

AGREEMENT

This Agreement (the "Agreement") is made as of this 20th day of October, 2019, by and between THE CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation (the "City") and THE SANDPEARL RESORT, LLC, a Florida limited liability company (the "Developer").

WITNESSETH:

WHEREAS, City and Developer entered into a Development Agreement for Property in the City of Clearwater dated January 26, 2005 recorded in Official Records Book 14089, Page 314 of the Public Records of Pinellas County, Florida ("Original Development Agreement"); and

WHEREAS, the Original Development Agreement was amended by Amendment to Development Agreement for Property in the City of Clearwater dated September 12, 2007 and recorded in Official Records Book 15983, Page 1204 of the Public Records of Pinellas County, Florida ("Amendment to Development Agreement"). The Original Development Agreement as amended by Amendment to Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, pursuant to the Development Agreement, the City and Developer entered into a separate Agreement dated September 12, 2007 as to the development of shared Boat Docking Facilities in the Boat Basin a copy of which is attached to the Development Agreement as Exhibit N-1 ("Original Boat Dock Agreement"); and

WHEREAS, subsequent to the execution of the Original Boat Dock Agreement, it was determined that the submerged land in the Boat Basin was owned in fee simple by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("State"); and

WHEREAS, the Original Boat Dock Agreement has, by its terms, expired; and

WHEREAS, the City, as appurtenant upland owner, applied to the State for a Sovereignty Submerged Lands Lease ("SSLL"), which SSLL was approved by State and submitted to City for execution; and

WHEREAS, in connection with the execution of the SSLL, City and Developer have agreed to enter into a new Boat Dock Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS.

1.01. Definitions. The capitalized terms used in this Agreement that are not defined shall have the meanings given to such terms in the Development Agreement.

1.02. Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, limited liability corporations and partnerships, including public bodies, as well as natural persons.

"Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

- 1.03. Florida Statutes.** All references herein to Florida Statutes are to Florida Statutes (2005), as amended from time to time.

ARTICLE 2. PURPOSE AND DESCRIPTION OF BOAT DOCKING FACILITIES.

- 2.01. Finding of Public Purpose and Benefit.** The Boat Docking Facilities, including the design, construction, completion and use of the Boat Docking Facilities, is hereby found by the parties hereto: (1) to be consistent with and in furtherance of the objectives of the Comprehensive Plan of the City of Clearwater, (2) to conform to the provisions of Florida law, (3) to be in the best interests of the citizens of the City, (4) to further the purposes and objectives of the City, (5) to further the public interest on Clearwater Beach, and (6) to implement *Beach by Design*, including the creation of the new quality hotel resort which was constructed as a part of the Project.

- 2.02. Purpose of Agreement.** The purpose of this Agreement is to further the implementation of *Beach by Design* by providing for the continued use of the Boat Docking Facilities, all to enhance the quality of life, increase employment and improve the aesthetic and useful enjoyment of Clearwater Beach and the City, all in accordance with and in furtherance of the Comprehensive Plan of the City of Clearwater and as authorized by and in accordance with the provisions of Florida law.

2.03. Scope of the Project.

1. The Boat Docking Facilities includes a central pier, finger piers and associated pilings as conceptually depicted on the attached Exhibit "A", which accommodates a maximum of 42 boat slips ("Boat Slips"). The Developer and its designated successors and assigns shall have the right to utilize exclusively 27 of the Boat Slips which are identified on the Site Plan ("Developer Slips") and the finger piers containing the Developer Slips ("Developer Piers"). The City shall have the right to control the use of the central pier, the 15 remaining Boat Slips ("City Slips") and the finger piers containing the City Slips. The City shall have the right to utilize the City Slips during the term of this Agreement for day docking or for any other purpose. Boats shall not be permitted to occupy the City Slips and no access shall be permitted to the City Slips during the period each night between midnight and 5:00 a.m., except in an emergency or as authorized by the City Harbor Master. The foregoing restriction on overnight use of the City Slips shall not be applicable to a fireboat or other boats operated by the City or other municipal or governmental entities for public purposes ("Governmental Vessels").
2. The Developer shall have the right to install gates or other access control improvements on the finger piers containing the Developer Slips and the right to install boat lifts in the Developer Slips ("Slip Improvements"). Developer shall also install gates on the finger piers containing the City Slips or on the central pier as directed by the City. Developer shall have the right to obtain at Developer's expense required access devices for 24/7 access to Developer Slips. The Boat Docking Facilities including Slip Improvements are subject to the following additional requirements and limitations:

- (a) Only low profile pilings and/or tie poles shall be used in the Boat Docking Facilities. As used in this Agreement, the term "low profile" means having a height of four (4) feet or less above the height of the decking of the dock.
 - (b) No covered Boat Slips are allowed.
 - (c) No boat lifts are permitted on 40 foot or larger slips.
 - (d) Boat lifts shall not be installed in more than 13 of the 27 Developer Slips or in more than 50% of the total Developer Slips if the number of Developer Slips is reduced from 27.
 - (e) No fuel containers shall be transported across the central pier or finger piers, nor any refueling of any vessels be done at this facility.
3. The Developer shall have the right, at its expense, to install water and electric lines serving the Developer Slips and the City shall cooperate as to extension and connection of such utilities. All utilities provided to the Developer Boat Slips shall be separately metered and Developer shall pay all utility connection and usage charges. Developer shall also provide lighting for the Boat Docking Facilities and pay all electric expenses as to such lighting. Utilities shall not be provided by Developer to the City Slips, provided, that at the request of the City, utilities (water and electric) shall be provided to City Slips to be used by Governmental Vessels and City shall reimburse Developer for additional expenses incurred by Developer as to such utilities.
4. Developer shall provide and pay for all maintenance and repair costs for the Boat Docking Facilities. Developer shall also provide, at its expense, for all required trash removal from the Boat Docking Facilities. All normal operating expenses incurred by Developer as to the Boat Docking Facilities including maintenance, repairs, insurance premiums and cost of trash removal excluding utilities provided to City Slips are to be paid by Developer. City shall pay all lease payments and all other applicable payments and charges due to the State of Florida pursuant to the SLL. Developer will reimburse the City for Developer's prorate share of all payments made to the SLL, which is 27/42 or 64.29% of all payments made to the State of Florida pursuant to the SLL, within thirty (30) days of receipt of an invoice. Developer shall comply with the minimum maintenance standards as provided in the attached Exhibit "C".
5. Developer agrees that use of the Developer Boat Slips shall be limited to (i) residents of the City, (ii) owners of real property within the City and their tenants and (iii) owners, tenants and guests (including Beach Club Members) of the Project. Any sublease or assignment by Developer of rights to utilize Developer Boat Slips shall be limited to such residents, owners, tenants and guests and all subleases or assignments shall expressly prohibit parking on the City Property during use of the Developer Boat Slips.
6. During the term of this Agreement, Developer shall provide a shuttle service to the Boat Docking Facilities from the Project. Developer shall also provide at the Project an employee assigned to respond to problems at the Boat Docking Facilities on a 24 hour/ 7 day per week basis. Neither the City nor Developer shall have any obligation to provide on-site security at the Boat Docking Facilities.

2.04. Cooperation of the Parties. The City and the Developer recognize that the successful maintenance of the Boat Docking Facilities and each component thereof is dependent upon the continued cooperation of the City and the Developer, and each agrees that it shall act in a reasonable manner hereunder, provide the other party with complete and updated information from time to time, with respect to the conditions such party is responsible for satisfying hereunder and make its good faith reasonable efforts to ensure that such cooperation is continuous, the purposes of this Agreement are carried out to the full extent contemplated hereby and the Boat Docking Facilities are designed, constructed, completed and used as provided herein.

ARTICLE 3. REGULATORY PROCESS.

3.01 Approvals and Permits.

1. Applications for Approval. To the extent necessary, the Developer shall prepare and submit to the appropriate governmental authorities, including the City, applications for approval of all required permits ("Permits"), and all plans and specifications ("Plans and Specifications") necessary for the Boat Docking Facilities, and shall bear all costs of preparing such applications, applying for and obtaining such approvals and permits, including payment of any and all applicable application, inspection, and regulatory fees or charges. The City shall, to the extent possible, expedite review of all applications. The failure of this Agreement to address any particular permit, condition, or term of restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.
2. City Cooperation and Assistance. The City shall cooperate with the Developer in obtaining all necessary Permits required for the construction, completion, maintenance, and use of the Boat Docking Facilities. If requested by the Developer and authorized by law, the City will join file or in the filing of any application for any Permit, or, alternatively, recommend to and urge any governmental authority that such Permit be issued or approved.
3. City Authority Preserved. The City's duties, obligations, or responsibilities under any section of this Agreement, specifically including, but not limited to, this Section 3.02, shall not affect the City's right, duty, obligation, authority and power to act in its governmental or regulatory capacity in accordance with applicable laws, ordinances, codes or other building regulations. Notwithstanding any other provision of this Agreement, any required permitting, licensing or other regulatory approvals by the City shall be subject to the established procedures and substantive requirements of the City with respect to review and permitting of a project of a similar or comparable nature, size and scope. In no event shall the City, due to any provision of this Agreement, be obligated to take any action concerning regulatory approvals except through its established procedures and in accordance with applicable provisions of law.

ARTICLE 4. PLANS AND SPECIFICATIONS.

4.01. Plans and Specifications.

1. Responsibility for Preparation of Plans and Specifications. The Developer shall be solely responsible for and shall pay the cost of preparing, submitting and obtaining approval of the Plans and Specifications for the Boat Docking Facilities.
2. Use of Qualified Professionals. The Developer shall retain qualified professionals to prepare the Plans and Specifications and shall cause such professionals to prepare the Plans and Specifications.

ARTICLE 5. MAINTENANCE OF BOAT DOCKING FACILITIES.

5.01. Ownership of City Property. The City is the owner the City Property which is more particularly described in Exhibit "B" to this Agreement.

5.02. Boat Basin. The Boat Basin in which the Boat Docking Facilities are located adjoins the City Property, is located on submerged lands owned by the State of Florida and leased to the City pursuant to the SSSL, and is depicted on the Site Plan attached as Exhibit "A".

5.03. Obligations of the City.

1. Sublease of Developer Slips. The City agrees to enter the SSSL with the State of Florida for certain submerged land as described in the SSSL. This Agreement shall constitute a sublease to Developer of the portion of the Boat Basin on which the Developer Slips and associated finger piers shall be located ("Leased Premises") together with the non-exclusive right to utilize the central pier and City Property for access to the Developer Slips. The term of the sublease shall be for the term of this Agreement as provided in Section 18.18 below.

Subject to Section 18.01, if Developer subsequently transfers or assigns the right to use the Developer Slips to another party, the instrument or agreement used to transfer the Developer Slips shall contain a provision that requires six percent (6%) of the annual gross income derived from the instrument or agreement for the use of the Developer Slips be paid to the City who, upon receipt, will report and transmit said amount to the State of Florida.

No interest in the Developer Slips shall be further transferred unless a substantially similar provision to the one contained in the proceeding paragraph is placed in each succeeding instrument or agreement used to transfer the Developer Slips to each new slip renter, user, or holder.

2. Permits. The City will cooperate and coordinate with the Developer with regard to all Permit applications, including those to state agencies, and will facilitate or expedite, to the greatest extent possible, the permit approval process.

ARTICLE 6. PROJECT FINANCING.

- 6.01. Assignment of Rights Under Agreement To Project Lender.** Developer may assign to the Project Lender all its right, title and interest under this Agreement as security for any indebtedness of Developer. The execution of any assignment, security agreement, or other instrument, or the foreclosure of the instruction or any sale under the instrument, either by judicial proceedings or by virtue of any power reserved in the mortgage or deed of trust, or conveyance in lieu of foreclosure by Developer to the holder of such indebtedness, or the existence of any right, power, or privilege reserved in any instrument, shall not be held as a violation of any of the terms or conditions of this Agreement, or as an assumption by the holder of such indebtedness personally of the obligations of this Agreement. No such assignment, foreclosure, conveyance or exercise of right shall relieve Developer from its liability under this Agreement.
- 6.02. Cooperation.** The City and the Developer shall cooperate as to reasonable requests for assurances any proposed Project Lender for the purpose of implementing the mortgagee protection provisions contained in this Agreement and allowing the Project Lender reasonable means to protect or preserve the liens of such Project Lender upon the occurrence of a default under the terms of this Agreement.

ARTICLE 7. CONSTRUCTION OF PROJECT.

- 7.01 Construction Completion Affirmation.** The Parties agree that the Boat Docking Facilities has been constructed in substantial conformity with Article 7 of the Original Boat Dock Agreement.

ARTICLE 8. INDEMNIFICATION.

8.01. Indemnification by the Developer.

1. The Developer agrees to indemnify, defend and hold harmless, the City, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of the Developer, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services covered by this Agreement.
2. The Developer shall indemnify, defend and hold harmless the City, its officers and employees from any and all liabilities, damages, costs, penalties, judgments, claims, demands, losses, or expenses (including, but not limited to, actual attorneys' fees and engineering fees) arising from or attributable to any breach by the Developer, as the case may be, of any representations or warranties contained in Section 9.01, or covenants contained in Section 9.02.
3. The Developer's indemnity obligations under subsections (1) and (2) of this Section shall survive the earlier of the Termination Date or the Expiration Date, but

shall apply only to occurrences, acts, or omissions that arise on or before the earlier of the Termination Date or the Expiration Date.

4. The Developer's indemnity hereunder is in addition to and not limited by any insurance policy and is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, nor as a waiver of sovereign immunity for any party entitled to assert the defense of sovereign immunity.

8.02. Indemnification by the City.

1. To the extent permitted by law, the City agrees to indemnify, defend and hold harmless, the Developer, its respective officers, and employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of, any act or omission of the City, its respective agents or employees arising out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services covered by this Agreement.
2. The City shall indemnify, defend and hold harmless the Developer, its officers and employees from any and all liabilities, damages, costs, penalties, judgments, claims, demands, losses, or expenses (including, but not limited to, actual attorneys' fees and engineering fees) arising from or attributable to any breach by the City, as the case may be, of any representations or warranties contained in Section 10.01, or covenants contained in Section 10.02.
3. The City's indemnity obligations under this Section 8.02 shall survive the earlier of the Termination Date or the Expiration Date, but shall only apply to occurrences, acts or omissions that arise on or before the earlier of the Termination Date or the Expiration Date. The City's indemnity hereunder is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, but is in addition to and not limited by any insurance policy provided that said obligation shall not be greater than that permitted and shall be limited by the provisions of Section 768.28, Florida Statutes, or any successor statute thereto.

8.03. Limitation of Indemnification. Notwithstanding anything to the contrary contained herein, with respect to the indemnification obligations of the Developer (as set forth in Section 8.01) and the City (as set forth in Section 8.02), the following shall apply:

1. The indemnifying party shall not be responsible for damages that could have been, but were not, mitigated by the indemnified party;
2. The indemnifying party shall not be responsible for that portion of any damages caused by the negligent or willful acts or omissions of the indemnified party; and
3. There shall be no obligation to indemnify hereunder in the event that the indemnified party (1) shall have effected a settlement of any claim without the prior written consent of the indemnifying party, or (2) shall not have subrogated the indemnifying party to the indemnified party's rights against any third party by an

assignment to the indemnifying party of any cause or action against such third party.

ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER.

9.01. Representations and Warranties. The Developer represents and warrants to the City that each of the following statements is currently true and accurate and agrees the City may rely upon each of the following statements:

1. The Developer is a Florida Limited Liability Company duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida.
2. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the Developer is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the Developer, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (i) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Developer, (iii) contravenes or results in any breach of, default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Developer under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Developer's Articles of Organization, or, any other agreement or instrument to which the Developer is a party or by which the Developer may be bound.
3. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the Developer is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.
4. There are no pending or, to the knowledge of the Developer threatened actions or proceedings before any court or administrative agency against the Developer, or against any controlling shareholder, officer, employee or agent of the Developer which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Developer.

5. The Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by the Developer and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against the Developer.
6. All documentation, including that pertaining to the Boat Docking Facilities or the Developer, delivered by the Developer to the City was, on the date of delivery thereof, true and correct.
7. The principal place of business and principal executive offices of the Developer is in St. Petersburg, Florida, and the Developer will keep records concerning the Boat Docking Facilities (such as construction contracts, financing documents and corporate documents) and all contracts, licenses and similar rights relating thereto at an office in Pinellas County.
8. As of the Effective Date, the Developer will have the financial capability to carry out its obligations and responsibilities in connection with the development of the Boat Docking Facilities as contemplated by this Agreement.
9. The Developer has the experience, expertise, and capability to oversee and manage the use of the Boat Docking Facilities.

9.02. Covenants. The Developer covenants with the City that until the earlier of the Termination Date or the Expiration Date:

1. The Developer shall timely perform or cause to be performed all the obligations contained herein which are the responsibility of the Developer to perform.
2. During each year that this Agreement and the obligations of the Developer under this Agreement shall be in effect, the Developer shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals and shall cause to occur those events contemplated by this Agreement that are applicable to, and that are the responsibility of, the Developer.
3. The Developer shall assist and cooperate with the City to accomplish the development of the Boat Docking Facilities by the Developer in accordance with the Plans and Specifications, and this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.
4. Subsequent to the Effective Date, the Developer shall maintain its financial capability to maintain the Boat Docking Facilities and shall promptly notify the City of any event, condition, occurrence, or change in its financial condition which adversely affects, or with the passage of time is likely to adversely affect, the Developer's financial capability to successfully and completely maintain the Boat Docking Facilities as contemplated hereby.
5. The Developer shall promptly cause to be filed when due all federal, state, local and foreign tax returns required to be filed by it, and shall promptly pay when due any tax required thereby.

6. Subject to Section 18.01, the Developer shall maintain its existence, will not dissolve or substantially dissolve all of its assets and will not consolidate with or merge into another corporation, limited partnership, or other entity or permit one or more other corporations or other entity to consolidate with or merge into it without the prior approval of the City unless the Developer or an entity under common control with Developer, retains a controlling interest in the consolidated or merged entity, and will promptly notify the City of any changes to the existence or form of the entity or any change in the control of the Developer.
7. The Developer shall not permit, commit, or suffer any waste of the City Property, the Boat Basin or the Boat Docking Facilities.
8. Provided all conditions precedent thereto have been satisfied or waived as provided herein, the Developer shall maintain the Boat Docking Facilities such that it is substantially complete as provided in this Agreement no later than the Completion Date.

ARTICLE 10. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY.

10.01. Representations and Warranties. The City represents and warrants to the Developer that each of the following statements is currently true and accurate and agrees that the Developer may rely on each of the following statements:

1. The City is a validly existing body corporate and politic of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.
2. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the City is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the City, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City, (iii) contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the City under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the City is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City outstanding on the Effective Date.
3. This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Developer, each document contemplated or required by this Agreement to which the City is or will be a party constitute, or when entered into will constitute, legal, valid and binding obligations of the City enforceable against the City in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws

from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

10.02. Covenants. The City covenants with the Developer that until the earlier of the Termination Date or the Expiration Date:

1. The City shall timely perform, or cause to be performed, all of the obligations contained herein which are the responsibility of the City to perform.
2. During each year that this Agreement and the obligations of the City under this Agreement shall be in effect, the City shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals, and shall cause to occur those events contemplated by this Agreement that are applicable to and are the responsibility of the City.
3. The City shall assist and cooperate with the Developer to accomplish the maintenance of the Boat Docking Facilities in accordance with this Agreement and the Plans and Specifications, will carry out its duties and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, and, to the extent permitted by law, the City will not enact or adopt or urge or encourage the adoption of any ordinances, resolutions, rules regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.
4. The City shall not permit, commit, or suffer any waste or impairment to the Boat Docking Facilities, nor shall the City alter the City Property, or any part thereof, so as to prevent or adversely affect the use of the Boat Docking Facilities.

ARTICLE 11. CONDITIONS PRECEDENT.

11.01. Developer Obligations. Unless this Agreement has been terminated pursuant to Article 12 hereof, the obligation of the Developer to maintain the Boat Docking Facilities is subject to the fulfillment to the satisfaction of, or waiver in writing by, the Developer of each of the following conditions precedent:

1. All conditions precedent under Article 11 of the Development Agreement have been satisfied or waived by Developer.
2. The Plans and Specifications required to commence construction and maintenance of the Boat Docking Facilities shall have been approved by the City in accordance with applicable ordinances, land use regulations, building codes and other regulations of the City.
3. All Permits necessary for construction and maintenance of the Boat Docking Facilities to commence shall have been issued and have become final and non-appealable.

11.02. Responsibilities of the Parties for Conditions Precedent. The parties hereto shall not, individually or collectively, knowingly, intentionally or negligently prevent any condition precedent from occurring; provided, however, nothing in this Section is intended or shall be deemed to deny any party the right to reasonably exercise its discretion to the extent permitted by law or this Agreement.

ARTICLE 12. DEFAULT; TERMINATION.

12.01. Project Default by the Developer.

1. There shall be an "event of default" by the Developer under this Agreement upon the occurrence of any one or more of the following:
 - a. The Developer shall fail to perform or comply with any material provision of this Agreement applicable to it within the time prescribed therefor, after receipt of a notice from the City pursuant to Subsection 12.01.2.a.; or
 - b. The Developer shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Developer or any material part of such entity's properties; or
 - c. Within sixty (60) days after the commencement of any proceeding by or against the Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed or otherwise terminated, or if, within sixty (60) days after the appointment without the consent or acquiescence of the Developer of any trustee, receiver or liquidator of any of such entities or of any material part of any of such entity's properties, such appointment shall not have been vacated; or
2.
 - a. If an event of default by the Developer described in subsection 1 above shall occur, the City shall provide written notice thereof to the Developer, and, if such event of default shall not be cured by the Developer within thirty (30) days after receipt of the written notice from the City specifying in reasonable detail the event of default by the Developer, or if such event of default is of such nature that it cannot be completely cured within such time period, then if the Developer shall not have commenced to cure such default within such thirty (30) day period and shall not diligently prosecute such cure to completion within such reasonable longer period of time as may be necessary (provided, however, if the Developer is proceeding diligently and in good faith, the curative period shall be extended for a period of not exceeding six (6) months without any approval or consent of

the City being required, but such approval will be required if the curative period is to be extended beyond six (6) months) then, in addition to any remedy available under Section 12.05, the City may terminate this Agreement or pursue any and all legal or equitable remedies to which the City is entitled, provided, however, if the Developer shall fail to cure such event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event of default, then the City may proceed to enforce other available remedies without providing any additional notice to the Developer.

- b. Any attempt by the City to pursue any of the above referenced remedies will not be deemed an exclusive election of remedy or waiver of the City's right to pursue any other remedy to which either may be entitled.
 - c. Any time periods or deadlines provided in this Agreement shall be tolled or extended by the amount of time to cure any event of default hereunder if such event affects the Developer's or City's ability to perform by such deadline or the expiration of such period.
3. Subject to the rights of the Project Lender, if the City elects to cure a default under Subsection 12.01.1. by the Developer, construction contracts, contract documents, building permits, development permits, management agreements, and financial commitments (all only to the extent assignable) with respect to the Project shall, if such default has not been previously cured, on the day following receipt by the Developer of notice from the City of its election to cure, be deemed then assigned to the City making said election, without necessity of any other action being taken or not taken by any party hereto. The Developer shall transfer and deliver to the City upon making said election, all assignable Plans and Specifications, working drawings, construction contracts, contract documents and all Permits, and, at the direction of the City, the Developer shall vacate the Leased Premises.

12.02. Default by the City.

1. Provided the Developer is not then in default under Section 12.01, there shall be an "event of default" by the City under this Agreement in the event the City shall fail to perform or comply with any material provision of this Agreement applicable to it; provided, however, that suspension of or delay in performance by the City during any period in which the Developer is in default of this Agreement as provided in Section 12.01 hereof will not constitute an event of default by the City under this Subsection 12.02.
2. a. If an event of default by the City described in Subsection 12.02.1. shall occur, the Developer shall provide written notice thereof to the City, and, after expiration of the curative period described in paragraph (b) below, may terminate this Agreement, institute an action to compel specific performance of the terms hereof by the City or pursue any and all legal or equitable remedies to which the Developer is entitled; provided, however, if the event of default by the City occurs, any monetary recovery by the Developer in any such action shall be limited to bona fide third-party out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred by the Developer in connection with this Agreement and the transactions

contemplated hereby, unless any such default by the City was willful and committed in bad faith with reckless disregard for the rights of the Developer.

- b. The Developer may not terminate this Agreement or institute an action described in paragraph (2a) above if the City cures such event of default within thirty (30) days after receipt by the City of written notice from the Developer specifying in reasonable detail the event of default by the City, or if any such event of default is of such nature that it cannot be completely cured within such period, then within such reasonably longer period of time as may be necessary to cure such default, provided however, if the City is proceeding diligently and in good faith, the curative period shall be extended for a period of not exceeding six (6) months without any approval or consent of the Developer being required, but such approval will be required if the curative period is to be extended beyond six (6) months after the notice of default has been given by the Developer to the City if the City has commenced to cure such default within such thirty (30) day period and is diligently prosecuting such curative action to completion. The City shall within said thirty (30) day period or such longer period promptly, diligently and in good faith proceed to cure such event of default after receipt of the notice from the Developer and shall succeed in curing such event of default within said period of time, provided, however, if the City shall fail to cure such event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event of default, then the Developer may proceed with its available remedies without providing any additional notice to the City.
- c. Any attempt by the Developer to pursue any of the remedies referred to in paragraphs a. and b. above will not be deemed an exclusive election of remedy or waiver of the Developer's right to pursue any other remedy to which it might be entitled.
- d. Any time periods or deadlines provided in this Agreement shall be tolled or extended by the amount of time to cure any event of default hereunder if such event affects the Developer's or City's ability to perform by such deadline or the expiration of such period.

12.03. Obligations, Rights and Remedies Cumulative. Unless specifically stated herein to the contrary, the specified rights and remedies to which either the City or the Developer are entitled under this Agreement are not exclusive and are intended to be in addition to any other remedies or means of redress to which the City or the Developer may lawfully be entitled and are not specifically prohibited by this Agreement. The suspension of, or delay in, the performance of its obligations by the Developer while the City shall at such time be in default of their obligations hereunder shall not be deemed to be an "event of default." The suspension of, or delay in, the performance of the obligations by the City while the Developer shall at such time be in default of its obligations hereunder shall not be deemed to be an "event of default" by the City.

12.04. Non-Action on Failure to Observe Provisions of this Agreement. The failure of the City or the Developer to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any Exhibit hereto, or any other

agreement, instrument or document of whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that the City or the Developer may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

12.05. Termination Certificate.

1. In the event of a termination of this Agreement for any reason prior to the Expiration Date, each of the parties hereto do covenant and agree with each other to promptly execute a certificate prepared by the party electing to terminate this Agreement, which certificate shall expressly state that this Agreement has been terminated in accordance with its terms, is no longer of any force and effect except for those provisions hereof which expressly survive termination, that the rights, duties and obligations of the parties hereto have been terminated and released (subject to those surviving provisions hereof) and that the Boat Basin is no longer subject to any restrictions, limitations or encumbrances imposed by this Agreement.
2. The certificate described in Subsection 1. shall be prepared in a form suitable for recording and promptly after execution by all of the parties hereto shall be recorded in the public records of Pinellas County, Florida.

ARTICLE 13. RIGHT TO CONTEST.

13.01. Right to Contest. Subject to the conditions set forth in Section 13.02 below, the City or the Developer each may, at its sole discretion and expense, after prior written notice to the other parties hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against the City, the Developer, the Boat Docking Facilities (or any part thereof), the Boat Basin or personal property thereon, and the revenues generated from the use or operation of any or all of the above, any other payment specifically identified in this Agreement, or compliance with any law, rule, regulation, or other such legal requirement.

13.02. Conditions. The right to contest any charge, payment or requirement pursuant to Section 13.01 is subject to the following:

1. Such proceeding shall suspend the execution or enforcement of such charge, payment or requirement;
2. Such proceeding will not create any risk of impairment of the maintenance or use of the Boat Docking Facilities or any part thereof, in any material respect, and no portion of the Boat Docking Facilities would be subject to any risk of being involuntarily sold, forfeited or lost or the construction, equipping, or completion of the Boat Docking Facilities or any part thereof be delayed or prohibited;
3. Such proceeding will not subject any other party to criminal liability or risk of material civil liability for failure to comply therewith, or involve risk of any material claim against such party; and

4. The party seeking the benefit of this Article shall have furnished to the other parties such security, if any, as may be required in such proceeding or as may be reasonably requested by the others, to protect the Boat Docking Facilities and any part thereof, and any interest of such parties hereunder.

ARTICLE 14. ARBITRATION

14.01. Agreement to Arbitrate. Only as specifically provided in this Agreement and only if any judicial or administrative action or proceeding has not been commenced with regard to the same matter and, if so, the party hereto commencing such action has not dismissed it, any disagreement or dispute between the parties may be arbitrated in the manner set forth in this Article 14. All parties hereby agree such arbitration, once commenced, shall be the exclusive procedure for resolving such disagreement or dispute and agree to be bound by the result of any such arbitration proceeding unless all parties mutually agree to terminate such proceeding prior to decision. If any arbitration proceeding under this part adversely affects the performance of any party hereunder, then any time periods provided herein for such performance by that party shall be tolled during the pendency of the arbitration proceeding affecting such performance.

14.02. Appointment of Arbitrators.

1.
 - a. Unless accelerated arbitration as provided in Section 14.08 hereof is invoked, any party invoking arbitration herewith shall, within five (5) days after giving notice of impasse in the dispute resolution process or upon following the expiration of the time period for such dispute resolution occurrence of the event permitting arbitration to be invoked, give written notice to that effect to the other parties, and shall in such notice appoint a disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association or a disinterested person not on such list to whom an objection is not made by any other party hereto within five (5) days of receipt of the notice of such appointment as the arbitrator or, if more than one (1) arbitrator is to be appointed, as one of the arbitrators.
 - b. Within ten (10) days after receipt of the notice described in paragraph (1), the other parties shall by written notice to the original party acknowledge that arbitration has been invoked as permitted by this Agreement, and shall either accept and approve the appointment of such individual set forth in the original notice as a sole arbitrator or shall appoint one (1) disinterested person per party of recognized competence in such field as an arbitrator.
2.
 - a. If two (2) arbitrators are appointed pursuant to subsection a. above, the arbitrators thus appointed shall appoint a third disinterested person who is on the list of qualified arbitrators maintained by the American Arbitration Association, and such three (3) arbitrators shall as promptly as possible determine such matter.
 - b. If the second arbitrator shall not have been appointed as provided in subsection a., the first arbitrator shall, after ten (10) days notice to the parties, proceed to determine such matter.

- c. If the two (2) arbitrators appointed by the parties pursuant to subsection a. shall be unable to agree within fifteen (15) days after the appointment of the second arbitrator upon the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties, and, if the parties then fail to agree upon the selection of such third arbitrator within fifteen (15) days thereafter, then within ten (10) days thereafter each of the parties upon written notice to the other parties hereto may request the appointment of a third arbitrator by the office in or for the State of Florida (or if more than one office, the office located closest to the City) of the American Arbitration Association (or any successor organization thereto), or, in its absence, refusal, failure or inability to act, request such appointment of such arbitrator by the United States District Court for the Middle District of Florida (which request shall be filed in the division of that court responsible for the geographic area including the City), or as otherwise provided in Chapter 682, Florida Statutes, known and referred to as the Florida Arbitration Act, as amended.

14.03. General Procedures. In any arbitration proceeding under this part, those parties appointing arbitrators shall each be fully entitled to present evidence and argument to the sole arbitrator or panel of arbitrators. The arbitrator or panel of arbitrators shall only interpret and apply the terms of this Agreement and may not change any such terms, or deprive any party to this Agreement of any right or remedy expressed or implied in this Agreement, or award any damages or other compensation to any party hereto. The arbitration proceedings shall follow the rules and procedures of the American Arbitration Association (or any successor organization thereto) unless specifically modified by this Agreement, or as then agreed to by the parties hereto.

14.04. Majority Rule. In any arbitration proceeding under this part, the determination of the majority of the panel of arbitrators, or of the sole arbitrator if only one (1) arbitrator is used, shall be conclusive upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator or panel of arbitrators shall give written notice to the parties stating his or their determination within thirty (30) days after the conclusion of the hearing or final submission of all evidence or argument.

14.05. Replacement of Arbitrator. In the event of the failure, refusal or inability of any arbitrator to serve as such, promptly upon such determination being made by the affected arbitrator, the affected arbitrator shall give notice to the other two (2) arbitrators (if applicable) and to the parties hereto, and then a new arbitrator shall be promptly appointed as a replacement, which appointment shall be made by the party or the arbitrators who appointed the affected arbitrator in the same manner as provided for in the original appointment of the affected arbitrator in Section 14.02 hereof.

14.06. Decision of Arbitrators.

1. If any decision reached by arbitration as provided in this part requires performance by the Developer, the Developer covenants and agrees to comply with any decision of the arbitrator(s) promptly after the date of receipt by the Developer of such decision, and to continue such performance to completion with due diligence and in good faith.

2. If any such decision requires performance by the City, the City covenants and agrees to comply promptly with any decision reached by arbitrators) promptly after the date of receipt by the City of such decision, and to continue such performance to completion with due diligence and in good faith.
3. Nothing in this part, nor in any arbitration decision rendered under this part, shall be construed to require any payment by the City to the Developer not otherwise provided for herein.

14.07. Expense of Arbitration. The expenses of any arbitration proceeding pursuant to this part shall be borne equally by the parties to such proceeding, provided, however, for the purpose of this Section 14.07, "expenses" shall include the fees and expenses of the arbitrators and the American Arbitration Association with respect to such proceeding, but shall not include attorneys' fees or expert witness fees, or any costs incurred by attorneys or expert witnesses, unless (and to the extent) agreed to by the parties to such proceeding, which in the absence of such Agreement shall be the responsibility of the party incurring such fees or costs.

14.08. Accelerated Arbitration.

1.
 - a. If any of the parties to any arbitration proceeding under this part determines the matter for arbitration should be decided on an expedited basis, then after an initial election to invoke arbitration pursuant to Section 14.02 hereof has been made, either party to such proceeding may invoke accelerated arbitration by giving notice thereof to the other parties no later than three (3) days after arbitration has been initially invoked and the other parties do not object within three (3) days thereafter.
 - b. Accelerated arbitration, for purposes of this Section 14.08, shall be accomplished by either party notifying the American Arbitration Association (or any successor organization thereto) that the parties have agreed to a single arbitrator, qualified to decide the matter for arbitration, to be appointed by the American Arbitration Association (or any successor organization thereto) with the consent of the parties to such proceeding within three (3) days after receipt of the request and to decide such matter within five (5) days after such appointment.
 - c. If an arbitrator is not so appointed with consent of the parties to the proceeding within three (3) days after the notice referred to in paragraph (2) is received by the American Arbitration Association, the accelerated proceeding under this Section 14.08 shall terminate and the procedures otherwise set forth in this Article 14 shall apply, unless the parties mutually agree to an extension of such time period.
2. The Developer and the City hereby agree to use such accelerated procedure only when reasonably necessary, to not contest the appointment of the arbitrator or his or her decision except as may be permitted by law, and that all other provisions of this part, except as are in conflict with this Section 14.08, remain in effect and applicable to an accelerated arbitration proceeding.

14.09. Applicable Law. To the extent not inconsistent with this article, any arbitration proceeding under this article shall be governed by the provisions of Chapter 682, Florida Statutes, as amended, known and referred to as the Florida Arbitration Code.

14.10. Arbitration Proceedings and Records. Any arbitration hearing under this article shall be considered a meeting subject to Section 286.011, Florida Statutes, and shall be open to any member of the public. Unless otherwise rendered confidential pursuant to or by the operation of any applicable law or order (other than an order by a sole arbitrator or panel of arbitrators acting under this part), the record of such proceedings shall be a public record under Chapter 119, Florida Statutes.

ARTICLE 15. UNAVOIDABLE DELAY.

15.01. Unavoidable Delay.

1. Any delay in performance of or inability to perform any obligation under this Agreement (other than an obligation to pay money) due to any event or condition described in paragraph (b) as an event of "Unavoidable Delay" shall be excused in the manner provided in this Section 15.01.
2. "Unavoidable Delay" means any of the following events or conditions or any combination thereof: acts of God, litigation which has the effect of precluding reasonable satisfaction of the obligations of this Agreement, acts of the public enemy, riot, insurrection, war, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Effective Date), strikes or labor disturbances, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement, or acts of any governmental authority (except that acts of the City shall not constitute an Unavoidable Delay with respect to performance by the City).
3. An application by any party hereto (referred to in this paragraph (c) and in paragraph (d) as the "Applicant") for an extension of time pursuant to this subsection must be in writing, must set forth in detail the reasons and causes of delay, and must be filed with the other party to this Agreement within seven (7) days following the occurrence of the event or condition causing the Unavoidable Delay or seven (7) days following the Applicant becoming aware (or with the exercise of reasonable diligence should have become aware) of such occurrence.
4. The Applicant shall be entitled to an extension of time for an Unavoidable Delay only for the number of days of delay due solely to the occurrence of the event or condition causing such Unavoidable Delay and only to the extent that any such occurrence actually delays that party from proceeding with its rights, duties and obligations under this Agreement affected by such occurrence.

ARTICLE 16. INTENTIONALLY DELETED.

ARTICLE 17. FIRE OR OTHER CASUALTY; CONDEMNATION.

17.01. Loss or Damage to Project.

1. Until the Termination Date or the Expiration Date, and without regard to the extent or availability of any insurance proceeds, however, subject to any condition or limitations as set forth in the Permits, the Developer **shall have the right** to commence and complete the reconstruction or repair of any loss or damage caused by fire or other casualty or by eminent domain (provided the City is not the condemning authority) to each and every part of the Boat Docking Facilities substantially the same condition as existed prior to the occurrence of such loss or damage, promptly after the City approves the Plans and Specifications for such reconstruction or repairs.
2. The City shall review the Plans and Specifications for such reconstruction or repairs as soon as possible after filing thereof by the Developer. The City agrees to approve the Plans and Specifications for such reconstruction or repairs if the reconstruction or repairs contemplated by such Plans and Specifications will restore the Boat Docking Facilities, or the damaged portion thereof, to substantially the same condition as existed prior to the occurrence of such loss or damage and if such Plans and Specifications conform to the applicable laws, ordinances, codes, and regulations in effect at the time of filing with the City of the plans and specifications for such reconstruction or repairs.
3. If Developer elects not to reconstruct or repair the Boat Docking Facilities as provided herein, Developer shall promptly remove all improvements constituting the Boat Docking Facilities in compliance with the requirements of the City and the Permits.

17.02. Partial Loss or Damage to Project. Until the Termination Date or the Expiration Date, any loss or damage by fire or other casualty or exercise of eminent domain to the Boat Docking Facilities, or any portion thereof, which does not render the Boat Docking Facilities unusable for the use contemplated by Section 2.03 of this Agreement, shall not operate to terminate this Agreement or to relieve or discharge the Developer from the timely performance and fulfillment of the Developer's obligations pursuant to this Agreement, subject to an extension of time for an Unavoidable Delay.

17.03. Insurance Proceeds.

1. Whenever the Boat Docking Facilities, or any part thereof, shall have been damaged or destroyed, the Developer shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. Notwithstanding the foregoing, Developer shall not be obligated to obtain or provide casualty insurance as to the Boat Docking Facilities.
2. Subject to the rights of a Project Lender, the Developer agrees that all proceeds of property or casualty insurance received by the Developer as a result of such loss or damage shall be available and shall be used for payment of the costs of

the reconstruction or repair of the Boat Docking Facilities to the extent necessary to repair or reconstruct the Boat Docking Facilities.

17.04. Notice of Loss or Damage to Boat Docking Facilities. The Developer shall promptly give the City written notice of any significant damage or destruction to the Boat Docking Facilities stating the date on which such damage or destruction occurred, the expectations of the Developer as to the effect of such damage or destruction on the use of the Boat Docking Facilities, and the proposed schedule, if any, for repair or reconstruction of the Boat Docking Facilities.

17.05. Condemnation of Boat Docking Facilities; Application of Proceeds. In the event that part, but not all, of the Boat Docking Facilities shall be taken by the exercise of the power of eminent domain at any time before the Expiration Date, subject to the rights of a Project Lender, the compensation awarded to and received by the Developer shall be applied first to the restoration of the Boat Docking Facilities, provided the Boat Docking Facilities can be restored and be commercially feasible for its intended use as contemplated by Section 2.03.1. of this Agreement after the taking, and, if not, can be retained by the Developer.

ARTICLE 18. MISCELLANEOUS

18.01. Assignments.

1. By the Developer.

- a. The Developer may sell, convey, assign or otherwise dispose of any or all of its right, title, interest and obligations in and to the Boat Docking Facilities, or any part thereof, only with the prior written consent of the City, which consent is hereby granted for assignment to a party to which Developer's rights are assigned pursuant to the Development Agreement, provided that such party (hereinafter referred to as the "assignee"), to the extent of the sale, conveyance, assignment or other disposition by the Developer to the assignee, shall be bound by the terms of this Agreement the same as the Developer for such part of the Boat Docking Facilities as is subject to such sale, conveyance, assignment or other disposition.
- b. If the assignee of the Developer's right, title, interest and obligations in and to the Boat Docking Facilities, or any part thereof assumes all of the Developer's obligations hereunder, then the Developer shall be released from all such obligations hereunder which have been so assumed by the assignee, and the City agrees to execute an instrument evidencing such release, which shall be in recordable form.
- c. An assignment of the Boat Docking Facilities, any part thereof, by the Developer to any corporation, limited partnership, limited liability company, general partnership, or joint venture, in which the Developer (or an entity under common control with Developer) has either the controlling interest or through a joint venture or other arrangement shares equal management rights and maintains such controlling interest or equal management rights shall not be deemed an assignment or transfer subject to any restriction on or approvals of assignments or transfers imposed by this Section 18.01, provided, however, that notice of such assignment shall be given by the

Developer to the City not less than thirty (30) days prior to such assignment being effective and the assignee shall be bound by the terms of this Agreement to the same extent as would the Developer in the absence of such assignment.

- d. Notwithstanding the foregoing, so long as this Agreement is in effect, Developer shall have the right to sublease or license the use of individual Developer Boat Slips to owners, tenants and guests in accordance with Subsection 2.03.05 above without City's consent.

18.02. Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the City, and its successors and assigns, and the Developer and its successors and assigns, except as may otherwise be specifically provided herein.

18.03. Notices.

- 1. All notices, demands, requests for approvals or other communications given by either party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by courier service, or by hand delivery to the office for each party indicated below and addressed as follows:

To the Developer:

THE SANDPEARL RESORT, LLC
500 Mandalay Avenue
Clearwater, FL 33767
Attn: Don Wolfe

with copy to:

Greene Hamrick Quinlan & Schermer, P.A.
601 12th Street West
Bradenton, FL 34205
Attn: Robert F. Greene, Esquire

To the City:

City of Clearwater
P.O. Box 4748
Clearwater, FL 33756

with copies to:

Pam Akin, Esquire
Clearwater City Attorney
P.O. Box 4748
Clearwater, FL 33756

- 2. Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective upon receipt. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Section 18.03. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

18.04. Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the City and the Developer and the Agreement, including, without limitation,

the Exhibits, shall not be deemed to have been prepared by the City or the Developer, but by all equally.

18.05. Venue; Submission to Jurisdiction.

1. For purposes of any suit action, or other proceeding arising out of or relating to this Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Pinellas County, Florida.
2. Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Pinellas County and the courts thereof and to the jurisdiction of the United States District Court for the Middle District of Florida, for the purposes of any suit, action, or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.
3. If at any time during the term of this Agreement the Developer is not a resident of the State of Florida or has no office, employee, City or general partner thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee, agent, or general partner available for service of process in the State of Florida, the Developer hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the City, or both, arising out of or relating to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a non-resident; provided, however, that at the time of service on the Florida Secretary of State, a copy of such service shall be delivered to the Developer at the address for notices as provided in 18.03.

18.06. Estoppel Certificates. The Developer and the City shall at any time and from time to time, upon not less than ten (10) days prior notice by another party hereto, execute, acknowledge and deliver to the other parties a statement in recordable form certifying that this Agreement has not been modified and is in full force and effect (or if there have been modifications that the said Agreement as modified is in full force and effect and setting forth a notation of such modifications), and that to the knowledge of such party, neither it nor any other party is then in default hereof (or if another party is then in default hereof, stating the nature and details of such default), it being intended that any such statement delivered pursuant to this Section 18.06 may be relied upon by any prospective purchaser, mortgagee, successor, assignee of any mortgage or assignee of the respective interest in the Boat Docking Facilities, if any, of any party made in accordance with the provisions of this Agreement.

18.07. Complete Agreement; Amendments.

1. This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements, whether written or oral.

2. Any provision of this Agreement shall be read and applied in *para materia* with all other provisions hereof.

3. This Agreement cannot be changed or revised except by written amendment signed by all parties hereto.

18.08. Captions. The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

18.09. Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

18.10. Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto shall be treated as if they are part of this Agreement.

18.11. No Brokers. The City and the Developer hereby represent, agree and acknowledge that no real estate broker or other person is entitled to claim or to be paid a commission as a result of the execution and delivery of this Agreement, including any of the Exhibits.

18.12. Not an Agent of City. During the term of this Agreement, the Developer hereunder shall not be an agent of the City with respect to any and all services to be performed by the Developer (and any of its agents, assigns, or successors) with respect to the Boat Docking Facilities.

18.13. Memorandum of Agreement. The City and the Developer agree to execute, in recordable form, at the request of either party, a short form "Memorandum of Agreement" and agree, authorize and hereby direct such Memorandum to be recorded in the public records of Pinellas County, Florida, as soon as possible after execution thereof. The Developer shall pay the cost of such recording.

18.14. Public Purpose. The parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the City's power and authority.

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

18.16. Other Requirements of State Law. Nothing in this Agreement shall be deemed to relieve either party from full compliance with any provision of State law which is applicable to any

of the obligations or undertakings provided for in this Agreement. In the event that this Agreement omits an obligation to comply with any provision of State law in regard to any of the obligations or undertakings provided for in this Agreement, it is the intention of the parties that such applicable State law shall be deemed incorporated into this Agreement and made a part thereof. In the event that there is any conflict between the provisions of this Agreement and applicable State law, it is the intention of the parties that the Agreement shall be construed to incorporate such provisions of State law and that such provisions shall control.

18.17. Technical Amendments; Survey Corrections. In the event that due to minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to changes resulting from technical matters arising during the term of this Agreement, the parties agree that amendments to this Agreement required due to such inaccuracies, unforeseen events or circumstances which do not change the substance of this Agreement may be made and incorporated herein. The City Manager is authorized to approve such technical amendments on behalf of the City, respectively, and is authorized to execute any required instruments, to make and incorporate such amendment to this Agreement or any Exhibit attached hereto or any other agreement contemplated hereby.

18.18. Term; Expiration; Certificate.

1. If not earlier terminated as provided in Section 12.05, this Agreement shall expire and no longer be of any force and effect on April 30, 2024. The City shall have the unilateral option to renew this Agreement for five (5) successive renewal terms of five (5) years each by written notice to Developer. The date of expiration of this Agreement is the "Expiration Date".
2. If the City exercises all five (5) renewal options this Agreement shall expire on April 30, 2049 ("Final Expiration Date") and exclusive possession of the Boat Docking Facilities shall be relinquished by Developer to City together with ownership of all improvements within the Boat Docking Facilities (excluding the Slip Improvements) ("Improvements"). At the request of the City, Developer shall execute and deliver to City a Bill of Sale as to all Improvements. In the event the City does not exercise one of the renewal options so that this Agreement expires prior to the Final Expiration Date, City agrees to pay to Developer an amount equal to the unamortized cost on the Expiration Date incurred by Developer in connection with the design, permitting and construction of all Improvements ("Project Costs") such unamortized Project Costs to be determined by amortizing the Project Costs on a straight line basis over the thirty (30) year period commencing on the Lease Commencement Date. Upon expiration or termination of this Agreement, Developer may at its option and at its sole expense remove the Slip Improvements. Costs relating to the Slip Improvements shall not be considered part of the Project Costs. The total Project Costs to be amortized as provided above shall not exceed \$1,000,000.00.
3. Upon completion of the term of this Agreement including all renewal terms exercised by City, all parties hereto shall execute the Agreement Expiration Certificate. The Agreement Expiration Certificate shall constitute (and it shall be so provided in the certificate) a conclusive determination of satisfactory completion of all obligations hereunder and the expiration of this Agreement.

4. In the event of any dispute as to whether any party is required to execute the Agreement Expiration Certificate, the dispute shall be resolved by arbitration as provided in Article 14.
5. The Agreement Expiration Certificate shall be in such form as will enable it to be recorded in the public records of Pinellas County, Florida. Following execution by all of the parties hereto, the Agreement Expiration Certificate shall promptly be recorded by the Developer in the public records of Pinellas County, Florida and the Developer shall pay the cost of such recording.

18.19. Approvals Not Unreasonably Withheld. The parties hereto represent that it is their respective intent as of the Effective Date and do covenant and agree in the future that all approvals, consents, and reviews will be undertaken and completed as expeditiously as possible, in good faith, and will not be arbitrarily or unreasonably withheld, unless otherwise expressly authorized by the terms of this Agreement.

18.20 Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18.21. Effective Date. The Effective Date shall be the date of the last signature to this Agreement.

**BALANCE OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of this 22 day of October, 2019.

THE CITY OF CLEARWATER, FLORIDA

-george cretekos

George N. Cretekos
Mayor

Approved as to form:

Attest:

Michael P. Fuino

Michael P. Fuino
Assistant City Attorney

Rosemarie Call

Rosemarie Call
City Clerk



THE SANDPEARL RESORT, LLC,
a Florida limited liability company

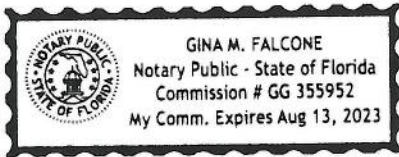
By: CLEARPEARL LLC
a Florida limited liability company
Managing Member

By: Eric Waltz
Name: ERIC WALTZ
Title: GENERAL MANAGER

STATE OF Florida

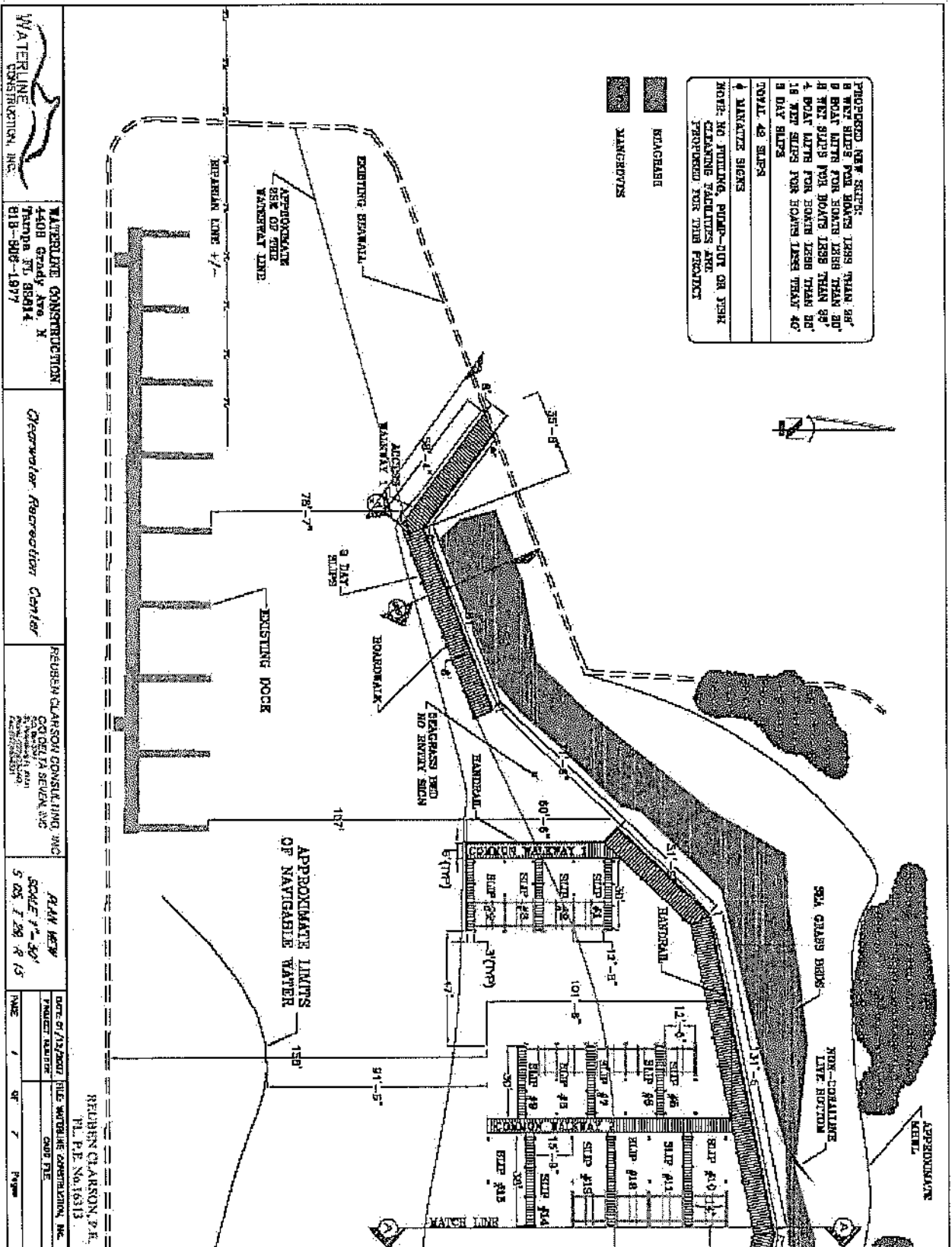
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 13 day of September, 2019, Eric Waltz as Manager of Clearpearl LLC, a Florida limited liability company, the Managing Member of The Sandpearl Resort, LLC, a Florida limited liability company, who is personally known to me or has produced a Florida driver's license or _____ as identification.



Gina M Falcone
NOTARY PUBLIC
Printed Name: Gina M Falcone
Commission No. GG 355952
My Commission expires: 8/13/23

Exhibit "A" Site Plan



REUBEN CARSON, P.E.
 P.L. P.E. No. 16313

DATE OF PREPARED FILE WATERLINE CONSTRUCTION, INC.
 PROJECT NUMBER 0103 PLE

NAME 1 of 7 Pages

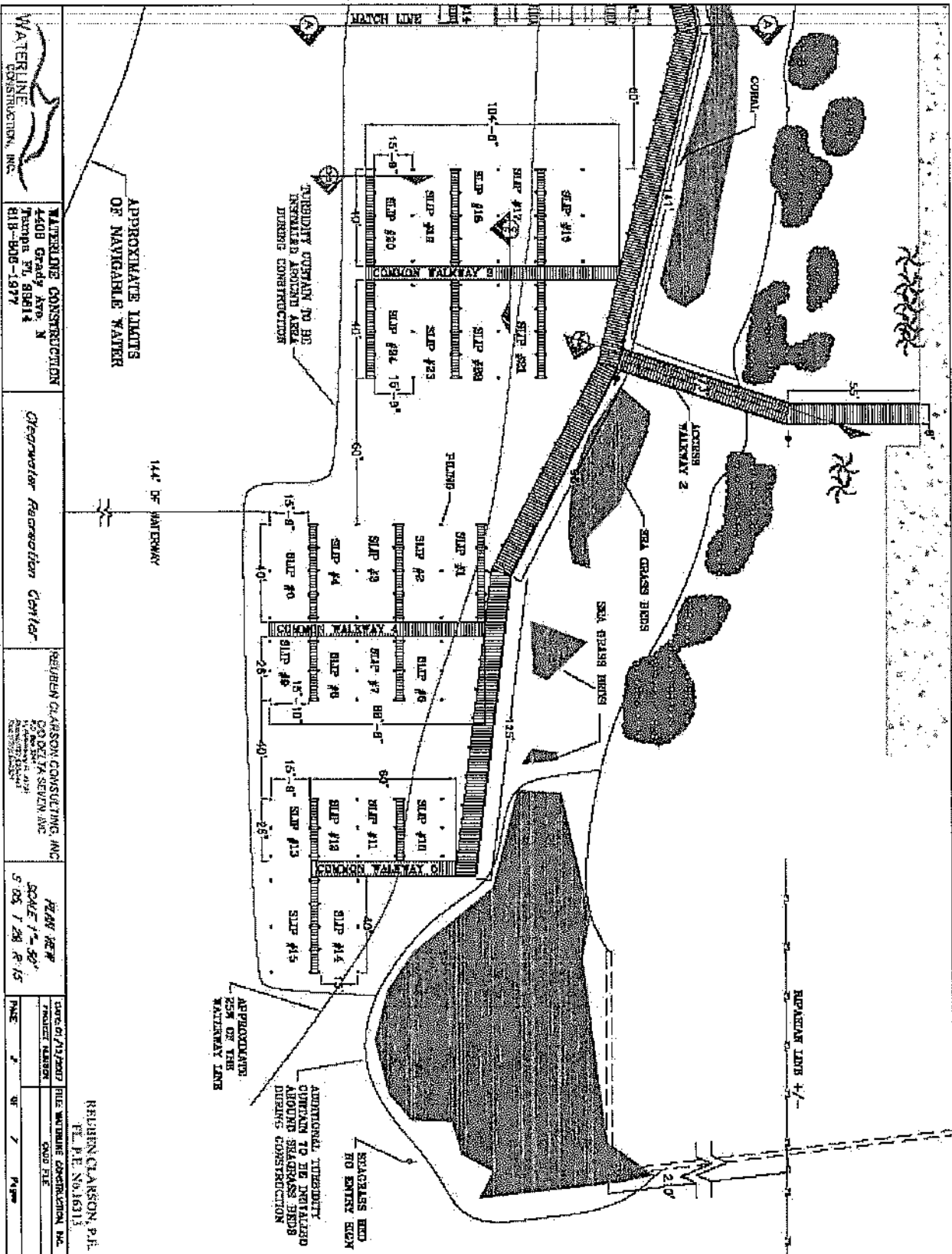
SCALE 1" = 50'
 5 03 1 28 4 15

ALAN MCFEE
 PROJECT NUMBER 0103 PLE

REUBEN CARSON CONSULTING, INC.
 5400 GARDNER AVE., N.
 TAMPA, FL 33604
 813-988-1877

WATERLINE CONSTRUCTION, INC.
 WATERLINE CONSTRUCTION, INC.
 TAMPA, FL 33604
 813-988-1877

Operator, Recreation Center



WATERLINE CONSTRUCTION, INC.

WATERLINE CONSTRUCTION
4408 Grady Ave. N
Tampa, FL 33614
813-808-1977

Deepwater Restoration Center

REUBEN CLARSON CONSULTING, INC.
5020 W. BAYVIEW AVENUE
SUITE 100
MIAMI BEACH, FL 33149
305-438-1234

PLAN SET
SCALE 1" = 50'
5/03, 1/28, 8/15

DATE OF APPROVAL	FILE NUMBER	CONSTRUCTION NO.
PROJECT NUMBER	CONTRACT NUMBER	CONTRACT FILE
PAGE 7	OF 7	PAGE

REUBEN CLARSON, P.E.
FL P.E. NO. 16113

APPROXIMATE LIMITS OF NAVIGABLE WATER

144' DE WATERWAY

APPROXIMATE 25M OF THE WALKWAY LANE

APPROXIMATE TIDEBENTH COMPANY TO BE INSTALLED AROUND SEA GRASS BEDS DURING CONSTRUCTION

SEA GRASS BEDS TO EXIST AS NOTED

APPROXIMATE TIDEBENTH COMPANY TO BE INSTALLED AROUND AREA DURING CONSTRUCTION

REPAIRING LANE 1/2

EXHIBIT "B"
CITY PROPERTY
LEGAL DESCRIPTION

Upland Property

PID# 05/29/15/00000/330/0100

**BEG AT NW COR LOT 9 YACHT BASIN SUB RUN N'LY ALONG E R/W MANDALAY AVE
400 FT(S) TH E'LY ALONG S R/W CLEARWATER ST 915 FT(S) TH S'LY ALONG
SEAWALL 195 FT(S) TH W'LY MEANDERING SHORELINE 700 FT(S) TH S'LY 100 FT(S)
TH SW'LY ALONG SEAWALL 245 FT(S) TH S'LY 60 FT(S) TH W'LY 27 FT(S) TO POB
CONT 4.13 AC(C)**

EXHIBIT "C"
MAINTENANCE STANDARDS

- DAILY:**
- Inspect Boat Docking Facilities
 - Enforce use restrictions, including, but not limited, the use restrictions found in Section 2.03.5 of this Agreement.
 - Respond to emergency conditions
- WEEKLY:**
- Trash removal (or more frequently as needed)
 - Lighting inspection and light bulb replacement
 - General maintenance inspection. Docking Facilities to be maintained in good condition and repair with all deteriorated or damaged materials and loose screws/nails replaced as needed. All repairs to be completed within ten (10) working days, however any repairs required for safe use of facilities shall be completed as soon as possible under the circumstances.
- QUARTERLY:**
- Thorough inspection of Docking Facilities with the City Harbor Master. All required repairs identified in quarterly inspection to be documented by written report and signed by a representative of Developer and City Harbor Master. All repairs to be completed in the time frame to be stated in the inspection report and Developer shall provide written certification upon completion.