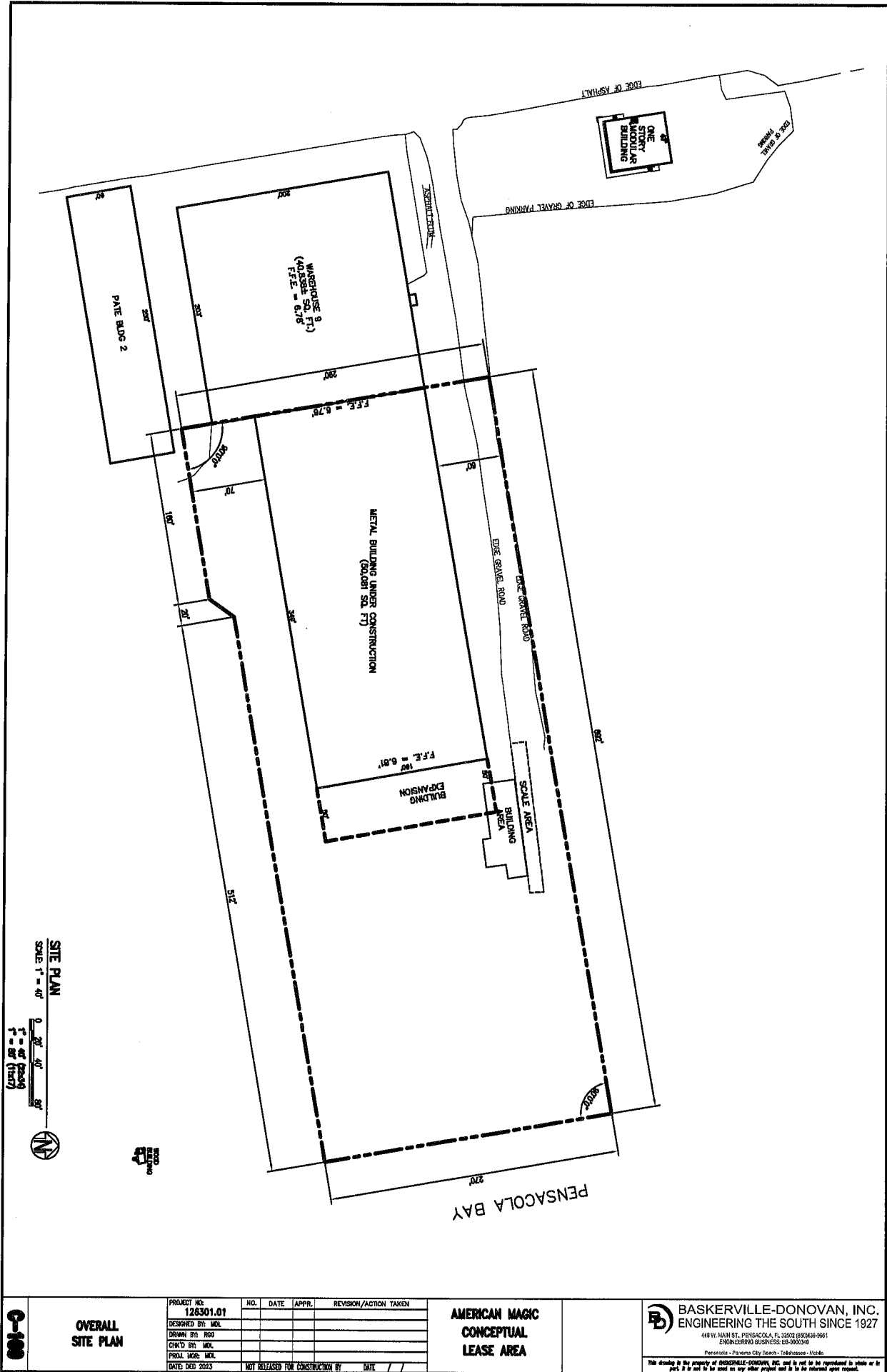
Figure 1
Building Location



EXHIBIT “B”

Figure 2
 Conceptual Site Layout

E:\DWD\misc\American Magic\Concept Lease Area.dwg, Dec 15, 2023 - 2:51:00PM, rgalger



SITE PLAN
 SCALE 1" = 40'
 0' 20' 40' 80'
 1" = 40' (GRAPHIC)
 1" = 80' (TEXT)



**OVERALL
 SITE PLAN**

PROJECT NO.	NO.	DATE	APPR.	REVISION/ACTION TAKEN
126301.01				
DESIGNED BY: MEL				
DRAWN BY: ROJ				
CHECK'D BY: MEL				
PROD. MGR: MEL				
DATE: DEC 2023	NOT RELEASED FOR CONSTRUCTION BY DATE			

**AMERICAN MAGIC
 CONCEPTUAL
 LEASE AREA**

BASKERVILLE-DONOVAN, INC.
 ENGINEERING THE SOUTH SINCE 1927
 440 W. MAIN ST., PENSACOLA, FL 32502 (850)434-9961
 ENGINEERING BUSINESS: EB-000310
 Pensacola - Panama City Beach - Tallahassee - 152246

This drawing is the property of BASKERVILLE-DONOVAN, INC. and is not to be reproduced in whole or in part, in any form, for any other project and is to be returned upon request.

Figure 3
Mezzanine Option

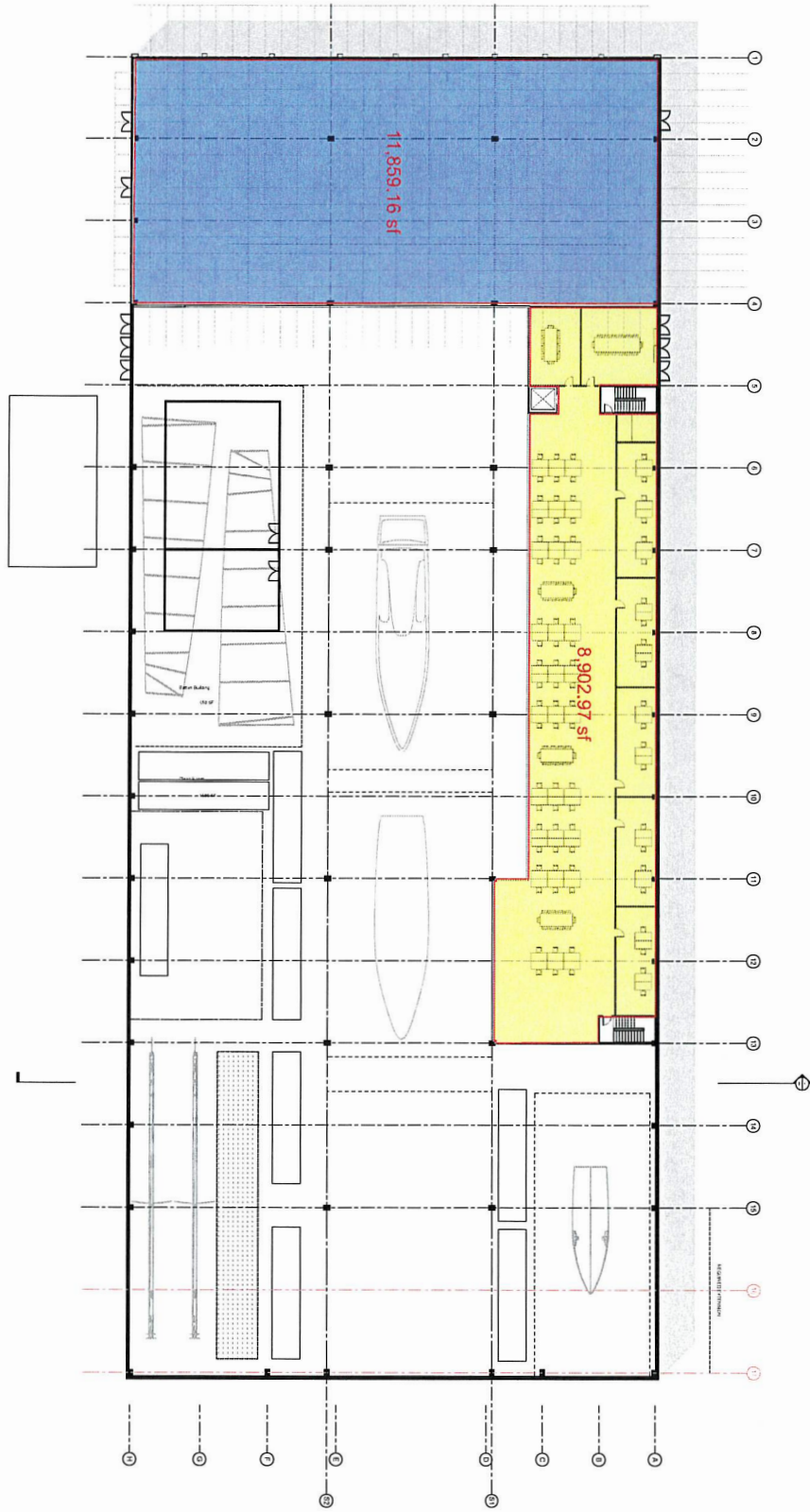


EXHIBIT “C”

Estimated Available Funds

Florida DEO Grant	\$3.9 million
Triumph of the Gulf Coast, Inc.	\$8.5 million
<u>Florida Seaport Transportation Economic Development</u>	<u>\$2.6 million</u>
TOTAL	\$15.0 million

EXHIBIT “D”

Preliminary Project Schedule

Design, construction and upfitting of Warehouse 10: July 2023 through December 2024

Design and construction of dock and boat ramp: July 2023 through December 2025