



**BOARD OF COMMISSIONERS  
of the  
PORT OF PALM BEACH DISTRICT**

**IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES  
ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS  
PROCEEDING SHALL, WITHIN THREE (3) DAYS PRIOR TO ANY PROCEEDING,  
CONTACT THIS OFFICE, ONE EAST 11TH STREET, SUITE 600, RIVIERA BEACH,  
FLORIDA 33404 – 6921 (561-842-4201).**

**Board of Commissioners Emergency Meeting  
Thursday, July 26, 2018  
4:00 p.m.**

One East 11th Street – 6th Floor  
Riviera Beach, Florida 33404-6921

**- THIS MEETING IS OPEN TO THE PUBLIC -**

Chair Jean L. Enright  
Vice-Chair Peyton W. McArthur  
Secretary/Treasurer Katherine M. Waldron  
Commissioner Blair J. Ciklin  
Commissioner Wayne M. Richards  
Executive Director Manuel Almira  
Port Attorney Gregory C. Picken

**I. BOARD OF COMMISSIONERS EMERGENCY MEETING**

**CIVILITY AND DECORUM:** The Port of Palm Beach is committed to civility and decorum by its officials, employees and members of the public who attend this meeting.

- Officials shall be recognized by the Chair and shall not interrupt a speaker.
- Public comment shall be addressed to the Board of Commissioners as a whole and not to any individual on the dais or in the audience.
- Displays of anger, rudeness, lack of respect, obscene or vulgar conduct shall not be permitted.
- The audience is expected to be respectful of others when they are addressing the Board of Commissioners.

**A. CALL TO ORDER / ROLL CALL**

**B. PLEDGE OF ALLEGIANCE**

**C. NEW BUSINESS**

- C.1. Discussion Of Permitting Issues And Consideration Of Legal Action For Breach Of Interlocal Agreement Between The Port Of Palm Beach District And The City Of Riviera

Beach

Documents:

[C-1 DISCUSSION OF PERMITTING ISSUES.PDF](#)

C.2. Consideration Of Berth One International, LLC Amended & Restated Operating Agreement

Documents:

[C-2 BERTH ONE AMENDED AND RESTATED OPERATING AGREEMENT.PDF](#)

**D. COMMENTS FROM THE PUBLIC**

**E. COMMENTS FROM THE BOARD OF COMMISSIONERS**

**F. SET NEXT MEETING DATE**

**Regular Board of Commissioners Meeting – Thursday, August 16, 2018 – 4:00 p.m.**

**G. ADJOURNMENT**

**PORT OF PALM BEACH DISTRICT  
REQUEST FOR DISCUSSION AND  
COMMISSION ACTION**

**NEW BUSINESS  
ITEM C-1**

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**PREPARED BY:** Manuel Almira Executive Director July 26, 2018

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**SUBJECT:** Discussion of permitting issues and consideration of legal action for breach of Interlocal Agreement between the Port of Palm Beach District and the City of Riviera Beach

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**BACKGROUND INFORMATION:** The City of Riviera Beach is requiring a Site Plan for the proposed MOB improvements, which can result in delays and lost funding to the Port for the project. The Board is asked to listen to a presentation by Port staff and consultants, and make such determinations as it deems fit, which may include legal action.

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**ADDITIONAL INFORMATION ATTACHED:** No  X  Yes \_\_\_\_\_

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**FINANCIAL IMPACT:** N/A

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**RECOMMENDATION:** Port staff respectfully requests that the Board of Commissioners listen to the oral presentation and make a determination as the Board deems fit.

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**Respectfully Submitted By:**



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**Manuel Almira, Executive Director**

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**DATE ACTION TAKEN:** \_\_\_\_\_

Approved: _____	Motion By: _____
Disapproved: _____	Seconded By: _____
Deferred To: _____	Unanimous: Yes _____ No _____
Incorporated into Minutes: _____	By: _____

**PORT OF PALM BEACH DISTRICT  
REQUEST FOR DISCUSSION AND  
COMMISSION ACTION**

**NEW BUSINESS  
ITEM C-2**

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**PREPARED BY:** Jarra Kaczwaro July 26, 2018  
Senior Director, Business Development & Communications

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**SUBJECT: Berth One International, LLC  
Amended & Restated Operating Agreement**

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**BACKGROUND INFORMATION:**

Berth One International's (BOI) Amended & Restated Operating Agreement clarifies that the tenant will have "preferential use" of berth 1. The current agreement indicates that the tenant has exclusive use of berth 1; however, it also indicates that the Port and BOI may agree that the Port can use berth 1 and the leased area (adjacent dock). The Port has been able to accommodate other tenants on berth 1 since BOI's agreement went into effect, which is evidence that there is not exclusivity without other Port use.

This agreement clarification is required due to the understanding of "exclusive use" by the Palm Beach County Property Appraiser's Office. It is not and was not, at the time of signing, the intent of the agreement that BOI be the only entity entitled to use berth 1.

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**ADDITIONAL INFORMATION ATTACHED:** No \_\_\_\_\_ Yes  X

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**FINANCIAL IMPACT: N/A**

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**RECOMMENDATION:** Port Staff respectfully requests the Board of Commissioners' consideration and approval of the Berth One International, LLC Amended & Restated Operating Agreement.

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**Respectfully Submitted By:**



**Manuel Almira, Executive Director**

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**DATE ACTION TAKEN:** \_\_\_\_\_  
Approved: \_\_\_\_\_  
Disapproved: \_\_\_\_\_  
Deferred To: \_\_\_\_\_  
Incorporated into Minutes: \_\_\_\_\_

Motion By: \_\_\_\_\_  
Seconded By: \_\_\_\_\_  
Unanimous: Yes \_\_\_\_\_ No \_\_\_\_\_  
By: \_\_\_\_\_

Amended and Restated  
OPERATING AGREEMENT  
Between  
Port of Palm Beach District  
and  
BERTH ONE INTERNATIONAL, LLC, a Florida  
Limited Liability  
Company

This Amended and Restated Operating Agreement (“Operating Agreement” or “Agreement”) is made this \_\_\_ day of July 2018, by and between Port of Palm Beach District, a quasi-public corporation and political subdivision of the State of Florida, organized and existing under and by virtue of Chapter 7081, Laws of Florida, Acts of 1915, and subsequent and supplemental acts thereto (“District”) having its offices at Sixth Floor, One East Eleventh Street, Riviera Beach, Florida 33404, and BERTH ONE INTERNATIONAL, LLC, a Florida Limited Liability Company (“Company”), having its offices at 1812 Juno Isle Boulevard, North Palm Beach, FL 33408:

The purpose of this Amendment and Restatement is to clarify the intent of the Operating Agreement dated \_\_\_\_\_, 2017.

**RECITALS**

WHEREAS, certain persons or entities have misinterpreted the Operating Agreement without construing it in its entirety as a result which some confusion and negative consequences may result; and

WHEREAS, the parties desire to clarify for all persons and entities concerned, the intent of the Operating Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements made herein, Company and District agree to the “redline” editing of the Operating Agreement as shown herein:

**Article One  
Definitions**

The following terms, wherever they appear in this Operating Agreement, shall be given the meanings set forth below:

(a) Agreement Year

Shall mean a twelve (12) month period, with the first Agreement Year commencing on the Commencement Date.

(b) Building

Shall mean the Port of Palm Beach Maritime Office Complex (includes both Cruise Terminal and Office building) adjacent to the Mega Yacht Berth.

(c) Commencement Date

Shall mean November 1, 2017.

(d) Day

Whether or not capitalized, shall mean a calendar day, and shall include weekdays, weekends, and legal holidays.

(e) Effective Date

Shall mean the date set forth in the opening paragraph of this Operating Agreement.

(f) Mega Yacht

Shall mean a vessel which is not a casino boat, cruise ship or cargo vessel, and which is not less than sixty (60) feet in length.

(g) Mega Yacht Berth

Shall mean Berth 1 as described in the Tariff, and shown on EXHIBIT F.

(h) Leased Area

Shall mean the property described on EXHIBIT B; provided, that before and after the Bulkhead Work, the east line of the Leased Area shall always be five feet west from the bulkhead line.

(i) Mega Yacht Reception Area ("MYRA")

Shall mean the area depicted on EXHIBIT C which is located within the Building. Company acknowledges that this is a common use area, reserved for operations in connection with berthing of Mega Yachts and is not being leased to Company. The MYRA is, however, reserved and dedicated for use in connection with the Mega Yacht Berth.

(j) Month

Whether or not capitalized, shall mean a full calendar month.

(k) Tariff

Shall mean District's standard published then current tariff which is applicable to all Port Users without separate contractual agreements, as the same may be amended from time to time, and any successor tariff, the now current Tariff of the District being Tariff No. 21, and shall mean (unless the term "now current Tariff of the District" is used) the Tariff of the District as in effect at the time a charge, right or obligation is claimed to have been incurred, or a right or obligation is claimed to have arisen. Company acknowledges receipt of a copy of the current Tariff of the District and agrees that the same is incorporated herein and forms a part of this Operating Agreement as completely as if set forth herein in full. Notwithstanding the foregoing, to the extent any provisions of this Operating Agreement are at variance with provisions in the Tariff, the provisions of this Operating Agreement shall control. Changes to the Tariff as they may relate to this Agreement shall be non-discriminatory, and when a cost or charge is involved shall bear a reasonable relationship to Company's operations, the Mega Yacht Berth, MYRA and facilities available to Company hereunder, as determined in accordance with the completion of the rule-making process of the DISTRICT.

Accordingly, any amounts charged at Tariff hereunder are not fixed, and will vary with the Tariff as adopted by the Port of Palm Beach District from time to time.

## **Article Two Demise and Term**

### **Section 2.01 Demise**

District leases unto Company, and Company accepts, the Leased Area as defined herein, to be used for, and only for, the uses and purposes set forth in [Section 6.05\(a\)](#) ~~Section 6.03(a)~~, and under the terms and conditions otherwise set forth herein, which shall include construction of facilities appropriate for a luxury, deep water mega yacht berth as generally set forth in Company's proposal to District ("Company Proposal"), attached hereto as EXHIBIT K, all under the terms and conditions otherwise set forth herein.

### **Section 2.02 Term**

The Company shall have and hold the Leased Area for an initial term ("Initial Term") commencing on the Commencement Date and expiring 36 calendar months thereafter, subject to tolling as provided in [Section 7.05](#) ~~Section 7.03~~. Each year of this Agreement, commencing with the Commencement Date shall be referred to as an "Agreement Year". District may make appropriate adjustments and pro-rations for payments to be made hereunder, e.g. where tolling may apply.

### **Section 2.03 Renewals**

Upon the expiration of the Initial Term the Company shall have the right, exercisable in its sole option, to renew this Agreement for up to a total of two (2) renewal terms of three (3) years each (each a “Renewal Term”). Each Renewal Term shall be upon the same terms, conditions (including without limitation Rent, Combined Fee), and covenants as contained herein (but not increasing the total time period of the Initial Term plus the originally granted Renewal Terms), and each year thereof shall be deemed an Agreement Year. If the Company elects to exercise its option to renew this Agreement at the expiration of the Initial Term or the then current Renewal Term, it shall furnish written notice (“Renewal Notice”) of the exercise to the District not less than one hundred eighty (180) days prior to the expiration of the Initial Term or the then current Renewal Term; provided, however, that Company shall have no right to renew or give notice of renewal of this Agreement if Company is then in default under this Agreement after notice of said default has been given and the same has not been cured during any applicable cure period. Further provided, that in order to be effective, the Renewal Notice must be accompanied by payment of the Rent and Combined Fee (defined in Article Three) for the first year of the renewal term.

### **Section 2.04 Gates and Fencing**

Vehicle gates will always be located at the current location, unless re-located at the cost of District in connection with construction of a parking garage. Fencing shall remain in place and shall be maintained (or replaced) at Company’s expense.

## **Article Three Rates and Charges**

### **Section 3.01 Rent**

Rent shall be as set forth in the Payment Schedule attached as EXHIBIT D.

### **Section 3.02 Due Date of Payments**

Except where a different timing for payment is specifically set forth herein (e.g. payment upon giving of the Renewal Notice), payments hereunder shall be as set forth in the Payment Schedule attached as EXHIBIT D. The due dates of payments set forth in the Schedule shall be subject to adjustment by reason of tolling under [Section 7.05](#)~~Section 7.03~~.

### **Section 3.03 Combined Fee**

The Rent and Combined Fee are set forth on the Payment Schedule attached hereto as EXHIBIT D. The Combined Fee shall be an “all-in rate” that includes (only) dockage, harbormaster fee and security fees on dockage, which fees would otherwise be separately assessed under the Tariff and shall include dedicated use of the MYRA. Company shall be



responsible for obtaining from the Third Party Depositor, defined in Section 8.03, the execution of the Third Party Depositor Agreement attached hereto attached as EXHIBIT G.

#### **Section 3.04 Sales Tax and Other Charges**

Company shall also pay, as additional Rent, any and all sales taxes imposed by the State of Florida or any other governmental authority, on any amounts paid by Company hereunder, although the taxing statute or ordinance may purport to impose such sales tax upon District. The payment of sales tax shall be paid by Company at the same time as payment is being made with respect to amounts on which the sales tax is imposed.

#### **Section 3.05 Solid Waste Charges**

Solid waste charges attributable to Company's use are payable by Company, and may be estimated by District and required to be paid 1/12th monthly, with appropriate adjustments made when the actual charges are known. Company shall only be responsible for charges incurred by it with respect to services ordered by them for solid waste. Company acknowledges that there is both an annual and a monthly fee.

#### **Section 3.06 Intangible Tax**

Company shall be responsible for and shall pay all personal property and intangible taxes, if any, imposed upon Company's improvements to the Leased Area.

#### **Section 3.07 Payment Related to Taxes**

In addition to the Rent and other charges payable under this Agreement, Company shall pay to District, monthly in advance, a Payment Related to Taxes with respect to the Leased Area. The Payment Related to Taxes shall be 1/12th of the Allocable Amount, as determined by the District (pro rated for periods of less than a month). Company shall not be responsible for the Payment Related to Taxes during the Tolling Period defined in [Section 7.05](#) ~~Section 7.04~~ (but it shall be responsible for the portion of the Payment Related to Taxes that relates to the Additional Leased Area, if added).

In an instance where the term of the lease encompasses an entire calendar year of the lease, the Allocable Amount for that year shall be the ad valorem taxes actually due or to be due for that year (actual or estimated (by District), and if estimated, adjusted when the actual taxes are known), and pro rated for the period of Company's occupancy during that year. In an instance where the lease commences in a year where ad valorem taxes are not being assessed by governmental authorities having jurisdiction, the Allocable Amount for that year shall be an estimate of what the ad valorem taxes would be for that year had ad valorem taxes been assessed for that year, and pro rated for the period of Company's occupancy during that year; provided that if the lease is for less than one year and terminates such that it does not extend into a year in which ad valorem taxes are assessed,

then, all amounts collected as Payments Related to Taxes shall be refunded to Company after offset for any amounts due District from Company.

District shall notify Company of the actual amount of taxes for the current year at the later of (i) fifteen days prior to the last date on which the maximum discount can be obtained ("Maximum Discount Date") or (ii) five days after receipt by District from the taxing authority, and advise Company of the balance due, and said balance due shall be paid within five days. Provided that Company shall pay any balance due at least ten days prior to the Maximum Discount Date, District shall pay the taxes on or before the Maximum Discount Date.

### **Section 3.08 Utilities**

Company shall pay for utilities used by Company for the Leased Area, including electrical, water and sewer service. If feasible, all utilities will be separately metered and bills presented directly to Company, but if this is not feasible, then District shall notify Company of the amount of each bill that is reasonably allocable to the Leased Area and Company shall pay the amount to District within 10 days after receipt of District's notice.

### **Section 3.09 Water and Power to Vessels**

Water and power charges to vessels shall be in accordance with Tariff.

### **Section 3.10 Tariff**

All other rates and charges shall be in accordance with the Tariff. All provisions of the Tariff shall apply to Company.

### **Section 3.11 Amounts Due Collectible As Rent**

All amounts due under the Agreement shall be considered as rent due and shall be collectible in the same manner as rent and shall be included in any lien for rent due and unpaid.

## **Article Four Leased Area**

### **Section 4.01 Leased Area Improvements.**

Following the Bulkhead Work, Company shall diligently work to complete such improvements ("Leased Area Improvements") as it deems appropriate to appeal to Mega Yacht clientele, and shall be responsible for payment of same and for all maintenance, and shall complete same on or before the later of (i) six months following the completion of the Bulkhead Work or (ii) six months after the approval of the improvements by District. The nature and extent of the improvements shall be subject to District approval, and shall

comply with all applicable building code requirements. District agrees to promptly approve any plans for Leased Area Improvements that are substantially in accordance with the Company Proposal and shall not unreasonably withhold consent to any Leased Area Improvements. Leased Area Improvements shall include a removable fence sufficient to keep guests and invitees who are on the Leased Area from entering into other areas of the Port, and away from the bulkhead.

Improvements shall be subject to the provisions of Section 5.03(b), Section 5.03(c), Section 5.03(d) and Section 5.03(e). Company will provide its own sea guards. District shall install a fence at the south end of the Leased Area, generally, which shall run generally from the corner of the Building south-east, and separating the dockside power from the mooring at that location. Signage shall be established as required by District informing guests of Company that they are on property that is leased by District to the Company and which is not operated or controlled by District and that by entering the Leased Area they hold District harmless from and again all liability in connection with such with their activities in the Leased Area.

District shall have access to the Leased Area for maintenance of bulkheads and other District property, including without limitation, the Building, and shall schedule same with Company. District shall have access to the Leased Area at all times for emergency purposes (and including vehicles).

All such activities of District shall be coordinated with Company, except where prompt action is required. District shall not be liable for damage to the Leased Area, except in the case of willful actions or gross negligence. The Leased Area Improvement shall not include a pool.

#### **Section 4.02 Foreign Trade Zone “(FTZ)”**

District agrees to submit application for FTZ designation for the Mega Yacht Berth so that it may be activated as an FTZ space and entitled to all of the rights and benefits that inure to FTZ property. District shall pay all costs, for permitting fees and consultants in that effort and Company shall cooperate reasonably with District in the FTZ process. District does not guaranty that FTZ status can be obtained.

Should Company desire FTZ designation for the Leased Area so that it may be activated as an FTZ space and entitled to all of the rights and benefits that inure to FTZ property. Company shall pay all costs, for permitting fees and consultants in that effort and District shall cooperate reasonably with Company in the FTZ process. District does not guaranty that FTZ status can be obtained.

#### **Section 4.03 Additions to Leased Area**

Company shall have the option to add (all, but not part) of the area depicted as “Leased Area Addition” on EXHIBIT E, attached, to the Leased Area. If so added, the Rent shall increase by an amount equal to \$12.50 square foot for any part of the Leased Area Addition shown as “Interior” and an amount equal to \$2.00 per square foot for the balance

of the area. The option shall be exercised in writing on or before October 31, 2018, or the same shall terminate.

If Company exercises the option, then, provided that District and Company can agree on the nature of improvements to the Leased Area Addition (and other improvements to the Building that may be necessitated by the improvements to the Leased Area Addition and District's consent to said improvements shall not be unreasonably withheld or delayed), Company shall then apply for permits for same and commence construction/installation of such improvements. The improvements to the Leased Area Addition shall be subject to the provisions of Section 5.03. The leasing of the Leased Area Addition is subject to local code and land use requirements, and compliance with emergency ingress and egress requirements.

If added, the term "Leased Area" shall thereafter refer to the area originally described as the Leased Area and the Leased Area Addition.

#### **Section 4.04 Other Limitations**

All use of the Leased Area shall conform to local applicable zoning and land use regulations.

Consumption of alcohol is permitted in the Leased Area only at catered events, where the caterer has a liquor license, the license has been provided to the District, and the caterer has provided a certificate of insurance to District showing District as a named insured with limits as established by District, from time to time. No sale of alcohol or gambling is permitted in the Leased Area. All activities are limited by noise ordinances (which shall also be deemed to be rules of the District). Further, noise complaints from neighboring communities (whose ordinances might not directly apply due to jurisdictional issues), may be addressed by District in additional provisions to the Tariff.

Minors may transit Leased Area from the Mega Yacht Berth to the MYRA, but shall not remain, in the Leased Area without written approval from the Executive Director.

All use of the Leased Area and common areas of the District shall be subject to the Tariff as from time to time revised. District may place limitations on the use, placement and size of propane tanks on the Leased Area.

## **Article Five Improvements to MYRA**

#### **Section 5.01 MYRA**

Within six (6) months of the Commencement Date, Company shall propose such improvements to the MYRA ("MYRA Improvements") as it deems appropriate to appeal to Mega Yacht clientele, and shall be responsible for payment for same and for all maintenance. If District and Company cannot agree on the nature of the MYRA

Improvements within the six month period, this Agreement may be terminated by either party. The work shall be completed on or before the later of (i) six months following the completion of the Bulkhead Work or (ii) six months after the approval of the improvements by District. The nature and extent of the improvements shall be subject to District approval, and shall comply with all applicable building code requirements. District agrees to promptly approve any plans for Myra Improvements that are substantially in accordance with the Company Proposal and shall not unreasonably withhold consent to any MYRA Improvements. The MYRA Improvements shall be subject to the provisions of Section 5.03.

The MYRA is reserved and dedicated for use in connection with the Mega Yacht Berth.

### **Section 5.02 MYRA Use Limitations**

All use of the MYRA shall be in accordance with zoning and other regulations of the City of Riviera Beach, Florida.

Consumption of alcohol is permitted in the MYRA only at catered events, where the caterer has a liquor license, the license has been provided to the District, and the caterer has provided a certificate of insurance to District showing District as a named insured with limits as established by District, from time to time. No sale of alcohol or gambling is permitted in the MYRA. All activities are limited by noise ordinances.

Events for over fifty guests and invitees shall require the consent of District, which shall not be unreasonably withheld, and shall require valet parking services at Company's expense.

District, on at least ten days' notice to Company, may schedule events at the MYRA, provided the same do not interfere with Company's use of the MYRA in connection with a vessel berthed or scheduled by Company to be berthed at the Mega Yacht Berth. When used by District, District shall be responsible for all costs associated with such use, cleanup and any damage to the MYRA or the property located therein.

District and Company shall meet as deemed necessary by District to discuss use of the MYRA, in order to address issues that may have arisen in connection with its use by Company.

There shall be no more than four vessels at the berth at any one time, and the berth shall only be used for Mega Yachts.

### **Section 5.03 Improvements**

- (a) To the extent required by District regulations, improvements requiring building permits shall go through statutorily required bidding procedures for improvements to public facilities. When bids have been obtained and contracts have been executed, Company shall advance the funds to District

for such improvements in accordance with the payment timing provisions of the executed contract or contracts.

- (b) All improvements shall be the property of the District, Company shall reimburse District for all maintenance of Company's improvements, to the extent that Company does not perform such maintenance.
- (c) All improvements shall comply with all applicable building code requirements.
- (d) Improvements shall be subject to permitting by the District.
- (e) Improvements may be subject to permitting by the City of Riviera Beach.

## **Article Six Berth Assignment**

### **Section 6.01 Berth Assignment**

In order to accommodate operational limitations of the channel, the Intracoastal Waterway, berth depth, dredging schedules, vehicle ingress and egress on District property, non-interference with cruise vessels and cargo operations, parking, security issues, passenger and baggage screening equipment and personnel and operational requirements relating thereto, and access roads of the Port of Palm Beach, and to provide adequate and consistent service to a port's carriers or shippers, and to ensure attractive prices for such services and generally to advance the port's economic well-being, Company shall be assigned the ~~exclusive preferential~~ use of the Mega Yacht Berth ~~(in other words, the Company shall not be assigned to any other berth except the Mega Yacht Berth). The parties confirm that use of the Mega Yacht Berth continues to be subject to the provisions of Section 6.05 which recites the retention certain rights by the District, including the provisions of the Tariff of the Port of Palm Beach District. The provisions of the Tariff of the Port of Palm Beach requires (see Item 355<sup>1</sup>), provide for a reservation process for berthings, which process is on a "first come- first serve" basis, based on time of reservation). The parties do not and at the time of signing, did not intend that the Company be the only entity entitled to use of the Mega Yacht Berth.~~ Persons connected to the vessel at the Mega Yacht Berth shall be entitled to use of the MYRA.

### **Section 6.02 Noise**

All activities on the vessels at the berth shall be limited by noise ordinances (which for this purpose shall also be deemed to be rules of the District enforceable in the same manner as the District Tariff). Further, noise complaints from neighboring communities (whose ordinances might not directly apply due to jurisdictional issues), may be addressed by District in additional provisions to the Tariff.

### **Section 6.03 Painting and Sanding; Minor Repairs**

Any outside sanding/grinding to the vessel must be done with full containment of the removed material. This must be done either with vacuum sanders or with a fully enclosed tented structure. The work area must be vacuumed regularly to prevent accumulation of debris. No particles/dust must be able to become airborne or reach the water.

Any painting done by spray (not rolled) must be done in a fully enclosed tented structure (as to the area being worked on). The structure must be wrapped in fire retardant plastic. The lighting (if applicable) in the tented structure must be in accordance with fire codes of the City of Riviera Beach, or Palm Beach County, as applicable. The structure must be ventilated and must have clean filters. No dust/paint spray must leave the structure either airborne or in the water.

All waste, including used tent material, must be disposed of in accordance with local laws.

### **Section 6.04 Pilots**

Use of the Mega Yacht Berth shall be subject to demand of pilots (but not the District) that some of the southernmost portion be vacated, from time to time to provide clearance for the berthing of vessels in Slip 1.

### **Section 6.05 Retained Rights to Berth**

- (a) Use of the Mega Yacht Berth shall be subject to the provisions of the Tariff but the dockage, harbor master fees and security on dockage charges are included in the Combined Fee.
- (b) Use of the Mega Yacht Berth and Leased Area by District, may be agreed to by District and Company.
- (c) Maximum utilization of the Mega Yacht Berth shall be the northernmost 400 feet.
- (d) Company shall not act as a common carrier or water carrier, nor shall it provide any services to a common carrier or water carrier. The Mega Yacht Berth shall not be used for cargo operations or for the carrying of passengers for hire or for a common carrier or water carrier.

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## **Article Seven Other Agreements**

### **Section 7.01 Company Uses**

District acknowledges that Company's business plan calls for it to allow use of the Mega Yacht Berth by Mega Yachts and also that various vendors may be occupying/using space at the Leased Area and/or MYRA in conjunction with Company's activities (i.e. they would not be conducting business for themselves with the general public) and agrees that these arrangements will not be considered a violation of the assignment/subleasing provisions in Section 9.04 or require consent from District. All such uses, and any other uses of the Leased Area, Mega Yacht Berth or MYRA, may be subject to restrictions imposed by other entities having jurisdiction. Current zoning permits the uses set forth on EXHIBIT L (from the Port/City of Riviera Beach Interlocal Agreement), but local zoning codes should be investigated by Company.

Company uses shall be limited to those set forth in the Company Proposal.

No political events can be held at the Leased Area or in the MYRA. Except with prior District approval, all events shall be targeted to be in support of Company business and high-end corporate sponsors, and businesses that cater to such enterprises. Company shall apply for approval of events at least two-weeks prior to same, and District shall not unreasonably withhold approval. If District does not deny approval within seventy-two hours of the request, approval shall be deemed given.

Valet shall be required for all events commencing prior to 6:00 PM.

### **Section 7.02 Parking**

There shall be 20 (twenty) parking spaces reserved for Company's parking, of which eleven (11) shall be in the area depicted as "Berth 1" on EXHIBIT J, and nine (9) shall be in the area depicted as "Alternate Parking Area" on EXHIBIT J; provided, that when not in use, they shall be available to District. Company must coordinate event parking at least one-week ahead of the event. Additional parking shall be at then-current Tariff rates, with surcharge for valet, all as determined by District, from time to time. In the event that a parking garage is constructed, this reserved parking may be subject to relocation.

### **Section 7.03 Leased Area and MYRA Improvements**

The total cost of the Leased Area Improvements and the MYRA Improvements shall be not less than \$100,000, and shall be the responsibility of Company. Company shall provide verified evidence of payment for all improvements. Additional improvements may be proposed by Company and the timing and cost of same shall be subject to agreement between District and Company. All improvements to the MYRA shall be the property of the District upon installation. All improvements to the Leased Area shall become the



property of District at the conclusion of the Agreement, even if the same are in the nature of removable fencing or flooring.

#### **Section 7.04 Boarding Ramps and Other Equipment**

District is not required to provide boarding ramps or other equipment to Company.

#### **Section 7.05 Bulkhead Work and Tolling of Agreement**

The existing bulkhead is aging and needs to be replaced (“Bulkhead Work”). Company acknowledges that the Bulkhead Work, will likely include complete replacement of the existing bulkhead for the Mega Yacht Berth, and that the same will require complete closure and unavailability of the Mega Yacht Berth and the Leased Area, during a portion of the term of this Agreement. Upon request by the Company, the District will provide an updated Condition Report of Berth 1 within the next ninety (90) days. During such time as more particularly described below (“Tolling Period”), this Agreement shall be tolled as to all dates, and the Rent, Combined Fee and other charges shall not be due or payable during the Tolling Period; provided that (i) the sum of \$3,800 per month (for not more than six months) shall be paid by Company to District to retain the use rights to the MYRA that are associated with the Mega Yacht Berth (but use can continue beyond the six month payment period) and (ii) the Rent and other charges in connection with the Additional Leased Area shall continue. The Combined Fee, and all such rents, fees and charges shall be prorated for periods of less than one year that may occur before and after the term of the Bulkhead Work.

Neither District nor any of its contractors or agents, shall be responsible for damage to Company’s Leased Area Improvements in connection with the Bulkhead Work provided the damage is not the result of willful actions or gross negligence. The Bulkhead Work will be commenced in April 1, 2019 (unless Company and District agree to shift this date for their mutual convenience) and is estimated to take no longer than eight (8) months after the work is commenced. In no event shall Bulkhead Work be completed later than twelve months after work is commenced. If the completion of the Bulkhead Work extends beyond the one year period, then Company shall have the right to terminate this Agreement and receive back any unearned Rent and Combined Fees theretofore paid, less any outstanding charges, and the sum of \$25,000.00, as liquidated damages, and the Security Deposit, less any outstanding charges, shall be refunded to the Third Party Depositor, but no other damages or amounts shall be payable by District. Said amounts shall be payable not later than thirty (30) days following the date that Company vacates the Leased Area, the MYRA, and all vessels have departed the Mega Yacht Berth.

Company may make improvements to the Leased Area (with appropriate permitting procedures) at any time after the Commencement Date and prior to commencement of the Bulkhead Work, but District shall not be responsible for damage to same occasioned by the Bulkhead Work as long as such damage does not result from willful action or gross negligence on the part of District or its agent or contractors.

The term of the Tolling Period shall commence on that date which is thirty (30) days following notice to Company from District that commencement of the Bulkhead Work is imminent, and end on the first to occur of (i) fifteen (15) days after the date of notice from District that the Bulkhead Work is completed and that all governmental inspections completed and all governmental approvals of the Bulkhead Work obtained or (ii) that, with District written permission, Company has begun to make use of the Leased Area or the Mega Yacht Berth. Beginning with the Commencement Date and continuing through completion of the Bulkhead Work, District shall keep Company reasonably apprised of the status of the project.

## **Article Eight Default**

### **Section 8.01 Monetary defaults**

Rent (with sales tax) and Combined Fee shall be due on the first day of each month for which the Payment Schedule shows a payment as due, and if not paid by the fifteenth day of the month, shall Company shall be in default.

If Company shall fail to make any other payment due hereunder within thirty (30) days after written notice from the District, District shall have the option to terminate this Agreement, and/or pursue such other remedies as are provided by law or otherwise herein, which shall include, but not be limited to, recovery of all remaining Rent and Combined Fee due or to become due and all other amounts due or to become due as Rent under this Agreement as may be allowed by Florida law. Billing by the District shall constitute written notice hereunder. Company shall have no use of the Leased Area, the MYRA or Mega Yacht Berth during any period of default if not timely cured.

### **Section 8.02 Non-monetary defaults**

In the event Company shall (a) be adjudged bankrupt; or (b) make an assignment for the benefit of its creditors; or (c) violate the Tariff of the District; or (d) violate or fail to perform any of the agreements herein contained, except as set forth under "Monetary Defaults", above, and shall (unless notice and or demand are specifically dispensed with under other terms of this Agreement) fail to cure the default within ten (10) days after written notice from District, District shall have the option to terminate this Agreement, and/or pursue such other remedies as are provided by law or equity or otherwise herein, which shall include, but not be limited to, the remedies provided in "Monetary Defaults", above. Notwithstanding the foregoing, any matter involving safety or security shall be addressed and cured without delay.

While this Agreement is in default, any vessel that holds over in the Berth after receiving notice from the District to vacate the Berth will be subject to Tariff rates, and the vessel agent designated by Company shall be responsible for all such charges.

### **Section 8.03 Security Deposit**

At the time of execution of this Agreement a third party ("Third Party Depositor"), who shall be a natural person, shall deposit the amount of \$200,000.00 (the "Security Deposit") with District. The Security Deposit shall not be assignable without written consent of District and shall not be assignable to Company. Third Party Depositor shall execute Third Party Depositor Agreement attached as EXHIBIT G, attached. District's rights to draw against the Security Deposit shall be in addition to any maritime lien claims, claims against the vessel owner and any claims against the vessel agent, and any other claims, and District shall not be obligated to look to any of its rights exclusively or in any particular order, i.e. District, in its sole discretion may look first to the Security Deposit, or any other right hereunder, if Company is in default beyond any cure period.

Vessel Agent acknowledges that it shall have no claim against the Security Deposit, or with respect to the manner in which District applies or has applied the Security Deposit, and specifically waives all such claims, as to the District.

The Security Deposit shall be held by District as security for all amounts due from Company under this Agreement, including without limitation, Rent, accrued Combined Fees, and the Combined Fee (together, the "Secured Amounts"), and the Security Deposit is pledged as security for the Secured Amounts. District shall have the right to draw upon such Security Deposit at any time and from time to time for the Secured Amounts, if Company is in default beyond any cure period. To the extent that the Security Deposit has been drawn upon by District as aforesaid, District shall give notice of said draw-down to Company, and Company shall be obligated to restore the amount drawn down from Security Deposit within ten (10) days of the notice, and failure to do so within said period shall constitute a default of this Agreement, and said notice shall constitute the ten (10) day notice required to be given under Article Eight. Any interest on the Security Deposit shall inure to the benefit of, and be paid to the District when and as earned (to be drawn down at such intervals as shall be convenient to District), and shall not be applied to obligations of Company.

District's rights to draw against the Security Deposit shall be in addition to any maritime lien claims, any claims against the vessel agent, and any other claims, and District shall not be obligated to look to any of its rights exclusively or in any particular order; provided, however, that amounts drawn from the Security Deposit shall be applied in the following order:

- (A) Rent;
- (B) Any amounts due District (but not including amounts as to which the vessel agent is obligated to pay);
- (C) The Combined Fee;
- (D) Amounts due for which the vessel agent would be liable, which the vessel agent has not paid.

At the end of the term of this Agreement, any balance of the Security Deposit that is remaining shall be refunded to the Third Party Depositor.

**Section 8.04 Interest on Late Payments**

Any and all sums due under this Agreement from Company to District, and not paid within ten days following the due date, shall bear interest from ten (10) days after due date at eighteen per cent (18%), thereafter until fully paid, in addition to any late charges otherwise provided for in this Agreement, and the foregoing shall not be in derogation of District's right to terminate this Agreement.

**Section 8.05 Late Fees**

If Company shall fail to pay the monthly installment of Rent or any additional payment as required herein to District, so that District shall not receive same within five (5) days of the date when the amount is due and payable, a late charge of five percent (5%) of the total amount past due, or a minimum of One Hundred and no/100 Dollars (\$100.00), whichever is greater, shall be paid by the Company to the District per month, or portion of each month such item(s) is unpaid and still due. In addition to the aforesaid late charge, the Company shall pay interest at the rate of eighteen percent (18%) commencing five (5) days after the amount past due was payable by the terms hereof until the date District received payment of same. These charges are for the purpose of collection efforts and to defray costs incurred by District in regard to such collection efforts.

**Section 8.06 Other remedies**

The remedies for which provisions are made in this Paragraph shall not be exclusive and shall be in addition to other remedies provided by law or equity, including without limitation, specific performance and injunctive relief, and District may pursue such other remedies as are provided by law or equity in the event of any breach, default, or abandonment by Company, including District's rights to make claim against the Combined Fee and Security Deposit any financial guaranties provided for herein, e.g. guaranties, bonds and/or letters of credit given in connection with vessel agency or stevedoring. In the event of a default under this Agreement by District, Company shall be entitled to pursue all rights and remedies available to it under Florida law.

**Article Nine  
General Provisions**

**Section 9.01 Security**

Company acknowledges that the Leased Area, Building and Mega Yacht Berth are subject to security rules and regulations, as established from time to time by District, and other governmental agencies, and acknowledges that access to the Leased Area is subject to such security measures as District shall from time to time determine. Company shall pay

the charges for investigation of employees and issuance of security badges and proximity cards, in accordance with the Tariff of the District. The imposition of such security measures as set forth in this paragraph shall not constitute a force majeure or basis for avoidance of this Agreement, or any provision hereof. Further, Company shall pay for an estimated share, as determined by the District for additional security for events conducted by Company. If a security mandate is imposed by a higher level government than District, and such mandate makes it unfeasible for Company to carry on its business as contemplated by this Agreement, then Company may terminate this Agreement and receive back any unearned Rent and Combined Fees theretofore paid, less any outstanding charges, and the Security Deposit, less any outstanding charges shall be refunded to the Third Party Guaranty, but no other amount shall be payable by District.

### **Section 9.02 Janitorial**

Company shall keep the Leased Area in a clean condition, at Company's expense. Company shall also provide, at its expense, full janitorial service to the MYRA after each use by Company.

### **Section 9.03 Approaches, Slips and Berths**

The Company acknowledges that District makes no promise or warranty that the channel will be open, that a pilot will be available, that navigational constraints will not occur or that other vessel conflicts where District has no control ("Uncontrolled Berthing Interference") over the berthing (such as a seized vessel where District has no control where a vessel is berthed by governmental authorities, derelict vessels, disabled vessels, sunken vessels, etc. sunken at the berth or that other matters outside the control of the District will not occur which will prevent berthing. An event of Uncontrolled Berthing Interference shall only include an actual interference at the berth, by a vessel which was not being provided the Mega Yacht Berth by Company. Where an event of Uncontrolled Berthing Interference occurs, District shall immediately commence to remedy same and shall diligently pursue such remedy for forty-five (45) days ("Cure Period"). During the Cure Period, all amounts due with respect to the Cure Period shall be tolled. If District is unable to remedy the interference within forty-five (45) days, then Company may terminate this Agreement and receive back any unearned Rent and Combined Fees theretofore paid, less any outstanding charges, and the Security Deposit, less any outstanding charges shall be refunded to the Third Party Guaranty, but no other amount shall be payable by District.

The release of vessels into the channel is based upon District's practices and policies then in effect and the determination of the pilots. The Company further agrees that the District shall not be liable in damages or any kind or nature, including without limitation, demurrage, for any failure to provide a berth, except in the case of intentional breach of this Agreement. The Company shall take such steps as it deems appropriate to mitigate any damages which it might suffer as a result of the District's inability to provide berths. The Company shall not rely on any hydrographic information source, including materials published by District. District does not guaranty the depth of any of the berths or slips approaches, channel, turning basin, or any other location, and shall not have any

liability to Company with respect to same. District shall use its best efforts to cause the applicable governmental agency to maintain Congressionally mandated depths of the channel and turning basin.

#### **Section 9.04 Assignment**

None of (i) Company, (ii) any person or entity owning an interest in Company, or (iii) any entity at any level above such entity, up to the level of a human being, shall have any right whatsoever to assign, sublet or otherwise transfer its interest in and to this Agreement, or any portion thereof, or in any entity owning an interest in Company, or any entity at any level above such entity, up to the level of a human being, to any other person, corporation or entity whatsoever, and in no event shall a collateral assignment be permitted of this Agreement or any interest in any entity owning an interest in Company, or in any entity at any level above such entity, up to the level of a living human being, and any attempted assignment or collateral assignment shall be void and of no force or effect, except that such attempted assignment shall constitute a breach of this Agreement. As used herein, the term “transfer” shall include any action by which the ownership is otherwise than as before such action, and shall include, without limitation, a merger, liquidation and foreclosure. Notwithstanding the foregoing, any person having an ownership interest in Company directly or indirectly may leave his interest to his beneficiaries or heirs at the time of death and such a transfer shall not violate the assignment provisions of this Agreement

As of the date of execution of this Agreement, Company represents that the ownership of Company is held as set forth on EXHIBIT I, attached hereto and incorporated herein, and shall include the issuance of any additional interests in Company

At any time, District shall have the right to request, and Company, and the persons set forth on EXHIBIT I shall be obligated to provide, a sworn statement as to the ownership of Company.

#### **Section 9.05 Company’s property**

All personal property placed or moved in the Leased Area or the MYRA shall be at the risk of the Company or owner thereof, and District shall not be liable for any theft of or damage to said personal property, or to the Company arising from the bursting or leaking of water pipes, or from any act of negligence of any cotenant or occupants of the building or of any other person whomsoever.

#### **Section 9.06 Security cameras**

The District has the right, but not the obligation, to have security cameras in and around the Leased Area and in and around the MYRA. District may, but is not required to, permit Company to view images captured by the security cameras, but District has no obligation to retain footage for any period of time, or at all.

### **Section 9.07 Compliance with laws**

Company shall comply with all statutes, ordinances, rules, orders, regulations and requirements of the Florida Department of Law Enforcement, the United States Coast Guard, Port of Palm Beach and all other federal, state and city government and of any and all their departments and bureaus having jurisdiction over the Building of which the MYRA is a part, and obtain and maintain all licenses necessary for Company's operations.

### **Section 9.08 Damage Due To Casualty**

In the event the Leased Area or the Mega Yacht Berth or the MYRA shall be destroyed or so damaged or injured by fire, flood, windstorm or other casualty during the term of this Agreement, whereby the same shall be rendered unusable for the purpose for which they were intended then the District shall use reasonable efforts to render same useable by repairs within ninety (90) days therefrom ("Repair Period"). Unless Company was wholly or partially at fault for such damage, this Agreement shall be tolled for such ninety (90) days. If any of the properties are not rendered useable within said time, it shall be optional with either party hereto to cancel this Lease, provided that notice of such cancellation is given in writing and within sixty days following the end of the Repair Period. If the Building has been destroyed or so damaged or injured by fire, flood, windstorm or other casualty during the term of this Agreement, so as to render continuation of the Lease or use of the Mega Yacht Berth or the MYRA by Company impractical, then District shall have the right to cancel this Agreement provided that notice of such cancellation is given in writing to Company within ninety (90) days following the date of the casualty.

### **Section 9.09 Vessel Agency**

Company will direct each arriving vessel that it must have, at all times, a vessel agent approved and licensed by District having such cash deposit, bond or letter of credit (payable at a bank in Palm Beach County, Florida), as may be required, from time to time, by District. District shall have the right to require that such agent (and, at the election of District, such agent's bonding company) acknowledge and agree to the appropriate terms of this Agreement regarding charges and application of security deposits, if any.

### **Section 9.10 Stevedoring**

All stevedoring must be performed by a stevedore approved and licensed by the Port of Palm Beach District.

### **Section 9.11 District's use reservation in leased area**

The Leased Area is subject to all existing easements. As of the date of this Agreement, District is not aware of any easements, but believes that there could or may be easements for drainage, electrical and water. District reserves the right to grant additional

below ground easements under the Leased Area, and the right of entry over the Leased Area for District purposes, for example, maintenance, security, emergency vehicles.

District shall have access to the Leased Area for maintenance of the Building. Company shall construct its Leased Area Improvements in such a manner (e.g. removable ground sections) that the likelihood of damage by District to the Leased Area Improvement is minimized. District shall not be responsible for any damage to Leased Area Improvements not caused by willful action or gross negligence. A “willful action” shall not include responding to an emergency.

#### **Section 9.12 Landlord's lien**

In addition to all lien and other rights granted under Florida Statutes Chapter 83, Company hereby pledges and assigns to the District all the furniture, fixtures, goods and chattels of said Company, which shall or may be brought or put on said Leased Area as security for the payment of the Rent herein reserved, and Company agrees that the said lien may be enforced by distress foreclosure or otherwise at the election of District, and does hereby agree to pay District's reasonable attorney's fees incurred, together with all costs and charges therefore incurred or paid by District.

#### **Section 9.13 Entry on land**

District, or any of his agents, shall have the right to enter the Leased Area and the MYRA during all reasonable hours and upon reasonable notice, if practicable, to examine the same to make such repairs, additions or alterations as may be deemed necessary for the safety, or preservation thereof, or of said Building, if Company has failed to attend to same.

#### **Section 9.14 Fire protection**

Company acknowledges that District does not provide fire-fighting equipment or personnel, and does not have any fire-fighting capability.

#### **Section 9.15 Condition on termination**

Company hereby accepts the Leased Area in the condition it is in at the beginning of this Agreement and agrees to maintain the Leased Area in the same condition, order and repair as it is in at the commencement of said term, excepting only improvement thereto and reasonable wear and tear arising from the use thereof under this Agreement, and to make good to said District immediately upon demand, any damage to said Leased Area, or of the Mega Yacht Berth or the MYRA or any common area of District, caused by any act or neglect of Company, or of any person or persons in the employ or under the control of Company.



### **Section 9.16 Bankruptcy**

If the Company shall become insolvent or if bankruptcy proceedings shall be begun by or against Company before the end of the Lease term, District is hereby irrevocably authorized, at its option, to cancel this Agreement as for a default. District may elect to accept Rent and other payments due hereunder from such receiver, trustee, or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting District's rights as contained in this Agreement, but no receiver, trustee or other judicial officer shall ever have any right, title or interest in or to the above-described property by virtue of this Agreement.

### **Section 9.17 Work performed by District for Company**

It is further understood and agreed between the parties hereto that any charges against Company by District for services or for work done on the Leased Area by order of Company, or otherwise accruing under this Agreement, shall be considered as Rent due and shall be included in any lien or Rent due and unpaid.

### **Section 9.18 Liability insurance**

Company shall obtain public liability insurance from an insurance carrier satisfactory to District to protect against loss from liability imposed by law for all damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever, resulting directly or indirectly from any act or activities of Company, or any person acting for it or under its control or direction, at the Leased Area, the Building of which the MYRA is a part, or any property of District, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of any of the foregoing. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Agreement, in the amount of not less Five Million Dollars (\$5,000,000.00) for any property damage or loss from any one (1) accident, and not less than Five Million Dollars (\$5,000,000.00) for injury to any one (1) person and not less than Five Million Dollars (\$5,000,000.00) from any one (1) accident combined, single limit. District reserves the right to require any increase in the amount of liability coverage, from time to time during the term of this Agreement as District should determine to be commercially reasonable. Each such liability insurance policy shall be of the type commonly known as Owner's Landlord's and Tenant's Insurance, but provide the extended coverage required herein above.

Company shall deliver to District a copy of the binder of all insurances required of Company hereunder, and duplicate originals of the policy itself, and certificates evidencing the existence of the necessary insurance policies. All insurance policies contemplated herein to be maintained by Company shall insure District and Company as their respective interests may appear, and shall show District as a named insured. All such policies required to be maintained by Company shall be issued by companies qualified to write insurance in the State of Florida and possessing a rating of A-3A (or higher), by Best's Insurance Rating.

The cost of premiums of all such policies of insurance as herein required to be maintained by Company shall be paid by Company. If available, any policy required hereunder to be maintained by Company or actually maintained by Company shall contain a clause that the insurer shall not cancel or change the insurance policy without first providing ten (10) days prior written notice to District. Not less than thirty (30) days prior to the expiration of any insurance required herein to be maintained by Company or actually carried by Company, Company shall deliver to District a copy of the certificate of renewal thereof.

Company shall not use the Leased Area in any manner, even in Company's use for which the Leased Area is leased, that will increase risks covered by insurance on the Leased Area so as to increase the rate of insurance on the Leased Area or to cause cancellation of any insurance policy covering the Leased Area. Company further agrees not to keep the Leased Area or permit to be kept, used or sold or transferred thereon, anything prohibited by the policy of fire insurance covering the Leased Area. Company shall comply, at Company's own expense, with all requirements of insurers necessary to keep in force the fire and public liability covering the Leased Area.

#### **Section 9.19 Indemnification**

Company herewith gives the following indemnities, none of which shall be deemed or intended to waive sovereign immunity or to create any third party beneficiaries or any rights in third parties:

a) Company hereby indemnifies, holds and saves harmless DISTRICT of, from, and against (a) all fines, suits, loss, cost, liability, claims, demands, actions and judgments of every kind and character by reason or any breach, violation or non-performance by Company of any term, provision, covenant, agreement or conditions hereunder, and (b) any claim, demand, actions, damages, loss, cost, liabilities, expenses, and judgments suffered by, recovered from, or asserted against DISTRICT on account of injury or damage to person or property to the extent that any such damage or injury arose from any act, omission, negligence, or misconduct on the part of Company, its agents, servants, employees, contractors, guests, licensees, or invitees entered upon the Building, the Leased Area, or other property of DISTRICT or Company; and (c) any claim, demand, actions, damages, loss, liabilities, expenses, and judgments suffered by, recovered from, or asserted by a business invitee of Company DISTRICT on account of injury or damage to person or property of DISTRICT or Company; provided, however, that if District is legally responsible for the claims under (a), (b) or (c), above, then Company's liability under this indemnity shall be reduced by the percentage degree of responsibility of District. This indemnification shall include payment of all reasonable attorneys' fees and costs, which may be incurred by District, and payable as incurred. District shall have the right to settle any claim without the consent of Company, but shall consult with Company prior to executing any such settlement.

b) Company shall indemnify, defend and save District harmless from and against and shall promptly remedy upon notice and demand from District: (i) any violation of any federal, state, local environmental law or regulation (collectively "Environmental Laws") by Company or its employees, agents, contractors, employees, servants,

consultants, lessees, users, permitted invitees or concessionaires at or with respect to any of the District property or the waters in which any vessel operated by Company hereunder operates; (ii) the disposal of hazardous or toxic substances: (as defined in Environmental Law) by Company or its employees, agents, contractors, servants consultants, lessees, users, permitted invitees or concessionaires on any District property or the waters in which the any vessel operated by Company hereunder operates caused by Company or its employees, agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires. In addition, each party agrees that in connection with all new construction, and all repairs for which it is responsible, it shall comply with all Environmental Laws. This indemnification shall include payment of all reasonable attorneys' fees and costs, which may be incurred by District, payable as incurred by District. District shall have the right to settle any claim without the consent of Company, but shall consult with Company prior to executing any such settlement.

All rights of District under this Section 9.19 shall survive termination of this Agreement.

#### **Section 9.20 Non-recordation**

This Agreement shall not be recorded except by District, in District's sole discretion.

#### **Section 9.21 Subordination**

Provided that a customary subordination, non-disturbance and attornment agreement ("SNDA") is entered into to grant Company nondisturbance rights, this Agreement and all rights of Company are subject and subordinate to the mortgages or other instruments of security which do now or may hereafter cover the Leased Area or any interest of District therein, and to any and all advances made on the security thereof. This provision is hereby declared self-operative. Company agrees to execute any SNDA reasonably requested by any lender loaning money to District secured by the Leased Area. Further, upon request of District, Company shall certify the status of this Lease in writing, including in such certification, the term, the annual Rental, the amounts of any deposits claimed to have been hereunder, and whether or not Company is claiming any then current breaches or defaults by District, and if so, the precise nature of such breaches or defaults.

#### **Section 9.22 Improvements**

All of Company's improvements shall be subject to the prior written consent of the District (if required herein, and if consent is required it shall not be unreasonably withheld), and the permitting requirements of the Port of Palm Beach District, and all governmental authorities having jurisdiction, and all of the same shall be at Company's sole cost and expense. Company shall obtain all other necessary permits from other governmental authorities having jurisdiction prior to commencing any improvements requiring such permits. Company agrees that Company will pay all valid liens of contractors, subcontractors, mechanics, laborers, materialmen, and other items of like character, and

will indemnify District against all expenses, costs and charges, including bond premiums for release of liens and attorney's fees reasonably incurred in and about the defense of any suit in discharging the Leased Area or any part thereof from any liens, judgments or encumbrances caused by Company. In the event any such lien shall be made or filed, Company shall bond against or discharge the same within fifteen (15) days after the same has been made or filed. It is understood and agreed between the parties hereto that the expenses, costs and charges above referred to shall be considered as Rent due and shall be included in any lien for rent. Company shall not have any authority to create any liens for labor or materials on District's interest in the Leased Area and all persons contracting with the Company for the destruction or removal of any facilities or other improvements or for the erection, installation, alteration or repair of any facilities or other improvements on or about the Leased Area, and all materialmen, contractors, mechanics and laborers, are hereby charged with notice that they must look only to Company's interest in the Leased Area to secure the payment of any bill for work done or material furnished at the request or instruction of Company. Company agrees, at the request of District, to execute a memorandum setting forth the above to be recorded in the public records.

**Section 9.23 Condemnation**

It is agreed by and between the parties that if the whole or any part of the Leased Area shall be taken by any competent authority for any public or quasi-public use or purpose, then and in that event, the term of this Agreement shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose. All damages awarded for such taking shall belong to, and be the property of, District but Company shall be entitled to participate in the condemnation proceeding and receive any and all awards that are payable to a tenant provided this does not diminish any award received by District. If any portion of the Leased Area is taken by condemnation such that the remainder of the Leased Area cannot reasonably be utilized by Company for the purposes intended by this Agreement, then Company shall be entitled to terminate this Agreement within thirty (30) days after the completion of the condemnation proceeding.

**Section 9.24 Notices**

All notices, requests, approvals, consents and other communications hereunder shall be sent by registered or certified mail; or by personal delivery, or by national overnight courier such as Federal Express addressed to the respective addresses stated below:

AS TO District:	At its address set forth at the beginning of this Agreement.
WITH A COPY TO:	Gregory C. Picken, Esq. Gary, Dytrych & Ryan, P.A. 701 U.S. Highway One, Suite 402 North Palm Beach, Florida 33408
AS TO Company:	At its address set forth at the beginning of this Agreement
WITH A COPY TO:	Louis L. Hamby III, Esq.

Alley, Maass, Rogers & Lindsay, P.A. 340 Royal Poinciana Way, Suite 321 Palm Beach, Florida 33480
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Notice, except notice of default, may be delivered by email.

Notices shall be deemed given when received by the recipient or when delivery is refused or is incapable of being made as certified in writing by the third party delivery company attempting delivery.

**Section 9.25 Attorneys fees**

In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred, including those at the appellate level.

**Section 9.26 Venue: controlling law**

Venue in any litigation in connection with this Agreement shall lie only in Palm Beach County, Florida, and this Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.

**Section 9.27 Successors and assigns**

This contract shall bind the District and its successors or assigns, and the assigns, or successors as the case may be, of Company (if assignment is permitted).

**Section 9.28 Time of the essence**

Time is of the essence of this Agreement, and this applies to all terms and conditions contained herein.

**Section 9.29 Rights Cummulative**

The rights of District under this Agreement shall be cumulative, and failure on the part of District to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

**Section 9.30 Waiver of notice**

Company specifically waives all of its rights to receive any kind of written notice from District as may otherwise be afforded to Company pursuant to Florida Statutes Sections 83.20 and 83.05.

**Section 9.31 Radon**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit pursuant to Florida Statutes §404.056(8).

**Section 9.32 Repairs and maintenance**

Company shall be responsible for all repairs to the Leased Area.

**Section 9.33 Discrimination**

Company shall not discriminate against any person, employee, or applicant for employment because of race, religion, color, age, gender, sexual orientation, sexual preferences or national origin.

**Section 9.34 Signage**

District shall have the right to control the verbiage, location and style of all sign.

**Section 9.35 Facilities; access**

District makes no representations regarding the continuation of the availability of any facilities or services at the Port of Palm Beach District, except as set forth herein.

**Section 9.36 Public entity crimes affidavit**

Concurrent with execution hereof, Company shall execute the PUBLIC ENTITY CRIMES Affidavit attached hereto, the truth of which shall be a condition to the effectiveness of this Agreement.

**Section 9.37 Counterparts**

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument. Delivery of signature pages may be by fax or email, with originals to follow.

<b>EXHIBIT TABLE</b>
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EXHIBIT NAME	LETTERED EXHIBIT
Sworn Statement	A
Leased Area	B
Mega Yacht Reception Area	C
Payment Schedule	D
Leased Area Addition	E
Assigned Mega Yacht Berth	F
Third Party Depositor	G
Agreement of Vessel Agent	H
Company Ownership	I
Parking	J
Company Proposal	K
Port Land Use	L

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

WITNESSES:

DISTRICT:  
PORT OF PALM BEACH DISTRICT

\_\_\_\_\_

BY \_\_\_\_\_

-

Printed Name of  
Witness: \_\_\_\_\_

-

\_\_\_\_\_

Printed Name of  
Witness: \_\_\_\_\_

COMPANY:  
BERTH ONE INTERNATIONAL,  
LLC, a Florida Limited Liability  
Company

\_\_\_\_\_ BY \_\_\_\_\_

Printed Name of  
Witness: \_\_\_\_\_

Printed Name of  
Witness: \_\_\_\_\_

STATE OF FLORIDA ]  
COUNTY OF PALM BEACH ]

The foregoing instrument was acknowledged before me this October \_\_, 2017 by \_\_\_\_\_, who is personally known to me or who produced Florida Driver's license \_\_\_\_\_ as identification, Chairman of the Board of Commissioners of Port of Palm Beach District, a Political Subdivision of the State of Florida.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

STATE OF FLORIDA ]  
COUNTY OF PALM BEACH ]

The foregoing instrument was acknowledged before me this October \_\_, 2017 by \_\_\_\_\_, who is personally known to me or who produced Florida Driver's license \_\_\_\_\_ as identification, as Manager of BERTH ONE INTERNATIONAL, LLC, a Florida Limited Liability Company.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:



|

Approved as to Form:

BY: \_\_\_\_\_

GARY, DYTRYCH & RYAN, P.A.

Counsel for the District

DRAFT

EXHIBIT H  
AGREEMENT OF VESSEL AGENT

The undersigned, a steamship agent licensed by the Port of Palm Beach District, has reviewed the above and foregoing Operating Agreement, and herewith agrees to be responsible for all charges for which a steamship agent is liable under the Tariff, provided, however, that District shall look only to Company for payment of the charges included in the Dockage Fees. Steamship Agent shall have no recourse to the Security Deposit provided for herein.

Steamship Agent:

DATED: \_\_\_\_\_  
\_\_\_\_\_

DRAFT

**EXHIBIT D**

(Agreement of Third Party Depositor)

For good and adequate consideration, including the agreements made by District herein which are for the benefit of an entity in which the undersigned has a direct or indirect, but valuable interest, the undersigned herewith agrees to the provisions of the Agreement, with respect to the Security Deposit, and waives, notice and demand as to any amounts drawn from the Security Deposit, agrees that any litigation in connection with this Agreement shall be in Palm Beach County, Florida, that Florida law shall apply, waives trial by jury in connection all matters arising out of this Agreement, and that the prevailing party shall be entitled to attorneys fees and costs. The undersigned further agrees that the Operating Agreement can be modified and amended at any time without impairing the obligations of the undersigned, and without the consent of or notice to the undersigned.

\_\_\_\_\_

THIRD PARTY DEPOSITOR

Witnesses:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_ who is personally known to me or who produced \_\_\_\_\_ as identification.

My commission expires:

\_\_\_\_\_  
NOTARY PUBLIC  
Printed name of Notary: \_\_\_\_\_

[SEAL]

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<sup>i</sup> Any agent desiring a berth at the Port Facilities shall as far in advance as possible, but not less than 72 hours prior to the time of docking, make application to the Harbormaster for a berth assignment (“Berthing Request”) in accordance with the Application for Berth Assignment available on the District’s website at [www.portofpalmbeach.com](http://www.portofpalmbeach.com). Agent must provide a firm 24-hour estimated time of arrival for all vessels allowed to enter the Port. All berth requests will include a vessel security certificate number or copy and current operating MARSEC level. Vessel will verify berth location and time of arrival or departure prior to any vessel movement. This verification process will take place between the Harbormaster or designee and Pilot or Vessel Captain.

Any vessel which does not conform with the 72-hour berth application or 24-hour firm estimated time of arrival and conflicts with berth assignments previously made may be ordered to leave and shall be subject to a \$1,000.00 fine and reported to Captain of the Port – U.S. Coast Guard.

Berthing Requests will include both an anticipated arrival date and time, as well as a definitive sailing date and time. Any request to extend the Sailing Date or time must be made to the Director of Operations, in writing, no less than 12 hours prior to the expiration of the current Berth Request. A Berth Request expires upon any change being made thereto. If the District declines to grant the requested extension due to the scheduled arrival of another Berth then the vessel will be required, at their expense, to move their vessel out of the Berth by whatever means required.

The Harbormaster, shall (subject to modification by the Executive Director), prioritize vessel movements, berth assignments and cargo staging to utilize Port Facilities to their maximum potential, and resolve scheduling, and cruise and cargo terminal space conflicts, however, generally:

1. Vessels will be assigned berthing facilities by the Harbormaster in accordance with a proper Berthing Request, generally on a “first in time/first in line” basis.

2. Vessels will be allowed to enter the harbor (but not necessarily dock at any specific berth, whether or not assigned) based upon their order of arrival at the Sea Buoy;

3. Cruise ships have priority over cargo vessels;

4. Vessels with special circumstances, such as restrictions by the Pilots requiring entry during daylight/high water/slack have priority over cruise ships.

Where a particular Berthing Request for a vessel call has been changed more than once for that call, the vessel shall not be entitled to rely on a berth assignment, and shall be susceptible to being “bumped” for another vessel.