

SPARTAN BAY MARINA, INC. OPTION AGREEMENT

**SPARTAN BAY MARINA, INC. LEASE AND BUSINESS
LICENSE**

SEPTEMBER 4, 2007

Contents

SPARTAN BAY MARINA, INC. OPTION AGREEMENT 3

1. Option to Lease..... 3

2. Term..... 4

3. Option Fee. 4

4. Right of Renewal. 4

5. Proposed Lease and Terms. 4

6. Notice of Intent. 5

7. Permitted Uses. 5

8. Entire Agreement..... 5

9. Partial Invalidity. 5

10. Modification of Agreement..... 5

11. Maine Law. 5

12. Binding upon Successors/Assigns. 6

13. Recording..... 6

Tab 1 8

SPARTAN BAY MARINA, INC. LEASE AND BUSINESS LICENSE 8

1. Leasehold / Premises. 8

2. Term..... 8

3. Rent..... 9

4. Security Deposit. 10

5. Renewal Option. 10

6. Build-out and Maintenance Expenses. 10

7. Utilities. 10

8. Compliance with law – Licenses and permits. 10

9. Title and Use..... 11

10. Quiet Enjoyment. 12

11. Maintenance, Repairs, Alterations, Improvements..... 13

11. Insurance. 13

13. Indemnity and Release of Liability..... 14

14. Damage or Destruction. 14

15. Assignment and Subletting. 15

16.	Default.....	15
17.	Remedies Upon Default.....	16
18.	Reasonable Access / Inspection.....	17
19.	Notices.....	17
20.	Partial Payment.....	17
21.	Recording.....	18
22.	Surrender.....	18
23.	Signage / Advertising.....	18
24.	Sand / Dredged Material.....	18
25.	Taxes.....	18
26.	Dispute Resolution.....	18
27.	Home Status.....	19
28.	Rapid Response Fund.....	19
29.	Change in Law / Change in Condition.....	20
29.	Integration Intended.....	20
30.	Modification.....	20
31.	Consultation.....	20
32.	Governing Law.....	20
33.	Right of First Refusal.....	21
	Slip Fees	23
	All other Business Activities	23

SPARTAN BAY MARINA, INC. OPTION AGREEMENT

NOW COME the Parties, the City of Saco, a Municipal Corporation, 300 Main Street, Saco, Maine (“The City”) and Spartan Bay Marina, Inc. a Maine Corporation with a principal place of business at 316 Main Street, Biddeford, Maine (“Spartan Bay”) who agree as follows:

1. Option to Lease.

The City, upon the terms and conditions herein set forth, extends an irrevocable option to Spartan Bay to enter into a lease and license for certain waters of the City. The subject premises shall be found, bounded and situated as follows:

A certain point lying 1000 feet from the low water mark of the Atlantic Ocean (said point also marking the boundary of the Town of Old Orchard Beach and the City of Saco) , said point also being situated on a straight line if extended from the end of the Old Orchard Beach Pier, thence turning 90° and running 500 yards easterly along said boundary to another point; thence turning 90° and running southerly 1500 yards seaward to a point; thence turning 90° and running westerly 1000 yards to another point, said course at all times 1000 yards from and parallel to the first course above; thence turning 90° and running 1500 yards in a generally Northerly direction to another point; thence 500 yards Easterly back to the point of beginning, intending to describe an area 1000 yards by 1500 yards, and the use and occupancy of all the waters therein and there under.

2. Term.

This option shall run for 365 days from the date it is approved and voted upon by the Saco City Council (the “effective date”), regardless of the date it is actually signed and delivered by either the City or Spartan Bay.

3. Option Fee.

The option shall be contingent upon the payment of a non-refundable fee of \$20,000.00 by Spartan Bay not later than 30 days after the effective date described in Section 2 above. Should Spartan Bay fail or refuse to pay the option fee within said 30 day time period, all rights herein shall terminate and expire.

4. Right of Renewal.

Spartan Bay shall enjoy the right to renew this option for one (1) additional year (365 days) by payment of a one time, non-refundable extension fee of \$50,000.00. Payment of the extension fee must be received by the City before 5:00 pm, close of business 365 days from the effective date, or if such date is a weekend or holiday, then the most immediate preceding regular, non-holiday business day for the City. Upon such payment, the option shall be extended for an additional 365 additional days.

5. Proposed Lease and Terms.

Aside from the terms set forth herein, the Lease and license to be entered into by the Parties should Spartan Bay choose to exercise its option is attached hereto as Tab 1. The option provided herein is solely to enter into the attached Agreement, without modification of principal terms or conditions. Each party, in advance, has been provided opportunity to review and negotiate the terms of said proposed lease, and each is satisfied as to said terms and conditions.

6. Notice of Intent.

Spartan Bay must notice the City in writing of its intent to exercise the option contained herein, and of its intent to extend the option, which notice must be delivered not less than 30 days before the expiration of this option. Should Spartan Bay exercise the option, it must sign the proposed Agreement within the same 30 day time period described herein.

7. Permitted Uses.

The Agreement sets forth the permitted uses for the time period of the leasehold, such uses shall be limited to boating, marine and recreational uses, except as otherwise noted. Retail and on site sales will be permitted but in no event is any industrial or heavy commercial use authorized including, but not limited to: petroleum pipe lines, bulk storage of liquefied natural gas or heavy petroleum.

Notwithstanding the preceding, the only use permitted Spartan Bay during the option period shall be limited to testing, site inspections, borings, and other acts which may be reasonably necessary or required for preliminary design, engineering, and feasibility studies. No fixed or permanent structures may be placed or installed upon the premises by Spartan Bay, or any agent, employees or contractors of Spartan Bay without the specific written consent of the City.

8. Entire Agreement.

With the exception of the attached Lease, this Agreement shall constitute the entire agreement between the parties. Any prior understandings or representations of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

9. Partial Invalidity.

The invalidity of any portion of this Agreement shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

10. Modification of Agreement.

Any modification of this Agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

11. Maine Law.

This Agreement is a Maine contract, to be governed by Maine Law.

12. Binding upon Successors/Assigns.

This Agreement shall be binding upon the Parties, as well as upon their successors, and assigns.

13. Recording.

This option shall be recorded by the City upon its execution.

Dated at Saco, Maine this 20th day of September, 2007.

WITNESS:

Lisa R. Parker
Signature
Lisa R. Parker
Print Name

CITY OF SACO:

Richard R. Michaud
Richard R. Michaud
City Administrator

WITNESS:

Lisa R. Parker
Signature
Lisa R. Parker
Print Name

SPARTAN BAY MARINA, INC.

William Danton
William Danton
President

STATE OF MAINE
YORK, ss.

September 26, 2007

Then personally appeared before me RICHARD R. MICHAUD, who gave oath and acknowledged the foregoing to be his free act and deed, and the free act and deed of the CITY OF SACO, and of his authority herein to act on its behalf.

Before me,

Kathleen H. Kern
Notary Public/Attorney at Law

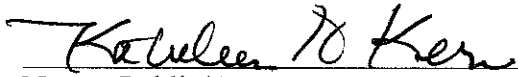
KATHLEEN H. KERN
Notary Public, Maine
My Commission Expires September 17, 2013

STATE OF MAINE
YORK, ss.

September 20, 2007

Then personally appeared before me WILLIAM DANTON, who gave oath and acknowledged the foregoing to be his free act and deed, and the free act and deed of SPARTAN BAY MARINA, INC., and of his authority herein to act on its behalf.

Before me,



Notary Public/Attorney at Law

KATHLEEN H. KERN
Notary Public, Maine
My Commission Expires September 17, 2013

Tab 1

SPARTAN BAY MARINA, INC. LEASE AND BUSINESS LICENSE

NOW COME the Parties, the City of Saco, a Municipal Corporation, 300 Main Street, Saco, Maine ("the City" or "Lessor") and Spartan Bay Marina Inc., a Maine Corporation, with a principal office at 316 Main Street, Biddeford, Maine ("Spartan Bay" or "Lessee") who agree as follows:

WITNESSTH:

1. Leasehold / Premises.

The City grants a business license for and leases to Spartan Bay, subject to the terms and conditions herein, the following unimproved premises:

A certain parcel of land lying 1000 feet from the low water mark of the Atlantic Ocean (said point also marking the boundary of the Town of Old Orchard Beach and the City of Saco) , said point also being situated on a straight line if extended from the end of the Old Orchard Beach Pier, thence turning 90° and running 500 yards easterly along said boundary to another point; thence turning 90° and running southerly 1500 yards seaward to a point; thence turning 90° and running westerly 1000 yards to another point, said course at all times 1000 yards from and parallel to the first course above; thence turning 90° and running 1500 yards in a generally Northerly direction to another point; thence 500 yards Easterly back to the point of beginning, intending to describe an area 1000 yards by 1500 yards, and the use and occupancy of all the waters therein and there under.

2. Term.

The initial term of the Agreement shall run for twenty-five (25) years from the date of execution. It may be renewed for up to three (3) additional twenty-five (25) year terms upon the terms and conditions set forth herein below.

3. Rent.

Spartan Bay shall pay to the City as a "base rent" the sum of \$50,000.00 per year, payable in twelve (12) equal, monthly installments, each payment due on the first of each month, said base rent shall be subject to an annual cost of living adjustment based on the published "CPI" rates, all urban consumers, Boston Market, but in no event to exceed seven (7) percent. Notwithstanding the preceding, said base rent shall not commence or be due until the third (3rd) year of said Lease.

- (a) "Yearly Adjusted Rent". In addition to the base rent, Spartan Bay shall also pay the City a "yearly adjusted rent" said yearly adjusted rent being a percentage of all gross receipts for any and all business conducted by Spartan Bay, as well as any other party, sub lessee, agent or assignee of Spartan Bay that uses occupies the premises, the percentage of gross receipts due as adjusted rent to increase over the term of the Lease pursuant to the schedule set forth in Tab A.
- (b) "Gross Receipts". This term shall mean the gross amount earned or received by Spartan Bay, and any sub lessees, agents or assignees, from all business activities at or from the premises, both cash and credit, including but not limited to sales of goods, all provision of any services, merchandise, alterations, repairs, slip/berthing or mooring provision, entertainment and meals.
- (c) Payment Date. Said yearly adjusted rent shall be due the City March 30 for any and all years the Agreement is in effect, except the adjusted rent for year one (1) regardless of when commenced shall be calculated the following March 30 and each year thereafter. Spartan Bay shall provide clear and reasonably detailed financial records to substantiate its calculation of the adjusted rent at the time of payment, and said financials shall be affixed to the delivered funds.
- (d) City Acceptance. The yearly adjusted rent shall be accepted by the City without prejudice as to its rights hereunder. The City will have one (1) year from delivery of the adjusted rent to dispute the paid amount, otherwise it will be deemed to have agreed that the paid amount constitutes the due tally of gross receipts for the immediately preceding year.
- (e) Audited Financial Records. Not later than March 30 for all years this Agreement is in effect, Spartan Bay, and all other parties, licensees, sub lessees, agents and assignees who conduct business at or from the premises, shall provide the City with audited, financial records for review, as well as signed federal tax returns and all associated schedules. The financial records shall be prepared and transmitted by a reputable, qualified CPA chosen by the City.
- (f) Disputes. If the City reasonably believes the audited financials and/or tax returns of Spartan Bay and/or any licensee, sub lessee or assignee of

Spartan Bay do not confirm the calculation of the adjusted yearly rent, then the City may invoke the Dispute Resolution process set forth below in Section 26, which process shall conclusively determine the matter.

- (g) Duty of Good Faith and Fair Dealing. Because the yearly adjusted rent must be calculated by Spartan Bay, and can be affected by its actions, business decisions, and judgments, and as such determination falls almost entirely within the control of Spartan Bay, it therefore covenants and agrees that it shall have, notwithstanding any provision of Maine statutory or case law to the contrary, an independent duty to act in good faith at all times, as to all its duties under this Agreement, including the calculation of gross receipts; and it will conduct fair dealings with all, including the City, at all times.

4. Security Deposit.

Spartan Bay shall pay the City \$10,000.00 upon the execution of this Agreement as a security deposit upon the premises. City is not required to escrow this fee, but may deposit it in with any general funds.

5. Renewal Option.

Spartan Bay shall enjoy the option to renew this Agreement up to three (3) additional twenty-five (25) year time periods. Notice of the option to renew must be given in writing by Spartan Bay not less than 180 days before the expiration of then existing Agreement, or said option shall be waived. Exercise of the option to renew must be accompanied by a non-refundable \$250,000.00 option fee upon each occasion that the option is exercised.

6. Build-out and Maintenance Expenses.

Those expenses necessary to build-out, repair and maintain a Marina or other facilities at or upon the premises shall be borne solely by Spartan Bay for so long as this Agreement is in effect.

7. Utilities.

Spartan Bay shall secure in its name and shall be responsible for the cost of all utilities used at or delivered to the premises, including but not limited to water, heat, gas, electricity, telephone, sewerage, cable, fiber optic and internet services. It shall also be responsible for the payment of any deposits or similar charges required to be paid in connection with the installation, delivery and supply of these services.

8. Compliance with law – Licenses and permits.

Spartan Bay shall obtain and maintain at all times this Agreement is in effect all licenses, approvals and permits required to conduct or operate its business in and upon the premises which are, or may become, required by any applicable governmental body or agency having jurisdiction over the premises, including but not limited to the City of Saco, the State of Maine, and its

Department of Environmental Protection and its Department of Marine Resources, the U.S. Federal Government and its U.S. Coast Guard, Army Corps of Engineers and its Department of Environmental Protection. Spartan Bay shall pay the fee or charge imposed for issuance of any such license or permit. Spartan Bay shall renew any of these licenses and permits in accordance with the rules, codes, statutes or ordinances requiring the licenses or permits. Spartan Bay agrees to conduct and operate at all times during the term only the business for which it is licensed, and in the event of a change in the nature of its business or operation to obtain any necessary new or additional licenses or permits. Spartan Bay, at its expense, shall comply with all requirements and perform all necessary action required under any rules, codes, statutes or ordinances for the issuance and continuance of the permits or licenses. The Parties agree the proposed use of the premises described herein is subject to Saco Planning Board Site Plan review; further, no material change in use may occur during the term of this lease without subsequent and complete Planning Board review.

9. Title and Use.

The premises are leased and licensed as is, where as, without any improvements thereon, and without promise or warranty as to title, fitness for use or purpose, including but not limited to depth of water, or as to condition. Notwithstanding the preceding, the City recognizes the desire of Spartan Bay to build out a Marina for boating, marine and other recreational use upon the premises and by the Agreement assents to said use and purpose, and specifically authorizes and licenses said use, including the berthing of large ocean going cruise ships.

- (a) No use, business, trade, exchange, transaction or occupation shall be conducted at or upon the premises which will be unlawful, improper, industrial in nature or character, noisy or offensive, or in contravention to any state or federal law, statute or regulation, or any municipal code or ordinance. If the State of Maine should, at some future date, authorize gaming or gambling within Maine waters, Spartan Bay agrees it shall not, at any time this Agreement between the parties is in effect, offer, conduct, operate, manage, permit, or maintain any games of chance or gambling on the licensed premises.
- (b) In no event and under no circumstance will Spartan Bay establish an oil or petroleum depot or liquefied natural gas storage or receiving facility at or upon the premises, or otherwise seek to link the premises by pipe line or other transmission facility to any other place or land, if the purpose of such pipeline or transmission is the transport any liquid or gas or steam. Notwithstanding the preceding, Spartan Bay may install sewerage, telephone, water or other utility lines, provided that such lines are used solely to support use and consumption at the premises.
- (c) It shall be Spartan Bay's responsibility to assure that any use, and that all business and operations conducted within or upon the premises, is safe, and conducted or operated pursuant to all applicable federal, state and local laws, statutes, regulations and codes ("applicable laws") including

but not limited to local building, plumbing, electrical and other Life-Safety Codes ("City Codes").

- (d) In no event or circumstance shall Spartan Bay store within or upon it any toxic, explosive, special or hazardous materials or waste (hereinafter "hazardous materials"), nor in any manner or form violate Maine's Hazardous Waste and Pollution Control Laws and Acts, including but not limited to 38 MRSA, Sections 1301, et. seq. and 1351 et. seq.; nor Federal Hazardous Waste and Pollution Control Laws, including but not limited to: the Clean Water Act, 33 U.S.C Section 1321, et seq., as amended, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C Section 9607 et seq. as amended; the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. 6921, et seq., as amended, and 42 U.S.C. 11004, et seq., as amended, the Emergency Planning and Right to Know Act ("EPCRA").
- (e) If Spartan Bay breaches the obligations stated in this section, or if the presence of hazardous materials on the premises caused or permitted by Spartan Bay results in contamination of the premises, or if contamination of the premises by hazardous material otherwise occurs then Spartan Bay shall indemnify, defend and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, but not limited to, diminution in value of the premises, damages for the loss or restriction on use of rentable or usable space, damages arising from any adverse environmental impact, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the term of the Agreement as a result of such contamination. This indemnification of the City by Spartan Bay includes, but is not limited to, costs incurred in connection with any investigation of site conditions, or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or water on or under the premises or on or under the surrounding waters and lands. Without limiting the above, if the presence of any hazardous material on the premises caused or permitted by Spartan Bay results in any contamination of the premises, and/or surrounding waters and lands, Spartan Bay shall promptly take all actions at its sole expense as are necessary to return the premises and surrounding waters and lands to the condition existing prior to the introduction of any such hazardous material.

10. Quiet Enjoyment.

Spartan Bay shall peacefully and quietly enjoy the premises for the intended purposes without disturbance of the City. A reciprocal duty is owed by Spartan Bay to all others. It shall be a breach of this Agreement for Spartan Bay or any employee, agent or guest of Spartan Bay to

cause disturbance, or to threaten, intimidate or interfere with any person, visitor or guest or any officer or official of the City in the conduct of their official business.

11. Maintenance, Repairs, Alterations, Improvements.

- (a) Spartan Bay shall keep the premises in clean, orderly and sanitary condition.
- (b) It shall make no alterations in, or additions or improvements to the Premises without first obtaining the City's written consent to such alterations or improvements, including building permits, none of which shall be unreasonably withheld.
- (c) Any alterations or additions authorized by the City shall be performed with care, in a workmanlike manner, and shall be at Spartan Bay's cost unless otherwise agreed in writing.

11. Insurance.

Spartan Bay shall maintain the following insurance coverage's, policies and amounts for all periods of time this Agreement is in effect. Each liability policy described and required hereunder shall name the City of Saco as an additional insured. Proof of such coverage shall be due each year, and the City shall receive notice of both placement, and any termination.

- (a) Comprehensive General Liability. Spartan Bay will keep in force comprehensive general liability insurance which provides a minimum of not less than \$1,000,000.00 single limit coverage and not less than an aggregate of \$2,000,000.00 of liability coverage per year with respect to property damage, personal injury and death.
- (b) Marina Operators Legal Liability Policy. Spartan Bay shall place and maintain such coverage in an amount and type matching subsection (a) above.
- (c) Liability Umbrella Coverage. Spartan Bay shall place and hold an Umbrella Liability policy providing an additional \$10,000,000.00 of coverage. Said insurance shall provide for coverage of all third parties, who might be harmed or injured, or suffer property damage, as a result of any negligent act of Spartan Bay
- (d) Pollution Coverage/Endorsement/Riders. Spartan Bay shall place and hold a separate policy, in an amount not less than \$5,000,000.00 which provides specific coverage against any and all accidental or negligent discharges of petroleum products and any other pollutants upon land or waters of the City or any other third party.

- (e) Workman's Compensation. Spartan Bay shall provide that level of coverage required under the applicable Maine and/or federal workers compensation laws, such coverage to assure federal extensions for long-shoremen and dock workers.
- (f) Quality of Coverage. All policies will be placed with nationally recognized underwriting firms with Standard and Pools ratings of A+ or better, or Moody's ratings of Aa3 or better, or A.M. Best ratings of A+ or better.
- (g) Additional Insurance. City reserves the right in its sole judgment, from time to time, to require Spartan Bay secure added coverage and increased policy limits to address added, new or unanticipated risks, to provide additional liability protection to the City an third parties, and to assume State and Federal requirements are met.
- (h) Mandated Coverage. Spartan Bay will place and maintain any other policies, with those limits, as may be mandated by any State or Federal Agency as part of any permitting, approvals, license conditions or otherwise.

13. Indemnity and Release of Liability.

- (a) Notwithstanding Section 9 (e), and in addition thereto, Spartan Bay agrees to indemnify the City and hold it harmless from and against any and all claims, actions, damages, fines, liability and expense, including reasonable attorney's and other professional fees, in connection with, related to or arising from any loss of life, personal injury and/or damage to property at or upon the premises, or as a result of or arising in any way from its use and operation of the premises.
- (b) Release of all Liability. The City shall not be liable, and Spartan Bay affirmatively waives and releases the City from all liability, for any and all personal injury or property damage occurring on, at or to the premises, or to any persons in or on the demised premises. This waiver of liability and release shall include, but is not limited to damage caused by persons, employees, boats, tides, fire, wind, water, storm, acts of God, loss of property by theft or burglary, loss of utility services, accidental damage or loss, defects in construction and conditions of nature.

14. Damage or Destruction.

In case the Premises shall be damaged by wind, water, tide, storm, fire, act of God, or other casualty so as to render the same unusable in whole or in part for any period, no abatement of the "base rent" shall be made. As for the adjusted yearly rent, a period of dis-use or reduced use

would likely result in a diminution of gross receipts, and such diminution shall constitute the agreed abatement.

15. Assignment and Subletting.

Spartan Bay shall not assign or encumber the premises, nor sublet the Premises, or permit any part thereof to be used by others, without the specific written consent of the City.

- (a) Security for Improvements. Notwithstanding the preceding, Spartan Bay may pledge its rights under this Agreement as security to finance any improvements thereon. Any such assignment may only be made to a nationally chartered Bank with proper credentials, and financial capacity.
- (b) Improvements only. Any pledge of this Agreement shall be and must be limited solely to the value and finance of physical improvements placed at and upon the premises, and no pledge of the premises shall or can be made for purposes of securing or financing other general business activities of Spartan Bay, or any other party.

16. Default.

The Parties covenant they shall not breach the terms and conditions of this Agreement.

- (a) The following events shall be deemed to be events of default by Spartan Bay:
 - (i) Spartan Bay shall fail to pay the rent when due and such failure shall continue for a period of fourteen (14) days, or
 - (ii) Spartan Bay shall fail to comply with any other term, provision or covenant of this Agreement, and shall not cure such failure within fourteen (14) days after written notice specifying the nature of such default; or
 - (iii) Spartan Bay shall abandon the Premises or fail to conduct business in the Leased Premises as required by this Agreement for a period of thirty (30) days; or
 - (iv) Spartan Bay shall become insolvent, admit in writing its inability to pay its rent generally as it becomes due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment to benefit of creditor, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended.

- (v) The failure of Spartan Bay, within 14 days of notice, to correct, cease and desist, or abate any business, use, transaction or operation in contravention of any applicable State or Federal law, regulation or statute, or any applicable City Code or Ordinance.
 - (vi) The failure of Spartan Bay to pay any utility fee or charge as assessed or incurred.
 - (vii) Any action or proceeding which results in the placement or filing of a lien, attachment or judgment upon premises, which lien, attachment or judgment is not removed within thirty (30) days of its recording.
 - (viii) The failure of Spartan Bay to pay any and all taxes assessed against the premises within thirty (30) days after they become due.
 - (ix) The failure of Spartan Bay to provide financial records, audits, tax returns and schedules when required hereunder, including pursuant to sections 3 (c), 3 (e), 18 and 26 (a).
- (b) The City shall in no event be in default in the performance of any of its obligations hereunder unless and until it shall have failed to perform such obligations within thirty (30) days after written notice by Spartan Bay reasonably specifying the default alleged, and specifying the nature of the alleged default, and indicating wherein the City has failed to correct or abate said default.

17. Remedies Upon Default.

In the event of a default, as specified under section 16 above, the City shall have all remedies under law and equity. In addition to, and not in lieu thereof, the City may involve the following specific remedies:

- (a) The City may reenter and take full control and possession of the demised premises immediately and remove the property of Spartan Bay, store the property in a public warehouse or at a place selected by the City, at the expense of Spartan Bay. Spartan Bay waives all rights under Maine Law to further notice and it waives and releases the City from any requirement or obligation to second possession through an eviction or other Court proceeding.
- (b) The City may terminate this agreement. It may thereupon file suit to recover from Spartan Bay all damages resulting from the breach, including, but not limited to: the balance of the rent payments remaining due and unpaid under this agreement, all costs of site remediation and any and all attorneys' fees incurred to enforce the terms and conditions of this Agreement.

- (c) The City may re-let and re-license to another the demised premises or any part of the demised premises for any term, at such rent and on such terms, as it deems prudent. Any such re-let and re-license shall constitute a mitigation of damages for the benefit of Spartan Bay. The City may make alterations and repairs to the demised premises.
- (d) In addition to Spartan Bay's liability to the City for breach of this agreement, Spartan Bay shall be liable for all expenses of the re-letting, re-licensing for the alterations and repairs made, and for the difference between the rent received by the City under the new agreement and the rent installments that were due for the same period under this agreement.
- (e) In the event the City fails to remedy a default on its part within the time permitted, herein, Spartan Bay may invoke any and all remedies provided for under law and equity.

18. Reasonable Access / Inspection.

The City and its Administrator, representatives, officers, agents or employees, may enter the Premises at any reasonable time for the purposes of inspecting the property, for purposes of review and auditing of any books, accounts, receipts, ledgers, records, or memorandum of Spartan Bay and any sub lessee, agent or assignee of Spartan Bay, or for such other purposes as it deems necessary, provided that City provides Spartan Bay with 24-hour advance notice, except for emergencies, in which case the City may enter as deemed necessary.

19. Notices.

Any notice or communication relating to this Agreement shall be deemed duly given if in writing and either hand delivered or sent by certified mail, postage addressed as follows:

To Spartan Bay: Spartan Bay Marina, Inc.
William Danton, President
316 Main Street, Suite 202
Biddeford, Maine 04005

To The City: City of Saco
c/o City Administrator
300 Main Street
Saco, Maine 04072

20. Partial Payment.

The acceptance of a check or cash by the City for a lesser amount than the full rent with an endorsement or statement thereon, or upon any letter accompanying such check, to the effect that such lesser amount constitutes payment in full shall be given no effect and the City may accept

such funds without prejudice to any other rights or remedies which the City may have against Spartan Bay.

21. Recording.

The Parties agree that this Agreement or a memorandum thereof may be recorded by the City.

22. Surrender.

Spartan Bay shall at the expiration of this Agreement remove all of its goods and effects from the demised premises within seven (7) days. Upon request of the City, Spartan Bay will leave those fixtures, including piers, pilings, floats, docks, moorings and any other improvements associated or affixed thereto or therein. Upon such request, Spartan Bay shall waive, release and relinquish any and all right, title and interest to such improvements.

23. Signage / Advertising.

Spartan Bay may install signage at and upon the premises that meets the conditions and standards set forth in Section 707-5 of the City's Zoning Ordinance. The Parties agree that the premises shall be deemed a "Marine District" or B-5 District for purposes of signage.

24. Sand / Dredged Material.

For so long as this Agreement is in effect, including any extensions thereof, Spartan Bay shall offer, at no fee of cost, all sand and/or dredged material taken from the premises to the City. The City shall enjoy the absolute, unconditional option to accept said materials. If the City accepts any offer of sand or dredged material, Spartan Bay, at its costs, shall transport and deposit the sand and/or dredged materials at a location of the City's choosing. The City is free to refuse sand or dredged materials from time to time, without said action constituting a waiver of this condition.

25. Taxes.

Spartan Bay shall pay all real and personal property taxes assessed on or against the premises, and any equipment and improvements thereon.

26. Dispute Resolution.

The Parties shall resolve dispute between them as follows:

- (a) Calculation of the Adjusted Rent. If a dispute arises solely with regard to the calculation and payment of the yearly adjusted rent, that dispute shall be resolved by the parties, at shared cost, as follows:
 1. Each Party shall select an independent, qualified and recognized certified public accountant;

2. These two Parties shall select one independent, locally or nationally recognized, certified public accounting firm or accountant.
3. The three accountants shall meet, consult over issues and review those tax federal returns, schedules and audited financials they deem necessary, and the adjusted rent calculation method used by Spartan Bay. The accountants shall each thereupon reach an independent determination as to the proper amount due as the yearly adjusted rent. Those figures shall be provided to each party.
4. The two figures that are closest shall be added together, then divided in two (2), and the resulting figure shall constitute the final adjusted rent for the subject year, and the dispute shall end.
5. The parties agree to split the cost of Dispute Resolution, however, as additional consideration, the City's half share shall be capped at \$10,000.00 all other costs of resolution above \$10,000.00 to be borne solely by Spartan Bay.

- (b) All other disputes. The parties may resolve any and all other disputes by mediation, arbitration or Court of Law as each deems in their interest, but in no event shall this provision negate, limit or bar those specific remedies for default provided to either party as set forth above in Section 17.

27. Home Status.

For so long as the Agreement is in effect the City shall enjoy "Home Status", and Spartan Bay covenants it shall affirmatively designate the City as such at each and all opportunities when the issue arises. Further, Spartan Bay covenants it shall not designate any other community as Home Community so long as this Agreement is in effect.

28. Rapid Response Fund.

Spartan Bay shall place with an independent bank, in an interest bearing account, an initial sum of \$10,000.00 upon the execution of this Agreement. Thereafter, on the anniversary of this Agreement it shall deposit an additional \$25,000.00 into said account. Said rapid response fund shall be accessible by Spartan Bay (and the account shall be so conditioned) under two (2) circumstances:

- (a) In the event of a hazardous materials spill or other contamination of the City's waters for immediate remediation or mitigation efforts and only upon consent of Saco, which consent shall not be unreasonably withheld or delayed.
- (b) Upon termination of this Agreement for site remediation.

29. Change in Law / Change in Condition.

- (a) Change in Laws. If any change of Law by Federal, State or local Government Agency renders the premises substantially unusable as a Marina, Spartan Bay may request a termination of this Agreement which request will not be unreasonably withheld. Upon such request, Spartan Bay shall remove and dispose of those facilities and improvements as designated by the City.
- (b) Material Change in Conditions. If a material change in condition occurs or arises, not sooner than the 10th year of this Agreement, which change in condition substantially affects, reduces or impairs the City's fair market return on this Agreement or otherwise presents material jeopardy or unpredicted and substantial risk to the City, it reserves the sole right to re-open the Agreement for purposes of fairly and adequately addressing said change in conditions.

29. Integration Intended.

This document and its attached Tab A represent the entire Agreement between the Parties. No other oral or other Agreements between the Parties are made or intended.

30. Modification.

No amendment or modification of this Agreement can be made by either party unless it is reduced to writing and signed by both parties.

31. Consultation.

Upon the fifth (5th) year of this Agreement, and every fifth (5th) year thereafter, Spartan Bay shall hire a recognized Pollution Control and Abatement Expert for purposes of site review and consultation. That individual or firm shall be engaged to determine those plans, procedures, personnel, equipment, processes and methods which shall best serve to prevent and limit any spills of hazardous wastes and/or contamination of Saco and surrounding waters. The consultant shall prepare a written assessment for Spartan Bay and the City to review. The City may thereupon reasonably demand that Spartan Bay act upon, install, implement and/or undertake one or more of recommendations of the consultant. Failure to then do so within 180 days of the request shall constitute a default hereunder.

32. Governing Law.

This Agreement shall be governed by the provisions hereof and by the laws of the State of Maine, except to the extent Federal Admiralty or other Federal Law supersedes such Maine Law, and then only to the extent and limit of the paragraphs or provisions herein that are superseded or pre-empted.

33. Right of First Refusal.

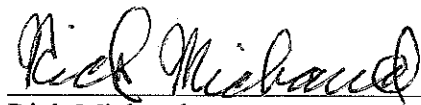
If any other firm, person or entity makes a bona fide proposal to license and or lease from the City any other portion of Bay waters lying within the bounds of the City, Spartan Bay shall have and enjoy a 90 day period to meet, match or exceed said proposal.

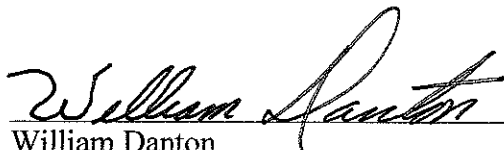
IN WITNESS WHEREOF, the parties hereto have set their hand and seals on and as of the date first set forth above.

This Sept. 20th, 2007, which date shall constitute the date of execution regardless of which party signs first or last.

CITY OF SACO:

SPARTAN BAY MARINA, INC.


Rick Michaud
City Administrator


William Danton
President

STATE OF MAINE
YORK, ss.

September 20, 2007

Then personally appeared before me RICHARD MICHAUD, who gave oath and acknowledged the foregoing to be his free act and deed, and the free act and deed of the CITY OF SACO, and of his authority herein to act on its behalf.

Before me,



Notary Public/Attorney at Law


KATHLEEN H. KERN
Notary Public, Maine
My Commission Expires September 17, 2013

STATE OF MAINE
YORK, ss.

September 20, 2007

Then personally appeared before me WILLIAM DANTON, who gave oath and acknowledged the foregoing to be his free act and deed, and the free act and deed of SPARTAN BAY MARINA, INC., and of his authority herein to act on its behalf.

Before me,



Notary Public/Attorney at Law

KATHLEEN H. KERN
Notary Public, Maine
My Commission Expires September 17, 2013

Tab A.

The yearly adjusted rent shall be compromised of two elements: 1) slip fees and 2) revenue from all other lawful business activities at or upon the premises. The City shall receive a fixed percentage of gross receipts for each of the two elements as set forth below:

Slip Fees

Year	Percentage of Gross Receipts Due
1-25	2%
26-50	2.1%
51-75	2.2%
76-100	2.3%

All other Business Activities

Year	Percentage of Gross Receipts Due
1-10	1.0%
11-20	1.1%
21-25	1.2%
26-30	1.3%
31-40	1.4%
41-50	1.5%
51-60	1.6%
61-70	1.7%
71-75	1.8%
76-80	1.9%
81-90	2.0%
91-100	2.1%