

1 **APPROVED AS TO LEGAL FORM:**

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4 **Thomas M. Carpenter, City Attorney**

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1 **EXHIBIT A**

2 **ESTOPPEL AGREEMENT**

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4 This Agreement Prepared By:
5 Timothy W. Grooms, Esq.
6 Quattlebaum, Grooms & Tull, PLLC
7 111 Center Street, Suite 1900
8 Little Rock, Arkansas 72201
9 (501) 379-1700

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11 **LANDLORD'S WAIVER, ESTOPPEL AND NONDISTURBANCE AGREEMENT**

12 **Landlord: CITY OF LITTLE ROCK**
13 Office of the City Manager
14 500 West Markham Street
15 Little Rock, Arkansas 72201
16 **Tenant: JAPB, LLC**, an Arkansas limited liability company
17 d/b/a Rock City Yacht Club
18 26 Collins Industrial Place
19 North Little Rock, Arkansas 72113
20 Attn: John Burkhalter
21 **Lender: FIRST SERVICE BANK**
22 an Arkansas banking corporation
23 12921 Cantrell Road, Suite 204
24 Little Rock, Arkansas 72223
25 Attn: Bill Puddephatt, President-Little Rock Market
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28 **RECITALS:**

29 Landlord is the owner and landlord of the "Land" as defined in that certain Ground Lease, dated
30 December 19, 2013, by and between Landlord and Tenant (the "**Lease**"). The Lease is memorialized by
31 that certain Memorandum of Lease by and between Landlord and Tenant, dated _____, 20__, and
32 recorded on _____, 2017 in the real property records of Pulaski County, Arkansas as Instrument
33 #_____.

34 Lender has been, and may in the future be, requested to make secured loans to Tenant and/or
35 Tenant's affiliates from time to time covering the construction of a marina and the consumer goods,
36 equipment, inventory, accessions and fixtures (collectively the "**Personal Property**") that may hereafter be
37 delivered to or installed on the Land. Lender has required the execution of this Landlord's Waiver, Estoppel
38 and Nondisturbance Agreement ("**Agreement**") as a condition precedent to making a loan to Tenant, and
39 Landlord acknowledges that benefits will inure to the undersigned because of the loan.
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41 **AGREEMENT:**

42 In consideration of the foregoing and of other good and valuable consideration, the receipt and
43 sufficiency of which is acknowledged, Landlord hereby agrees as follows:

- 1 1. Landlord hereby consents to Tenant granting Lender a mortgage on Tenant's leasehold interest
2 under the Lease, including without limitation Tenant's interest in the Land and the marina.
3 Landlord further consents to Tenant granting Lender a security interest in and to the Personal
4 Property.
- 5 2. Landlord hereby waives and subordinates as to the Lender all rights that Landlord now has, or may
6 hereafter have, under the laws of the State of Arkansas, in which the Land is located, or by virtue
7 of any lease, mortgage or deed of trust affecting the Land, now in effect or hereafter executed by
8 Tenant, to levy upon or distrain the Personal Property for rent, or to claim or assert title to or any
9 interest in any of the Personal Property.
- 10 3. The Personal Property shall remain personal property notwithstanding its attachment to or
11 installation on the Land and none of the Personal Property shall become a fixture. The Personal
12 Property may be installed, kept, maintained, used and operated on the Land, and the Lender's
13 interest in the Personal Property shall be superior to any interest which the Landlord may now have,
14 or hereafter may acquire in the Personal Property, by operation of law or otherwise.
- 15 4. In the event of a default by Tenant in the payment or performance of any of its obligations to
16 Lender, Lender may (i) enter upon the Land and remove the Personal Property or any part thereof
17 from the Land, or (ii) enter upon the Land and maintain the Personal Property on the Land with full
18 right of access thereto for a reasonable period of time for purposes of disposing of the same, either
19 privately or publicly, provided Lender pays any rent or other payments to Landlord that Tenant
20 would have been required to pay during the same period under any rental or lease agreement or
21 mortgage or deed of trust between Tenant and the Landlord. Except for payment of rent or other
22 payments during periods in which it occupies the Land, Lender shall have no obligation for rent or
23 any other payments or obligations of Tenant to the Landlord. Upon default, if Lender chooses to
24 remove some or all of the Personal Property, without obligation to do so, Landlord may require
25 Lender, to the extent of conditions caused by removal by Lender of some or all of the Personal
26 Property, to restore the Land to a reasonably safe condition acceptable to Landlord at the expense
27 of the Tenant or Lender.
- 28 5. The initial term of the Lease commenced on December 19, 2013 and ends on December 18, 2112.
- 29 6. The Lease is in full force and effect.
- 30 7. As of the date hereof, the rent obligation under the Lease is as set forth in Article 2.2 of the Lease
31 has been paid in full. Landlord does not currently hold a security deposit from Tenant.
- 32 8. To the best of Landlord's knowledge, there is no existing default or claimed default by either
33 Landlord or Tenant under the Lease. To the best of Landlord's knowledge, no event has occurred
34 that, with the passage of time or the giving of notice, or both, would constitute a default by either
35 Landlord or Tenant under the Lease.

- 1 9. If any proceedings are brought by Lender to (a) foreclose its lien or security interest or (b) to
2 succeed to the interest of Tenant by foreclosure, deed in lieu thereof or otherwise, Landlord and
3 Lender agree that the Lease shall in accordance with all terms, conditions and covenants remain in
4 full force and effect as a direct lease and easement between Lender (or the purchaser through
5 foreclosure or other sale) and Landlord for the unexpired balance (and any extensions or renewals
6 provided for in the Lease, including, without limitation, any extensions or renewals pursuant to
7 options contained in the Lease and previously, at that time or thereafter exercised by Tenant) of the
8 term of the Lease, with the same force and effect as if originally entered into with Lender. If any
9 default occurs in the Lease following succession to Lender (or the purchaser through foreclosure
10 or other sale), this Agreement shall have no impact on future estoppel agreements between
11 Landlord and future lenders.
- 12 10. In the event of any such foreclosure or succession to the interest of Tenant by deed in lieu thereof
13 or otherwise by Lender or by any purchaser of such interest through foreclosure or other sale,
14 Landlord shall attorn to and shall be bound to Lender or such purchaser under all of the terms,
15 conditions and covenants in the Lease for the unexpired balance (and any extensions or renewals
16 provided for in the Lease, including, without limitation, any extensions or renewals pursuant to
17 options contained in the Lease and previously, at that time or thereafter exercised by Tenant) of the
18 term of the Lease without the execution of any further instrument on the part of the parties hereto.
- 19 11. Notwithstanding anything to the contrary contained herein or in the Lease or Easement, in the event
20 of foreclosure of, or other execution on, Lender's lien or security interest (by judicial process, power
21 of sale or otherwise) or conveyance in lieu of foreclosure, Lender shall in no event or to any extent:
22 (1) be liable to Landlord for any past act, omission or default on the part of Tenant except acts,
23 omissions or defaults which continue subsequent to the time Lender acquires Tenant's interest in
24 the Lease, and only to the extent of such continuation;
25 (2) be subject to any defenses which Landlord might have against Tenant, unless Landlord has
26 given Lender notice and opportunity to cure any default pursuant to the provisions below;
27 (3) bound by any Lease amendment after the effective date of this Agreement that is made
28 without Lender's written consent which shall not be unreasonably withheld, conditioned or delayed.
29 Lender shall be deemed to have given its consent to any amendment of the Lease to which Lender
30 would not otherwise be bound, if Lender fails to respond, either by reasonably requesting additional
31 information or by disapproving the request, within ten (10) days after Lender's receipt of such
32 request from Landlord or Tenant.
- 33 12. Landlord agrees to give Lender a copy of any notice of default served upon Tenant. Lender shall
34 thereafter have the right, but not the obligation, to cure the default within the longer of (i) the

1 expiration of Tenant's cure period, if any, under the Lease; (ii) thirty (30) days after Lender receives
2 a copy of such notice of default, or (iii) such other period negotiated between Landlord and Lender.

3 13. This Agreement shall inure to the benefit of the successors and assigns of the Lender and shall be
4 binding upon the successors and assigns of Landlord, and upon any purchaser of the undersigned's
5 interest in the Land.

6 14. Whenever in this Agreement or in any proceedings involving the foreclosure of Lender's liens or
7 security interests in the leasehold interests or the exercise of any power of sale it shall be required
8 or desired that notice or demand be given or served by any party hereto, such notice or demand
9 shall be in writing and shall be given by United States certified or registered mail, postage prepaid,
10 return receipt requested, or by messenger or overnight delivery, addressed to the party for whom it
11 is intended at the address provided at the beginning of this Agreement.

12 15. The obligations and covenants of the parties hereto shall be binding upon and shall inure to the
13 benefit of the parties hereto, their respective successors and assigns.

14 16. The parties hereto agree that this Agreement may be recorded in the public records in the county
15 where the Premises are located.

16 IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed this
17 ___day of _____, 2017.

18 LANDLORD:

19 **CITY OF LITTLE ROCK**

20 By: _____

21 Name: Mark Stodola

22 Title: Mayor

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1 STATE OF ARKANSAS)
2)ss. ACKNOWLEDGMENT
3 COUNTY OF PULASKI)

4 On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said
5 County and State, appeared in person the within named Mark Stodola, to me well known, who stated he
6 was the Mayor of the **City of Little Rock**, an Arkansas municipality, and was duly authorized in such
7 capacity to execute the foregoing instrument for and in the name and on behalf of the municipality, and
8 further stated and acknowledged he had so signed, executed and delivered the foregoing instrument for the
9 consideration, uses and purposes therein mentioned and set forth.

10 IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of
11 _____, 2017.

12 _____
13 Notary Public
14 My commission expires:
15 _____
16 (SEAL)

TENANT:
JAPB, LLC,
an Arkansas limited liability company
d/b/a Rock City Yacht Club
By: _____
John C. Burkhalter, Manager

23 STATE OF ARKANSAS)
24)ss. ACKNOWLEDGMENT
25 COUNTY OF PULASKI)

26 On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said
27 County and State, appeared in person the within named **John C. Burkhalter**, to me well known, who stated
28 he was the Manager of **JAPB, LLC**, an Arkansas limited liability company, and was duly authorized in
29 such capacity to execute the foregoing instrument for and in the name and on behalf of the company, and
30 further stated and acknowledged he had so signed, executed and delivered the foregoing instrument for the
31 consideration, uses and purposes therein mentioned and set forth.

32 IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of
33 _____, 2017.

34 _____
35 Notary Public
36 My commission expires:
37 _____
38 (SEAL)

LENDER:
FIRST SERVICE BANK,
an Arkansas banking corporation
By: _____
Bill Puddephatt, President-Little Rock Market

1 STATE OF ARKANSAS)

2)ss. ACKNOWLEDGMENT

3 COUNTY OF _PULASKI)

4 On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said
5 County and State, appeared in person the within named **Bill Puddephatt**, to me well known, who stated he
6 was the **President-Little Rock Market of First Service Bank**, an Arkansas banking corporation, and was
7 duly authorized in such capacity to execute the foregoing instrument for and in the name and on behalf of
8 the company, and further stated and acknowledged he had so signed, executed and delivered the foregoing
9 instrument for the consideration, uses and purposes therein mentioned and set forth.

10 IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of
11 _____, 2017.

Notary Public

14 My commission expires:

15 _____
16 (SEAL)

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