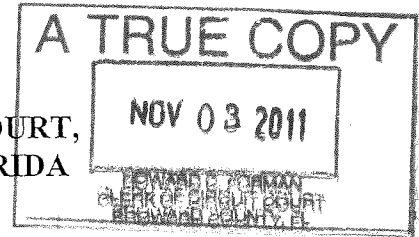


IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL DISTRICT COURT,  
IN AND FOR BROWARD COUNTY, FLORIDA



PIER SEVENTEEN MARINA AND YACHT  
CLUB, L.L.C.,

Plaintiff,

versus

JERICHO ALL WEATHER OPPORTUNITY  
FUND, L.P., SVIRSKY ASSET  
MANAGEMENT, INC. AND  
SCOTT SVIRSKY

Defendants.

CIVIL ACTION NO. 10-043764

\*\*\*\*\*

**FIRST AMENDED COMPLAINT FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, comes the plaintiff, Pier Seventeen Marina and Yacht Club, L.L.C. who respectfully files this Complaint against the defendants Jericho All Weather Opportunity Fund, L.P., Svirsky Asset Management, Inc. and Scott Svirsky through alleging the following facts upon information and belief:

**JURISDICTION AND VENUE**

1. This Honorable Court has jurisdiction over this civil action pursuant to Article 5 § 5 of the Florida Constitution.
2. Venue lies in this district pursuant to the Loan Agreement, Article VII, Section BB, attached hereto as Exhibit "A."

### **PARTIES**

3. Plaintiff Pier Seventeen Marina and Yacht Club, L.L.C. ("Pier 17") is a Louisiana limited liability company. Pier 17 is managed by Earl Weber.
4. Defendant Jericho All Weather Opportunity Fund, L.P. ("Jericho"), is a Delaware limited partnership that engages in investment and financing activities, with a principal place of business in Florida.
5. Defendant Svirsky Asset Management, Inc. ("Svirsky Asset Management") is a Florida corporation that engages in investment and financing activities, with a principal place of business in Florida. At all material times, Svirsky Asset Management was the general and managing partner of Jericho.
6. As general and managing partner of Jericho, Svirsky Asset Management is jointly and severally liable for all obligations of Jericho, including liability for the acts of Jericho outlined in this Complaint.
7. Defendant Scott Svirsky is a resident of the state of Florida. At all material times, Svirsky was the principal of Svirsky Asset Management and managed Jericho individually and through Svirsky Asset Management.

### **PRELIMINARY STATEMENT**

8. This case arises from a commitment by Jericho, in early-2008, to fund a \$36,000,000 loan to Pier 17 for the construction of a yacht "dockominium" on a property in Fort Lauderdale, Florida. Prior to the loan closing, Pier 17 had satisfied all obligations for the loan's funding. On April 1, 2008, the loan's closing date, Jericho failed to fund the loan.

As a result of Jericho's failure to fund the loan, Pier 17 was unable to proceed with the construction of the dockominium, causing severe damages to Pier 17 as outlined within.

9. Further, following April 1, 2008, Svirsky continued to represent to Pier 17 that Jericho would be able to fund the loan in short order, despite the fact that, based on information and belief, Jericho had no reasonable prospects of being able to do so. After months of empty promises, Jericho was never able to fund the loan. Neither Jericho nor Svirsky forthrightly informed Pier 17 that they would be unable to fund the loan, and in reliance on Jericho and Svirsky's representations, as a result Pier 17 was delayed in attempting to secure alternative financing, and the Fort Lauderdale property was foreclosed upon.
10. Pier 17 is suing to recover the damages caused by the breach of the Loan Agreement and the other acts and omissions of the Defendants.

#### **FACTUAL ALLEGATIONS**

11. In or around 2006, Pier 17 purchased a plot of land located at 1500 SW 17<sup>th</sup> Street, Fort Lauderdale, Florida (the "Property"), with the intention of developing a "dockominium" and yacht club with amenities and clubhouse facilities for large yachts and megayachts (the "Project").
12. The Project was to include twenty-six yacht slips for sale, seventeen of which were to offer 120 feet of dock length to accommodate large yachts and megayachts. At all material time periods herein, there has been a great demand for large yacht and megayacht dockage in South Florida. The combined sell-out value of all twenty-six slips, once the Project was completed, was estimated between fifty and fifty three million dollars

- (\$50,000,000.00 - \$53,000,000.00). Further, as more units were sold, the price for each slip was to increase, which in turn would increase the total sell-out value of the Project.
13. The Project was also to include ten transient slips, known as “side-tie slips,” which were to be made available for rental. The rentals of the side-tie slips were estimated to generate income of approximately four hundred thousand dollars (\$400,000.00) annually for the life of the slips.
  14. In or around June 2006, Pier 17 and Regions Bank entered into an agreement in which Regions Bank approved a loan to Pier 17 to finance the development of the Project (the “Regions Bank Loan”). *See* the Construction Loan Agreement and Promissory Note, attached hereto as Exhibit “B.” Pier 17 was approved by Regions for a total loan amount of twenty seven million, four hundred fifty-four thousand dollars (\$27,454,000.00). The Regions Bank Loan matured on June 20, 2008. *Id.*
  15. Of the total potential \$27,454,000.00, approximately twelve million dollars (\$12,000,000.00) was disbursed to purchase the Property and finance other costs.
  16. The terms of the Regions Bank Loan required that participating lenders be found to fund a minimum amount of seven million, four hundred fifty four thousand dollars (\$7,454,000.00) of the Regions Bank Loan, or Pier 17 would be required to obtain Pre-Sales of the slips in the minimum amount of thirty five million, three hundred seventy eight thousand, eight hundred and sixty six dollars (\$35,378,866.00). *See* Exhibit “B” at Article VII, General Conditions, Item 30, subparts (a) and (b).
  17. To satisfy this condition, Pier 17 sought to find a participating lender.



18. Through Joakim Mortenson of Tavernier Capital Partners, Pier 17 was introduced to Mr. Svirsky of Jericho and Svirsky Asset Management.
19. In or around 2007, Jericho began discussions with Pier 17 regarding the possibility of Jericho providing a loan to Pier 17 for the construction of the Project. (the "Jericho Loan").
20. A first commitment letter ("First Commitment Letter"), dated January 11, 2008, for a loan to Pier 17 was executed by Mr. Svirsky on behalf of Jericho and Svirsky Asset Management, and Mr. Weber on behalf of Pier 17. *See* the First Commitment Letter, attached hereto as Exhibit "C."
21. The terms of the first commitment letter provided that Jericho would lend twenty three million dollars (\$23,000,000.00) to Pier 17 for a term of eighteen months at fourteen percent (14%) per annum. *See* Exhibit "C." Pursuant to the terms of the letter, Pier 17 paid Jericho a first commitment fee of two hundred and thirty thousand dollars (\$230,000.00) on or about January 23, 2008. *See* Pier 17 Marina and Yacht Club, L.L.C. Accounting ("Pier 17 Accounting"), attached hereto as Exhibit "D."
22. Section 2 of the First Commitment Letter, entitled "Loan Purpose; Premises," provided that the Jericho Loan would be used for refinancing the Property, for "construction financing for the Property, and therefore, to fund the Construction Reserve, to fund the Interest Reserve, for certain Lender-approved closing costs, and to pay all taxes for the years 2007 and 2008." *See* Exhibit "C."
23. After execution of the First Commitment Letter, and after extensive negotiations between Pier 17 and Jericho, the parties reached an agreement that Jericho would loan thirty-six

million dollars (\$36,000,000.00) to Pier 17. The terms of the Jericho Loan included an amount sufficient to pay off the balance on the Regions Bank Loan.

24. This new agreement was memorialized in writing in a second commitment letter (the "Second Commitment Letter"), and that letter was executed by the parties on or about March 6, 2008. *See* the Second Commitment Letter, attached hereto as Exhibit "E."
25. The terms of the Second Commitment Letter provided the Jericho Loan was to be for thirty six million dollars (\$36,000,000.00) for a term of eighteen months at fourteen percent (14%) per annum. *See* Exhibit "E." Pursuant to the terms of the letter, Pier 17 paid Jericho a second commitment fee of one hundred and thirty thousand dollars (\$130,000.00) on or about March 6, 2008. *See* Exhibit "D."
26. Section 2 of the Second Commitment Letter, entitled "Loan Purpose; Premises," provided that the Jericho Loan would be used for refinancing the Property, for "construction financing for the Property, and therefore, to fund the Construction Reserve, to fund the Interest Reserve, for certain Lender-approved closing costs, and to pay all taxes for the years 2007 and 2008." *See* Exhibit "E."
27. The terms of the Jericho Loan, as outlined in the Second Commitment Letter, were documented in a Loan Agreement. On or about March 11, 2008, Mr. Weber as Manager of Pier 17, executed the Loan Agreement (the "Loan Agreement"). *See* Exhibit A. On or about March 25, 2008, Scott Svirsky, on behalf of Jericho and Svirsky Asset Management, executed the Loan Agreement. *See* Exhibit "A."
28. Collectively, the Loan Agreement, Settlement Statement, Construction Reserve and Security Agreement are referred to herein as the "Loan Documents." The Loan

Documents include but are not limited to the following, which are attached hereto and incorporated by reference:

- a. Loan Agreement, attached hereto as Exhibit "A."
  - b. Loan Settlement Statement; Letters of Credit Agreement; Construction Reserve; Security Agreement; Acknowledgement Agreement; and Intercreditor Agreement, attached hereto *in globo* as Exhibit "F."
29. The Loan Agreement provided that Jericho agreed to lend to Pier 17 the principal amount of \$36,000,000.00 to be used by Pier 17 for the purpose of refinancing the Property. See Exhibit "A." The closing date for the Jericho Loan was April 1, 2008 (the "Closing Date").
30. On or prior to the Closing Date, Pier 17 had met all of the requirements under the terms of the Loan Agreement in order to obtain the proceeds of the Jericho Loan. Prior to the Closing Date, all plans and designs for the Project were complete and some of the slips had been pre-sold or reserved. At no material time did Jericho issue a notice of default or otherwise indicate that Pier 17 had not fulfilled all of their obligations as required by the terms of the Loan Documents.
31. On April 1, 2008, Jericho failed to fund the Jericho Loan as Jericho was obligated pursuant to the Loan Documents. Jericho's breach of the Loan Documents constitutes a material breach of the agreements between Jericho and Pier 17.
32. On the afternoon of April 1, 2008, Steven Moorhead, an attorney for Pier 17, was contacted by Gregory Cohen, an attorney for Jericho, after Mr. Moorhead repeatedly attempted to contact Svirsky and Jericho regarding disbursement of the proceeds of the Jericho Loan.

33. Mr. Cohen advised Mr. Moorhead that Jericho should be able to obtain funding for the Jericho Loan in fourteen to twenty days. Mr. Cohen suggested Pier 17 make the payments on the Regions Bank Loan in the interim period.
34. On or about April 2, 2008, Mr. Svirsky asserted that, in the history of Jericho, its principals had never before had an instance where they could not fund a loan.
35. Following Jericho's failure to fund the loan on April 1, 2008, on various dates in April and May 2008, including April 2, April 3, April 21, April 24, May 7, May 9, May 12, May 13, and May 27, Svirsky represented to Pier 17 that Jericho would be able to obtain financing and fund the Jericho Loan in short order.
36. At all material times after April 1, 2008, based upon information and believe, Svirsky knew or should have known that Jericho's financial situation was sufficiently dire that it had neither ability to nor any reasonable prospect of being able to fund the Jericho Loan.
37. Svirsky knew that Pier 17 would rely on these representations to delay seeking alternative funding, and Jericho wanted Pier 17 to rely on these promises rather than take its lucrative Project to another lender. Svirsky and Jericho were aware that Pier 17 continued to attempt to work towards a closing and funding of the Jericho Loan through at least July 2008.
38. Despite the months of empty promises, Jericho was never able to fund the Jericho Loan.
39. When Jericho's promises to fund the Jericho Loan went unfulfilled, Pier 17 sought alternative funding sources but was unsuccessful.
40. In June 2008, the Regions Bank Loan matured. Pier 17 had intended to use the funds from the Jericho Loan to pay the balance of the Regions Bank Loan. Because Jericho did

not fund the Jericho Loan, however, Pier 17 was unable to pay back the Regions Bank Loan.

41. As a result of Jericho's failure to fund the Loan, Pier 17 was unable to repay the Regions Bank Loan, resulting in a foreclosure of the property.
42. Mr. Svirsky, Jericho and Svirsky Asset Management were well aware of the obligations Pier 17 owed Regions, as evidenced by the Intercreditor Agreement and the communications between the parties. *See, e.g.,* Exhibit "F."
43. As a result of Jericho's failure to fund the Loan, the Project failed and Pier 17 sustained extensive damages, including millions of dollars already invested in the Project, (including a down payment, maintenance costs and closing costs), and millions of dollars in reasonably certain and foreseeable profits.

**FIRST CAUSE OF ACTION:**  
**BREACH OF CONTRACT/ BREACH OF LOAN AGREEMENT**

44. Plaintiff incorporates and re-alleges paragraphs 1- 43 as if set forth herein.
45. Jericho was obligated under the Loan Documents, specifically the Loan Agreement, to lend Pier 17 \$36,000,000.00. *See* Exhibits "A" and "F."
46. Jericho's failure to honor the Loan Agreement and its failure to fund constitute material breaches of Jericho's obligations under the Loan Documents.
47. There has been no event of default by Pier 17, and there is no basis to excuse Jericho from performance of its obligations under the Loan Agreement.

48. Jericho's breach of the Loan Agreement caused Plaintiff to incur damages, all foreseeable and reasonably certain, and within the contemplation of the parties at the time of the agreement.

49. Jericho and its general partner, Svirsky Asset Management, are liable for all damages that are just and reasonable under the circumstances, including, but not limited to, any and all consequential damages resulting from Jericho's failure to fund the Loan and the subsequent failure of the Project.

**SECOND CAUSE OF ACTION:  
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

50. Plaintiff incorporates and re-alleges paragraphs 1- 49 as if set forth herein.

51. After breaching the Loan Agreement, Jericho, through its manager Scott Svirsky, repeatedly represented that it would shortly fund the Jericho Loan, despite the fact that Jericho had no reasonable prospect of being able to do so. These representations delayed Pier 17 from seeking alternate financing, which further damaged Pier 17 because Pier 17 was unable to find alternate financing quickly enough to prevent foreclosure of the property.

52. By its breach of the Loan Agreement and its repeated empty promises that it would fund the Jericho Loan, Jericho and its general partner, Svirsky Asset Management, have breached the covenant of good faith and fair dealing implied in every contract.

53. As a result of this breach, Jericho and its general partner, Svirsky Asset Management, are liable for all damages that are just and reasonable under the circumstances, including, but

not limited to, any and all consequential damages resulting from the foreclosure of the Project.

**THIRD CAUSE OF ACTION**  
**NEGLIGENT MISREPRESENTATION**

- 54. Plaintiff incorporates and re-alleges paragraphs 1- 53 as if set forth herein.
- 55. From approximately April 1, 2008 through at least July 2008, after the breach of the Loan Agreement had occurred, Svirsky repeatedly represented to Pier Seventeen that Jericho would obtain financing and fund the Loan pursuant to its obligations under the Loan Agreement.
- 56. Relying to his detriment on the representations of Svirsky, Pier 17 did not immediately seek alternative sources of funding, and when Pier 17 did so, those efforts failed.
- 57. Pier 17's reliance on the representations of Svirsky was reasonable. Svirsky intended for Pier 17 to rely on these representations, so that Pier 17 would not take its lucrative Project to another lender.
- 58. At all relevant times, Svirsky knew or was negligent in not knowing that Jericho had no ability or reasonable prospect of being able to fund its obligations under the loan agreement.
- 59. As a result of the Svirsky's negligent misrepresentations, Pier 17 incurred damages. Svirsky is liable for all damages that are just and reasonable under the circumstances, including, but not limited to, any and all consequential damages resulting from Jericho's failure to fund the Loan and subsequent failure of the Project.

### **REQUEST FOR A TRIAL BY JURY**

60. Pursuant to the Florida Rules of Civil Procedure, Pier 17 respectfully requests trial by jury in this matter.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays that the Court grant Plaintiff's request for a trial by jury, and, after all due proceedings, enter judgment as follows:

- a. in favor of Plaintiff and against Defendants for actual damages in an amount to be proven at trial;
- b. declaring that Defendants are liable to Plaintiff for such damages that have been sustained as a result of the material breach of the Loan Agreement, the breach of the implied covenant of good faith and fair dealing and the negligent misrepresentations as set forth herein;
- c. awarding all costs, expenses and reasonable attorneys' fees in favor of Plaintiff and against Defendants to the fullest extent authorized by law; and
- d. granting such other and further relief which the Court deems necessary and proper at law and in equity.



Respectfully submitted,



MICHAEL J. RYAN, ESQUIRE

Florida Bar No.: 975990

KELLEY B. STEWART

Florida Bar No.: 492132

KRUPNICK, CAMPBELL, MALONE,

BUSER, SLAMA, HANCOCK,

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AND

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(Admitted *pro hac vice*)

LYNN E. SWANSON, ESQUIRE

Louisiana Bar. Roll No. 22650

(Admitted *pro hac vice* pending)

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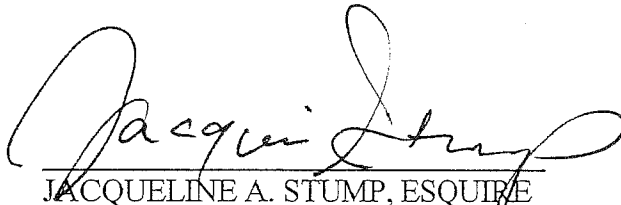
COUNSEL FOR PLAINTIFF PIER 17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on the following by U.S.

Mail and electronic mail, postage pre-paid, on this 2nd day of November, 2011.

James S. Telepman  
Cohen, Norris, Scherer, Weinberg & Wolmer  
712 U.S. Highway One  
Suite 400  
North Palm Beach, Fl 33408  
jst@cohenlaw.com  
Attorney for Defendants

  
JACQUELINE A. STUMP, ESQUIRE  
Louisiana Bar Roll No. 31981  
(Admitted *pro hac vice*)

### LOAN AGREEMENT

THIS LOAN AGREEMENT, is entered into this March 11, 2008 by and between PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company, whose mailing address is 1500 SW 17<sup>th</sup> Street, Fort Lauderdale, Florida 33309 ("Borrower") joined by Earl E. Weber, Jr. and Michelle J. Weber (collectively "Guarantor") and JERICHO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership whose mailing address is 3835 NW Boca Raton Blvd., Building 200, Boca Raton, Florida 33431 ("Lender").

#### RECITALS:

A. Borrower has negotiated with Lender for a loan ("Loan") in the principal amount of Thirty Six Million and No/100 (\$36,000,000.00) Dollars to be used by Borrower for the purpose of refinancing on the property located in Broward County, Florida, more fully described in EXHIBIT "A" attached hereto ("Real Property").

B. Borrower and Lender wish to enter into this Agreement in order to set forth (among other things) the terms and conditions of said Loan.

NOW, THEREFORE, in consideration of the Loan and the sum of Ten and No/100 Dollars (\$10.00) each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, and the other terms and conditions set forth hereafter, Borrower and Lender (and joined by Guarantor) agree as follows:

#### ARTICLE I

##### LOAN DOCUMENTS

Borrower has executed and delivered, or caused to be executed and delivered, to Lender the following documents (hereinafter collectively and together with this Agreement referred to as "Loan Documents"), concurrently herewith:

A. NOTE: A promissory note of even date herewith executed by Borrower and payable to the order of Lender in the principal amount of Thirty Six Million and No/100 (\$36,000,000.00) Dollars, ("Note"). All monies due and payable Lender pursuant to the Note and all Loan Documents including, but not limited to, the entire principal amount and any interest due under the Note, are collectively referred to herein as the "Indebtedness."

B. REAL ESTATE MORTGAGE AND SECURITY AGREEMENT: A Mortgage, Assignment of Leases and Rents and Security Agreement ("Mortgage") encumbering (among other things) the Real Property described and set forth in EXHIBIT "A" attached hereto and made a part hereof which upon recordation shall constitute a first lien on said Real Property, together with the improvements located and constructed thereon and/or to be constructed thereon ("Improvements"), together with all appurtenant fixtures ("Fixtures") and other personal property (including but not limited to any equipment and furniture and fixtures) located or to be located thereon ("Personal Property"). (The Real Property, the Improvements, the Fixtures and Personal Property shall be collectively referred to as the "Property").

C. UCC-1 FINANCING STATEMENTS: UCC-1 Financing Statements (state and local) covering all Personal Property, Fixtures, and equipment placed or to be placed on or under said Property, and such other documents as will insure Lender a first perfected interest in and to said Personal Property, Fixtures, and equipment, including all licenses, permits, plans and specifications relating to the Property.

D. ASSIGNMENT OF LEASES AND RENTS: A general collateral assignment of all leases, income, rents and profits, and rents and profits from or concerning the Property, whether now or in the future ("Leases").

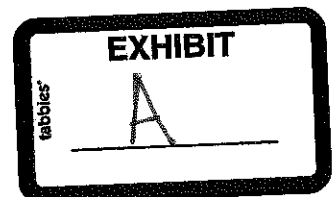
E. MORTGAGEE TITLE INSURANCE BINDER AND POLICY: A mortgagee title insurance binder and policy in the face amount of the Loan, insuring the Mortgage as a valid second lien on the property described in EXHIBIT "A" subject only to exceptions as shall be approved in writing by Lender issued by a title insurance company ("Title Company") satisfactory to Lender, and containing such endorsements, and in a form satisfactory to and approved by Lender, including such reinsurance agreements, if any, as shall be approved by Lender. All standard title exceptions for mechanic's liens, survey matters, and rights of parties in possession shall be eliminated from and not included in the mortgagee title insurance policy.

F. SURVEY: A survey, certified to Lender and the title insurance company, satisfactory to Lender, of all properties covered by the Mortgage showing public access and all improvements and no encroachments or easements on the property lines. The survey shall be updated from time to time as required by Lender. The Survey shall also certify to Lender whether the Property is or is not located within an area identified pursuant to the Flood Disaster Act of 1973 as having flood hazards. The survey shall further show all easements on the Property as reflected in the title policy.

G. COLLATERAL ASSIGNMENT OF CONTRACT RIGHTS: A collateral assignment by the Borrower in favor of the Lender of all contract rights (this will include, but not be limited to, any construction contracts, architectural contracts, and/or engineering contracts) of the Borrower in and to any contracts or documents affecting the Property with respect to the contemplated construction of the Improvements.

H. ENVIRONMENTAL INDEMNIFICATION AGREEMENT: An agreement by the Borrower and Guarantor(s), if any, in favor of Lender whereby Borrower and Guarantor(s) jointly and severally warrant and indemnify Lender against any liability relative to hazardous pollutants or toxic materials and agree to certain other terms and conditions concerning such substances.

I. AGREEMENT TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT OF 1990 AND FLORIDA AMERICANS WITH DISABILITIES ACCESSIBILITY IMPLEMENTATION ACT: An Agreement by the Borrower in favor of Lender whereby Borrower agrees to comply with the Americans With Disabilities Act of 1990, Florida Americans With Disabilities Accessibility Implementation Act, and any acts recognized under the laws of the State of Florida providing benefits to Americans with Disabilities, and to indemnifies Lender from any such claims.



- J. COLLATERAL ASSIGNMENT OF AGREEMENTS AFFECTING REAL ESTATE: A collateral assignment by Borrower to Lender of all contract rights arising under all contracts, licenses, permits and any agreements affecting the Property. (All of same and all contracts referred under Paragraph G above are collectively referred to as "Contracts").
- K. Intentionally Deleted.
- L. GUARANTY: Unconditional Guaranty executed by Earl E. Weber, Jr. and Michelle J. Weber (collectively "Guarantor").
- M. AFFIDAVITS OF BORROWER: Affidavits of Ownership as to the Property and as to the nonexistence of any liens and encumbrances on the Property or relating to Borrower; certificates delivered to Lender from Borrower regarding organizational documents of Borrower.
- N. ATTORNEY OPINION: Opinion letter from Borrower's counsel.
- O. PLEDGE AND SECURITY AGREEMENT: That Pledge and Security Agreement executed of even date by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company and Earl E. Weber, Jr. and Michelle J. Weber in favor of Lender.
- P. Intentionally Deleted.
- Q. OTHER DOCUMENTS: Such other documents, affidavits and certificates reasonably requested by Lender and/or referenced herein and/or executed in conjunction with the Loan, including but not limited to the following:
- 
- 

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower hereby represents and warrants to Lender as follows:

- A. VALIDITY OF LOAN DOCUMENTS: That the Loan Documents are in all respects legal, valid, and binding according to their terms and grant to Lender a direct, valid, and enforceable first lien interest in the Property now and hereafter.
- B. ENTITY EXISTENCE OF BORROWER; COMPLIANCE WITH LAW: Borrower is duly organized, and validly existing and in good standing under the laws of the jurisdiction where Borrower was formed and where the Property is located. That Borrower has the legal power to own its properties (including the Property) and to carry on its business as now being conducted, and Borrower is in compliance with all other requirements of law applicable to it and to its business.
- C. PRIORITY OF LIEN ON PERSONAL PROPERTY AND FIXTURES: That no bill of sale, security agreement, financing statement, or other title retention agreement (except those executed in favor of Lender) has been or will be executed with respect to any Personal Property and Fixtures and equipment used, in conjunction with the operation, or maintenance of the Improvements, now or hereafter located on the Real Property. Lender is aware of that loan with a principal balance not in excess of Twelve Million Eighty Thousand and No/100 (\$12,080,000.00) Dollars ("Prior Loan") and that mortgage securing same ("Prior Mortgage") from Borrower in favor of Regions Bank.
- D. CONFLICTING TRANSACTIONS OF BORROWER: That the consummation of the transactions hereby contemplated and the performance of the obligations of Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default or Event of Default under, any mortgage, deed, deed of trust, lease, bank loan or credit agreement, corporate charter or by-laws or other instrument to which Borrower is a party or by which it may be bound or affected.
- E. OTHER LOANS: That the Borrower has not procured subordinate financing in connection with the Property, nor has the Borrower procured a loan or loans from any other sources other than Lender for construction of the Improvements or any other work or purposes contemplated by this Agreement, and will not procure such loans, or any other loans now or hereafter on the Property, unless approved by Lender in writing.
- F. PENDING LITIGATION: That there are no actions, suits, or proceedings pending, or to the knowledge of Borrower threatened against or affecting it or the Property or against any Guarantor, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereof, at law or in equity, or before or by any governmental authority; and to the Borrower's knowledge, it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority.
- G. VIOLATIONS OF GOVERNMENTAL LAW, ORDINANCES OR REGULATIONS: That Borrower has no knowledge of any violations or notices of violations of any federal or state law or municipal ordinance or order or requirement of the county or city in which the Property is located or any municipal department or other governmental authority having jurisdiction affecting the Property, which violations in any way relate to or affect the Property.
- H. COMPLIANCE WITH ZONING ORDINANCES AND SIMILAR LAWS: That the Plans and Specifications and construction of the Improvements pursuant thereto and the use of the Property contemplated hereby complies and will comply with all governmental laws and regulations, and requirements, standards, and regulations of appropriate supervising boards of fire underwriters and similar agencies.
- I. AVAILABILITY OF UTILITIES: That all utility services necessary for the construction of the Improvements and for the operation thereof for their intended purpose are available on or at the boundaries of the Real Property, including water supply, storm and sanitary sewer facilities, electric and telephone facilities.

J. CONDITION OF PROPERTY: That the Property is not now damaged or injured as a result of any fire, explosion, accident, flood, or other casualty.

K. LEASES: That there are presently no leases which touch and affect the Property.

L. Intentionally Deleted.

M. Intentionally Deleted.

N. Intentionally Deleted.

O. ACCESS: That the rights of way for all roads necessary for the full utilization of the Improvements for their intended purposes have either been acquired by the appropriate governmental authority or have been dedicated to public use and accepted by such governmental authority, and all such roads shall have been completed, or all necessary steps shall have been taken by the Borrower and such governmental authority to assure the complete construction and installation thereof prior to the date upon which access to the Property via such roads will be necessary. All curb cuts and traffic signals shown on the plans and specifications are existing or have been fully approved by all necessary governmental authorities.

P. ENVIRONMENTAL:

1. Borrower is the fee simple title holder of the Real Property.

2. Borrower has undertaken such inquiry into the previous ownership and uses of the Property as is consistent with good commercial practice in an effort to minimize liability with respect to "Hazardous Substances", which terms shall include: any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601), (vii) defined as "hazardous waste" as defined in Chapter 403 (Part IV) of the Florida Statutes.

3. Except as disclosed in the environmental report by LM Engineering, Inc. dated June 16, 2006 provided to Lender, the Property is presently free from contamination by or the presence of Hazardous Substances, and the Property and activities conducted thereon do not pose any significant hazard to human health or the environment or violate any applicable federal, state or local laws, ordinances, rules, regulations or requirements pertaining to Hazardous Substances including, but not limited to, any of the above referenced Laws, Statutes, Codes and/or Regulations.

4. The Property and any improvements now or hereafter located thereon have not in the past been used, are not presently being used, and will not be used for such time as the Loan is owed to Lender for the generation, release, treatment, discharge, emission, handling, storage, transportation, or disposal of Hazardous Substances.

Q. FINANCIAL STATEMENTS: That the financial statements submitted to Lender by the Borrower and Guarantor(s) are true, accurate and complete and that the Borrower and Guarantor(s) are in good and sound financial condition and not insolvent. Furthermore, the Borrower and Guarantor(s) are not in default in performance of any contract, agreement or undertaking with any other person, firm or corporation, nor are they delinquent in the payment of any financial obligation owing to any firm, person or corporation, and there is no event or condition now existing, unless disclosed in writing, which would materially and adversely affect the Guarantor(s) or Borrower, its properties or its ability to comply with the terms of this Agreement and the Loan Documents.

R. PRIOR REPRESENTATIONS: - All representations of Borrower and Guarantor set forth in the Loan Commitment remain true, correct, complete and accurate as of this date.

S. RECITALS: That the Recitals are true and correct and are incorporated herein by reference verbatim.

### ARTICLE III

#### COVENANTS OF BORROWER

Borrower hereby covenants and agrees with Lender as follows:

A. OTHER LOANS: To procure no subordinate financing in connection with the purchase and/or operation of the Property (now or hereafter) or construction of the Improvements nor to procure a loan or loans from other sources other than Lender for any work contemplated by this Loan Agreement, unless approved by Lender in writing.

B. Intentionally Deleted.

C. INSURANCE: To obtain and maintain such insurance or evidence of insurance as Lender may reasonably require, including but not limited to the following:

1. Hazard Insurance. With respect to any buildings and Improvements now or hereafter constructed on the Real Property, "all risk" coverage insurance, and such other hazard insurance as Lender may require with standard non-contributing mortgagee clauses and standard subrogation clauses, such insurance to be in such amounts and form and by such companies as shall be approved and required by Lender, such insurance to be obtained immediately upon

completion of construction of the Improvements and before issuance of the Certificate of Occupancy and before any portion of the Property is occupied by Borrower or any tenant of Borrower, with such insurance to be kept in full force and effect at all times thereafter until the payment in full of the Loan evidenced by the Note. This policy must be paid one year in advance.

2. Comprehensive General Liability and Statutory Workers' Comprehensive Insurance. A certificate from an insurance company indicating that Borrower and Contractor are covered to the satisfaction of Lender by comprehensive general liability insurance coverage and statutory workers' compensation coverage, in such amounts and form and by such companies as shall be approved by Lender. This policy must be paid one year in advance.

3. Flood Insurance. Flood insurance issued by an acceptable company in the amount of the loan or the maximum coverage available or appropriate evidence that such insurance is not necessary. This policy must be paid one year in advance.

4. Intentionally Deleted.

5. Windstorm Insurance. Windstorm insurance in amounts sufficient to satisfy full replacement costs of the construction of the Improvements and any other work contemplated hereunder, or in such other amounts, and by such companies as shall be approved by Lender. The policy must be paid for one year in advance.

As to all of the insurance obtained, the originals of such policies (together with appropriate endorsements thereto), evidence of payment of premiums thereon, shall be promptly delivered to Lender and further shall name Lender as mortgagee on the loss payee clause as an additional insured. The policies shall include an agreement by the insurer to provide Lender thirty (30) days prior written notice of any intention to cancel or amend.

D. COLLECTION OF INSURANCE PROCEEDS: To cooperate with Lender in obtaining for Lender the benefits of any insurance or other proceeds lawfully or equitably payable to them in connection with the transactions contemplated hereby and the collection of any indebtedness or obligation of Borrower to Lender incurred hereunder (including the payment by Borrower of the expense of an independent appraisal on behalf of Lender in case of a fire or other casualty affecting the Property).

E. APPLICATION OF PROCEEDS: To deliver any insurance proceeds received by Borrower promptly to Lender upon demand.

F. EXPENSES: To pay, upon demand by Lender all costs of closing the Loan contemplated hereunder and all expenses of Lender with respect thereto, directly or indirectly, including but not limited to, fees of Lender's Inspector, attorneys' fees, including attorneys' fees, paralegal fees and other fees and costs incurred by Lender subsequent to closing of the Loan in connection with the disbursement, administration, collection, restructure, amendment, whether prior to or after commencement of litigation, mediation, arbitration, trial, retrial, appeal, bankruptcy or any other proceedings, advances, recording expenses, surveys, title insurance premiums, intangible taxes, documentary stamps, surtax and other revenue fees, escrow fees, recording costs, architect or engineer's costs and inspection fees, expenses of foreclosure (including reasonable attorneys' fees) and similar items, and to allow all closing papers, Loan Documents and other legal matters to be subject to the approval of Lender's attorneys.

G. ESCROW AGREEMENT: Borrower shall also establish and maintain a segregated Eligible Account ("Escrow Account") to be held by McDonald Fleming Moorhead in escrow (not to be released without the approval of Lender) for the purposes of paying real estate taxes for 2008 on the Property and for a renewal of insurance on the Property. On the date of this Agreement, \$ 167,604.04 shall be deposited into such Escrow Account. Notwithstanding the foregoing, between November 1, 2008 and November 16, 2008, monies shall be released from such Escrow Account to be paid to the taxing authority for the Real Property to satisfy all real estate taxes on the Real Property for 2008 and necessary monies shall be released for the renewal of the insurance. Borrower hereby (i) grants to Lender a first priority security interest in the Escrow Account, and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Escrow Account including, without limitation, filing UCC-1 Financing Statements and continuations thereof. All interest which accrues on the Escrow Account shall accrue for the benefit of Borrower.

H. RIGHT OF LENDER TO INSPECT PROPERTY: To permit Lender and its representatives and agents to enter upon the Property and to inspect the Property at all reasonable times.

I. CORRECTION OF DEFECTS: To promptly correct any structural defect in the Improvements. The advance of any loan proceeds shall not constitute a waiver of Lender's right to require compliance with this covenant.

J. Intentionally Deleted.

K. BOOKS AND RECORDS: To keep and maintain proper and accurate books, records and accounts reflecting all items of income and expense of Borrower in connection with the Property and, upon the request of Lender, to make such books, records, and accounts immediately available to Lender for inspection or independent audit.

L. NOTIFICATION OF CLAIMS BY SUBCONTRACTORS AND MATERIALMEN: To advise Lender immediately, (no later than twenty-four (24) hours after notice whether written or oral) and in writing, if Borrower receives any Notice To Owner or Claim of Lien, written or oral, from any laborer, subcontractor, or materialmen in connection with any labor or materials furnished in the construction of the Improvements or any labor or materials furnished on the Property.

M. Intentionally Deleted.

N. PRESERVATION OF SECURITY: To sign and deliver to Lender such documents, instruments, assignments, and

other writings, and to do such other acts necessary or desirable, to preserve and protect the collateral at any time securing or intended to secure the Note, as Lender may require.

O. FUTURE ASSURANCES: To do and execute all and such further lawful and reasonable acts, conveyances, and assurances in the law for the better and more effective carrying out of the intents and purposes of this Agreement as Lender shall require from time to time.

P. ASSIGNMENT OF RENTS AND LEASES: If requested by Lender (although same have previously been assigned), to furnish a collateral assignment of Borrower's interest in any subsequent leases and rents in the Property, assigning to Lender all Leases now or hereafter entered into by Borrower demising all or any part of the Property, and to provide Lender with copies of such leases upon execution thereof.

Q. Intentionally Deleted.

R. Intentionally Deleted.

S. Intentionally Deleted.

T. Intentionally Deleted.

U. Intentionally Deleted.

V. Intentionally Deleted.

W. Intentionally Deleted.

X. ORGANIZATIONAL DOCUMENTS: To furnish to Lender a Certificate of Good Standing of Borrower certified by the Secretary of State of the state of formation of Borrower. Borrower shall also furnish to Lender such organizational documents requested by Lender and any amendments thereto of Borrower, accompanied by a certificate from the appropriate officer of Borrower that the company is active and that organizational documents have not been amended, annulled, rescinded or revoked since the date of the Certificate of the Secretary of State and a copy of the Resolution of Borrower, and such other authorizing documents authorizing execution, delivery and performance of the Loan Documents and the borrowings contemplated hereunder on behalf of Borrower, and specifying the officer or officers of Borrower are authorized to execute the Loan Documents accompanied by a certificate from an appropriate officer of Borrower that the resolutions are true and complete, were duly adopted at a duly called meeting at which a quorum was present and acting throughout, or were duly adopted by a written action, and have not been amended, annulled, rescinded or revoked in any respect and remain in full force and effect on the date of the certificate. (All documents delivered above shall further be deemed "Loan Documents").

The organizational documents of the Borrower will not, throughout the term of the Loan, be in any way or manner, changed, modified, or altered, without the prior written consent of Lender.

For purposes hereof, "organizational documents" shall mean such documents in existence which are necessary to create the Borrower or setting forth the rules governing the operation of Borrower, such as a partnership agreement in the case of a partnership, articles of incorporation and by-laws with respect to a corporation and articles of organizations and operating agreement with respect to a limited liability company.

Y. FINANCIAL STATEMENTS:

1. Financial Statements. To furnish (at their expense) Lender complete accurate and compiled financial statements of Borrower's and Guarantor's operations and conditions at least annually, compilation to be done by Borrower's and Guarantor's Certified Public Accountants, and to furnish an annual compiled statement until the Loan is paid in full. These statements must reflect income and expenses and changes in assets and liabilities during the given period, all prepared in accordance with generally accepted accounting principals. Accuracy of these statements is to be personally certified by the Borrower and Guarantor. Lender retains the right to ask for interim statements on a more frequent basis.

2. Tax Returns. All Federal Tax Returns of Borrower and Guarantor shall be furnished annually, or more frequently if requested by Lender, within thirty (30) days of the filing date, and all amendments thereto shall likewise be furnished to the Bank under the same conditions. In the event an extension is sought, a copy of the extension request shall be provided upon its filing within the period allowed for extension.

All financial statements/reports shall follow generally accepted accounting procedures. Borrower and Guarantor shall maintain substantial similar accounting procedures as those in use when this Loan was approved unless Lender is notified in writing of a change and consents to such change. Lender reserves the right to request such additional accounting and reports as Lender, in its sole discretion, deems necessary.

Z. COMMISSIONS: Any future real estate commissions on any purchase contracts for the dock slips will be paid directly by Borrower, and not with any Loan proceeds. Any failure to pay same when due will constitute an Event of Default of the Loan, this Loan Agreement and all Loan Documents.

#### ARTICLE IV

Intentionally Deleted.

#### ARTICLE V

##### EVENTS OF DEFAULT

An event of default ("Event of Default") shall be deemed to have occurred hereunder, if:

A. DEFAULT UNDER NOTE: Any failure to make any payment required in the Note occurs; and/or

B. DEFAULT UNDER LOAN DOCUMENTS: Any default or "Event of Default" occurs under any of the Loan Documents; and/or

C. BREACH OF WARRANTY: Any warranties, representations, terms, covenants and/or obligations made or agreed

to be made in any of the Loan Documents (which further includes this Agreement) shall be breached by Borrower or Guarantor, shall not timely be performed by Borrower and/or Guarantor(s) as required therein, and/or shall prove to be false or misleading; and/or

D. FILING OF LIENS AGAINST THE PROPERTY: Any lien for labor, material, taxes, or otherwise shall be filed against the Property and not be removed or otherwise discharged within thirty (30) days thereafter; and/or

E. MATERIAL ADVERSE CHANGE: Borrower or any of the Guarantor(s) shall suffer any material adverse change in financial condition which, in the reasonable opinion of Lender, could impair the ability of the Borrower to perform all of its duties and obligations under the Loan Documents; and/or

F. LEVY UPON THE PROPERTY: A levy be made under any process on, or a receiver be appointed for the Property or any other property of Borrower or any of the Guarantor(s); and/or

G. BANKRUPTCY OR INSOLVENCY OF BORROWER OR GUARANTOR:

1. The filing by either Borrower or Guarantor of a voluntary petition in bankruptcy for adjudication as bankrupt or insolvent, or the filing by either Borrower or Guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or either Borrower or Guarantor seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of either Borrower or Guarantor of all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due; and/or

2. The failure to timely answer or to discharge within sixty (60) days of filing a petition filed against Borrower or Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation or dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver or liquidator for Borrower, or of all or any substantial part of the Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Borrower; and/or

H. ASSIGNMENT FOR THE BENEFIT OF CREDITORS: Borrower or any Guarantor shall make a general assignment for the benefit of creditors; and/or

I. TRANSFER OF PROPERTY: Borrower shall voluntarily or by operation of law sell, transfer, or convey all or any part of its interest in the Property. (A transfer of any membership interest of Borrower shall be deemed a transfer hereunder; and/or

J. LIEN AGAINST PROPERTY: Borrower grants any lien or encumbrance upon the Property; or

K. CHANGE IN OWNERSHIP OF BORROWER OR GUARANTOR(S): Any change in the ownership, membership or control or any portion thereof of the Borrower or Guarantor occurs without the Lender's prior written approval; and/or

L. FAILURE TO DISPROVE DEFAULT/CHANGE: Lender shall reasonably suspect the occurrence of one or more of the above said Events of Default and Borrower, upon request of the Lender, shall fail to provide evidence reasonably satisfactory to Lender that such event or Event of Default has not in fact occurred; and/or Lender shall reasonably determine that a material adverse change has occurred in Borrower's or any Guarantor's financial condition; and/or.

M. DEFAULT OR TERMINATION OF LEASE AND/OR CONTRACT: Borrower shall breach the terms of any Leases and/or Contracts which touch and affect the Property beyond all applicable grace periods.

N. DEFAULT OF ANY OTHER LOAN BETWEEN BORROWER AND LENDER AND/OR ANY DOCUMENTS EXECUTED IN CONJUNCTION WITH ANY OTHER LOAN: Borrower shall breach any terms of any other loan between Borrower and Lender and/or any loan documents relating to said Loan.

O. DISSOLUTION, DEATH OR INCAPACITY OF BORROWER OR GUARANTOR(S): The event of the dissolution or death of Borrower or any Guarantor(s), or the permanent incapacity or disability of Borrower or any Guarantor(s) occurs; and/or

P. INSECURE. If Lender shall reasonably deem itself insecure; and/or

Q. GARNISHMENT: The service of writ of attachment, garnishment or other collection remedies are initiated against Borrower for a judgment entered against Borrower; and/or

R. A default or event of default or any act which if not cured would constitute a default or event of default occurs under the Prior Loan and/or the Prior Mortgage and/or any other loan documents executed in connection therewith; and/or

S. The outstanding principal balance of the Prior Loan and/or the Prior Mortgage and/or any other loan documents executed in connection therewith exceeds \$ 7,646,446.97 ; and/or

T. A foreclosure of the Prior Mortgage is commenced and/or any legal proceedings regarding the Prior Loan are commenced.

#### ARTICLE VI REMEDIES OF LENDER

Upon the occurrence of any one or more of the Events of Default hereunder, which will further constitute a default or Event of Default under each of the Loan Documents, Lender shall at its option be entitled, in addition to and not in lieu of the remedies provided for in the Note, Mortgage, and other Loan Documents to proceed to exercise any and/or all of some of the following remedies set forth at any time:

A. DEFAULT CONSTITUTES DEFAULT UNDER LOAN DOCUMENTS: Lender may: (i) exercise any of the



various remedies provided herein and/or under any of the Loan Documents including, but not limited to, the acceleration of the Indebtedness evidenced by the Note and the foreclosure of the Mortgage, and (ii) cumulatively to exercise all other rights, options, and privileges provided by law and/or in equity.

B. ACCELERATION: Lender may declare the entire Indebtedness due and payable immediately without notice.

C. RIGHT OF LENDER TO ASSUME POSSESSION: Upon the request of Lender, Borrower shall vacate the Property and permit Lender to enter into possession of the Property, and further, to employ security watchmen to protect the Property.

#### ARTICLE VII MISCELLANEOUS

A. Intentionally Deleted.

B. NO ELECTION OF REMEDIES: Lender has the option of proceeding individually against Borrower or any Guarantor(s) or Mortgagor, if any, for the Indebtedness and may utilize any remedies allowable by law. Lender shall have the right to exercise any right or remedy available to Bank as a secured party under the Florida Uniform Commercial Code. Lender may proceed to realize upon and all other security for the Indebtedness in such order as Lender may elect; no such action shall constitute any election or remedies by Lender nor in any manner alter, diminish, or impair the security interest created by this Loan Agreement unless and until the Indebtedness is paid in full.

C. JUDGMENT: Lender may seek and recover judgment for all amounts due and payable in accordance with the Loan Documents either before, after or during the pendency of any other proceedings or action to obtain relief under or with respect to this Loan Agreement or the Loan Documents or both and Lender's right to seek and recover any such judgment will not be affected by obtaining any such other relief. Neither the security interest referenced in this Loan Agreement nor the rights and remedies to the Lender hereunder will be impaired in any way by the recovery of any judgment of Lender against Borrower, or by the levy of an execution upon such judgment upon any portion of the Secured Property until the Indebtedness is paid in full.

D. WRIT OF GARNISHMENT: Borrower hereby consents to the issuance of a continuing writ of garnishment or attachment against disposable earnings in accordance with Section 221.11, Florida Statutes, in order to satisfy, in whole or in part, any money judgment entered in favor of Lender.

E. CROSS COLLATERALIZATION/CROSS DEFAULT: An Event of Default of Borrower or Guarantor under this Loan or any other loan ("Related Loans") shall be deemed an Event of Default of all loans between Lender and Borrower and/or the Guarantor and/or any Related Borrowers [parties who maintain an ownership interest in Borrower and/or Guarantor] and any Event of Default under said loans shall constitute an Event of Default hereunder ("Cross-Default") and, in such event, Lender may proceed to enforce any security interest irrespective of which indebtedness it secures and utilize all rights and remedies available at law and/or in equity ("Cross-Collateralization Right"). Therefore, all note and loan obligations of Borrower and/or Related Borrower and/or Guarantor with Lender shall be fully cross-collateralized with reference to all collateral taken by Lender, and a default or Event of Default in any one obligation shall entitle Lender to full default remedies as provided in any loan documentation and at law and/or in equity in the State of Florida, and all collateral shall stand for any singular default. An Event of Default shall further entitle Lender to set-off against any property of Borrower or Related Borrowers or Guarantor up to the amount of the obligation, or guaranties, whichever is greater, and the note obligations shall be fully cross-collateralized with any collateral pledged by either the Guarantor or Borrower during the course of the loan and all Related Loans.

F. GENERAL: Lender is entitled to exercise any and all rights and remedies available at law and/or in equity including, but not limited to, the right to have a receiver appointed for the Borrower and/or the Property and the right to institute foreclosure proceedings.

G. OTHER RIGHTS: No right or remedy conferred upon or reserved to Lender by this Loan Agreement is intended to be exclusive of any other right or remedies; and each and every right and remedy is cumulative and in addition to any other right or remedy otherwise available. Every right, power, privilege and remedy granted Lender by this Loan Agreement or the Loan Documents or both or otherwise available at law or in equity may be exercised by Lender from time to time as often as Lender deems expedient until the Indebtedness is paid in full. Lender's failure to insist at any time upon a strict observance or performance by Borrower of any of the provisions of the Loan Agreement, or to exercise any right or remedy provided in this Loan Agreement will not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt of Lender of any payment required to be made pursuant to this Loan Agreement or the Loan Documents or both with knowledge of the breach or Event of Default of any provision of this agreement or the Loan Documents or both will not constitute a waiver of such breach or Event of Default. In addition to all of the remedies provided in this Loan Agreement and Loan Documents, Lender will be entitled, to the extent permitted by law and/or by virtue of any equitable rights, to injunctive relief in the case of a violation or attempted or threatened violation of any of the provisions of this Loan Agreement or the Loan Documents or both or to a decree coercing performances of any of the provisions of any of the foregoing.

H. NOTICES TO ALL PARTIES: All notices, statements, requests, and demands given to or made upon any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given or made when hand delivered or five (5) days after deposited in the certified mails of the United States, return receipt requested, postage prepaid, or one (1) day after delivery to a recognized overnight courier service, addressed to such party at the address or addresses herein above stated following the names of the respective parties, or to a different address in accordance with

any unrevoked written direction from such party to the other parties hereto, except in cases herein where it is expressly provided that such notice, request, or demand shall not be effective until received by the party to whom it is intended.

I. NO PARTNERSHIP OR JOINT VENTURE: Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between Borrower and Lender.

J. NO ASSIGNMENT BY BORROWER: This Agreement may not be assigned by Borrower without the prior written consent of Lender which may be withheld in Lender's sole and absolute discretion. If Lender approves an assignment hereof by Borrower, Lender shall be entitled to make advances to such assignee and such advances shall be evidenced by the Note and secured by the Mortgage and Loan Documents. Borrower shall remain liable for payment of all sums advanced hereunder before and after such assignment.

K. RELIEF FROM AUTOMATIC STAY: The Borrower hereby agrees that, in consideration of the Lender funding the Loan, in the event that the Borrower and/or any Guarantor shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the United States Code, as amended ("Title 11"); (ii) be the subject of any order for relief issued under Title 11; (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act of law relating to insolvency or bankruptcy, or other relief from creditors for debtors; (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator; (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to insolvency or bankruptcy, or other relief from creditors for debtors, the Lender shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11, or otherwise, on or against the exercise of the rights and remedies otherwise available to the Lender under this Loan Agreement and the Loan Documents, and as otherwise provided by law.

L. RIGHTS OF THIRD PARTIES: All conditions of the obligations of Lender hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Lender, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it desirable to do so. In particular, Lender makes no representations and assumes no obligations as to third parties or otherwise concerning the quality of the construction of the Improvements by Borrower or the absence thereof of defects/Indemnification.

M. INDEMNIFICATION: Borrower agrees to and shall indemnify Lender from any liability, claims or losses, and attorneys' fees resulting from the disbursement of the Loan proceeds or from the condition of the Property whether related to the quality of construction or otherwise and whether arising during or after the term of the Loan made by Lender to Borrower in connection herewith. Furthermore, Borrower agrees to indemnify and hold harmless Lender from any costs or damages whatsoever arising under this Loan Agreement and the Loan Documents from any cause whatsoever, including reasonable attorneys' fees and costs for Lender through appeal or in Federal Bankruptcy actions through final appellate level. The provisions shall survive the repayment of said Loan and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists. Borrower further assumes full responsibility for any misconduct, any misapplication, and/or misuse of proceeds by Contractor, as well as any failure of Contractor to properly and/or timely complete construction of the Improvements. Borrower's indemnification and hold harmless provision under this paragraph, including but not limited to, the obligation to reimburse Lender's attorneys' fees and costs, are applicable to the foregoing.

N. OTHER AGREEMENTS: In further consideration of the Loan or other extension of credit to Borrower by Lender, Borrower and Lender agree that the representations, warranties and agreements made herein are also hereby incorporated and made a part of every other promissory note, loan agreement, mortgage and security agreement and other agreement involving the extension of credit, made by Borrower with Lender at any time prior to, on, or after the date of this agreement. Any Event of Default hereunder will constitute an Event of Default under every such note or agreement.

O. ASSIGNMENT: Lender shall have the unconditional right to assign all or any part of its interest hereunder to any third parties, but Borrower may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Lender, consent which may be withheld in Lender's sole and absolute discretion.

P. SUCCESSORS AND ASSIGNS INCLUDED IN PARTIES: Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors, and assigns of such parties shall be included and all obligations which shall be binding upon them, and all covenants and agreements contained in this Agreement by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit and detriment of their respective heirs, legal representatives, successors and assigns whether so expressed or not.

Q. HEADINGS: The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

R. INVALID PROVISIONS TO AFFECT NO OTHERS: If fulfillment of any provision hereof or any transaction related hereto at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision or portion thereof herein contained operates or would prospectively operate to invalidate this

Agreement in whole or in part, then such clause or provision or portion thereof only shall be ineffective and deleted as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

S. NEUTER AND GENDER: Whenever the singular or plural number, masculine or feminine, or neuter gender is used herein, it shall equally include the other.

T. AMENDMENTS: Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

U. GOVERNING LAW: This Agreement shall be governed by and construed according to the laws of the State of Florida.

V. TIME: Time is of the essence with respect to all obligations, terms, duties and periods of time set forth herein.

W. NO WAIVER: Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender, and then only to the extent specifically set forth in writing. A waiver on one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

X. LENDER LIABILITY:

a. Intentionally Deleted.

b. To Third Persons. This Agreement shall not be construed to make Lender liable to any lienors as defined by Chapter 713, Florida Statutes, or others for goods or services delivered by them in or upon the Property, or for debts or claims to any such parties against Borrower or for claims of any nature made by third persons arising out of the construction or the financing provided hereunder.

c. Inspection Service. It is expressly agreed that all inspection and other services rendered by Lender officers or agents shall be rendered solely for the protection and benefit of the Lender, and Borrower shall not be entitled to claim any loss or damage, either against Lender or its officers or agents, for failure of said officers or agents, for failure of said officers or agents to properly discharge their duties to Lender. Lender, its officers or agents shall not be liable for failure of any dealer, contractor, craftsman or laborer to deliver the goods or perform the services to be delivered or performed by them, nor for the quality, sufficiency or fitness of the said goods or services. Lender will charge Borrower the inspection fee incurred for each inspection required in Lender's sole discretion.

Y. TENANT IMPROVEMENTS: In the event that construction proceeds are to be utilized for any tenant improvements, no such funds shall be disbursed for the purpose of tenant improvements until fully executed leases from tenants seeking such improvements have been submitted to Lender and the terms thereof have been accepted and approved by Lender.

Z. ADDITIONAL CLAUSES:

a. Intentionally Deleted.

b. Intentionally Deleted.

c. Releases by Lender. Lender, from time to time, without notice to any person and without affecting the liability of Borrower or of any other person (other than any person expressly released by Lender in writing) for the payment of any of the indebtedness, and without affecting the priority or extent of the security interest of the Loan Agreement and Loan Documents, may do any and/or all of the following: (i) release in whole or in part any person liable for payment of any or all of the Indebtedness; (ii) extend the time or otherwise alter the terms of payment of the Indebtedness, in whole or in part, or; (iii) accept additional or substitute security of any kind, or; (iv) release or otherwise deal with any property, real or personal, securing the indebtedness.

d. This Loan Agreement cannot be changed or terminated orally. If any portion of this Loan Agreement is rendered unenforceable, same shall not affect the remaining portions of this Loan Agreement, which remaining portions shall remain in full force and effect. Venue for any proceeding arising under this Loan Agreement shall be Broward County, Florida, or any other County designated by Lender.

e. Special Clauses. This Agreement may be executed in counterparts and facsimile signatures shall operate as originals.

AA. Intentionally Deleted.

BB. WAIVER OF RIGHT TO JURY TRIAL: LENDER AND BORROWER HEREBY WAIVE ANY OBJECTION TO VENUE BEING IN COURTS LOCATED IN BROWARD COUNTY, FLORIDA OR ANY OTHER COUNTY DESIGNATED BY LENDER, FOR ANY DISPUTE ARISING OUT OF THE LOAN AND THIS LOAN AGREEMENT. BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE NOT TO SEEK A TRIAL BY JURY AND WAIVE ANY RIGHTS TO HAVE SAME IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS-CLAIMS, THIRD PARTY CLAIMS) ARISING IN CONNECTION WITH THE LOAN AGREEMENT, THE LOAN DOCUMENTS, AND THE TRANSACTIONS CONTEMPLATED THEREIN AND ALL AND ANY COMBINATION OF THE FOREGOING. BORROWER ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED TO ENTER INTO THE LOAN BY, INTER ALIA, THE PROVISIONS OF THIS PARAGRAPH.

IN WITNESS WHEREOF, Borrower and Lender and Guarantor have hereunto caused these presents to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

BORROWER

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company

By:

Earl E. Weber, Jr., Manager

STATE OF LOUISIANA

COUNTY OF JEFFERSON

I hereby certify that the foregoing instrument was acknowledged before me this March 11, 2008, by Earl E. Weber, Jr., as Manager of PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company, who is personally known to me or has produced as identification and did not take an oath.

Sign:

Notary Public

Print: STEPHEN J. BROUSSARD

My commission expires: AT DEATH

**STEPHEN J. BROUSSARD**  
Attorney at Law, Bar #1268  
Notary Public  
Parish of Jefferson, State of Louisiana  
My Commission is for Life

IN WITNESS WHEREOF, Borrower and Lender and Guarantor have hereunto caused these presents to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

LENDER:

Print: \_\_\_\_\_

JERICO ALL-WEATHER OPPORTUNITY  
FUND, L.P., a Delaware limited partnership  
Svirsky Asset Management, Inc.

By: [Signature]

Print: Scott Svirsky

Print: \_\_\_\_\_

Its: President

STATE OF FLORIDA  
COUNTY OF Palm Beach

I hereby certify that the foregoing instrument was acknowledged before me this 25 day of March, 2008, by Scott Svirsky as President of JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership, who is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

Sign: [Signature]

Notary Public

Print: Pamela N O'Brien

My commission expires: \_\_\_\_\_



**Pamela N. O'Brien**

Commission # DD567204

Expires June 25, 2010


Bonded Troy Fair - Insurance, Inc. 800-385-7019

IN WITNESS WHEREOF, Borrower and Lender and Guarantor have hereunto caused these presents to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

GUARANTOR:

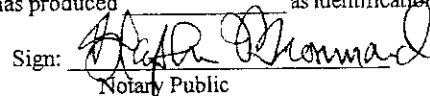
  
Earl E. Weber, Jr.

  
Michelle J. Weber

STATE OF LOUISIANA

COUNTY OF JEFFERSON

I hereby certify that the foregoing instrument was acknowledged before me this March 11, 2008, by Earl E. Weber, Jr., who is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

Sign:   
Notary Public

Print: STEPHEN J. BROUSSARD

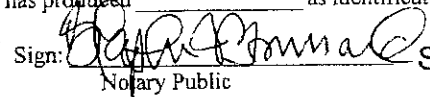
My commission expires: AT DEATH

**STEPHEN J. BROUSSARD**  
Attorney at Law, Bar #1268  
Notary Public  
Parish of Jefferson, State of Louisiana  
My Commission is for Life

STATE OF LOUISIANA

COUNTY OF JEFFERSON

I hereby certify that the foregoing instrument was acknowledged before me this March 11, 2008, by Michelle J. Weber, who is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

Sign:   
Notary Public

Print: STEPHEN J. BROUSSARD

My commission expires: AT DEATH

**STEPHEN J. BROUSSARD**  
Attorney at Law, Bar #1268  
Notary Public  
Parish of Jefferson, State of Louisiana  
My Commission is for Life

EXHIBIT "A"  
LEGAL DESCRIPTION

PARCEL 1 (FEE SIMPLE ESTATE):

The East 65.84 feet of the West 1121.84 feet of Tract A; AND Tract A, LESS the West 1121.84 feet, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

The East 128 feet of the West 798 feet of Tract A, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

All that portion of the West three-fourths (W 3/4) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) and the East one-half (E 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) in Section 16, Township 50 South, Range 42 East, lying North of the Channel of the South Fork of New River, said lands situate, lying and being in Broward County, Florida;

AND

The East one-half (E 1/2) of the East one-half (E 1/2) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4), North of New River, LESS the East 100 feet, Section 16, Township 50 South, Range 42 East, in the County of Broward, State of Florida.

AND

All that parcel of land described as follows: Beginning at the Northeast corner of the Southwest one-quarter (SW 1/4) of Section 16, Township 50 South, Range 42 East, run thence West along the North line of said Southwest one-quarter (SW 1/4), 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence Easterly along the South Fork of New River to the East line of said Southwest one-quarter (SW 1/4); thence North along said East line of the Southwest one-quarter (SW 1/4) to the Point of Beginning; said parcel being also described as all that part of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION of Government Lots 1, 2, 3, and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4) of Section 16, Township 50 South, Range 42 East, as recorded in Plat Book 1, Page 2, of Broward County, Florida, Public Records; beginning at a point on the South Fork of New River where the East line of the Southwest one-quarter (SW 1/4) of said Section 16 intersects said South Fork of New River; thence Northerly along said East line of said Southwest one-quarter (SW 1/4) projected Northerly to the point where the same as projected intersects the North line of said Lot 17; thence West along the North line of said Lot 17, 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence along the South Fork of New River to the Point of Beginning.

AND

That certain parcel of land known as Block A, of the Amended Plat of YELLOWSTONE PARK, as per Plat thereof, recorded in Plat Book 15, Page 3, of the Public Records of Broward County, Florida; said parcel being also described as all that portion of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION, of Government Lots 1, 2, 3 and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4), Section 16, Township 50 South, Range 42 East, as per Plat thereof, recorded in Plat Book 1, Page 2, of the Public Records of Broward County, Florida, lying East of the East line of the Southwest one-quarter (SW 1/4) of said Section 16 projected to a point where the same as so projected intersects the North line of said Lot 17.

AND TOGETHER WITH AND SUBJECT TO those non-exclusive easement rights for road purposes, access purposes and/or ingress and egress purposes, as set forth in that certain Agreement recorded in Official Records Book 747, Page 370, of the Public Records of Broward County, Florida.

PARCEL 2 (LEASEHOLD ESTATE): The Leasehold interest created under that certain Board of Trustees of the Internal Improvement Trust Fund of the State of Florida Sovereignty Submerged Lands Lease, recorded in Official Records Book 28991, Page 265, together with: Modification to Increase Square Footage recorded in Official Records Book 37567, Page 1279; Modification To Reflect a Change In Ownership recorded in Official Records Book 40816, Page 208; Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership recorded in Official Records Book 42722, Page 1649; Surveyor's Affidavit recorded in Official Records Book 43631, Page 1704 and Corrective Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership to be recorded, all in the Public Records of Broward County, Florida, to wit:

Seven (7) Parcels of Submerged land lying in the South Fork of New River in Section 16, Township 50 South, Range 42 East, Broward County, Florida, said Submerged Land Parcels being more fully described as follows:

PARCEL "A":

Commencing (1) at the Northeast corner of the Southwest one-quarter (SW 1/4) of said Section 16; thence North 90°00'00" East, on the North line of said Southeast one-quarter (SE 1/4), a distance of 52.88 feet to the Point of Beginning (1); thence North 16°47'35" West, a distance of 1.19 feet to a point on the wetface of an existing seawall cap; thence North 04°19'49" East, on said wetface, a distance of 93.20 feet to a point of curve; thence Northerly through Northwesterly on said wetface and said curve to the left, with a radius of 20.82 feet, a central angle of 51°49'04", an arc distance of 18.83 feet to a point; thence South 88°56'14" East, a distance of 40.02 feet; thence South 04°19'49" West, distance of 106.07 feet; thence South 85°40'11" East, a distance of 8.28 feet; thence South 04°19'49" West, a distance of 28.35 feet; thence North 85°40'11" West, a distance of 31.56 feet to a Reference Point "A"; thence North 16°47'35" West a distance of 23.01 feet to the Point of Beginning (1).

TOGETHER WITH PARCEL "B":

Commencing (2) at the aforementioned Reference Point "A"; thence South 16°47'35" East, a distance of 11.16 feet to the Point of Beginning (2); thence continuing South 16°47'35" East, a distance of 42.79 feet to a Reference Point "B"; thence North 90°00'00" East, a distance of 20.44 feet; thence North 00°00'00" East, a distance of 40.96 feet; thence North 90°00'00" West, a distance of 32.80 feet to the Point of Beginning (2).

ALSO TOGETHER WITH PARCEL "C":

Commencing (3) at the aforementioned Reference Point "B"; thence South 16°47'35" East, a distance of 11.18 feet to the Point of Beginning (3); thence South 14°52'33" West, a distance of 35.56 feet; thence South 33°50'47" West, a distance 48.63 feet to a point on the wetface of an existing 2.50 feet seawall cap; thence South 26°35'58" West, on the Northeasterly extension of the wetface of an existing 1.30 foot seawall cap and on the wetface of said 1.30 feet seawall cap, a distance of 19.36 feet; thence South 81°16'24" West, on said wetface and Westerly extension thereof, a distance of 123.73 feet to a Reference Point "C"; thence South 08°43'36" East, a distance of 32.00 feet; thence North 81°16'24" East, a distance of 137.40 feet; thence North 27°41'14" East, a distance of 32.14 feet; thence North 25°53'10" East, a distance of 6.87 feet; thence North 18°07'24" East, a distance of 86.41 feet; thence North 75°07'27" West, a distance of 18.93 feet to the Point of Beginning (3).

AND ALSO TOGETHER WITH PARCEL "D":

Beginning (4) of the aforementioned Reference Point "C"; thence North 76°54'00" West, a distance of 24.19 feet to the corner of the wetface of an existing 1.70 foot seawall cap; thence North 88°49'49" West, on said wetface of a distance of 21.31 feet to a Reference Point "D"; thence South 01°10'11" West, a distance of 14.61 feet; thence South 88°49'49" East, a distance of 46.65 feet; thence North 08°43'36" West, a distance of 9.75 feet to the Point of Beginning (4).

AND ALSO TOGETHER WITH PARCEL "E":

Commencing (4) at the aforementioned Reference Point "D"; thence North 88°49'49" West, on the wetface of an existing 1.70 foot seawall cap and Westerly extension thereof, a distance of 58.96 feet; thence North 89°09'21" West, a distance of 280.74 feet to the Point of Beginning (5); thence continuing North 89°09'21" West, a distance of 72.44 feet; thence South 89°50'47" West, a distance of 50.00 feet; thence South 84°38'49" West, a distance of 79.73 feet to a Reference Point "E"; thence South 00°41'48" West, a distance of 6.47 feet; thence North 90°00'00" East, a distance of 201.89 feet; thence North 00°00'00" East, a distance of 12.97 feet to the Point of Beginning (5).

AND ALSO TOGETHER WITH PARCEL "F":

Beginning (6) at the aforementioned Reference Point "E"; thence South 84°38'49" West, a distance of 55.98 feet to a Reference Point "F"; thence South 00°11'29" East, a distance of 9.25 feet; thence North 89°48'31" East, a distance of 55.53 feet; thence North 00°41'48" East, a distance of 14.29 feet to the Point of Beginning (6).



AND ALSO TOGETHER WITH PARCEL "G":

Commencing (5) at the aforementioned Reference Point "F"; thence South 84°38'49" West, a distance of 28.00 feet to the Point of Beginning (7); thence continue South 84°38'49" West, a distance of 91.27 feet; thence South 76°18'50" West, a distance of 5.38 feet to the corner of the wetface of an existing 2.00 foot seawall cap thence South 76°26'28" West, on said wetface and the Westerly extension thereof, a distance of 144.35 feet; thence South 16°29'31" East, a distance of 46.08 feet; thence North 77°42'48" East, a distance of 177.52 feet; thence North 57°48'51" East, a distance of 21.53 feet; thence North 39°23'59" East, a distance of 49.91 feet to the Point of Beginning (7).

All of said Submerged Lands situate, lying and being in the City of Fort Lauderdale, Broward County.

CONSTRUCTION LOAN AGREEMENT

Dated as of

June 20, 2006

REGIONS BANK, an Alabama banking corporation  
301 St. Charles Avenue  
New Orleans, Louisiana 70130

(the "Lender"  
or "Bank")

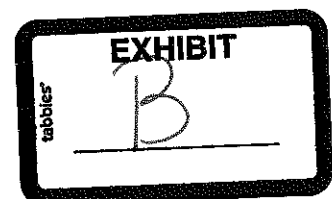
AND

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC,  
a Louisiana limited liability company  
620 Decatur Street, Unit A  
New Orleans, Louisiana 70130

(the "Borrower")

LOCATION OF PROPERTY:

1500 S.W. 17th Street  
Fort Lauderdale, Florida



### PARTICULAR TERMS; DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings indicated opposite each of them; where the meaning of any term is stated to be "None", provisions involving the application of that term shall be disregarded:

"Advance"	-	Progressive sums of money requested by Borrower under the Loan
"Borrower's Architect"	-	
"Borrower's Counsel"	-	MCDONALD, FLEMING, MOORHEAD, FERGUSON, GREEN, SMITH, BLANKENSHIP, HEATH AND DE KOZAN, LLP
"Borrower's Interest"	-	Fee interest in the Premises
"Completion Date"	-	June 20, 2008
"Contractor's Cost Breakdown"	-	A statement approved by Lender of the maximum monies that are allocated for the various items into which the job of making the Improvements is divided and also prescribing the amount of the Loan funds allocated to each such item as herein provided
"Event of Default"	-	A default by Borrower which continues beyond the expiration of any applicable notice and cure period hereunder or an Event of Default under the Note, Mortgage or any other Loan Document as defined therein
"Financial Statements"	-	Financial statements of the Borrower and Guarantor
"General Contract"	-	The contract between Borrower and the General Contractor for the construction of the Improvements.
"General Contractor"	-	
"Governmental Authority"	-	The United States, the State of Florida and any political subdivision thereof, and any agency department, commission, board, bureau or instrumentality of any of them.

"Gross Sales Price"	- The purchase price of a Unit set forth in a purchase and sale contract without regard for any pro-ration, deduction or adjustment.
"Guarantor"	- Earl E. Weber, Jr., individually
"Guaranty"	- The Continuing Guaranty of even date herewith from Guarantor in favor of Lender
"Hard Costs"	- The direct costs of constructing the improvements
"Improvements"	- Construction of twenty-six (26) boat slip units (including a two car garage for each unit) (each a "Unit"), a yacht club, 400 feet of storage space and related site improvements.
"Initial Closing"	- The time of the execution and delivery of this Agreement by Borrower and Lender
"Interest Reserve"	- As defined in Article I
"Lender's Architect"	- Such person designated from time to time by Lender. This term does not necessarily imply that the person designated is an architect in fact
"Lender's Commitment"	- The written commitment issued by Lender to make the Loan dated June 14, 2006.
"Lender's Counsel"	- Greenspoon Marder, P.A. 100 West Cypress Creek Road, Suite 700 Fort Lauderdale, Florida 33309
"Loan"	- The Twenty-Seven Million Four Hundred Fifty-Four Thousand and No/100 Dollars (\$27,454,000.00) loan made by Lender to Borrower which is evidenced by the Note and governed by this Agreement
"Loan Documents"	- This Agreement, the Note, the Mortgage and all other documents executed by Borrower from time to time in connection with the Loan

"Local Authority"	- Any non-Federal Governmental Authority that exercises jurisdiction over the Premises or construction thereon
"Minimum Sales Price"	- \$14,500.00 per linear foot.
"Mortgage"	- The Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement of even date herewith to be recorded in the Public Records of Broward County, Florida.
Net Sales Proceeds	- The Gross Sales Price (including the cost of any upgrades) less three percent (3%) of the Gross Sales Price.
"Note"	- The Promissory Note of even date herewith in the total principal amount of the Loan made by the Borrower to the Lender.
"Plans"	- The final plans <u>and</u> specifications for the construction of the Improvements on the Premises, to be prepared by the Borrower's Architect or Engineer, supported by satisfactory boring and/or soil tests, designating the manufacturer and model number of all equipment, and approved as required herein and all amendments and modifications thereof made by approved Change Orders; the term shall include the final plans and specifications for segments of the Improvements
"Premises"	- The property described in Exhibit "A" of the Mortgage and situated as indicated on the cover hereof
"Project"	- The construction of the Improvements and related site development
"Qualified Sales Contract"	- A non assignable, non-cancelable contract for the sale of a Unit to an unrelated third-party purchaser for value for a minimum purchase price equal or exceeding the Minimum Sales Price and supported by a cash escrow deposit in the minimum amount of twenty percent (20%) of the purchase price for such Unit or, in the

alternative a cash deposit of ten percent (10%) and a letter of credit for ten percent (10%). A contract or contracts for the sale of more than one (1) Unit to the same person or to an entity controlled by the same person, shall be deemed to constitute only one (1) Qualified Sales Contract unless otherwise approved with the prior written consent of the Lender, which consent may be granted or withheld in Lender's sole discretion.

- "Pre-Sale" - A Unit which is subject to a Qualified Sales Contract.
- "Requirement" or "Local Requirement" - Any law, ordinance, order, rule or regulation of a Governmental Authority or Local Authority
- "Request for Advance" - A statement of the Borrower setting forth the amount of Advance sought in such form and manner as the Lender may request, which Request shall constitute and affirm that the representations and warranties of Article II hereof remain true and correct as of the date thereof and that unless the Lender is notified to the contrary prior to the disbursement of the requested Advance, such representations and warranties and all other representations will be true on the date thereof
- "Requisition for Advance" - A statement signed by Title Company, Borrower, and Lender's Architect setting forth the amount of Advance sought in such form and manner as the Lender may request
- "Soft Costs" - All costs of the Project other than Hard Costs, including interest and overhead
- "Title Company" - Fidelity National Title
- "Unavoidable Delay" - Any strike, lockout, inability to obtain labor or materials, failure of power, governmental restrictions, riots, war, civil commotion, unavoidable casualty or other cause beyond the reasonable control of Borrower, except that lack

of funds shall not be deemed a cause beyond the  
control of the Borrower

ARTICLE I  
LOAN: ADVANCES

Subject to the provisions of this Agreement set forth in Articles II through VII hereof, Lender will advance and the Borrower, in accordance with Borrower's representation set forth in paragraph 11 of Article II, will accept the amount of the Loan as follows:

1. Borrower shall use Loan funds only for the specific purposes designated by Lender. Initially, Loan funds have been generally allocated in accordance with the Sources and Uses of Funds Budget attached hereto as Schedule "A". Thereafter, the specific Hard Costs and Soft Costs for which Loan funds shall be advanced shall be determined by Lender from time to time as Lender reviews Borrower's budgets and cost estimates. In the event the costs of making the Improvements do not coincide with the budgets and cost estimates submitted by Borrower, then Lender at its sole option may increase or decrease any previous allocations of Loan funds or may authorize the use of Loan funds for purposes other than those previously contemplated, but such actions shall not increase the original principal amount of the Loan. From and after an Event of Default, Lender may reallocate Loan funds as Lender may elect in its discretion.

2. Lender shall disburse Loan funds allocated for Hard Costs as construction of the Improvements progresses in accordance with the Contractor's Cost Breakdown, but not more frequently than once a month, in amounts that, at Lender's election, shall be either:

(a) the amount of Loan funds allocated for Hard Costs multiplied by the percentage of completion of the Improvements; or

(b) the estimated total cost of construction of the Improvements as determined from time to time by Lender's Architect multiplied by the percentage of completion of construction then attained, less the difference between such estimated cost of construction and the amount of Loan funds allocated for Hard Costs.

Notwithstanding the foregoing, Lender shall have no obligation to fund any Loan proceeds, other than amounts disbursed at closing pursuant to the Loan Closing Statement, until Borrower has contributed its Equity Requirement as hereinafter defined.

3. Lender shall disburse Loan funds allocated for Soft Costs not more frequently than once a month as Soft Costs are incurred by Borrower in connection with the Project, but subject to the following conditions:

(a) Loan funds allocated for the acquisition of the Property, as set forth in the Sources and Uses of Funds Budget, shall be available for disbursement at the Initial Closing.

(b) Loan funds allocated for interest, as set forth in the Sources and Uses of Funds Budget (sometimes referred to herein as the "Interest Reserve") shall be used towards the payment to Lender of interest as it accrues and becomes due and payable from time to time during the term of the Loan, subject to the following:



(i) Borrower may meet Borrower's interest obligations from these Loan funds, but only until: (aa) these Loan funds are exhausted; (bb) an Event of Default occurs hereunder and Lender elects to postpone or terminate further disbursements for interest (and Lender need not notify Borrower of such election); or (cc) any other condition occurs which would terminate or postpone Lender's obligation to make any further advances. If Lender elects to disburse Loan funds for interest while an Event of Default is continuing, such action shall not be deemed a waiver of its right not to fund thereafter or of any other rights or remedies. In addition, Loan funds allocated for interest shall be available for disbursement only in proportion to the percentage of completion of the Improvements then attained, notwithstanding anything to the contrary contained in this Article or elsewhere in this Agreement.

(ii) Nothing contained in this Agreement shall be deemed or construed to permit interest on the Loan to accumulate for more than one month. Borrower acknowledges that the existence of the Interest Reserve shall not affect Borrower's absolute obligation to pay interest on the outstanding balance of the Loan. Similarly, nothing contained in this Agreement shall require Borrower to use any such reserve to pay interest, and Borrower may pay interest from Borrower's own resources, notwithstanding that Loan funds allocated for such purpose remain undisbursed. Loan funds advanced from time to time to pay interest accruing under the Loan shall bear interest from the respective due dates of the interest payments for which such funds were advanced.

(iii) This subparagraph shall constitute Lender's authority to credit itself, from time to time and at any time, and at any time, if Lender so elects, out of the Interest Reserve with the appropriate sums necessary to pay interest when due (or after it becomes due) under the terms of the Note.

(c) If Borrower achieves any savings with respect to Hard Costs, Lender agrees to reallocate said amount to Soft Costs.

4. Loan funds allocated for interest, supervision, general conditions and contingencies shall be available for disbursement only in proportion to the percentage of completion of Improvements then attained.

5. Title Company is designated by Lender as its agent for the disbursement of Loan funds and by Borrower as the title insurer with respect to the transaction.

6. Lender shall deposit in Title Company's account for Borrower the proceeds of the Loan as requested by Title Company by an appropriate Requisition for Advance, and Title Company, acting in its capacity as disbursing agent for Lender, shall make disbursements of Advances, all upon the satisfaction of the conditions of Articles V and VI hereof.

7. In the event that Borrower requests an advance of both Hard Costs and Soft Costs during any month during the term of the Loan, then such advance request shall be made simultaneously with each other and not more frequently than once a month.

8. All disbursements of Loan funds are to be made at the office of Title Company or at such other place as Lender may designate, and for interest computation purposes shall be considered "advanced" when same is deposited in Title Company's account for Borrower.

9. Borrower, before any disbursements of Loan funds are made, shall, as may be required by Lender, either deposit with Title Company as disbursing agent for Lender an amount equal to the difference between the amount of Loan funds allocated for Hard Costs and the estimated cost of constructing the Improvements or expend Borrower's own funds in an amount equal to this difference. The deposit so made by the Borrower, if required by Lender, together with the proceeds of the Loan, shall constitute a fund to be disbursed by the Title Company for the account of Borrower; it being specifically provided that the Borrower's deposit, if required, or Borrower's own funds and the proceeds of the Loan shall not be commingled. The Borrower's deposit shall be first disbursed by Title Company before the disbursement of funds allocated for Hard Costs, or if such a deposit is not required by Lender, then Borrower shall provide Title Company with paid bills and lien waivers to the extent of the difference between the amount of the Loan and the estimated cost of construction before the disbursement of any of the proceeds of the Loan.

10. If at any time pending or during the disbursement of the Loan it appears to the Lender, in Lender's reasonable discretion, that these Loan funds remaining undisbursed will be insufficient to complete the Improvements in accordance with the Plans and to pay for all labor, material and costs in connection therewith, Borrower shall upon demand deposit with the Title Company, as disbursing agent for the Lender, additional monies which shall, when added to the undisbursed portion of the Loan funds allocated for Hard Costs, be sufficient to complete and pay for the Improvements, and all costs and expenses in connection therewith. The amount so deposited shall be disbursed to pay for the Improvements before any additional Loan funds will be advanced for Hard Costs.

11. Upon the occurrence or during the existence of an Event of Default, Lender may, at its option, after providing five (5) days advance written notice to Borrower of its intent to do so, make all Advances of Loan funds allocated for Hard Costs directly to contractors and subcontractors for amounts due to them for construction of the Improvements and the execution of this Agreement by the Borrower shall, and hereby does, constitute an irrevocable direction and authorization to so advance the funds with the same effect as though advanced to Borrower. No further direction or authorization from Borrower shall be necessary to warrant such direct advances and all such advances shall satisfy pro tanto the obligations of Lender hereunder and shall be secured by the Mortgage as fully as if made to Borrower, regardless of the disposition thereof by contractors or subcontractors.

12. All disbursements of Loan funds are to be made into a demand deposit account maintained by Borrower with Lender, and for interest computation purposes shall be considered "advanced" when same is deposited into said account.

13. During the continuance of any Event of Default, at Lender's option and in its sole discretion, Lender may reallocate Loan funds among Budget Items and/or otherwise reallocate Loan funds, as Lender elects in Lender's discretion.

14. The Initial Closing shall be held at the office of Lender's Counsel, or at such other place as Lender may designate.

15. Lender shall disburse funds for materials stored on or off Premises, provided, however, in each instance, said materials will not be purchased on a retained title basis, and title to the materials shall be in Borrower, and shall be free of any and all claims of lien. Said materials shall be stored in a secure manner, and protected from damage or theft. Materials stored off-site shall be either in a bonded warehouse, or, if in a supplier's warehouse, the supplier shall supply evidence of adequate insurance. Borrower shall, upon Lender's request, also provide to Lender evidence of insurance in transit. Lender further reserves the right to have its Inspector verify the quantity and location of said materials.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower represents and warrants that:

1. If applicable, Borrower is duly organized or incorporated and validly existing under the laws governing its organization or incorporation; Borrower has full power and authority to consummate the transactions contemplated hereby; and, all documentation (if any) prerequisite to Borrower's undertaking the construction contemplated hereby has been duly executed, delivered and, where necessary, recorded;

2. The Plans are satisfactory to Borrower and have been, or are in the process of being approved by the appropriate Authority to the extent required by applicable law or any effective restrictive covenant, by all Governmental and Local Authorities and the beneficiary of any such covenant, respectively; the Plans so approved have been identified and accepted by Borrower and by the General Contractor; all construction, if any, heretofore performed in connection with the Improvements has been performed within the perimeter of the Premises in accordance with the Plans as approved by Lender's Architect, and in accordance with any restrictive covenants applicable thereto;

3. There are no structural defects in the Improvements, no violation of any Local Requirement exists with respect thereto, and the anticipated use thereof complies with applicable state and county laws and all zoning ordinances, regulations, and restrictive covenants affecting the Premises; and, all Requirements including conditions for final platting for such use have been satisfied;

4. The Financial Statements heretofore delivered to the Lender have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the correct respective financial conditions of the subjects thereof as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower or Guarantor since the date

thereof other than made in the ordinary course of business, the borrowing contemplated hereby, or borrowings approved by Lender;

5. Except as disclosed to Lender in writing, there are no actions, suits, or proceedings pending before any court of law or equity or any administrative board, or threatened against or affecting Borrower or the Premises, or involving the validity or enforceability of the Mortgage or the priority of the lien thereof, at law or in equity, or before or by any Governmental Authority or Local Authority; and Borrower is not in default under any other indebtedness or with respect to any order, writ, injunction, decree, or demand of any court or any Governmental Authority or Local Authority;

6. The consummation of the transactions hereby contemplated and performance of this Agreement, the Note and Mortgage will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan, or credit agreement, corporation charter, by-laws, or other instrument to which Borrower is a party or by which Borrower may be bound or affected;

7. All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are available at the boundaries of the Premises, including, without limitation, water supply, storm and sanitary sewer facilities, electric and telephone facilities; and, binding agreements or commitment letters satisfactory to Lender to that effect will be obtained from and delivered by the appropriate utilities prior to any Advance being made hereunder;

8. Each request for an Advance, or the receipt of the funds requested thereby, shall have the effect stated in the definition of the term Request for Advance;

9. Except as to liens heretofore made known to Lender and approved by Lender, Borrower has made no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Premises except for its arrangements with Borrower's Architect, the General Contractor and contractors or subcontractors;

10. All roads necessary for the full utilization of the Improvements for their intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate Local Authority or have been dedicated to public use and accepted by said Local Authority and all necessary steps have been taken by the Borrower and said Local Authority to assure the complete construction and installation thereof; or, if by private street, all adequate easements of ingress and egress have been afforded same; all platting requirements and the Requirements of Local Authorities have been duly met, and upon completion of the Improvements in accordance with the Plans, a proper certificate or certificates of occupancy will be issued;

11. There is no default on the part of the Borrower under this Agreement, the Note or the Mortgage, and no event has occurred and is continuing which with notice or the passage of time or both would constitute a default under any thereof;

12. Borrower will employ the Loan proceeds only for the specific purposes designated by Lender to complete the Improvements; and, except to the extent of proposed borrowings heretofore

disclosed to Lender, if any, Borrower will not require and will not avail itself of any additional extension of credit for such purpose;

13. All of the statements, reports, and other matters presented or delivered to the Lender in connection with the Loan are true and correct as of the date hereof, in each case in all material respects.

### ARTICLE III COVENANTS OF BORROWER

Borrower covenants and agrees with Lender for Lender's benefit as follows:

1. Except for the sale of the Units in compliance with this Agreement or as permitted by the Loan Documents, Borrower shall not convey or lease the Premises in whole or in part, or encumber the Premises or any part thereof or any interest therein, or assign this Agreement or the proceeds of the Loan without the prior written consent of Lender, which consent may be given or withheld in Lender's sole, absolute discretion;

2. Borrower shall comply promptly with any Requirement or Local Requirement and furnish Lender, on demand, official documents made by any Governmental Authority or Local Authority;

3. Borrower, upon receiving forty eight (48) hours notice, shall (at all reasonable times and without material interference with the progress of construction) permit Lender or Lender's representatives, Title Company, and the Lender's Architect, to enter upon the Premises, inspect the Improvements and all materials to be used in the construction thereof and to examine all detailed plans and shop drawings that are or may be kept at the construction site, and will cooperate, and cause the General Contractor to cooperate, with the Lender's Architect to enable him to perform his functions hereunder;

4. Borrower shall promptly pay Lender's Counsel Fees and all costs and expenses required to satisfy the conditions of this Agreement. Without limitation of the generality of the foregoing, Borrower shall pay:

(a) all taxes and recording expenses, intangible tax on the full amount of the Mortgage, and documentary stamp tax on the full amount of the Note;

(b) the fees and commissions lawfully due to any brokers in connection with this transaction;

(c) title insurance, abstracting, and the cost of updating the title insurance policy for each Advance; and

(d) to the extent services are required of Lender's Counsel subsequent to the closing, Borrower shall pay the reasonable fees therefore;

(e) the fees of Lender's Architect and all other charges for parties performing plan review or other construction review or sewer review for Lender; and

(f) all appraisal fees.

5. Borrower shall promptly commence the construction of the Improvements and will cause it to be prosecuted with diligence and continuity and will complete the same in substantial accordance with the Plans on or before the Completion Date, free and clear of liens or claims of liens for material supplied, and/or for labor or services performed, in connection with the construction of the Improvements, irrespective of the total cost thereof;

6. Borrower shall cause all conditions hereto or established by agreement executed contemporaneously with this Agreement as a condition to funding to be satisfied;

7. Borrower shall receive all advances of Loan funds and shall hold the right to receive the same as a trust fund for the purpose of paying the costs of construction of the Improvements and for such other purposes as said advances are expressly made by Lender. Borrower shall inform Lender immediately of any change in circumstances affecting the Project which may require any material change in any category of costs scheduled in any cost estimates or cash flow projections previously submitted by Borrower or on Borrower's behalf to Lender, or which may require Borrower to incur any costs not scheduled therein;

8. Borrower shall indemnify and hold Lender harmless from claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby and from expenses incurred by Lender in connection with any such claims (including attorney's fees);

9. Borrower shall deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers, or agreements under which Borrower claims title to any materials, fixtures, or articles incorporated in the Improvements or subject to the lien of the Mortgage;

10. Borrower shall, upon demand of the Lender's Architect, correct any structural defect in the Improvements or any departure from the Plans not approved by Lender's Architect. The advance of any Loan proceeds shall not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defects or departures from the Plans not theretofore discovered by, or called to the attention of, the Lender's Architect;

11. Borrower shall not permit the performance of any work pursuant to any change order without the prior specific written approval of Lender;

12. Borrower shall not permit, order, or authorize any changes in the Plans without the prior written consent of the Lender;

13. Borrower shall require that all subcontractors be subject to the approval of Lender and shall, upon request, deliver to Lender the names of all persons with whom Borrower or the General

Contractor has contracted or intends to contract for the construction of the portions or parts of the Improvements or for the furnishing of labor or materials therefor. Lender will not unreasonably withhold or delay its approval of subcontractors provided in each instance, and as a prerequisite to such approval, such subcontractor shall agree in writing with and for the benefit of Lender not to sue or seek redress in any way from Lender with respect to the subject matter of its contract or in any action or proceeding growing out of or arising therefrom; Borrower shall in any case hold Lender harmless and indemnify Lender from any such cause or action;

14. Without the prior written consent of Lender, which Lender may grant or withhold in its sole discretion, Borrower shall not make or permit any payment or distribution of funds to any person related to Borrower, nor use or dispose of any funds or assets of Borrower except in connection with the Project; and

15. This Agreement inures only to the benefit of the parties hereto and no other person shall be deemed a benefited party under any circumstances.

#### ARTICLE IV EVENTS OF DEFAULT

1. Borrower shall be in default under this Agreement and all other Loan Documents if any of the following events shall occur (and continue uncured beyond the expiration of the grace period, if any, provided therefor) (each an "Event of Default"):

(a) The occurrence of any Event of Default under the Note, the Mortgage, this Agreement or any other Loan Document executed in connection therewith; or

(b) Borrower's abandonment of the construction of the Improvements for ten (10) consecutive working days (excluding Saturdays, Sundays and legal holidays) for any reason whatsoever other than delays caused by strikes, labor or material shortages, inclement weather, acts of God, or other events beyond Borrower's reasonable control, or Borrower's material departure (in Lender's reasonable but exclusive judgment) from the Plans, in either case without the prior written consent of Lender, which Lender may grant or withhold in its sole but reasonable discretion; or

(c) Borrower's inability for thirty (30) days to satisfy any condition precedent to Borrower's right to receive a requested advance of Loan funds (or such longer period as shall be reasonably required with the exercise of reasonable diligence); or

(d) Borrower's failure to contribute additional funds for the Project from Borrower's own resources, within fifteen (15) days of receiving written demand from Lender, in the event that Lender determines in its reasonable but exclusive judgment that the estimated sum required to complete the Project, including all unpaid obligations and all carrying costs and other Soft Costs to be incurred in connection with the Project, exceeds the undisbursed balance of the Loan; or

(e) Any assignment of Borrower's rights under any Loan Document or in or to any proceeds of the Loan, or Borrower's acceptance of any additional extension of credit for Project expenses, in either case without the prior written consent of Lender, which Lender may grant or withhold in its sole discretion; or

2. Lender shall have the right, upon the happening of any such Event of Default, in addition to any rights or remedies available to it under the Note, the Mortgage or any other Loan Document, to enter into possession of the Premises, and Borrower hereby unconditionally authorizes and licenses Lender to come upon the Premises and take possession thereof in Borrower's name and perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans and employ watchmen to protect the Premises and the Improvements. All reasonable sums expended by Lender for such purposes shall be deemed to have been paid to Borrower and secured by the Mortgage. For this purpose, Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete the Improvements in the name of Borrower, and hereby empowers said attorney (from and after the happening of an Event of Default) as follows: to use any funds of Borrower, including any balance that may be held in escrow and any funds that may remain unadvanced hereunder, for the purpose of completing the Improvements in the manner called for by the Plans; to make such additions and changes and corrections in the Plans that shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans; to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; to pay, settle, or compromise all existing bills and claims that are or may become liens against the Premises, or may be necessary or desirable for the completion of the work or the clearance of title; to execute all applications and certificates in the name of Borrower that may be required by any construction contract; and to do any and every act with respect to the construction of the Improvements that Borrower may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked. Said attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the construction of the Improvements on the Premises and to take such action and require such performance as is deemed necessary. Borrower hereby assigns and quitclaims to Lender all sums advanced and to be evidenced hereunder and all sums in escrow, subject to the condition that said sums, if any, be used for the completion of the Improvements.

3. Any Event of Default under this Agreement shall also constitute an Event of Default under the Note, the Mortgage, and all other Loan documents, and shall entitle the Lender to all remedies therein contained in addition to any and all remedies set forth in this Agreement or provided at law or equity.

#### ARTICLE V CONDITIONS PRECEDENT TO LENDER'S OBLIGATION

The Lender shall not be obligated to disburse any Loan funds unless and until the following conditions shall have been satisfied:

1. Lender shall have received:



- (a) evidence of payment of Lender's Counsel Fees;
- (b) Borrower's and Guarantor's Financial Statements in form and content acceptable to Lender;
- (c) Advice from the Lender's Architect to the effect that the Plans have been approved by him and by the Local Authority, that the Improvements comply with applicable zoning, building, and other pertinent ordinances, regulations and Requirements, and assurances that all roads necessary for the full utilization of the Improvements for their intended purposes have been completed and are available for unobstructed continuous use by all vehicles for ingress and egress to the Premises for all lawful business from the public street;
- (d) an appraisal satisfactory in form and content to Lender, reflecting a minimum "as is" value of \$15,000,000.00 and a minimum "as built" value of \$34,317,500.00;
- (e) the policies of builder's risk insurance, casualty, liability and other insurance required by the Mortgage accompanied by evidence of the cash payment of the premiums therefor for at least one year in advance;
- (f) evidence satisfactory to Lender that the Premises have been fully paid for, free of all liens and encumbrances;
- (g) three complete sets of final detailed Plans;
- (h) a copy of the survey referred to in Subparagraph (2)(e) of this Article;
- (i) a copy of the fully executed General Contract (fixed price) and copies of all subcontracts for HVAC, plumbing, electric, roof, concrete block, earthwork, utilities and stucco, in each instance duly conformed and certified by Borrower as "true copies" and in each instance, in form and content satisfactory to Lender;
- (j) the duly executed Note;
- (k) the duly executed Mortgage;
- (l) the duly executed Guaranty; and
- (m) Such other documents evidencing and/or securing the Loan as may be required by Lender's Counsel.
- (n) Evidence that Borrower has contributed sufficient up-front equity in accordance with the Sources and Uses of Funds Budget;
- (o) Receipt of Plan and Cost Review in form and content satisfactory to Lender;

(p) Copy of soil boring and compaction report in form and content satisfactory to Lender.

Notwithstanding the foregoing, items (c), (g), (i), (o) and (p) shall be delivered in accordance with the terms of the Post-Closing Letter of even date herewith;

2. Lender's Counsel shall have received:

(a) all authorizations, if any, required by any Governmental Authority or Local Authority for the operation of the Premises for the purposes contemplated by the Plans, which are presently procurable;

(b) the authorization and all needed permits from the Local Authority to construct the Improvements;

(c) evidence reflecting that Borrower has contributed from Borrower's own funds, upfront equity in the minimum amount of \$3,000,000.00 towards the acquisition of the Property ("Upfront Equity");

(d) a paid title insurance policy from the Title Company, on American Land Title Association Standard Loan Policy 1970 form in the full amount of the Loan, insuring the Mortgage to be a valid first lien on the Borrower's Interest in the Premises, free and clear of all defects and encumbrances except such as Lender and Lender's Counsel shall approve, and otherwise in form and content acceptable to Lender and Lender's Counsel;

(e) an original current survey of the Premises certified to Lender and the Title Company, meeting the minimum requirements of the F.L.S.P.S. and the F.L.T.A., and otherwise in form and content acceptable to Lender and Lender's Counsel, receipt of which is hereby acknowledged by Lender;

(f) an executed copy of the General Contract, and if requested by Lender, a list, certified by Borrower, of all contracts executed by Borrower or the General Contractor for the performance of services or the supply of materials in connection with the construction of the Improvements;

(g) the tax identification number of Borrower;

(h) a copy of the fully executed deed vesting title to the Property in Borrower;

(i) an opinion of Borrower's Counsel in form and content acceptable to Lender and Lender's Counsel;

(j) except as otherwise provided herein for Lender to advance and apply funds due hereunder to a person other than the Borrower, a written direction of payment to Lender and Title Company if proceeds of the Loan are to be paid to a person other than the Borrower;

(k) evidence satisfactory to Lender's Counsel shall be disclosed to and made available to Lender's Counsel so that Lender's Counsel may reasonably opine that upon due authorization and execution by the parties and upon due recording or filing thereof, the Note, the Mortgage, and this Agreement will be legal, valid, and binding instruments, enforceable against the makers thereof in accordance with their respective terms;

(l) an executed copy of the contract between Borrower and Borrower's Architect certified by Borrower to be true and complete, receipt of which is hereby acknowledged by Lender;

(m) duly executed Post Closing Letter.

(n) any other items not specifically listed in this Article which are reasonably required by the terms of Lender's Commitment or which may be required by Lender's Counsel.

ARTICLE VI  
CONDITIONS TO LENDER'S  
OBLIGATION TO MAKE ADVANCES OF LOAN FUNDS

1. Lender shall not be obligated to make any subsequent Advance of Loan funds hereunder until the conditions set forth in Article V and the following further conditions shall have been satisfied:

(a) The representations and warranties made in Article II hereof shall be true and correct, in all material respects, on and as of the date of the Advance with the same effect as if made on such date.

(b) The Improvements shall not have been materially injured or damaged by fire or other casualty;

(c) If the Loan funds are for Hard Costs:

(i) The Title Company shall have received:

(A) a Request for Advance on Lender's standard form signed by Borrower;

(B) the General Contractor's Cost Breakdown and Request for Partial Payment on Lender's standard form signed by the General Contractor; and

(C) any other conditions imposed by Title Company including sworn statements, waivers, partial waivers, releases of lien, proof of paid bills, inspection of payroll

vouchers, submission of Lender's Architect's certificates and progress surveys as it may deem necessary to protect the priority of Lender's Mortgage.

(ii) Lender shall have received:

(A) a Requisition for Advance from Title Company on Lender's standard form, signed by Borrower, Lender's Architect and the Title Company;

(B) the General Contractor's Cost Breakdown and request for partial payment on Lender's standard form signed by the General Contractor;

(C) written certification from Lender's Architect to the effect that in his opinion the work performed to the time of the Request for Advance was completed within the approved cost estimates and in substantial accordance with the Plans;

(D) advice from the Title Company to the effect that a search of the public records discloses no liens, conditional sales contracts, chattel mortgages, leases of personalty, financing statements, title retention agreements, or other instruments filed and/or recorded against the Borrower or the Premises that affect any of the security for this Loan;

(E) the recorded Notice of Commencement;

(F) Borrower shall have obtained Pre-Sales in an amount equal to or exceeding the Loan amount; and

(G) Borrower shall have contributed additional equity into the Project, from Borrower's own funds, in the minimum amount of \$3,863,660.00 or deposited said amount into escrow with Lender for use in construction of the Improvements (the "Deferred Equity").

(d) If the Loan funds are for Soft Costs:

(i) the Title Company shall have received the items referred to in (c)(i)(A) and (B) above; and

(ii) the Lender shall have received the items referred in (c)(ii)(A), (D), (F) and (G) above together with bills, invoices and other supporting documentation as Lender may require from time to time evidencing that the Soft Costs for which Borrower is requesting Loan funds have been legitimately incurred by Borrower;

(e) there shall exist no Event of Default or other default under this Agreement, the Note, the Mortgage or any other documents evidencing and/or securing the Loan; and

(f) evidence satisfactory to Lender's Counsel of the recording, at least one day after the recording of the Mortgage, of a Notice of Commencement required by Florida Statute

713.13 affecting the parcel to be improved and the posting of a certified copy thereof on the Premises, effected in the manner required by law.

2. The Lender shall not be obligated to make any Advance of the Loan funds allocated for Hard Costs after the first Advance until the conditions set forth in Articles V and VI(1) and the following further conditions shall have been satisfied:

(a) Title Company shall have received:

(i) lien waivers and receipted bills for work previously furnished and paid for through the date of the previous Advance.

(b) Lender shall have received:

(i) a notice of title continuation or an endorsement to the title insurance policy theretofore delivered, indicating that since the last preceding Advance there have been no changes in the state of title not theretofore approved by the Lender, which endorsement shall have the effect of increasing the coverage of the policy by an amount equal to the Advance then being made if the policy does not by its terms provide for such an increase;

(c) Borrower shall furnish to the Lender, from time to time as and when reasonably required by the Lender, evidence satisfactory to the Lender that Borrower and the General Contractor have obtained or can obtain all necessary materials as and when required for the completion of construction in accordance with the Plans. The Lender shall be the sole judge of the sufficiency of such evidence and the furnishing thereof acceptable to the Lender shall be a condition precedent to the making of any disbursement on the Loan by Title Company; and

(d) Lender shall not be obligated to make any Advance of Loan funds for construction beyond the foundation for the Improvements until Lender's Counsel shall have received and approved an as-built foundation survey showing the location of all easements, building setback lines, and other matters affecting the location of the Improvements on the Premises.

3. The Lender shall not be obligated to make the final advance of Loan funds for Hard Costs until the conditions set forth in Articles V, VI(1) and (2), and the following further conditions shall have been satisfied:

(a) Lender shall have received:

(i) evidence of the approval by Local Authority of the Improvements in their entirety for permanent occupancy by issuance of a temporary or permanent certificate of occupancy to the extent any such approval is a condition of the lawful use and occupancy of the Improvements, and of such approval by the local Board of Fire Underwriters or its equivalent and of the approval of the contemplated uses thereof by the Governmental Authority;

(ii) advice from Lender's Architect to the effect that the Improvements have been completed in substantial accordance with the Plans and that the amount shown to be owing on the final Requisition for Advance is due and payable;

(iii) a final survey showing the completed Improvements; and

(iv) all other documents reasonably required by Lender or Lender's Counsel to evidence satisfactory lien free completion of the Improvements.

#### ARTICLE VII GENERAL CONDITIONS

Borrower and Lender further covenant and agree as follows:

1. No advance of Loan funds by Lender shall constitute an approval or acceptance by Lender of the work theretofore done or a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition beyond any applicable grace period, shall any such advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default as hereinabove provided. Lender may advance a part of or the whole of any requested advance before it becomes due, and Lender may increase or decrease the amount of any Advance as reasonably required, and all Advances shall be deemed to have been in pursuance hereof;

2. No work shall be commenced with respect to any particular segment of construction until the Plans for such segment shall have been submitted to, and approved by Lender;

3. All proceedings taken in connection with the transactions provided for herein, all surveys, appraisals, and documents required or contemplated by this Agreement or the Mortgage and the persons responsible for the execution and preparation thereof, the General Contractor, all subcontractors, and insurers, and the form of subcontracts, leases, guaranties, and policies of insurance shall be reasonably satisfactory to Lender, and Lender's Counsel shall have received copies (or certified copies where appropriate in such counsel's judgment) of all documents that Lender may reasonably request in connection therewith;

4. Any condition of this Agreement that requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts, and the Lender shall, at all times, be free independently to establish to its satisfaction and in its reasonable but absolute discretion such existence or non-existence;

5. All conditions of Lender's obligation to make advances of Loan funds hereunder are imposed solely and exclusively for the benefit of Lender and its assigns, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof, and no other person may be a beneficiary of such conditions, any or all of which may be

freely waived in whole or in part by Lender at any time if in its sole discretion it deems it advisable to do so;

6. All notices, approvals, demands, waivers, consents or other communications hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail return receipt requested in a postage prepaid envelope to any party hereto at its address above stated or at such other address of which it shall have notified the party giving such notice in writing;

7. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated except by the written agreement of the party against whom enforcement of the change, waiver, discharge, or termination is sought;

8. Borrower shall execute such other documents as Lender may reasonably require to effectuate the intent hereof, including, but not limited to, estoppel certificates stating that the Loan is in full force and effect and that there are no defenses or offsets thereto;

9. Borrower will not, without the prior written consent of Lender in each instance, modify, amend, or terminate the General Contract or any subcontract, or suffer to be done any act whereby any such effect will occur;

10. The Lender's Architect shall be the sole and exclusive judge of whether or not the Improvements are being constructed in substantial compliance with the Plans; whether the rate of progress of the construction is sufficient to insure completion of the construction of the Improvements by the Completion Date; and, whether from time to time the undisbursed portion of Loan funds allocated for Hard Costs is sufficient to insure completion of the Improvements in substantial accordance with the Plans. Any decision of Lender with respect to the said questions shall be conclusive and binding upon all of the parties to this Agreement; provided, however, only that the Lender act reasonably and in good faith in reaching any such decision. Borrower shall be responsible for the reasonable costs of Lender's Architect's inspections;

11. In addition to being responsible to Lender for the proper disbursement of said funds, Title Company will be called upon to insure Lender against loss or damage on account of defects in, mechanic's lien upon, or unmarketability of the title to the Premises, as well as to insure that the Mortgage at the time of each advance of Loan funds constitutes a valid first lien thereon. Borrower agrees to promptly and fully observe and comply with the regulations and requirements of Title Company with respect to the title, the Mortgage and Note, disbursements of Advances, proofs as to payment of construction bills or subcontractors, surveys, inspections, proof of construction progress, waivers, partial releases and satisfactions of liens, execution of papers, closing, and deposit for costs;

12. All costs incident to the Title Company's services shall be paid by Borrower when and as required by Title Company, including Title Company's charge for its services to be rendered to Lender;

13. In no event shall Title Company, upon disbursing to Borrower, be construed as Borrower's agent or to be assuming Borrower's responsibility for proper payments, but shall be entitled to rely upon representations of Borrower and General Contractor in the Requests for Advances; this latter provision shall in no way alter Title Company's liability to Lender as its disbursing agent or as Title Insurer as established elsewhere in this Agreement;

14. The interest of Lender during construction of the Improvements shall at all times be protected by adequate Builder's Risk Insurance, completed value on a non-reporting form, and all policies of such insurance shall be written to cover the Improvements and on-site materials against such hazards, in such amounts and in such form as the Lender may from time to time reasonably require. All such policies shall be delivered to the Lender with premiums fully paid by the Borrower;

15. This Agreement shall not be construed to make Lender liable to materialmen, contractors, craftsmen, laborers, or others for goods or services delivered by them to or upon the Premises, or for debts or claims accruing to said parties against Borrower or the General Contractor, or either of them, and, it is distinctly understood and agreed that there is no contractual relation, either express or implied, between the Lender and any materialmen, subcontractors, craftsmen, laborers or any other person supplying any work, labor or materials. Borrower and the General Contractor understand and agree that neither the Lender nor the Title Company is the agent or representative of the Borrower or the General Contractor, and the Borrower and the General Contractor shall make this fact known to all persons or firms dealing with them in this construction project;

16. All contracts having to do with construction or the furnishing of materials shall be modified to reflect the agreement of the party or parties to such contracts other than Borrower, that such party or parties agree not to look to Lender for redress or compensation with respect to any matter or event arising from or growing out of this Agreement, the Premises, the construction of the Improvements thereon, or any related third party claims. Except to the extent of the negligent or intentional misconduct of Lender or its agents, Borrower agrees to indemnify Lender and hold Lender harmless from: (i) any and all claims or demands of third parties arising from or growing out of Lender's relationship to the Premises as construction lender and (ii) any related litigation. Borrower shall, in the event Lender is made a party to any suit at law or equity or made to defend any counterclaim or any administrative procedure, provide Lender with counsel reasonably acceptable to Lender at Borrower's sole expense and cost. The foregoing indemnity and obligation shall survive the repayment of the Loan and the termination of this Agreement;

17. Any "approval" by Lender with respect to any plan or specification means, simply, that for investment purposes, Lender finds the material unobjectionable, and such approval or consent or authorization to proceed, however expressed, shall not imply or be deemed to express or be construed to be any representation that the plans and/or specifications are suitable for any particular purpose, or that the resultant structure is safe or suitable for any particular purpose or has any particular value, or actually costs the amount said to have been paid for its construction. Nor shall such acceptance of the Plans imply that the quality of the material or the manner in which the material is assembled is safe or suitable or has a particular value. The review of all matters pertaining to the construction and the judging of their acceptability by Lender has no other purpose



than to determine investment quality from an economic point of view, and is not done for the benefit of anyone other than Lender. In any case, nothing shall be built and no structure shall be commenced or authorized prior to securing Lender's written approval;

18. Lender shall not be obligated to disburse Loan funds for Hard Costs for purposes or in amounts other than as shown in the Sources and Uses of Funds Budget. Anything herein to the contrary notwithstanding, Lender shall not be required to segregate the Loan proceeds in any manner; the sole obligation of Lender shall be to disburse the proceeds of the Loan, subject to the terms and conditions of this Agreement, provided no Event of Default exists under the Note, the Mortgage, or this Agreement;

19. All contracts for the sale of the Units shall be subject to the prior written approval of the Lender and shall be non-assignable and provide for a sales price equal to or in excess of the Minimum Sales Price. The Minimum Sales Price may not be reduced without the prior written consent of the Lender, which Lender may grant or withhold in its sole discretion.

20. Borrower shall not make or enter into any change order(s), which, in the aggregate, exceed \$50,000.00 without the prior written consent of the Bank.

21. Borrower shall furnish Lender with monthly status reports reflecting all existing sales contracts for the Units, which shall include the sales price, the amount of deposit, the construction status for such Unit, the closing status, and a reconciliation balancing the escrow deposit account balance with the amount of escrow deposits set forth in said report.

22. During the term of the Loan, Borrower shall maintain a deposit escrow account at Bank for the purpose of holding all deposits on purchase and sale contracts on Units at the Property. All deposits made by purchasers of Units at the Subject Property shall be deposited into, and held in the escrow account until closing of the Unit, except for deposits which may be utilized in accordance with Sections 25 and 26 hereinbelow.

23. Notwithstanding anything to the contrary contained herein, Lender shall not be required to make any advance under the Loan until Lender has received written evidence reflecting that Borrower has invested its Equity Requirement (as set forth in the Sources and Uses of Funds Budget) into the Project. Equity Requirement shall mean Upfront Equity in the amount of \$3,000,000.00 and additional Deferred Equity in the Project of \$3,863,660.00.

24. Provided that there is no uncured Event of Default or existing condition, which by the passage of time or delivery of notice, will constitute an Event of Default hereunder, or under the Note, the Mortgage or any other Loan Documents executed in connection therewith, Lender shall release individual Units from the lien of the Mortgage upon receipt, in cleared funds, of a principal repayment equal to the greater of one hundred percent (100%) of the Net Sales Proceeds for such individual Unit that is to be released. Each request for a partial release shall be accompanied by a survey prepared by a land surveyor within the State of Florida under seal and certified to Bank containing the proper legal description of the property to be released from the Mortgage in favor of Bank. Borrower shall submit to Bank a closing statement, as-built survey, a partial release prepared

by Borrower's counsel or title company, evidence of cleared funds, a thirty-five dollar (\$35.00) Partial Release Fee per Unit and any other documents deemed necessary by Bank, all which are subject to Bank's review and approval, prior to Bank being obligated to execute any partial releases. All costs associated with releasing any portion of the property from Bank's mortgage, including, but not limited to, recording costs and Bank's counsel's fees, if any, shall be paid by Borrower.

25. Borrower may utilize deposits in excess of ten percent (10%) of the purchase price of a Unit (the "Second Ten Percent Deposits"), provided that such funds shall be used only in the construction of the improvements in accordance with applicable Florida law. Notwithstanding the foregoing, Borrower shall have no right to use the first ten percent (10%) of such deposits.

26. In the event that Borrower utilizes any deposits for construction of the Improvements, then the available funds for disbursement under the Loan shall be reduced dollar for dollar for the amount of such deposits used.

27. The Loan shall be non-assumable and no secondary financing will be allowed without the prior written approval of the Lender.

28. Lender intends to sell one or more loan participations, or assign all or a portion of the Loan to other financial institutions, which participations may be sold or assignments may be made without the consent of or notice to the Borrower. Lender would be Lead Bank, and Borrower would deal only with Lender. The Borrower acknowledges and agrees that Lender may share with potential participants any information relating to the Loan, the Borrower and its subsidiaries. The Borrower further acknowledges and agrees to the disclosure by Lender of information relating to the Loan to bank trade publications; with such information to consist of deal terms and other information customarily found in such publications.

29. Notwithstanding anything to the contrary contained herein, Lender shall have no obligation to make any advance of Loan proceeds, other than the initial advance as reflected on the Loan Closing Statement, until Borrower has obtained all required consents and authorizations from the Board Of Trustees of the Internal Improvement Fund evidencing the Board's consent to the assignment of the Sovereignty Lease to Borrower.

30. In the event that Lender is unable to find a participant to participate in the Loan for a minimum amount of \$7,454,000.00, then the following conditions shall apply notwithstanding anything to the contrary contained herein:

(a) Borrower shall pledge the sum of \$1,700,000.00 in Regions Bank Account Number 4101413465 to secure Borrower's obligations under the Loan, until such time that Lender obtains a participation agreement from a participating lender, as set forth above. Said account shall be restricted with respect to required amount until such time that a Participation Agreement is obtained by the Lender; and

(b) Borrower shall be required to obtain Pre-Sales in the minimum amount of \$35,378,866.00.

The foregoing conditions shall be satisfied prior to the closing of the Loan, and Lender shall have no obligation to fund any Loan proceeds until the complete satisfaction thereof.

31. The parties agree that time is of the essence and that a waiver by Lender of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same kind or similar kind or of any other term, covenant, or condition herein contained;

32. If any provision or portion thereof of this Agreement is declared or found by any court of competent jurisdiction to be unenforceable or null and void, such provision or portions thereof shall be deemed stricken and severed from this Agreement, and the remaining provisions and portions thereof shall continue in full force and effect;

33. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida;

34. The Loan is governed only by the Loan Documents and there are no other agreements with respect to the Loan, whether oral or written, in effect between Lender and Borrower, or between Lender and any Guarantor. In the event of any conflict between the terms of this Agreement and any terms of any other Loan Document, the terms of this Agreement shall govern;

35. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument;

36. Whenever the context of any provisions shall require it, the singular number shall be held to include the plural number and the plural number shall be held to include the singular number; and the use of any gender shall include any other or all genders;

37. The Borrower shall not assign this Agreement nor any part of any advance to be made hereunder, nor convey, nor further encumber said premises, nor change Title Company, Borrower's Architect and/or Engineer, or General Contractor without the Lender's written consent;

38. All of the covenants, agreements, provisions, and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns; and

39. The Lender may issue news releases to newspapers, trade publications and other publications, concerning the loan. Lender shall have the right to maintain signs on the Property during the term of the loan indicating the source of financing, provided however, that such signs shall comply with all requirements of the local governmental authority having jurisdiction over the Property and such signs, and the location thereof, are mutually acceptable to Lender and Borrower.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LENDER:

Signed, sealed and delivered in  
the presence of:

REGIONS BANK, an Alabama banking corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.


The foregoing instrument was acknowledged this \_\_\_\_\_ day of June, 2006, by \_\_\_\_\_, as \_\_\_\_\_, of REGIONS BANK, an Alabama banking corporation, on behalf of the Bank. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

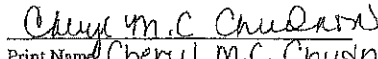
[Notary Seal]


NOTARY PUBLIC, STATE OF \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

BORROWER:

PIER SEVENTEEN MARINA AND YACHT  
CLUB, LLC, a Louisiana limited liability  
company

  
Print Name: Stephen P. Marshall

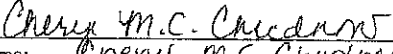
  
Print Name: Cheryl M.C. Chudnow

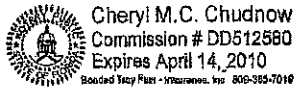
By:   
EARL E. WEBER, JR., its Manager

STATE OF Florida )  
COUNTY OF Broward ) SS:

The foregoing instrument was acknowledged before me this 20 day of June, 2006 by EARLE WEBER, JR., as Manager of PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company, on behalf of the company. He personally appeared before me and [ ] is personally known to me or [X] has produced Louisiana Driver's License, as identification.

[NOTARIAL SEAL]

Notary:   
Print Name: Cheryl M.C. Chudnow  
Notary Public, State of Florida  
My commission expires: April 14, 2010



SCHEDULE A  
SOURCES AND USES.

EXHIBIT A

Legal Description

PARCEL 1 (FBE SIMPLE ESTATE)

The East 65.84 feet of the West 1121.84 feet of Tract A; and Tract A, LESS the West 1121.84 feet, BOSSERT ISLES, according to the Plat thereof, as recorded in Plat Book 46, Page 42, Public Records of Broward County, Florida.

AND

The East 128 feet of the West 798 feet of Tract A, BOSSERT ISLES, according to the Plat thereof, as recorded in Plat Book 46, Page 42, Public Records of Broward County, Florida.

AND

All that portion of the West three-fourths ( $W \frac{3}{4}$ ) of the East one-half ( $E \frac{1}{2}$ ) of the Northeast one-quarter ( $NE \frac{1}{4}$ ) of the Southwest one-quarter ( $SW \frac{1}{4}$ ) and the East one-half ( $E \frac{1}{2}$ ) of the West one-half ( $W \frac{1}{2}$ ) of the Northeast one-quarter ( $NE \frac{1}{4}$ ) of the Southwest one-quarter ( $SW \frac{1}{4}$ ) in Section 16, Township 50 South, Range 42 East, lying North of the Channel of the South Fork of New River, said lands situate, lying and being in Broward County, Florida.

AND

The East one-half ( $E \frac{1}{2}$ ) of the East one-half ( $E \frac{1}{2}$ ) of the East one-half ( $E \frac{1}{2}$ ) of the Northeast one-quarter ( $NE \frac{1}{4}$ ) of the Southwest one-quarter ( $SW \frac{1}{4}$ ), North of New River LESS the East 100 feet, Section 16, Township 50 South, Range 42 East, Broward County, Florida;

AND

All that parcel of land described as follows: Beginning at the Northeast corner of the Southwest one-quarter ( $SW \frac{1}{4}$ ) of Section 16, Township 50 South, Range 42 East, run thence West along the North line of said Southwest one-quarter ( $SW \frac{1}{4}$ ), 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence Easterly along the South Fork of New River to the East line of said Southwest one-quarter ( $SW \frac{1}{4}$ ); thence North along said East line of the Southwest one-quarter ( $SW \frac{1}{4}$ ) to the POINT OF BEGINNING; said parcel being also described as all that part of Lot 17 of MRS. E. F. MARSHALL'S SUBDIVISION of Government Lots 1, 2, 3 and 4; the East one-half ( $E \frac{1}{2}$ ) of the Northeast one-quarter ( $NE \frac{1}{4}$ ) and Northwest one-quarter ( $NW \frac{1}{4}$ ) of the Northwest one-quarter ( $NW \frac{1}{4}$ ) of Section 16, Township 50 South, Range 42 East, as recorded in Plat Book 1, Page 2, Public Records of Broward County, Florida, described as follows: Beginning at a point on the South Fork of New River where the East line of the Southwest one-quarter ( $SW \frac{1}{4}$ ) of said Section 16 intersects said South Fork of New River; thence Northerly along said East line of said Southwest one-quarter ( $SW \frac{1}{4}$ ) projected Northerly to the point where the same as projected intersects the North

line of said Lot 17; thence West along the North line of said Lot 17, 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence along the South Fork of New River to the POINT OF BEGINNING.  
AND

That certain parcel of land known as Block A, of the Amended Plat of YELLOWSTONE PARK, according to the Plat thereof, as recorded in Plat Book 15, Page 3, Public Records of Broward County, Florida; said parcel being also described as all that portion of Lot 17, of MRS. E.F. MARSHALL'S SUBDIVISION of Government Lots 1, 2, 3 and 4; the East one-half (E ½) of the Northeast one-quarter (NE ¼) and the Northwest one-quarter (NW ¼) of the Northwest one-quarter (NW ¼) of Section 16, Township 50 South, Range 42 East, according to the Plat thereof, as recorded in Plat Book 1, Page 2, of the Public Records of Broward County, Florida, lying East of the East line of the Southwest one-quarter (SW ¼) of said Section 16 projected to a point where the same as so projected intersects the North line of said Lot 17.

#### PARCEL 2 (NON EXCLUSIVE EASEMENT ESTATE)

Together with the Non Exclusive Easement Rights created by the Agreement by and between Henry G. Summerfield and Pauline Marian Summerfield aka Pauline M. Summerfield, and Howard K. Stiles and Louise Stiles, his wife and Robert E. Miller and Jeanne M. Miller, his wife, recorded October 18, 1956 in Official Records Book 747, Page 370, Public Records of Broward County, Florida, over the following described property:

The South eight (South 8') feet of Cleveland Avenue, as shown on Plat of SHADY BANKS ON NEW RIVER, according to the Plat thereof, recorded in Plat Book 9, Page 32, of the Public Records of Broward County, Florida, less that portion thereof lying West of a point 206.85 feet East of the intersection of said street with Coolidge Avenue, as shown on said plat; said Cleveland Avenue having been vacated and abandoned by Ordinance of the City of Fort Lauderdale heretofore passed; except, however, the following described portion of said land; Beginning at a point on the South boundary line of Tract A of the resubdivision of SHADY BANKS ON NEW RIVER, according to the Plat thereof recorded in Plat Book 40, Page 46 of the Public Records of Broward County, Florida, said point being 114 feet West of the Southeast corner of said Tract A; thence East along said South boundary line 114 feet to the Southeast corner of said Tract A; thence North along the East boundary of said Tract A, 8 feet to a point; thence West along a line parallel to said South boundary a distance of 108 feet to a point; thence Southwesterly on a straight line to the POINT OF BEGINNING; Less any portion contained within Parcel 1.

#### PARCEL 3 (LEASEHOLD ESTATE)

Together with The Leasehold Interest created by Sovereignty Submerged Land Lease recorded November 13, 1998 in Official Records Book 28891, Page 265, Sovereignty Submerged Land Lease and Modification to increase square footage recorded May 28, 2004 in Official Records Book 37567, Page 1279, Sovereignty Submerged Lease and Modification to reflect a change in Owners, recorded November 2, 2005 in Official Records Book 40816, Page 208, Public Records of Broward County, Florida, over the following described land:



A portion of the South Fork of New River, lying in Section 16, Township 50 South, Range 42 East and being more fully described as follows:

Commencing (1) at the Northeast corner of the Southwest one-quarter (SW  $\frac{1}{4}$ ) of said Section 16; thence North 90 degrees 00 minutes 00 seconds East, on the North line of the Southeast one-quarter of said Section 16, a distance of 52.52 feet, to a point on the wet face of an existing cap atop a bulkhead and also to a reference Point "A"; thence North 04 degrees 17 minutes 05 seconds East, on said wet face of cap, a distance of 1.16 feet, to the POINT OF BEGINNING (1); thence South 83 degrees 08 minutes 18 seconds East, a distance of 33.43 feet; thence South 04 degrees 07 minutes 26 seconds West, a distance of 10.38 feet; thence South 85 degrees 52 minutes 34 seconds East, a distance of 20.00 feet; thence North 04 degrees 07 minutes 26 seconds East, a distance of 60.00 feet; thence North 85 degrees 52 minutes 34 seconds West, a distance of 20.00 feet; thence South 04 degrees 07 minutes 26 seconds West, a distance of 46.09 feet; thence North 83 degrees 08 minutes 18 seconds West, a distance of 33.42 feet to a point on the said wet face of cap and to a reference Point "B"; thence South 04 degrees 17 minutes 05 seconds West, on said wet face of cap a distance of 3.53 feet, to the POINT OF BEGINNING (1);

Together With:

Commencing (2) at the aforementioned Reference Point "B"; thence North 04 degrees 17 minutes 05 seconds East, on said wet face of cap a distance of 12.08 feet to the POINT OF BEGINNING (2); thence continuing North 04 degrees 17 minutes 05 seconds East, on said wet face of cap, a distance of 74.57 feet; thence South 85 degrees 42 minutes 55 seconds East, a distance of 20.00 feet; thence South 04 degrees 17 minutes 05 seconds West, a distance of 74.57 feet; thence North 85 degrees 42 minutes 55 seconds West, a distance of 20.00 feet to the POINT OF BEGINNING (2).

Also Together With:

Commencing (3) at the aforementioned Reference Point "A"; thence South 17 degrees 03 minutes 47 seconds East, a distance of 88.24 feet, to the POINT OF BEGINNING (3); thence South 14 degrees 52 minutes 33 seconds West, a distance of 35.56 feet; thence South 33 degrees 50 minutes 47 seconds West, a distance of 48.63 feet to a point on said wet face of cap; thence South 26 degrees 46 minutes 32 seconds West, on said wet face of cap, a distance of 19.41 feet; thence South 81 degrees 16 minutes 24 seconds West on said wet face of cap, a distance of 123.66 feet, to a Reference Point "C"; thence South 08 degrees 43 minutes 36 seconds East, a distance of 20.00 feet; thence North 81 degrees 16 minutes 24 seconds East, a distance of 133.96 feet; thence North 26 degrees 46 minutes 32 seconds East, a distance of 28.47 feet; thence North 33 degrees 50 minutes 47 seconds East, a distance of 50.73 feet; thence North 14 degrees 52 minutes 33 seconds East, a distance of 38.90 feet; thence North 75 degrees 07 minutes 27 seconds West, a distance of 20.00 feet to the POINT OF BEGINNING (3).

Also Together With:

Commencing (4) at the aforementioned Reference Point "C"; thence North 76 degrees 54 minutes 00 seconds West, a distance of 24.19 feet, to a point on the said wet face of cap, and to the POINT OF

BEGINNING (4); thence North 88 degrees 49 minutes 49 seconds West on said wet face of cap, a distance of 80.26 feet to a Reference Point "D"; thence South 01 degrees 10 minutes 11 seconds West, a distance of 20.00 feet; thence South 88 degrees 49 minutes 49 seconds East, a distance of 80.26 feet; thence North 01 degrees 10 minutes 11 seconds East, a distance of 20.00 feet to the POINT OF BEGINNING (4).

Also Together With:

Commencing (5) at the aforementioned Reference Point "D"; thence North 89 degrees 09 minutes 21 seconds West, a distance of 353.18 feet, to the POINT OF BEGINNING (5); thence South 89 degrees 50 minutes 47 seconds West, a distance of 50.00 feet; thence South 00 degrees 09 minutes 13 seconds East, a distance of 20.00 feet; thence North 89 degrees 50 minutes 47 seconds East, a distance of 50.00 feet; thence North 00 degrees 09 minutes 13 seconds West, a distance of 20.00 feet to the POINT OF BEGINNING (5).

Also Together With:

Commencing at the aforementioned Reference Point "E"; thence South 84 degrees 38 minutes 49 seconds West, a distance of 254.98 feet to a point on the Easterly extension of the said wet face of cap and to the POINT OF BEGINNING (6); thence South 76 degrees 26 minutes 11 seconds West, on said extension and on said wet face of cap and its Westerly extension, a distance of 149.74 feet; thence South 16 degrees 29 minutes 31 seconds East, a distance of 28.95 feet; thence North 75 degrees 31 minutes 43 seconds East, a distance of 148.70 feet; thence North 14 degrees 28 minutes 17 seconds West, a distance of 26.56 feet to the POINT OF BEGINNING (6).

Said lands situate, lying and being in Broward County, Florida.

**PROMISSORY NOTE**

\$27,454,000.00

Broward County, Florida

June 20, 2006

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the order of **REGIONS BANK, an Alabama banking corporation ("Bank")**, at the office of the Bank at 301 St. Charles Avenue, New Orleans, Louisiana, 70130, or at such other place as the holder hereof may from time to time designate in writing, the principal sum of TWENTY SEVEN MILLION FOUR HUNDRED FIFTY-FOUR THOUSAND AND NO/100 DOLLARS (\$27,454,000.00), together with interest thereon on the principal amount from time to time outstanding at an annual rate prior to maturity or default equal to the "Base Rate" plus one-half of one percent (.50%) ("Base Rate" shall mean, at any time, the rate of interest quoted by Bank as the Regions Financial Corporation Base Rate). The interest rate shall be computed and adjusted as of the date(s) of change of said Base Rate and shall be computed on the actual number of days elapsed and an assumed year of 360 days. Borrower and all endorsers, sureties, guarantors and any other persons liable or to become liable with respect to the loan evidenced by this Note (the "Loan") are each included in the term "Obligors" as used in this Note. Said principal and interest shall be payable in lawful money of the United States, on the dates and in the amounts specified below, to wit:

Interest only shall be due and payable monthly in arrears commencing on the 5<sup>th</sup> day of August, 2006, and on the 5<sup>th</sup> day of each succeeding month thereafter until June 20, 2008, on which date the entire outstanding principal balance together with all accrued and unpaid interest shall be due and payable in full.

Borrower shall pay to Bank a late charge of five percent (5%) of any payment not received by Bank within ten (10) days of its due date; provided, however, if said ten (10) day period ends on a day other than a day on which Bank is open for Business (a "Business Day"), then the aforescribed late charge shall be payable if the payment is not received by the last Business Day within said ten (10) day period.

Except as provided hereinbelow, this Note may be prepaid in whole, or in part, without premium or penalty.

Borrower shall pay all amounts owing under this Note in full when due without set-off, counterclaim deduction or withholding for any reason whatsoever. If any payment falls due on a day other than a Business Day, then such payment shall instead be made on the next succeeding Business Day, and interest shall accrue accordingly. Any payment received by Bank after 1:00 p.m. shall not be credited against the indebtedness under this Note until at least the next succeeding Business Day.

Upon the occurrence of any of the following events (each an "Event of Default"), Bank may, at its option, or at any time thereafter, declare the whole of the principal sum then remaining unpaid

hereunder, together with all interest accrued thereon and all other sums owing under the Loan Documents, immediately due and payable without notice and Bank shall be entitled to pursue any and all rights and remedies provided by applicable law and/or under the terms of this Note or any other Loan Document, all of which shall be cumulative and may be exercised successively or concurrently: (a) if any sum payable pursuant to the terms of this Note is not paid within ten (10) days of its due date; or (b) if an Event of Default occurs and continues beyond the expiration of any applicable notice and cure period under any other Loan Document (this Note, the Florida Real Estate Mortgage, Assignment of Leases, Rents and Security Agreement of even date herewith (the "Mortgage"), the Construction Loan Agreement of even date herewith (the "Loan Agreement"), the Continuing Guaranty Agreement (the "Guaranty Agreement") executed by Earl E. Weber, Jr. (the "Guarantor") and all such instruments and documents, including, without limitation, any guaranties, agreements, mortgages, security agreements, assignments and other documents securing this Note, are referred to in this Note as a "Loan Document" and are collectively referred to as the "Loan Documents"). In addition, Bank shall have the right to set off any and all sums owed by Bank to Borrower (whether or not then due) against the Loan.

From and after an Event of Default, and regardless of whether the Bank also elects to accelerate the maturity of this Note, the entire principal remaining unpaid hereunder shall bear an augmented annual interest rate equal to the lesser of (i) twenty-five percent (25%) per annum, or (ii) the highest applicable lawful rate. Failure to exercise any and all rights or remedies Bank may in the event of any such default be entitled to shall not constitute a waiver of the right to exercise such rights or remedies in the event of any subsequent default, whether of the same or different nature. No waiver of any right or remedy by Bank shall be effective unless made in writing and signed by Bank, nor shall any waiver on one occasion apply to any future occasion.

In no event shall any agreed or actual exaction charged, reserved or taken as an advance or forbearance by Bank as consideration for the Loan exceed the limits (if any) imposed or provided by the law applicable from time to time to the Loan for the use or detention of money or for forbearance in seeking its collection, and Bank hereby waives any right to demand such excess. If the floating rate of interest based on the Base Rate should increase above such maximum interest rate permitted by applicable law (if any), then notwithstanding any contrary provision in this Note or any other Loan Document and without necessity of further agreement or notice by Bank or any Obligor, the unpaid principal balance of the Loan shall thereupon bear interest at such maximum lawful rate. If the floating interest should thereafter decrease below such maximum lawful rate, the Loan shall nevertheless continue to bear interest at such maximum lawful rate until Bank, receives the full amount of interest delayed by the application of such maximum lawful rate under this paragraph, at which time the Loan shall once again bear interest at the then applicable floating interest rate. In the event that the interest provisions of this Note or any exactions provided for in this Note or any other Loan Document shall result at any time or for any reason in an effective rate of interest that transcends the maximum interest rate permitted by applicable law (if any), then without further agreement or notice the obligation to be fulfilled shall be automatically reduced to such limit and all sums received by Bank in excess of those lawfully collectible as interest shall be applied against the principal of the Loan immediately upon Bank's receipt thereof, with the same force and effect as though the payor had specifically designated such extra sums to be so applied to principal and Bank had agreed to accept such extra payment(s) as a premium-free prepayment or prepayments. During

any time that the Loan bears interest at the maximum lawful rate (whether by application of this paragraph, the default provisions of this Note or otherwise), interest shall be computed on the basis of the actual number of days elapsed and the actual number of days in the respective calendar year. Pursuant to Florida Statutes, Section 687.12, the interest rate charged is authorized by Florida Statutes, Chapter 665.

The Obligors hereby severally: (a) waive demand, presentment, protest, notice of dishonor, suit against or joinder of any other person, and all other requirements necessary to charge or hold any Obligor liable with respect to the Loan; (b) waive any right to immunity from any such action or proceeding and waive any immunity or exemption of any property, wherever located, from garnishment, levy, execution, seizure or attachment prior to or in execution of judgment, or sale under execution or other process for the collection of debts; (c) waive any right to interpose any set-off or non-compulsory counterclaim or to plead laches or any statute of limitations as a defense in any such action or proceeding and waive (to the extent lawfully waivable) all provisions and requirements of law for the benefit of any Obligor now or hereafter in force; (d) submit to the jurisdiction of the state and federal courts in the State of Florida for purposes of any such action or proceeding; (e) agree that the venue of any such action or proceeding may be laid in Broward County, Florida (in addition to any county in which any collateral for the Loan is located), and waive any claim that the same is an inconvenient forum; (f) stipulate that service of process in any such action or proceeding shall be properly made if mailed by any form of registered or certified mail (airmail if international), postage prepaid, to the address then registered in Bank's records for the Obligor(s) so served, and that any process so served shall be effective ten (10) days after mailing; and (g) agree that the death or mental or physical incapacity of any Obligor who is a natural person, or the dissolution or merger or consolidation or termination of the existence of any Obligor that is a business entity (or if any person controlling such Obligor shall take any action authorizing or leading to the same), shall at Bank's option, which option may be exercised then or at any time thereafter, result in the Loan being then due and payable in full. No provision of this Note shall limit Bank's right to serve legal process in any other manner permitted by law or to bring any such action or proceeding in any other competent jurisdiction. The Obligors hereby severally consent and agree that, at any time and from time to time without notice, (i) Bank and the owners(s) of any collateral then securing the Loan may agree to release, increase, change, substitute or exchange all or any part of such collateral, and (ii) Bank and any person(s) then primarily liable for the Loan may agree to renew, extend or compromise the Loan in whole or in part or to modify the terms of the Loan in any respect whatsoever; no such release, increase, change, substitution, exchange, renewal, extension, compromise or modification shall release or affect in any way the liability of any Obligor, and the Obligors hereby severally waive any and all defenses and claims whatsoever based thereon. Until Bank receives all sums due under this Note and all other Loan Documents in immediately available funds, no Obligor shall be released from liability with respect to the Loan unless Bank expressly releases such Obligor in a writing signed by Bank, and Bank's release of any Obligor(s) shall not release any other person liable with respect to the Loan.

The Obligors jointly and severally agree to pay all filing fees and similar charges and all costs incurred by Bank in collecting or securing or attempting to collect or secure the Loan, including attorney's fees, whether or not involving litigation and/or appellate, administrative or bankruptcy proceedings. The Obligors jointly and severally agree to pay any documentary stamp taxes,

intangibles taxes or other taxes (except for federal or Florida franchise or income taxes based on Bank's net income) which may now or hereafter apply to this Note or the Loan or any security therefor, and the Obligors jointly and severally agree to indemnify and hold Bank harmless from and against any liability, costs, attorney's fees, penalties, interest or expenses relating to any such taxes, as and when the same may be incurred. The Obligors jointly and severally agree to pay on demand, and to indemnify and hold Bank harmless from and against, any and all present or future taxes, levies, imposts, deductions, charges and withholdings imposed in connection with the Loan by the laws or governmental authorities of any jurisdiction other than the State of Florida or the United States of America, and all payments to Bank under this Note shall be made free and clear thereof and without deduction therefor.

This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, except that federal law shall govern to the extent that it may permit Bank to charge, from time to time, interest on the Loan at a rate higher than may be permissible under applicable Florida law.

Any provision of this Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent that the Obligors may lawfully waive any law that would otherwise invalidate any provision of this Note, each of them hereby waives the same, to the end that this Note shall be valid and binding and enforceable against each of them in accordance with all its terms.

If this Note is signed by more than one person, then the term "Borrower" as used in this Note shall refer to all such persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Note are made by and shall be binding upon each and every undersigned person, jointly and severally. The term "Bank" shall be deemed to include any subsequent holder(s) of this Note. Whenever used in this Note, the term "person" means any individual, firm, corporation, trust or other organization or association or other enterprise or any governmental or political subdivision, agency, department or instrumentality thereof. Whenever used in this Note, words in the singular include the plural, words in the plural include the singular, and pronouns of any gender include the other genders, all as may be appropriate. The "Base Rate" is a base reference rate of interest adopted by Bank as a general benchmark from which Bank determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness, and Borrower acknowledges and agrees that Bank has made no representations whatsoever that the "Base Rate" is the interest rate actually offered by Bank to borrowers of any particular creditworthiness.

Time shall be of the essence with respect to the terms of this Note. This Note cannot be changed or modified orally. Bank shall have the right unilaterally to correct patent errors or omissions in this Note or any other Loan Document. Except as otherwise required by law or by the provisions of this Note or any other Loan Document, payments received by Bank hereunder shall be applied first against expenses and indemnities, next against interest accrued on the Loan, and next in reduction of the outstanding principal balance of the Loan, except that from and after any default

under this Note, Bank may apply such payments in any order of priority determined by Bank in its exclusive judgment. Borrower shall receive immediate credit on payments only if made in the form of either a federal wire transfer of cleared funds or a check drawn on an account maintained with Bank containing sufficient available funds. Otherwise, Borrower shall receive credit on payments after clearance, which shall be no sooner than the first Business Day after receipt of payment by Bank. For purposes of determining interest accruing under this Note, principal shall be deemed outstanding on the date payment is credited by Bank. If any payment required to be made pursuant to this Note is not received on the due date, Bank shall have the right, at its election, to charge any of Borrower's accounts at Bank with the amount of such payment. Except as otherwise required by the provisions of this Note or any other Loan Document, any notice required to be given to any Obligor shall be deemed sufficient if made personally or if mailed, postage prepaid, to such Obligor's address as it appears in this Note (or, if none appears, to any address for such Obligor then registered in Bank's records). Bank may grant participations in all or any portion of, and may assign all or any part of Bank's rights under, this Note. Bank may disclose to any such participant or assignee any and all information held by or known to Bank at any time with respect to any Obligor. If Borrower or any other Obligor is a partnership, then all general partners thereof shall be liable jointly and severally for all obligations under this Note and for all other covenants, agreements, undertakings and obligations of Borrower in connection with the Loan, notwithstanding any contrary provision of the partnership laws of the State of Florida. All of the terms of this Note shall inure to the benefit of Bank and its successors and assigns and shall be binding upon each and every one of the Obligors and their respective heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally.

The Mortgage encumbers real and personal property located in Broward County, Florida, and is intended to be recorded amongst the Public Records of said County.

BANK AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. BORROWER ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO THE BANK IN EXTENDING CREDIT TO THE BORROWER, THAT THE BANK WOULD NOT HAVE EXTENDED SUCH CREDIT WITHOUT THIS JURY TRIAL WAIVER, AND THAT BORROWER HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.

WITNESS the due execution hereof as of the date first above written.

**BORROWER:**

**PIER SEVENTEEN MARINA AND YACHT CLUB, LLC**, a Louisiana limited liability company

By: [Signature]  
**EARL E. WEBER, JR.**, its Manager

STATE OF Florida )  
 ) SS:  
COUNTY OF Broward )

The foregoing instrument was acknowledged before me this 20 day of June, 2006, by **EARL E. WEBER, JR.**, as Manager of **PIER SEVENTEEN MARINA AND YACHT CLUB, LLC**, a Louisiana limited liability company, on behalf of the company. He is personally known to me or has produced Louisiana Driver's License as identification.

[NOTARIAL SEAL]

Notary: Cheryl M. C. Chudnow  
Print Name: Cheryl M.C. Chudnow  
Notary Public, State of Florida  
My commission expires: April 14, 2010



Cheryl M.C. Chudnow  
Commission # DD512580  
Expires April 14, 2010  
Bonded Tary Public - Insurance, Inc. 800-895-7019



Jericho All-Weather Opportunity Fund, L.P.  
3835 NW Boca Raton Blvd., Building 200  
Boca Raton, Florida 33431  
Tel: (561) 362-0091  
Fax: (561) 362-7199

January 11, 2008

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company  
1500 SW 17<sup>th</sup> Street  
Fort Lauderdale, Florida 33309

Dear Sirs:

We are pleased to advise you that Jericho All-Weather Opportunity Fund, L.P. ("Lender") has approved making a loan to you in the principal amount of Twenty Three Million and No/100 (\$23,000,000.00) Dollars (the "Loan") on the following terms and subject to the following conditions:

**1. TERMS OF THE LOAN**

**Borrower:** A single purpose entity acceptable to Lender and wholly owned and controlled by Earl E. Weber, Jr..

**Loan Amount:** Twenty Three Million and No/100 (\$23,000,000.00) Dollars.

**Term:** Eighteen (18) months (the "Term").

**Options to Extend:** Provided that (i) the Loan is not in default (as of the date that the option is to be exercised up to and including the date the Renewal Term commences) and (ii) the Borrower has not been late in making the monthly payments during the Term, the Borrower shall have the option to extend the Initial Term of the Loan for an additional six (6) months. The Borrower must give written notice to the Lender of its exercise of the option to extend at least sixty (60) days prior to the expiration of the Initial Term, with time being of the essence, and must include with each such notice a fee to Lender of 2% of the original Principal Balance in consideration therefore. Simultaneously with each such notice, the Borrower must also deposit with Lender an additional amount of money to be used as an Interest Reserve for such Renewal Term as hereinafter set forth.

**Interest Rate:** 14% per annum. (360 day basis).

**Guarantor:** Earl E. Weber, Jr. and Michelle J. Weber (collectively "Guarantor") shall unconditionally guaranty the Loan.

**Interest Reserve:** At Closing, Borrower shall post with Lender the sum of One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars ("First Interest Reserve"), which shall be held by Lender and applied against the monthly payments of interest due on the Senior Loan as and when they come due. The amounts so deposited will be maintained by the Lender at a bank or financial institution chosen by Lender, not as a trust fund and without interest (except solely as may be required by applicable law), to be applied to the payments of interest as they become due and payable provided there shall be no default under the Loan. The interest reserve account shall constitute additional collateral

EXHIBIT

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security for the Loan and in the event of default Lender shall be permitted to apply same to the Loan, in such order as Lender shall determine. Borrower understands and agrees that once the First Interest Reserve is insufficient to cover all or a portion of the payments then due on the Senior Loan (including, without limitation, interest payments), Borrower (and Guarantor) of their own funds shall nonetheless make the payments due on the Senior Loan and Borrower warrants and represents that it and the Guarantor have the financial ability to make such payments. In the event the Loan is prepaid in full prior to the expenditure of the First Interest Reserve, the remaining sum in the First Interest Reserve shall reduce the amounts due under the Loan. The First Interest Reserve is deemed funded upon the date of Closing and interest will commence to accrue on such monies on such date.

At Closing, Borrower shall post with Lender the sum of Three Million and No/100 (\$3,000,000.00) Dollars ("Second Interest Reserve"), which shall be held by Lender and applied against the monthly payments of interest due on the Loan as and when they come due. The amounts so deposited will be maintained by the Lender at a bank or financial institution chosen by Lender, not as a trust fund and without interest (except solely as may be required by applicable law), to be applied to the payments of interest as they become due and payable provided there shall be no default under the Loan. The interest reserve account shall constitute additional collateral security for the Loan and in the event of default Lender shall be permitted to apply same to the Loan, in such order as Lender shall determine. Borrower understands and agrees that once the Second Interest Reserve is insufficient to cover all or a portion of the payments then due on the Loan (including, without limitation, interest payments), Borrower (and Guarantor) of their own funds shall nonetheless make the payments due on the Loan and Borrower warrants and represents that it and the Guarantor have the financial ability to make such payments. Monies from the Second Interest Reserve will be deemed funded upon any payment from the Second Interest Reserve and interest will then commence to accrue on such monies on the date of funding.

**Construction Reserve:**

A. At Closing, Borrower shall post with Lender the sum of \$16,898,000.00 as a Construction Reserve. Provided there is no event of default under the Loan, the Construction Reserve will be disbursed in direct payment to third party contractors of certain construction costs (as shown on the attached budget and scope of work to be attached hereto as Exhibit B which is subject to Lender's approval) to the Property which are actually made to the Property following the Closing. It is a condition to the Closing of the Loan, that the plans and budget (showing expenditures broken down by line item in such detail as Lender shall require) for the proposed construction work are both satisfactory to Lender in all respects and that prior to Closing, there shall be a work permit and other necessary permits in place for the construction project for any draw request. It is also a condition that Borrower has established to Lender's satisfaction that the amount of the Construction Reserve is sufficient to cover the expected cost of the proposed construction work and such contingency factor as Lender shall determine. Monies from the Construction Reserve will be deemed funded upon any payment from the Construction Reserve and interest will then commence to accrue on such monies on the date of funding.

B. Disbursements from the Construction Reserve shall be made in accordance with Lender's standard construction loan documentation, which requires, among other things, that disbursements are only made upon the receipt of (i) lien waivers, (ii) appropriate endorsements to the title policy, (iii) a copy of the applicable invoice describing the work being billed for in reasonable detail, (iv) certification from an independent architect and/or engineer that the work subject to the payment request has been completed in accordance with the approved plans and approved construction budget and that the remaining Construction Reserve is sufficient to cover the expected balance of the

construction costs with Lender's required contingency factor and that the construction is on schedule to be completed within the required timeframe, and (v) the satisfactory inspection by Lender or Lender's construction representative. A 10% retainage will be held from each disbursement relating to "hard" costs which will be disbursed upon the final completion of the construction, a final inspection by Lender and receipt of all applicable permits and a permanent certificate of occupancy (if required). Disbursements shall be made no more often than twice per month and each disbursement shall be in the minimum amount of \$100,000, with the Lender reserving the right to pay such disbursements directly to the contractors.

C. The Construction Reserve will be maintained by the Lender at a bank or financial institution chosen by Lender, not as a trust fund and without interest (except solely as may be required by applicable law), to be applied as herein and in the Loan Documents set forth provided there shall be no default under the Loan. The Construction Reserve shall constitute additional collateral security for the Loan and, in the event of default, Lender shall be permitted to apply same to the Loan, in such order as Lender shall determine. Further, if a default shall occur under the Loan, then in addition to all of Lender's other rights and remedies, Lender shall have no obligation to make any further disbursements from the Construction Reserve. At the option of Lender's Counsel, the Mortgage may consist of one mortgage for the entire Loan Amount or a standard second mortgage.

D. It is also a condition to the Loan that (x) the construction be performed by a contractor approved by Lender and pursuant to a written agreement satisfactory to Lender and (y) such contractor and construction agreement shall be fully bonded in favor of Lender by an indemnitor and on such terms and conditions as shall be acceptable to Lender but which must include, without limitation, (i) that the Bond shall cover all cost overruns and (ii) that the indemnitor shall be obligated to have the construction completed within the specified time frame in accordance with the approved plans.

**Payments:** Provided there shall be no default, payments shall be made monthly in arrears and shall be comprised of interest only payments on the outstanding principal balance calculated at the Interest Rate. Interest is to be calculated based on the actual days elapsed over a 360 day year.

**Prepayment:** A prepayment shall be due on any principal that is prepaid within six (6) months from the date of the Note equal to all interest that would have accrued on such principal during the initial six (6) months, had it not been prepaid. Borrower shall have the right to prepay the outstanding Principal Balance in whole or in part (in minimum increments to be agreed upon by Lender) upon prior written notice of no less than thirty (30) days.

2. **LOAN PURPOSE; PREMISES.** The Loan shall be used (i) for refinancing Borrower's property identified on the property referenced on Exhibit "A" attached hereto ("Property"), (ii) for construction financing for the Property, and therefore, to fund the Construction Reserve (iii) to fund the Interest Reserve, (iv) for certain Lender-approved closing costs; and (v) to pay all taxes for the year 2007 and 2008. Borrower represents to Lender that Borrower is currently under contract(s) with a bona fide third party purchaser(s) for the dock slips constituting part of the Property at a total purchase price no less than Eighteen Million One Hundred Fifty Thousand and No/100 (\$18,150,000.00) Dollars, and it shall be a condition to Lender's obligations hereunder that the signed written contract(s) of sale must be delivered to Lender and must confirm such purchase price and be otherwise satisfactory to Lender in all respects. Borrower represents that the Property is currently zoned to permit the operation of dock slips. It is a condition to the Loan that Borrower have at least Five Million and No/100 (\$5,000,000.00) Dollars of cash equity in the transaction. If any of the amounts set forth above shall be less than as represented then the Loan Amount shall be reduced by such difference but in no event will the Loan Amount be increased.

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3. **SECURITY FOR THE LOAN.** The Loan will be evidenced by a note and will be secured by a blanket mortgage or deed of trust (either being referred to as the "Mortgage") on the Property, which shall be a valid second lien on a good, unencumbered and marketable title in fee simple to the Property. The Loan will also be secured by (a) a second priority security interest duly perfected under the Uniform Commercial Code covering all equipment, fixtures and articles of personal property at any time affixed to, installed at, or used in connection with the operation of the Property, (b) an assignment of all leases, rents and profits of the Property, (c) the personal guaranty of Earl E. Weber, Jr. ("Guarantor"), (d) an environmental guaranty of Borrower and Guarantor, (e) a pledge in favor of Lender from the sole member of Borrower of all membership interests in Borrower and Earl E. Weber, Jr., (f) all other security instruments and interests referred to in this commitment. All documents relating to the Loan shall be on Lender's standard forms for same subject to the terms hereof; and (g) a pledge of all letters of credit ("letters of credit") issued in connection with the purchase of any slips (at a minimum \$1,800,000.00) in first position.

4. **MORTGAGE PROVISIONS.** The Mortgage and/or Loan Agreement will provide, among other things, the following:

(a) **Restrictions of Transfer/Due On Sale.** The Mortgage shall contain a provision giving the Lender the right to call the Loan in the event of a sale of the Property or any portion thereof, or, if Borrower is an entity, upon the conveyance of any of the direct or indirect ownership interests in Borrower and/or upon a change in control of Borrower, and the Mortgage and related documents shall prohibit Borrower from entering into contracts of sale for all or any portion of the Property.

(b) **Tax and Insurance Escrow.** Borrower will deposit at closing, with a third party escrow agent approved by Lender, an amount reasonably estimated to pay for 2008 real estate taxes and a renewal of the present insurance.

(c) **Records and Accounts.** Borrower will keep proper books of record and account with respect to the operation of the Property in accordance with generally accepted accounting principles consistently applied and will furnish the Lender with quarterly and annual financial statements (including a quarterly certified rent roll) within 30 days of the end of each quarter and 90 days after the end of each calendar year, in form reasonably satisfactory to Lender, which shall disclose in reasonable detail all earnings and expenses with respect to the operation of the Property. The financial statements shall be certified by an executive officer (or equivalent) of Borrower.


(d) **Late Charges.** If any payment under the Loan shall become overdue for a period in excess of five days, then (to the extent permitted by law) a late charge of five (\$.05) cents for each dollar so overdue shall become immediately due to Lender.

(e) **Default Interest.** Upon default beyond any applicable notice and/or cure period(s) under the Mortgage or any of the other Loan Documents, the interest payable on the Loan shall be at the highest rate permitted by law.

(f) **Grace Periods.** As more fully described in the Mortgage and in the Loan Documents, there shall be a grace period of five days with respect to monetary defaults. For most non-monetary defaults, there shall be a notice and grace period of fifteen days (with provision for up to 30 days to cure such non-monetary defaults as are not reasonably susceptible to cure within such 15 days provided Borrower shall at all times be diligently pursuing such cure to completion, all as more fully to be set forth in the Loan documents).

(g) **Liability.** The Loan shall be recourse to Borrower and shall also be personally guaranteed by the Guarantors as set forth above.

(h) **Subordinate Financing; Refinancing.** The Mortgage will prohibit subordinate financing or other liens being placed on the Property or any portion thereof.

 (i) **Priority Financing.** The principal balance of the loan in favor of Regions Bank ("Senior Loan") cannot exceed Twelve Million and No/100 (\$12,000,000.00) Dollars, cannot become due prior to the Term, and further, Regions Bank will execute an intercreditor agreement acceptable to Lender, which states, among other matters, that no default exists under the Senior Loan, and that the security interest of Regions Bank is subordinate to Lender's security interest/pledge in the letters of credit.

(j) The original letters of credit will be delivered to Lender and appropriate documentation will be obtained from such issuing banks and that all disbursements will be made to Lender and no disbursement will be made to Borrower without Lender's approval. (The form document is attached).

5. **RESTRICTIONS ON ASSIGNMENT.** This commitment may not be assigned by Borrower as the identity of the person(s) with whom Lender deals is of material importance to it.

6. **FEEs.**

A. The Origination Fee due to the Lender or its affiliates hereunder is One Million Six Hundred Ten Thousand and No/100 (\$1,610,000.00) Dollars, of which Two Hundred Thirty Thousand and No/100 (\$230,000.00) Dollars ("Commitment Fee") shall be due and payable by Borrower simultaneously with Borrower's execution and delivery of this commitment, and the balance of which [i.e. an additional One Million Three Hundred Eighty Thousand and No/100 (\$1,380,000.00) Dollars] shall be due and payable by Borrower at the Closing of the Loan. If the Loan is not closed for any reason, Lender shall retain the Commitment Fee paid as full liquidated damages, but such liquidated damages shall not waive Lender's right to obtain reimbursement of its costs and expenses to the extent they shall exceed the Commitment Fee. The determination of the compliance by Borrower with the conditions contained herein shall be made by Lender in its sole but reasonable determination. In no event shall either party be liable to the other for consequential damages on account of a breach hereof.

B. Borrower has previously paid Lender a Legal Fee Deposit of Ten Thousand and No/100 (\$10,000.00) Dollars to be used by Lender's Counsel to commence its due diligence and the preparation of Loan Documents. The Legal Fee Deposit is merely a deposit and is not intended as an estimate of the final fees and disbursements for Lender's Counsel. Accordingly, at Closing (or if the Loan shall not close then upon the termination of this Commitment) Borrower shall be required to pay to Lender the excess of the amount of the actual fees and disbursements of Lender's Counsel over the Legal Fee Deposit. In the event that prior to Closing the legal fees and disbursements shall exceed the Legal Fee Deposit, Lender shall have the right to cause Lender's Counsel to stop work towards the Closing and unless Borrower shall pay to Lender or Lender's Counsel (as an addition to the Legal Fee Deposit), the amount that Lender's Counsel reasonably estimates will be necessary to finish its work within one (1) day of request therefore, this commitment shall automatically terminate and Lender shall be entitled to retain all funds on deposit with it and Lender shall have no further obligations under this commitment.

C. At Closing, Borrower shall pay to Lender a non-refundable Credit Review Fee of \$5,000.00 (to offset the costs of Lender's internal credit, appraisal, site inspection and due diligence procedures).

7. **BROKER.** Borrower represents and warrants to Lender that Borrower has not dealt with any broker with respect to the transaction contemplated hereby other than Tavernier Capital Partners (whom Borrower agrees to pay at Closing) and Kensington Capital and by accepting this commitment Borrower agrees forever to indemnify and save Lender harmless from and against any and all claims or suits for compensation, commissions or otherwise (and all costs, losses and expenses, including, but not limited to, reasonable attorneys fees and expenses related thereto) that may be asserted or made by any broker, person or entity claiming to have dealt with or to have been employed by Borrower. This provision shall survive the Closing or other termination of this commitment. The Kensington Capital brokers' fee will be paid directly by Borrower, and not from the loan proceeds. Proof and satisfaction of payment are due by Closing. In addition, regarding the sales of slips, commissions are also due third party brokers, which will be paid directly by Borrower, and not from the loan proceeds. Proof and satisfaction of payment are due by Closing.

8. **LENDER'S COUNSEL.** Lender will be represented in this matter by counsel of Lender's choice (which may also include Lender's local counsel). The fees and expenses of Lender's Counsel (including such local counsel) shall be payable by Borrower at Closing, or if the Loan shall not close then at the termination of this commitment.

9. **CLOSING.** The closing of the Loan (the "Closing") will take place at the offices of Lender's Counsel (which may be the offices of Lender's local counsel) on or prior to the Expiration Date (as hereinafter defined) as shall be mutually agreed to by Lender and Borrower.

10. **LOAN EXPENSES.** Borrower's acceptance of this commitment shall constitute its unconditional agreement to pay all fees, costs, charges and expenses with respect to the Loan or its making or in any way connected therewith, including, without limitation, the fees and expenses of Lender's counsel, title insurance premiums, survey costs, recording and filing fees, real estate tax service charges, documentary stamps, mortgage taxes and any and all other taxes, fees and expenses payable in connection with the Loan.

11. **ACCEPTANCE AND EXPIRATION.** This commitment shall not become effective unless executed by both Lender and Borrower. Acceptance of this commitment will constitute the Borrower's agreement to accept the Loan from the Lender and an authorization for the Lender's counsel to proceed at the Borrower's expense with the examination of title to the Property and to prepare for the Closing. This commitment will expire and all obligations of the Lender hereunder will terminate on the date that is fifteen (15) business days after the date hereof (such date is herein referred to as the "Expiration Date"). Time shall be of the essence under this commitment letter and in the Mortgage. It is understood and agreed that if a check for any portion of the Fees shall fail to clear then Lender shall retain the portion, if any, of the Fees that shall have cleared and this commitment shall terminate and neither party shall have any further obligations hereunder to the other except that Lender shall be permitted to attempt to collect from Borrower on the check(s) that shall have failed to clear by commencing litigation or otherwise as provided for by law.

12. **GENERAL LOAN CONDITIONS.** The obligation of Lender to make the Loan is expressly conditioned on the satisfaction of each and every one of the provisions and conditions of this Commitment Letter, including, without limitation, those set forth in the General Loan Conditions attached hereto, the terms of which are hereby incorporated herein. Borrower acknowledges that this Commitment Letter is intended as an outline only and does not purport to summarize all of the terms, conditions, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation for the Loan. The terms and conditions of the Loan will be further developed and supplemented during the course of Lender's due diligence and the preparation and negotiation of the loan documents. The loan documents for the Loan will include, in addition to the provisions that are summarized in this Commitment Letter, provisions that, in the opinion of Lender, are customary or typical for this type of financing transaction and other provisions that Lender may determine, in its sole but reasonable discretion, to be appropriate in the context of the proposed transaction. Such definitive legal documentation shall be in form and substance satisfactory to Lender. Lender's commitment to provide the Loan, as described herein, is subject to the satisfaction of Lender at all times that there has not occurred, or become known to Borrower or Lender, any material adverse change with respect to the condition, (financial or otherwise), operations, assets, liabilities or prospects of the Property, Guarantor or Borrower (or any subsidiary of Borrower, including, without limitation, Borrower and its owners), as determined by Lender in its sole but reasonable discretion (hereinafter referred to as a "Material Adverse Change"). If at any time Lender shall determine (in its sole discretion) that any Material Adverse Change has occurred, Lender may terminate this Commitment Letter by giving notice thereof to Borrower (subject to the obligation of Borrower to pay all fees, costs, charges, expenses and other payment obligations expressly assumed by Borrower hereunder, which shall survive the termination of this Commitment Letter).

13. **MISCELLANEOUS.** The loan documents shall be governed by the laws of the state in which the Property is located. This commitment contains the entire agreement between the parties hereto in respect of the matters hereof and supersedes any prior (oral or written) agreements. This commitment may not be modified nor any of its terms waived except by a writing executed by the party to be charged by such modification or waiver. Any item in this commitment calling for the approval of Lender shall mean that such approval is a condition to Lender's obligations hereunder.

Very truly yours,

JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.  
SUIRSKY Asset Management, Inc.

By: [Signature]  
Title: President

APPROVED AND ACCEPTED:

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company

By: [Signature]  
Earl E. Weber, Jr., Manager

[Signature]  
Earl E. Weber, Jr.  
Michelle J. Weber  
Michelle J. Weber

### GENERAL LOAN CONDITIONS

1. Title Insurance. At Closing Borrower shall deliver to Lender, at Borrower's cost, a policy of title insurance for the Loan, issued by a title insurance company acceptable to lender in the principal amount of the Loan, showing good and marketable fee simple title to the Property in the Borrower and insuring the Lender that the Mortgage is a second lien for the full amount of the Loan, subject only to such exceptions as shall be approved by Lender. Lender may, at its and Lender's Counsel's discretion, accept mortgages by assignment to constitute the Mortgage provided all original loan documents are available and satisfactory to Lender's Counsel and the assignment(s) are satisfactory to Lender's Counsel.

2. Survey. Prior to Closing Borrower shall deliver to Lender a boundary survey of the Property by a licensed engineer or surveyor, dated or redated not more than thirty (30) days prior to the Closing, which shall be certified to Lender and the title company and which shall contain such information as Lender shall require.

3. Legal Compliance and Other Conditions. As a condition to Lender's obligations hereunder, Borrower shall provide Lender with:

- (a) evidence reasonably satisfactory to Lender that the tax lot or lots for the Property do not include any properties other than the Property;
- (b) evidence satisfactory to Lender in all respects that the Property and the operation and use thereof as dock slips comply in all respects with all zoning (without grandfathering), building, parking, subdivision, development, environmental and all other applicable laws, ordinances, rules and regulations and other legal requirements affecting or relating to the Property and there is no violation of record or claimed violation of any of the foregoing that remains outstanding and uncured. At Lender's discretion, it may require a zoning letter regarding the foregoing from the municipality having jurisdiction over the Property;
- (c) evidence satisfactory to Lender in all respects that the Property and the operation and use thereof as dock slips comply in all respects with all applicable parking requirements (without grandfathering) imposed by applicable law and any imposed by leases at the Property or any covenants or restrictions of record (including without limitation "REA" agreements) affecting the Property; and
- (d) an opinion of counsel (satisfactory to Lender's Counsel) on such matters as Lender's Counsel shall reasonably require given the circumstances of the transaction (including a zoning opinion).

4. Insurance. The Mortgage shall require, among other things, that Borrower shall deliver to Lender original policies (or certificates for same) of fire and extended coverage insurance covering the Property in an amount equal to the full replacement value of the improvements, if any, and with premiums fully paid to the applicable insurer one (1) year in advance, which insurance shall name Lender under a standard New York mortgagee endorsement or local equivalent. All such policies shall be satisfactory to the Lender as to amounts and types of coverage and the companies by which such policies are issued. Deductibles shall be no more than \$25,000. The Mortgage shall also require that Borrower shall carry rent insurance in an amount equal to one year's then-applicable gross income from the Property and comprehensive general liability insurance, in an amount satisfactory to Lender. In addition, during the construction, Builder's Risk and such other insurance as Lender shall require shall be kept. Flood insurance shall be required if Lender determines that the Property is in a flood zone.

5. Leases. Prior to the Closing, Borrower shall submit to Lender true copies of all leases and occupancy agreements for the Property, including all amendments thereto or extensions thereof, and any guaranties thereof (collectively the "Lease Agreement"). The Lease Agreement shall be satisfactory to Lender in all respects. It is a further condition to Lender's obligation under this commitment that Borrower shall have delivered to Lender copies of the most current rental delinquency reports as required by Lender which must be to Lender and Lender's counsel.



6. **No Change in Condition.** As of the Closing, (a) neither the Property nor any portion thereof shall have been destroyed or damaged, (b) no adverse change shall have occurred in the results of operations of the Property or in the financial condition of Borrower or the Guarantor(s), and (c) no judicial or administrative proceeding shall be pending against Borrower, any Guarantor or the Property which if adversely determined would, in the opinion of Lender, affect the security of the Loan.

7. **Supporting Documentation.** Prior to Closing, Borrower shall submit to Lender such documentation as Lender shall require to support the financial statements previously (or herewith) delivered and the representations previously (or herein) made by Borrower to Lender and Lender's obligations hereunder shall be conditioned on the accuracy of such statements and representations. This commitment shall constitute the authorization by Borrower to obtain a credit report of Borrower and/or Guarantor from any credit reporting service, which must be acceptable to Lender. Guarantor shall submit its financial statements to Lender for its approval prior to Closing. This Loan shall be conditioned on the Lender's receipt and upon approval of the financial statements, credit report and criminal background search of Guarantor and Borrower and such other searches required by Lender's counsel. Borrower hereby represents on behalf of Guarantor that no Guarantor has been convicted of a felony nor is any Guarantor's currently indicted or under arrest or to their knowledge under investigation in respect of an alleged felony. This loan shall also be conditioned on the Lender's receipt and approval of the financial statements of Guarantor.

8. **Reports.** Prior to Closing, Borrower shall provide, at Borrower's expense, an environmental audit which shall include a visual survey, assessing the presence of hazardous or toxic wastes or substances, lead, asbestos, PCBs or storage tanks or other hazardous material at the Property, the results of checking with governmental agencies, and the identities of previous owners and users of the Property. The consultants, their qualifications, the scope and methodology of their investigations, their reports and recommendations and the form, scope and substance of their certifications to Lender must be acceptable to Lender in all respects. If Borrower shall not have current inspections of the Property, or if either or both of Borrower's existing reports are unsatisfactory to Lender in any respect, then Lender shall arrange for such inspections (at Borrower's expense) with such consultant(s) as Lender shall determine, which must be satisfactory to Lender in all respects.

9. **Certain Payments.** Neither Borrower nor any of its affiliates has directly or indirectly received or will receive any commissions or fees or any other consideration from the Seller of the Property, the mortgage broker, the real estate broker, the insurance broker or the title company and neither Borrower nor any of its affiliates is an affiliate of the Seller of the Property, the mortgage broker, the real estate broker, the insurance broker or the title company.

10. **Intentionally Deleted.**

11. **OFAC Disclosure and Obligations.** Borrower and each party signing this commitment jointly certify to Lender that, to such party's knowledge after having made reasonable inquiry, (a) no principal of the Borrower, no principal of any entity comprising Borrower, no property manager and no tenant at the property is currently identified on the list ("OFAC List") of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control, and (b) no principal of the Borrower, no principal of any entity comprising Borrower, no property manager and no tenant at the property is a person/entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. (The OFAC List is accessible through the internet website [www.treas.gov/ofac/tl.sdn.pdf](http://www.treas.gov/ofac/tl.sdn.pdf).) Borrower acknowledges and agrees that Borrower has a continuing obligation during the processing of the Loan to notify Lender promptly if any new information or change of condition exists to make such certification inaccurate or misleading. Borrower will be required to reconfirm these representations in the Loan documents and will be liable for all costs incurred by Lender arising from a violation thereof.

JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.

Skirsky Asset Management, Inc.

By: [Signature]

Title: President

APPROVED AND ACCEPTED:

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company

By: [Signature]

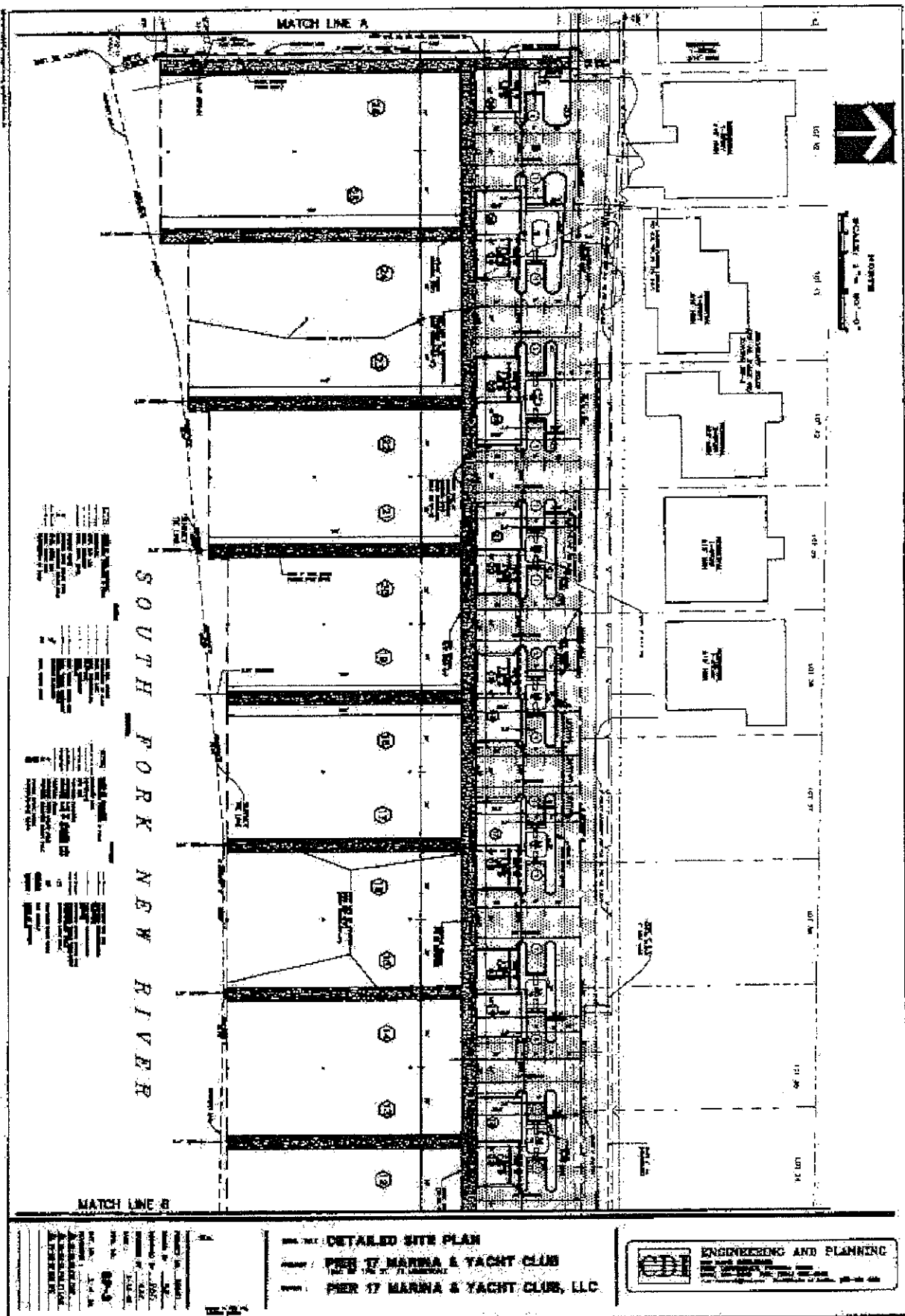
Earl E. Weber, Jr., Manager

Earl E. Weber, Jr.

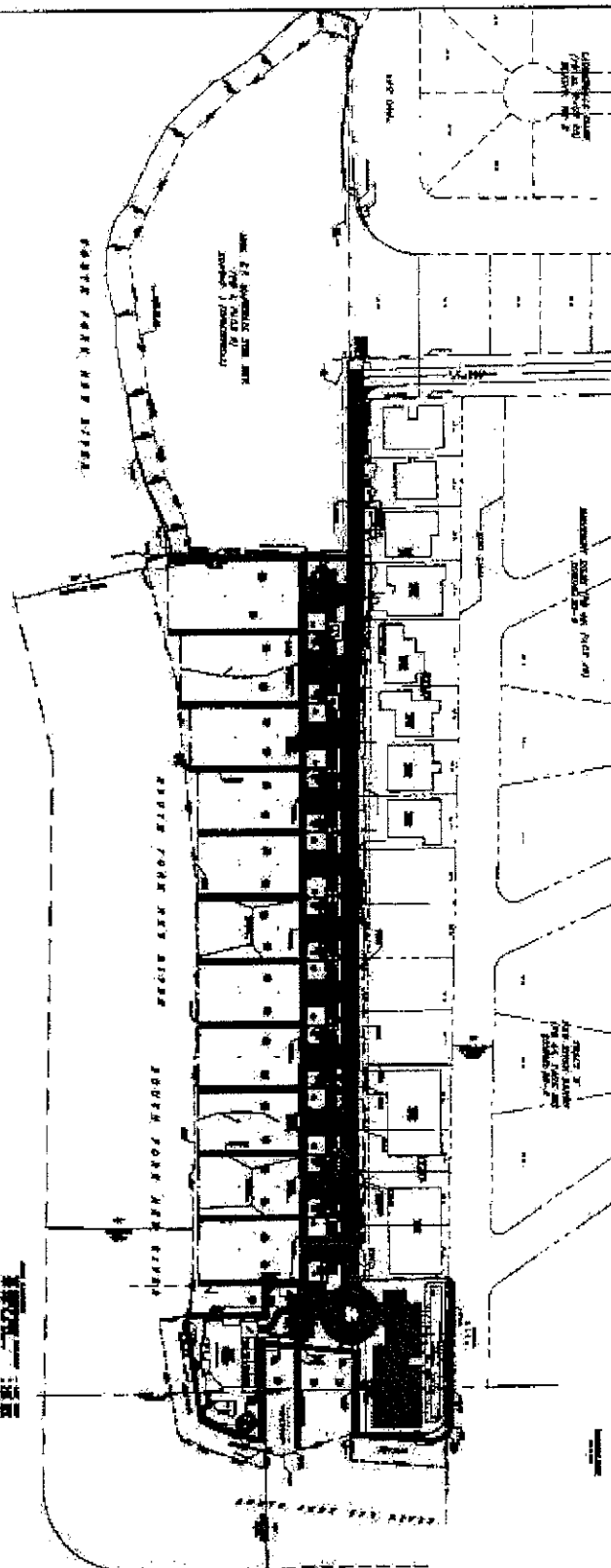
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Michelle J. Weber

**EXHIBIT A**

The real and personal property located at: See attached. Also including, without limitation: Pier 17 Yacht Club and the property identified as 1500 SW 17<sup>th</sup> Street, Fort Lauderdale, Florida 33309.







一、關於「中國共產黨」之組織  
 二、關於「中國共產黨」之綱領  
 三、關於「中國共產黨」之政策  
 四、關於「中國共產黨」之宣傳  
 五、關於「中國共產黨」之紀律  
 六、關於「中國共產黨」之財政  
 七、關於「中國共產黨」之教育  
 八、關於「中國共產黨」之文化  
 九、關於「中國共產黨」之體育  
 十、關於「中國共產黨」之藝術  
 十一、關於「中國共產黨」之宗教  
 十二、關於「中國共產黨」之社會  
 十三、關於「中國共產黨」之國際  
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1. The first step is to identify the problem. This involves understanding the current situation and the goals that need to be achieved.

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Model no.	10001
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Bath	1000
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Gas	1000
Heating	1000
Cooling	1000
Lighting	1000
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Visual	1000
Other	1000

## MASTER SITE PLAN

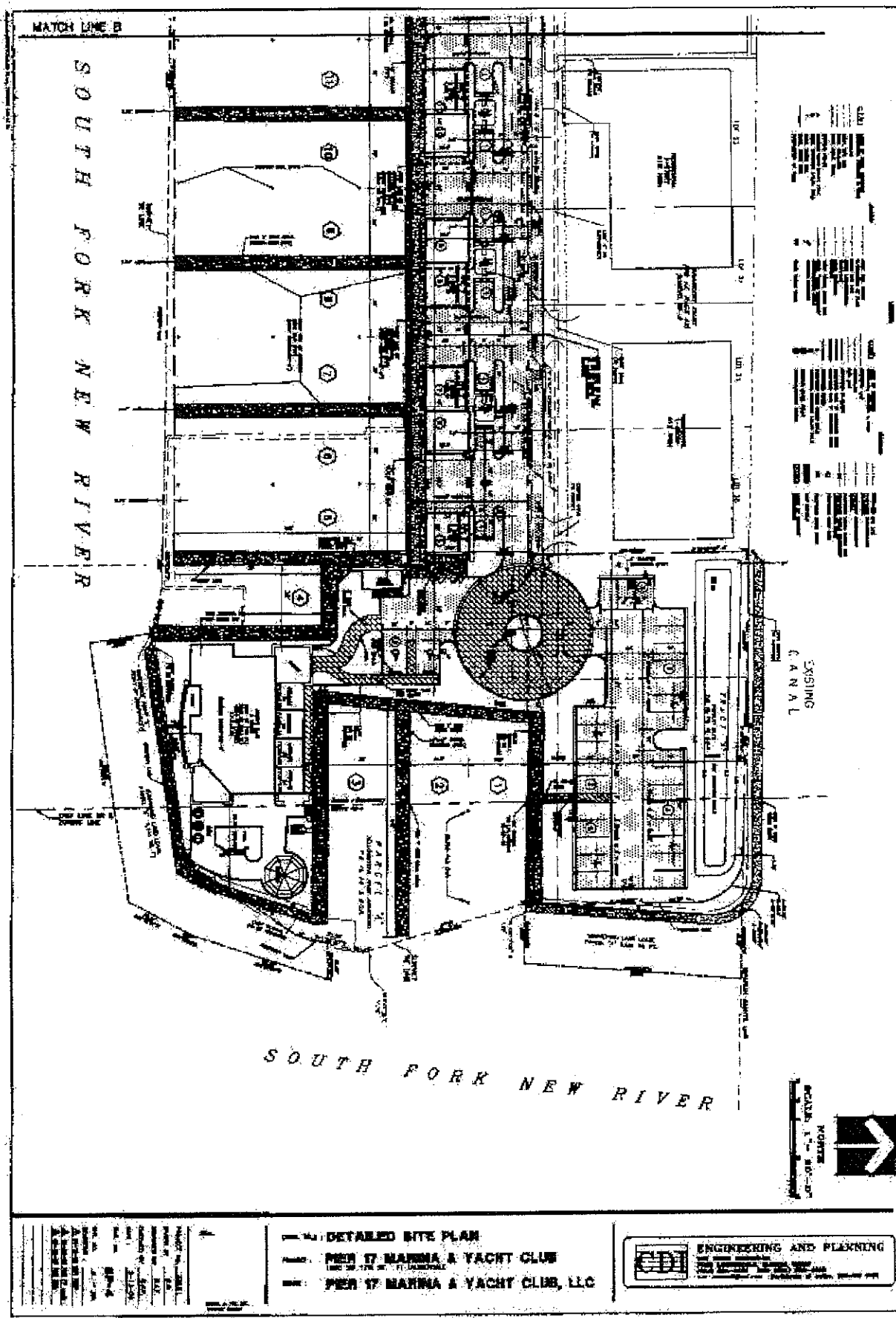
**PIER 17 MARINA & YACHT CLUB**

PIER 17 MARINA & YACHT CLUB, LLC



## ENGINEERING AND PLANNING

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 08-14-2001 BY 60322 UCBAW/SJS/STP



MATCH LINE B

SOUTH FORK NEW RIVER

SOUTH FORK NEW RIVER

NO.	DESCRIPTION
1	EXISTING CANAL
2	EXISTING MARINA
3	EXISTING BUILDING
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EXISTING CANAL

SCALE 1" = 50'-0"



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- DETAILED SITE PLAN
- PIER 17 MARINA & YACHT CLUB
- PIER 17 MARINA & YACHT CLUB, LLC

**ENGINEERING AND PLANNING**

1000 10th Street, Suite 100  
 Fort Worth, Texas 76102  
 Phone: (817) 339-1111  
 Fax: (817) 339-1112  
 Email: info@cdi-engineering.com





**EXHIBIT B**  
**BUDGET AND SCOPE OF WORK**

**LETTER OF CREDIT MODIFICATION AGREEMENT**

THIS LETTER OF CREDIT MODIFICATION AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2008 by and between PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Borrower") and the undersigned bank ("Bank") and JERICHO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership ("Lender").

**W I T N E S S E T H:**

WHEREAS, JERICHO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership ("Lender") has provided financing in the amount of \$\_\_\_\_\_ to PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Borrower") in reliance upon all parties executing this Letter of Credit Modification Agreement; and

WHEREAS, the undersigned bank ("Bank") has issued a letter of credit attached as Exhibit "A" ("Letter of Credit") for the benefit of Borrower; and

Now therefore, in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon, the parties hereto agree as follows:

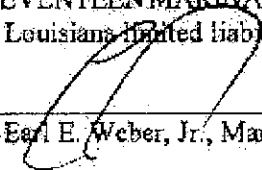
1. The recitals set forth hereinabove are true and correct and are incorporated herein by reference and made a part hereof as if restated.
2. All parties hereby agree and acknowledge that no payments will be made under the Letter of Credit to any party other than Lender unless Bank is in receipt of written authorization from Lender to disburse otherwise. Prior to such time, any monies drawn down upon such Letter of Credit by Borrower or Lender will be paid to Lender.
3. All parties agree that Lender shall have any and all rights of Borrower under the Letter of Credit to draw down on such monies, which will be payable to Lender pursuant to the terms of the Letter of Credit as set forth above. Furthermore, Lender shall have the same rights of Borrower to demand payment pursuant to the terms of the Letter of Credit to draw down such monies. In furtherance of same, without limitation, Lender will be deemed the "Beneficiary" under the Letter of Credit.
4. Notwithstanding anything to the contrary set forth in the Letter of Credit, all parties agree that all rights of Borrower under the Letter of Credit and the Letter of Credit itself may be transferred to Lender and/or assigned to Lender; and furthermore, such Letter of Credit may be amended pursuant to the terms herein.
5. This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties hereto, and facsimile copies shall serve as originals.

**[SIGNATURE PAGES TO FOLLOW]**

**[SIGNATURE PAGE TO LETTER OF CREDIT MODIFICATION AGREEMENT]**

BORROWER

PIER SEVENTEEN MARINA AND YACHT CLUB,  
LLC, a Louisiana limited liability company

By:  \_\_\_\_\_  
Earl E. Weber, Jr., Manager

[SIGNATURE PAGE TO LETTER OF CREDIT MODIFICATION AGREEMENT]

LENDER

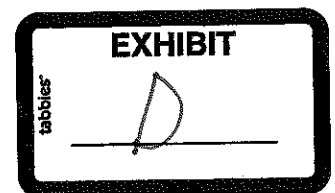
JERICO ALL-WEATHER OPPORTUNITY  
FUND, L.P., a Delaware limited partnership  
Sviesky Asset Management, Inc.

By: Scott Sviesky  
Print: Scott Sviesky  
Its: President

**PIER SEVENTEEN MARINA AND YACHT CLUB, LLC**

**ACCOUNTING OF MONIES PAID JERICHO**

Commitment Fees paid Jericho (January 23, 2008)	\$230,000.00
(March 6, 2008)	<u>\$130,000.00</u>
	\$360,000.00
Interest Payments paid by Jericho to Regions Bank	
(June 2008)	\$ 56,943.29
(July 2008)	\$ 58,780.18
	<u>\$115,723.47</u>
Balance	<u>\$244,276.53</u>



## JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.

3835 NW Boca Raton Blvd., Building 200

Boca Raton, Florida 33431

Tel: (561) 362-0091

Fax: (561) 362-7199

March 5, 2008

PIER SEVENTEEN MARINA AND YACHT CLUB, L.L.C. a Louisiana limited liability company  
1500 SW 17<sup>th</sup> Street  
Fort Lauderdale, Florida 33309

Dear Sirs:

We are pleased to advise you that Jericho All-Weather Opportunity Fund, L.P. ("Lender") has approved making a loan to you in the principal amount of Thirty Six Million and No/100 (\$36,000,000.00) Dollars (the "Loan") on the following terms and subject to the following conditions:

**I. TERMS OF THE LOAN**

**Borrower:** A single purpose entity acceptable to Lender and wholly owned and controlled by Earl E. Weber, Jr..

**Loan Amount:** Thirty Six Million and No/100 (\$36,000,000.00) Dollars.

**Term:** Eighteen (18) months (the "Term").

**Options to Extend:** Provided that (i) the Loan is not in default (as of the date that the option is to be exercised up to and including the date the Renewal Term commences) and (ii) the Borrower has not been late in making the monthly payments during the Term, the Borrower shall have the option to extend the Initial Term of the Loan for an additional six (6) months. The Borrower must give written notice to the Lender of its exercise of the option to extend at least sixty (60) days prior to the expiration of the Initial Term, with time being of the essence, and must include with each such notice a fee to Lender of 2% of the original Principal Balance in consideration therefore. Simultaneously with each such notice, the Borrower must also deposit with Lender an additional amount of money to be used as an Interest Reserve for such Renewal Term as hereinafter set forth.

**Interest Rate:** 14% per annum. (360 day basis).

**Guarantor:** Earl E. Weber, Jr. and Michelle J. Weber (collectively "Guarantor") shall unconditionally guaranty the Loan.

**Interest Reserve:** At Closing, Borrower shall post with Lender the sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars ("First Interest Reserve"), which shall be held by Lender and applied against the monthly payments of interest due on the Senior Loan as and when they come due. The amounts so deposited will be maintained by the Lender at a bank or financial institution chosen by Lender, not as a trust fund and without interest (except solely as may be required by applicable law), to be applied to the payments of interest as they become due and payable provided there shall be no default under the Loan. The interest reserve account shall constitute additional collateral security for the

**EXHIBIT**

tabbies

E

Loan and in the event of default Lender shall be permitted to apply same to the Loan, in such order as Lender shall determine. Borrower understands and agrees that once the First Interest Reserve is insufficient to cover all or a portion of the payments then due on the Senior Loan (including, without limitation, interest payments), Borrower (and Guarantor) of their own funds shall nonetheless make the payments due on the Senior Loan and Borrower warrants and represents that it and the Guarantor have the financial ability to make such payments. In the event the Loan is prepaid in full prior to the expenditure of the First Interest Reserve, the remaining sum in the First Interest Reserve shall reduce the amounts due under the Loan. The First Interest Reserve is deemed funded upon the date of Closing and interest will commence to accrue on such monies on such date.

At Closing, Borrower shall post with Lender the sum of Five Million One Hundred Thousand and No/100 (\$5,100,000.00) Dollars ("Second Interest Reserve"), which shall be held by Lender and applied against the monthly payments of interest due on the Loan as and when they come due. The amounts so deposited will be maintained by the Lender at a bank or financial institution chosen by Lender, not as a trust fund and without interest (except solely as may be required by applicable law), to be applied to the payments of interest as they become due and payable provided there shall be no default under the Loan. The interest reserve account shall constitute additional collateral security for the Loan and in the event of default Lender shall be permitted to apply same to the Loan, in such order as Lender shall determine. Borrower understands and agrees that once the Second Interest Reserve is insufficient to cover all or a portion of the payments then due on the Loan (including, without limitation, interest payments), Borrower (and Guarantor) of their own funds shall nonetheless make the payments due on the Loan and Borrower warrants and represents that it and the Guarantor have the financial ability to make such payments. Monies from the Second Interest Reserve will be deemed funded upon any payment from the Second Interest Reserve and interest will then commence to accrue on such monies on the date of funding.

At Closing, Borrower shall post with Lender the sum of Twelve Million Fifty Thousand and No/100 (\$12,050,000.00) Dollars ("Senior Loan Principal Reserve") to be applied toward a principal payoff of the Senior Loan when such Senior Loan matures. The Senior Loan Principal Reserve shall constitute additional collateral security for the Loan and in the event of default Lender shall be permitted to apply same to the Loan, in such order as Lender shall determine. Monies from the Senior Loan Principal Reserve will be deemed funded upon any payment from the Senior Loan Principal Reserve and interest will then commence to accrue on such monies on the date of funding.

**Construction Reserve:**

A. At Closing, Borrower shall post with Lender the sum of Fifteen Million Three Hundred Two Thousand and No/100 (\$15,302,000.00) Dollars as a Construction Reserve. Provided there is no event of default under the Loan, the Construction Reserve will be disbursed in direct payment to third party contractors of certain construction costs (as shown on the attached budget and scope of work to be attached hereto as Exhibit B which is subject to Lender's approval) to the Property which are actually made to the Property following the Closing. It is a condition to the Closing of the Loan, that the plans and budget (showing expenditures broken down by line item in such detail as Lender shall require) for the proposed construction work are both satisfactory to Lender in all respects and that prior to Closing, there shall be a work permit and other necessary permits in place for the construction project for any draw request. It is also a condition that Borrower has established to Lender's satisfaction that the amount of the Construction Reserve is sufficient to cover the expected cost of the proposed construction work and such contingency factor as Lender shall determine. Monies from the Construction Reserve will be deemed funded upon any payment from the Construction Reserve and interest will then commence to accrue on such monies on the date of funding.

Notwithstanding anything to the contrary herein, all deposit monies under any purchase contracts for the dock slips to be used for construction as set forth in the such purchase contracts [in no event will this amount be less than One Million Six Hundred Thousand and No/100 (\$1,600,000.00) Dollars at Closing], will be used/funded/drawn down on for construction prior to any funding of the Construction Reserve.

B. Disbursements from the Construction Reserve shall be made in accordance with Lender's standard construction loan documentation, which requires, among other things, that disbursements are only made upon the receipt of (i) lien waivers, (ii) appropriate endorsements to the title policy, (iii) a copy of the applicable invoice describing the work being billed for in reasonable detail, (iv) certification from an independent architect and/or engineer that the work subject to the payment request has been completed in accordance with the approved plans and approved construction budget and that the remaining Construction Reserve is sufficient to cover the expected balance of the construction costs with Lender's required contingency factor and that the construction is on schedule to be completed within the required timeframe; and (v) the satisfactory inspection by Lender or Lender's construction representative. A 10% retainage will be held from each disbursement relating to "hard" costs which will be disbursed upon the final completion of the construction, a final inspection by Lender and receipt of all applicable permits and a permanent certificate of occupancy (if required). Disbursements shall be made no more often than twice per month and each disbursement shall be in the minimum amount of \$100,000, with the Lender reserving the right to pay such disbursements directly to the contractors.

C. The Construction Reserve will be maintained by the Lender at a bank or financial institution chosen by Lender, not as a trust fund and without interest (except solely as may be required by applicable law), to be applied as herein and in the Loan Documents set forth provided there shall be no default under the Loan. The Construction Reserve shall constitute additional collateral security for the Loan and, in the event of default, Lender shall be permitted to apply same to the Loan, in such order as Lender shall determine. Further, if a default shall occur under the Loan, then in addition to all of Lender's other rights and remedies, Lender shall have no obligation to make any further disbursements from the Construction Reserve. At the option of Lender's Counsel, the Mortgage may consist of one mortgage for the entire Loan Amount or a standard second mortgage.

D. It is also a condition to the Loan that (x) the construction be performed by a contractor approved by Lender and pursuant to a written agreement satisfactory to Lender and (y) such contractor and construction agreement shall be fully bonded in favor of Lender by an indemnitor and on such terms and conditions as shall be acceptable to Lender but which must include, without limitation, (i) that the Bond shall cover all cost overruns and (ii) that the indemnitor shall be obligated to have the construction completed within the specified time frame in accordance with the approved plans.

**Payments:**

Provided there shall be no default, payments shall be made monthly in arrears and shall be comprised of interest only payments on the outstanding principal balance calculated at the Interest Rate. Interest is to be calculated based on the actual days elapsed over a 360 day year.

**Prepayment:**

A prepayment shall be due on any principal that is prepaid within six (6) months from the date of the Note equal to all interest that would have accrued on such principal during the initial six (6) months, had it not been prepaid. Borrower shall have the right to prepay the outstanding Principal Balance in whole or in part (in minimum increments to be agreed upon by Lender) upon prior written notice of no less than thirty (30) days.



**Balance of Funds****Available:**

After funding set forth herein, and funding of any closing costs approved by Lender, the balance of monies will be added to the Construction Reserve, so that Borrower will not receive any funds at Closing.

2. **LOAN PURPOSE: PREMISES.** The Loan shall be used (i) for refinancing Borrower's property identified on the property referenced on Exhibit "A" attached hereto ("Property"), (ii) for construction financing for the Property, and therefore, to fund the Construction Reserve (iii) to fund the Interest Reserve, (iv) for certain Lender-approved closing costs, and (v) to pay all taxes for the year 2007 and 2008. Borrower represents to Lender that Borrower is currently under contract(s) with a bona fide third party purchaser(s) for the dock slips constituting part of the Property at a total purchase price no less than Eighteen Million One Hundred Fifty Thousand and No/100 (\$18,150,000.00) Dollars, and it shall be a condition to Lender's obligations hereunder that the signed written contract(s) of sale must be delivered to Lender and must confirm such purchase price and be otherwise satisfactory to Lender in all respects. Borrower represents that the Property is currently zoned to permit the operation of dock slips. It is a condition to the Loan that Borrower have at least Seven Million Five Hundred Thousand and No/100 (\$7,500,000.00) Dollars of cash equity in the transaction. If any of the amounts set forth above shall be less than as represented then the Loan Amount shall be reduced by such difference but in no event will the Loan Amount be increased.

3. **SECURITY FOR THE LOAN.** The Loan will be evidenced by a note and will be secured by a blanket mortgage or deed of trust (either being referred to as the "Mortgage") on the Property, which shall be a valid second lien on a good, unencumbered and marketable title in fee simple to the Property. The Loan will also be secured by (a) a second priority security interest duly perfected under the Uniform Commercial Code covering all equipment, fixtures and articles of personal property at any time affixed to, installed at, or used in connection with the operation of the Property, (b) an assignment of all leases, rents and profits of the Property, (c) the personal guaranty of Earl E. Weber, Jr. ("Guarantor"), (d) an environmental guaranty of Borrower and Guarantor, (e) a pledge in favor of Lender from the sole member of Borrower of all membership interests in Borrower and Earl E. Weber, Jr.; (f) all other security instruments and interests referred to in this commitment. All documents relating to the Loan shall be on Lender's standard forms for same subject to the terms hereof; and (g) a pledge of all letters of credit ("letters of credit") issued in connection with the purchase of any slips (at a minimum \$1,800,000.00) in first position.

4. **MORTGAGE PROVISIONS.** The Mortgage and/or Loan Agreement will provide, among other things, the following:

(a) **Restrictions of Transfer/Due On Sale.** The Mortgage shall contain a provision giving the Lender the right to call the Loan in the event of a sale of the Property or any portion thereof, or, if Borrower is an entity, upon the conveyance of any of the direct or indirect ownership interests in Borrower and/or upon a change in control of Borrower, and the Mortgage and related documents shall prohibit Borrower from entering into contracts of sale for all or any portion of the Property.

(b) **Tax and Insurance Escrow.** Borrower will deposit at closing, with a third party escrow agent approved by Lender, an amount reasonably estimated to pay for 2008 real estate taxes and a renewal of the present insurance.

(c) **Records and Accounts.** Borrower will keep proper books of record and account with respect to the operation of the Property in accordance with generally accepted accounting principles consistently applied and will furnish the Lender with quarterly and annual financial statements (including a quarterly certified rent roll) within 30 days of the end of each quarter and 90 days after the end of each calendar year, in form reasonably satisfactory to Lender, which shall disclose in reasonable detail all earnings and expenses with respect to the operation of the Property. The financial statements shall be certified by an executive officer (or equivalent) of Borrower.

(d) Late Charges. If any payment under the Loan shall become overdue for a period in excess of five days, then (to the extent permitted by law) a late charge of five (\$.05) cents for each dollar so overdue shall become immediately due to Lender.

(e) Default Interest. Upon default beyond any applicable notice and/or cure period(s) under the Mortgage or any of the other Loan Documents, the interest payable on the Loan shall be at the highest rate permitted by law.

(f) Grace Periods. As more fully described in the Mortgage and in the Loan Documents, there shall be a grace period of five days with respect to monetary defaults. For most non-monetary defaults, there shall be a notice and grace period of fifteen days (with provision for up to 30 days to cure such non-monetary defaults as are not reasonably susceptible to cure within such 15 days provided Borrower shall at all times be diligently pursuing such cure to completion, all as more fully to be set forth in the Loan documents).

(g) Liability. The Loan shall be recourse to Borrower and shall also be personally guaranteed by the Guarantors as set forth above.

(h) Subordinate Financing; Refinancing. The Mortgage will prohibit subordinate financing or other liens being placed on the Property or any portion thereof.

(i) Priority Financing. The principal balance of the loan in favor of Regions Bank ("Senior Loan") cannot exceed Twelve Million Eighty Thousand and No/100 (\$12,080,000.00) Dollars, ~~cannot become due prior to the Term~~ and further, Regions Bank will execute an intercreditor agreement acceptable to Lender, which states, among other matters, that no default exists under the Senior Loan, and that the security interest of Regions Bank is subordinate to Lender's security interest/pledge in the letters of credit.

(j) The original letters of credit will be delivered to Lender and appropriate documentation will be obtained from such issuing banks and that all disbursements will be made to Lender and no disbursement will be made to Borrower without Lender's approval. (The form document is attached).

5. RESTRICTIONS ON ASSIGNMENT. This commitment may not be assigned by Borrower as the identity of the person(s) with whom Lender deals is of material importance to it.

6. FEES.

A. The Origination Fee due to the Lender or its affiliates hereunder is Two Million Two Hundred Ninety Thousand and No/100 (\$2,290,000.00) Dollars, of which One Hundred Thirty Thousand and No/100 (\$130,000.00) Dollars ("Commitment Fee") shall be due and payable by Borrower simultaneously with Borrower's execution and delivery of this commitment, and the balance of which [i.e. an additional Two Million One Hundred Sixty Thousand and No/100 (\$2,160,000.00) Dollars] shall be due and payable by Borrower at the Closing of the Loan. If the Loan is not closed for any reason, Lender shall retain the Commitment Fee paid as full liquidated damages, but such liquidated damages shall not waive Lender's right to obtain reimbursement of its costs and expenses to the extent they shall exceed the Commitment Fee. The determination of the compliance by Borrower with the conditions contained herein shall be made by Lender in its sole but reasonable determination. In no event shall either party be liable to the other for consequential damages on account of a breach hereof.

B. Borrower has previously paid Lender a Legal Fee Deposit of Ten Thousand and No/100 (\$10,000.00) Dollars to be used by Lender's Counsel to commence its due diligence and the preparation of Loan Documents. The Legal Fee Deposit is merely a deposit and is not intended as an estimate of the final fees and disbursements for Lender's Counsel. Accordingly, at Closing (or if the Loan shall not close then upon the termination of this Commitment) Borrower shall be required to pay to Lender the excess of the amount of the actual fees and disbursements of Lender's Counsel over the Legal Fee Deposit. In the event that prior to Closing the legal fees and disbursements shall exceed the Legal Fee Deposit, Lender shall have the right to cause Lender's Counsel to stop work towards the Closing and unless Borrower shall pay to Lender or Lender's Counsel (as an addition to the

Legal Fee Deposit), the amount that Lender's Counsel reasonably estimates will be necessary to finish its work within one (1) day of request; therefore, this commitment shall automatically terminate and Lender shall be entitled to retain all funds on deposit with it and Lender shall have no further obligations under this commitment.

C. At Closing, Borrower shall pay to Lender a non-refundable Credit Review Fee of \$5,000.00 (to offset the costs of Lender's internal credit, appraisal, site inspection and due diligence procedures).

7. **BROKER.** Borrower represents and warrants to Lender that Borrower has not dealt with any broker with respect to the transaction contemplated hereby other than Tavernier Capital Partners (whom Borrower agrees to pay at Closing) and Kensington Capital and by accepting this commitment Borrower agrees forever to indemnify and save Lender harmless from and against any and all claims or suits for compensation, commissions or otherwise (and all costs, losses and expenses, including, but not limited to, reasonable attorneys' fees and expenses related thereto) that may be asserted or made by any broker, person or entity claiming to have dealt with or to have been employed by Borrower. This provision shall survive the Closing or other termination of this commitment. The Kensington Capital brokers' fee will be paid directly by Borrower, and not from the loan proceeds. Proof and satisfaction of payment are due by Closing. In addition, regarding the sales of slips, commissions are also due third party brokers, which will be paid directly by Borrower, and not from the loan proceeds. Proof and satisfaction of payment are due by Closing. Any future real estate commissions on any purchase contracts for the dock slips will be paid directly by Borrower, and not with any loan proceeds. Any failure to pay same when due will constitute an Event of Default of the Loan and all Loan Documents.

8. **LENDER'S COUNSEL.** Lender will be represented in this matter by counsel of Lender's choice (which may also include Lender's local counsel). The fees and expenses of Lender's Counsel (including such local counsel) shall be payable by Borrower at Closing, or if the Loan shall not close then at the termination of this commitment.

9. **CLOSING.** The closing of the Loan (the "Closing") will take place at the offices of Lender's Counsel (which may be the offices of Lender's local counsel) on or prior to the Expiration Date (as hereinafter defined) as shall be mutually agreed to by Lender and Borrower.

10. **LOAN EXPENSES.** Borrower's acceptance of this commitment shall constitute its unconditional agreement to pay all fees, costs, charges and expenses with respect to the Loan or its making or in any way connected therewith, including, without limitation, the fees and expenses of Lender's counsel, title insurance premiums, survey costs, recording and filing fees, real estate tax service charges, documentary stamps, mortgage taxes and any and all other taxes, fees and expenses payable in connection with the Loan.

11. **ACCEPTANCE AND EXPIRATION.** This commitment shall not become effective unless executed by both Lender and Borrower. Acceptance of this commitment will constitute the Borrower's agreement to accept the Loan from the Lender and an authorization for the Lender's counsel to proceed at the Borrower's expense with the examination of title to the Property and to prepare for the Closing. This commitment will expire and all obligations of the Lender hereunder will terminate on the date that is fifteen (15) business days after the date hereof (such date is herein referred to as the "Expiration Date"). Time shall be of the essence under this commitment letter and in the Mortgage. It is understood and agreed that if a check for any portion of the Fees shall fail to clear then Lender shall retain the portion, if any, of the Fees that shall have cleared and this commitment shall terminate and neither party shall have any further obligations hereunder to the other except that Lender shall be permitted to attempt to collect from Borrower on the check(s) that shall have failed to clear by commencing litigation or otherwise as provided for by law.

12. **GENERAL LOAN CONDITIONS.** The obligation of Lender to make the Loan is expressly conditioned on the satisfaction of each and every one of the provisions and conditions of this Commitment Letter, including, without limitation, those set forth in the General Loan Conditions attached hereto, the terms of which are hereby incorporated herein. Borrower acknowledges that this Commitment Letter is intended as an outline only and does not purport to summarize all of the terms, conditions, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation for the Loan. The terms and conditions of the Loan will be further developed and supplemented during the course of Lender's due diligence and the preparation and

negotiation of the loan documents. The loan documents for the Loan will include, in addition to the provisions that are summarized in this Commitment Letter, provisions that, in the opinion of Lender, are customary or typical for this type of financing transaction and other provisions that Lender may determine, in its sole but reasonable discretion, to be appropriate in the context of the proposed transaction. Such definitive legal documentation shall be in form and substance satisfactory to Lender. Lender's commitment to provide the Loan, as described herein, is subject to the satisfaction of Lender at all times that there has not occurred, or become known to Borrower or Lender, any material adverse change with respect to the condition, (financial or otherwise), operations, assets, liabilities or prospects of the Property, Guarantor or Borrower (or any subsidiary of Borrower, including, without limitation, Borrower and its owners), as determined by Lender in its sole but reasonable discretion (hereinafter referred to as a "Material Adverse Change"). If at any time Lender shall determine (in its sole discretion) that any Material Adverse Change has occurred, Lender may terminate this Commitment Letter by giving notice thereof to Borrower (subject to the obligation of Borrower to pay all fees, costs, charges, expenses and other payment obligations expressly assumed by Borrower hereunder, which shall survive the termination of this Commitment Letter).

13. **MISCELLANEOUS.** The loan documents shall be governed by the laws of the state in which the Property is located. This commitment contains the entire agreement between the parties hereto in respect of the matters hereof and supersedes any prior (oral or written) agreements. This commitment may not be modified nor any of its terms waived except by a writing executed by the party to be charged by such modification or waiver. Any item in this commitment calling for the approval of Lender shall mean that such approval is a condition to Lender's obligations hereunder.

That prior loan commitment dated January 11, 2008 between Lender and Borrower for a loan in the amount of Twenty Three Million and No/100 (\$23,000,000.00) Dollars is hereby canceled and terminated effective upon execution of this commitment letter. All monies and fees previously paid by Borrower thereunder totaling Two Hundred Thirty Thousand and No/100 (\$230,000.00) Dollars are deemed fully earned by Lender under such other commitment letter, are nonrefundable, and further deemed the property of Lender. Borrower has requested the new Loan pursuant to the terms herein, and in accordance with such request, this new commitment letter for the Loan [in the amount of Thirty Six Million and No/100 (\$36,000,000.00) Dollars] has been issued by Lender.

Under the Senior Loan, Earl Weber shall be entitled to receive a return of any prepaid extension fees and back interest not to exceed One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars from the Senior Lender.

Very truly yours,

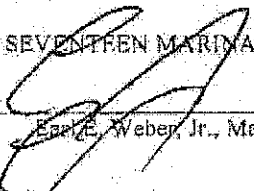
JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.

By: SVIRSKY ASSET MANAGEMENT, INC.

By:   
Scott Svirsky, President

APPROVED AND ACCEPTED:

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company

By:   
Earl E. Weber, Jr., Manager

Earl E. Weber, Jr.

  
Michelle J. Weber

**GENERAL LOAN CONDITIONS**

1. **Title Insurance.** At Closing Borrower shall deliver to Lender, at Borrower's cost, a policy of title insurance for the Loan, issued by a title insurance company acceptable to lender in the principal amount of the Loan, showing good and marketable fee simple title to the Property in the Borrower and insuring the Lender that the Mortgage is a second lien for the full amount of the Loan, subject only to such exceptions as shall be approved by Lender. Lender may, at its and Lender's Counsel's discretion, accept mortgages by assignment to constitute the Mortgage provided all original loan documents are available and satisfactory to Lender's Counsel and the assignment(s) are satisfactory to Lender's Counsel.

2. **Survey.** Prior to Closing Borrower shall deliver to Lender a boundary survey of the Property by a licensed engineer or surveyor, dated or redated not more than thirty (30) days prior to the Closing, which shall be certified to Lender and the title company and which shall contain such information as Lender shall require.

3. **Legal Compliance and Other Conditions.** As a condition to Lender's obligations hereunder, Borrower shall provide Lender with:

- (a) evidence reasonably satisfactory to Lender that the tax lot or lots for the Property do not include any properties other than the Property;
- (b) evidence satisfactory to Lender in all respects that the Property and the operation and use thereof as dock slips comply in all respects with all zoning (without grandfathering), building, parking, subdivision, development, environmental and all other applicable laws, ordinances, rules and regulations and other legal requirements affecting or relating to the Property and there is no violation of record or claimed violation of any of the foregoing that remains outstanding and uncured. At Lender's discretion, it may require a zoning letter regarding the foregoing from the municipality having jurisdiction over the Property;
- (c) evidence satisfactory to Lender in all respects that the Property and the operation and use thereof as dock slips comply in all respects with all applicable parking requirements (without grandfathering) imposed by applicable law and any imposed by leases at the Property or any covenants or restrictions of record (including without limitation "REA" agreements) affecting the Property; and
- (d) an opinion of counsel (satisfactory to Lender's Counsel) on such matters as Lender's Counsel shall reasonably require given the circumstances of the transaction (including a zoning opinion).

4. **Insurance.** The Mortgage shall require, among other things, that Borrower shall deliver to Lender original policies (or certificates for same) of fire and extended coverage insurance covering the Property in an amount equal to the full replacement value of the improvements, if any, and with premiums fully paid to the applicable insurer one (1) year in advance, which insurance shall name Lender under a standard New York mortgagee endorsement or local equivalent. All such policies shall be satisfactory to the Lender as to amounts and types of coverage and the companies by which such policies are issued. Deductibles shall be no more than \$25,000. The Mortgage shall also require that Borrower shall carry rent insurance in an amount equal to one year's then-applicable gross income from the Property and comprehensive general liability insurance, in an amount satisfactory to Lender. In addition, during the construction, Builder's Risk and such other insurance as Lender shall require shall be kept. Flood insurance shall be required if Lender determines that the Property is in a flood zone.

5. **Leases.** Prior to the Closing, Borrower shall submit to Lender true copies of all leases and occupancy agreements for the Property, including all amendments thereto or extensions thereof, and any guarantees thereof (collectively the "Lease Agreement"). The Lease Agreement shall be satisfactory to Lender in all respects. It is a further condition to Lender's obligation under this commitment that Borrower shall have delivered to Lender copies of the most current rental delinquency reports as required by Lender which must be to Lender and Lender's counsel.

6. **No Change in Condition.** As of the Closing, (a) neither the Property nor any portion thereof shall have been destroyed or damaged, (b) no adverse change shall have occurred in the results of operations of the Property or in the financial condition of Borrower or the Guarantor(s), and (c) no judicial or administrative proceeding shall be pending against Borrower, any Guarantor or the Property which if adversely determined would, in the opinion of Lender, affect the security of the Loan.

7. **Supporting Documentation.** Prior to Closing, Borrower shall submit to Lender such documentation as Lender shall require to support the financial statements previously (or herewith) delivered and the representations previously (or herein) made by Borrower to Lender and Lender's obligations hereunder shall be conditioned on the accuracy of such statements and representations. This commitment shall constitute the authorization by Borrower to obtain a credit report of Borrower and/or Guarantor from any credit reporting service, which must be acceptable to Lender. Guarantor shall submit its financial statements to Lender for its approval prior to Closing. This Loan shall be conditioned on the Lender's receipt and upon approval of the financial statements, credit report and criminal background search of Guarantor and Borrower and such other searches required by Lender's counsel. Borrower hereby represents on behalf of Guarantor that no Guarantor has been convicted of a felony nor is any Guarantor's currently indicted or under arrest or to their knowledge under investigation in respect of an alleged felony. This loan shall also be conditioned on the Lender's receipt and approval of the financial statements of Guarantor.

8. **Reports.** Prior to Closing, Borrower shall provide, at Borrower's expense, an environmental audit which shall include a visual survey, assessing the presence of hazardous or toxic wastes or substances, lead, asbestos, PCBs or storage tanks or other hazardous material at the Property, the results of checking with governmental agencies, and the identities of previous owners and users of the Property. The consultants, their qualifications, the scope and methodology of their investigations, their reports and recommendations and the form, scope and substance of their certifications to Lender must be acceptable to Lender in all respects. If Borrower shall not have current inspections of the Property, or if either or both of Borrower's existing reports are unsatisfactory to Lender in any respect, then Lender shall arrange for such inspections (at Borrower's expense) with such consultant(s) as Lender shall determine, which must be satisfactory to Lender in all respects.

9. **Certain Payments.** Neither Borrower nor any of its affiliates has directly or indirectly received or will receive any commissions or fees or any other consideration from the Seller of the Property, the mortgage broker, the real estate broker, the insurance broker or the title company and neither Borrower nor any of its affiliates is an affiliate of the Seller of the Property, the mortgage broker, the real estate broker, the insurance broker or the title company.

10. Intentionally Deleted.

11. **OFAC Disclosure and Obligations.** Borrower and each party signing this commitment jointly certify to Lender that, to such party's knowledge after having made reasonable inquiry, (a) no principal of the Borrower, no principal of any entity comprising Borrower, no property manager and no tenant at the property is currently identified on the list ("OFAC List") of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control, and (b) no principal of the Borrower, no principal of any entity comprising Borrower, no property manager and no tenant at the property is a person/entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. (The OFAC List is accessible through the Internet website [www.treas.gov/ofac/tl1.shtm.pdf](http://www.treas.gov/ofac/tl1.shtm.pdf).) Borrower acknowledges and agrees that Borrower has a continuing obligation during the processing of the Loan to notify Lender promptly if any new information or change of condition exists to make such certification inaccurate or misleading. Borrower will be required to reconfirm these representations in the Loan documents and will be liable for all costs incurred by Lender arising from a violation thereof.

**JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.**

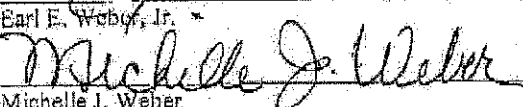
By: **SVIRSKY ASSET MANAGEMENT, INC.**

By:   
Scott Svirsky, President

**APPROVED AND ACCEPTED:**

**PIER SEVENTEEN MARINA AND YACHT CLUB, LLC**, a Louisiana limited liability company

By:   
Earl E. Weber, Jr., Manager

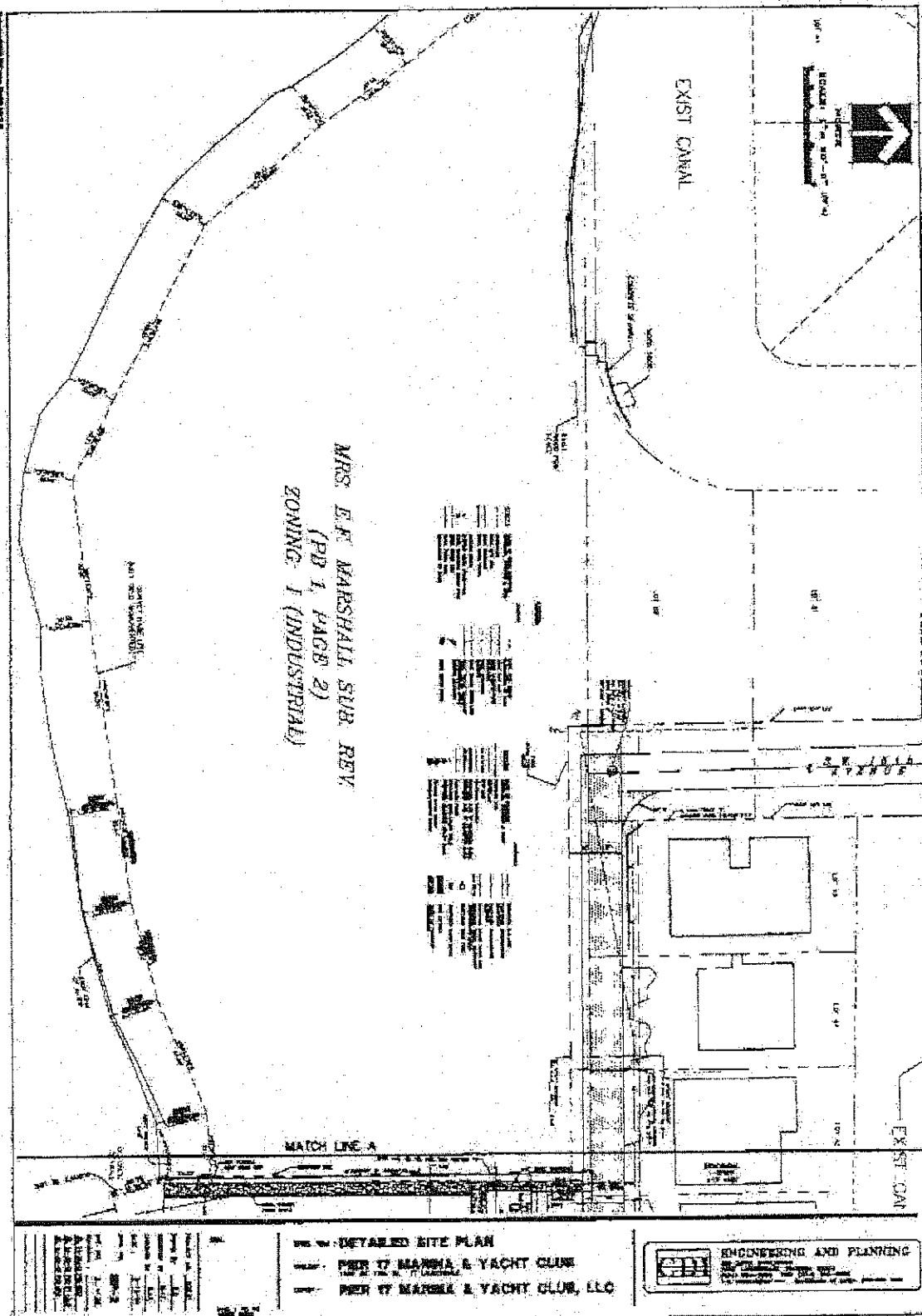
Earl E. Weber, Jr. ✕  
  
Michelle J. Weber

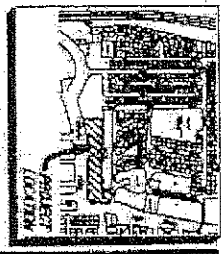
**EXHIBIT A**

The real and personal property located at: See attached. Also including, without limitation: Pier 17 Yacht Club and the property identified as 1500 SW 17<sup>th</sup> Street, Fort Lauderdale, Florida 33309.











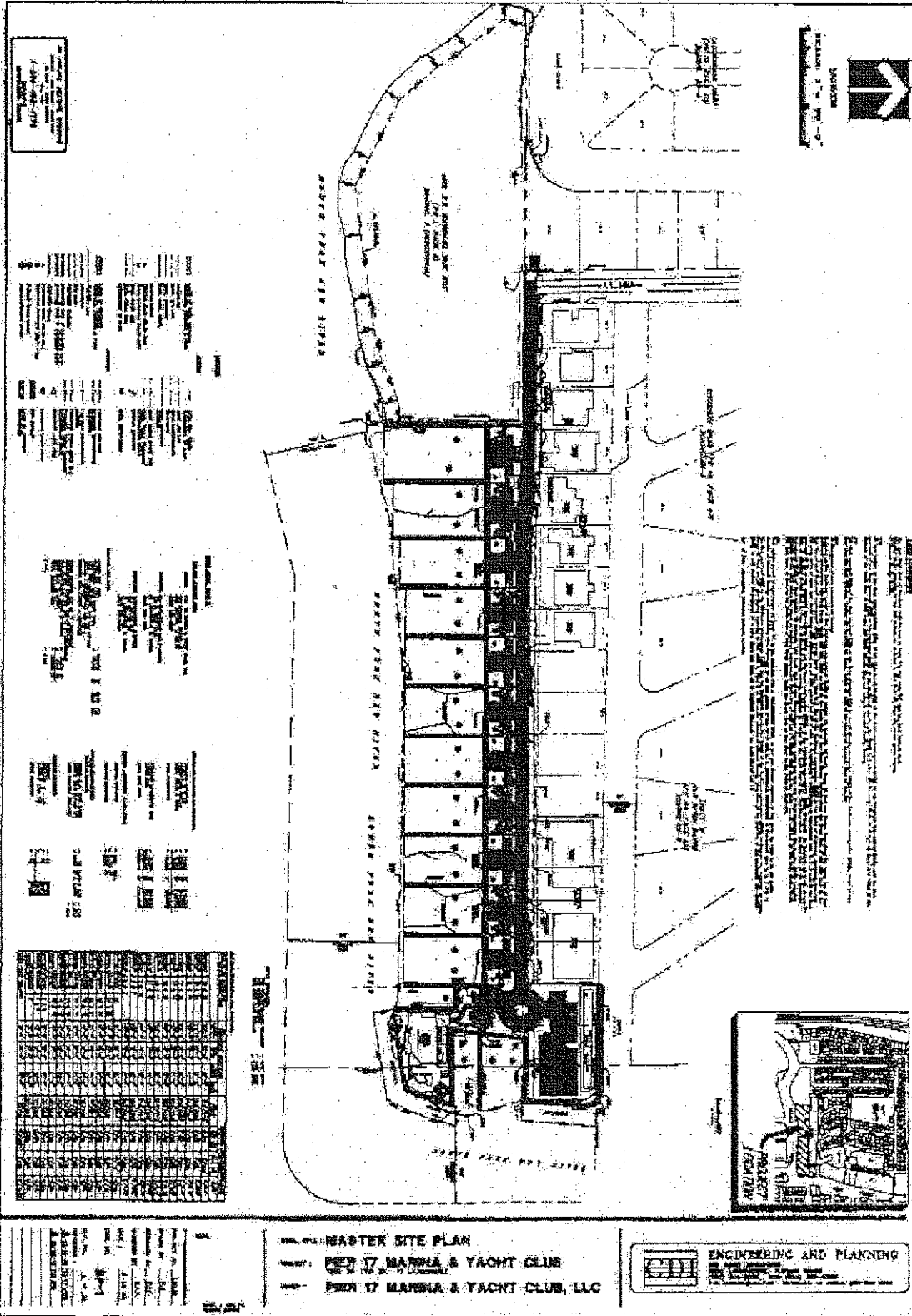


EXHIBIT D  
BUDGET AND SCOPE OF WORK

**LETTER OF CREDIT MODIFICATION AGREEMENT**

THIS LETTER OF CREDIT MODIFICATION AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2008 by and between PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Borrower") and the undersigned bank ("Bank") and JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership ("Lender").

**WITNESSETH:**

WHEREAS, JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership ("Lender") has provided financing in the amount of \$\_\_\_\_\_ to PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Borrower") in reliance upon all parties executing this Letter of Credit Modification Agreement; and

WHEREAS, the undersigned bank ("Bank") has issued a letter of credit attached as Exhibit "A" ("Letter of Credit") for the benefit of Borrower; and

Now therefore, in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon, the parties hereto agree as follows:

1. The recitals set forth hereinabove are true and correct and are incorporated herein by reference and made a part hereof as if restated.
2. All parties hereby agree and acknowledge that no payments will be made under the Letter of Credit to any party other than Lender unless Bank is in receipt of written authorization from Lender to disburse otherwise. Prior to such time, any monies drawn down upon such Letter of Credit by Borrower or Lender will be paid to Lender.
3. All parties agree that Lender shall have any and all rights of Borrower under the Letter of Credit to draw down on such monies, which will be payable to Lender pursuant to the terms of the Letter of Credit as set forth above. Furthermore, Lender shall have the same rights of Borrower to demand payment pursuant to the terms of the Letter of Credit to draw down such monies. In furtherance of same, without limitation, Lender will be deemed the "Beneficiary" under the Letter of Credit.
4. Notwithstanding anything to the contrary set forth in the Letter of Credit, all parties agree that all rights of Borrower under the Letter of Credit and the Letter of Credit itself may be transferred to Lender and/or assigned to Lender; and furthermore, such Letter of Credit may be amended pursuant to the terms herein.
5. This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties hereto, and facsimile copies shall serve as originals.

[SIGNATURE PAGES TO FOLLOW]

[SIGNATURE PAGE TO LETTER OF CREDIT MODIFICATION AGREEMENT]

BORROWER

PIER SEVENTEEN MARINA AND YACHT CLUB,  
LLC, a Louisiana limited liability company

By: \_\_\_\_\_

  
Earl E. Weber, Jr., Manager



[SIGNATURE PAGE TO LETTER OF CREDIT MODIFICATION AGREEMENT]

LENDER

JERICO ALL-WEATHER OPPORTUNITY  
FUND, L.P., a Delaware limited partnership  
Swirsky Asset Management, Inc.

By: Scott Swirsky  
Print: Scott Swirsky  
Its: President

<b>A. U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SETTLEMENT STATEMENT</b> <b>McDonald Fleming Moorhead, Attorneys at Law</b> 25 West Government Street Pensacola, Florida 32502 850-477-0660 fax: 850-477-1730		<b>B. TYPE OF LOAN</b> 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FMHA 3. <input checked="" type="checkbox"/> CONV. UNINS. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. File Number: SRM-07-2327 7. Loan Number: 8. Mortgage Ins. Case No.:	
<b>C. NOTE:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked (poc) were paid outside the closing. They are shown here for informational purposes and are not included in the totals.			
<b>D. Borrower:</b> Pier Seventeen Marina and Yacht Club, LLC P.O. Box 640730 Kenner, LA 70064		<b>E. Seller:</b> Jericho All-Weather Opportunity Fund, L.P. <b>F. Lender:</b> 3835 NW Boca Raton Blvd., Building 200 Boca Raton, Florida 33431	
<b>G. Property:</b> ---, Broward County, Florida Broward County,		<b>H. Settlement Agent:</b> McDonald Fleming Moorhead, Attorneys at Law <b>I. Place of Settlement:</b> 25 West Government Street, Pensacola, Florida 32502 Escambia County	
<b>I. Settlement Date:</b> March 31, 2008		<b>Interest Begins:</b> March 31, 2008	
<b>J. Summary of Borrower's Transaction</b>		<b>K. Summary of Seller's Transaction</b>	
<b>100. Gross Amount Due From Borrower:</b>		<b>400. Gross Amount Due To Seller:</b>	
101. Contract Sales Price		401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (line 1400) 8,271,326.39		403.	
104. Held in LIP Account for future draws to Jericho All-Weather Opportunity Fund, L.P. 28,048,446.97		404.	
<b>Adjustments for Items Paid by Seller in Advance:</b>		<b>Adjustments for Items Paid by Seller in Advance:</b>	
106. City / Town Taxes		406. City / Town Taxes	
107. County / Parish Taxes		407. County / Parish Taxes	
108. Assessments		408. Assessments	
<b>120. Gross Amount Due from Borrower: 36,319,773.36</b>		<b>420. Gross Amount Due to Seller:</b>	
<b>200. Amounts Paid by or in Behalf of Borrower:</b>		<b>500. Reductions in Amount Due to Seller:</b>	
201. Deposit / Earnest Money		501. Excess Deposit (see instructions)	
202. Principal Amount of New Loan 36,000,000.00		502. Settlement Charges to Seller (Line 1400)	
203. Existing Loan(s)		503. Existing Loan(s)	
204.		504. Payoff of First Mortgage	
205.		505. Payoff of Second Mortgage	
206.		506. Purchase Money Mortgage	
<b>Adjustments for Items Unpaid by Seller:</b>		<b>Adjustments for Items Unpaid by Seller:</b>	
210. City / Town Taxes		510. City / Town Taxes	
211. County / Parish Taxes		511. County / Parish Taxes	
212. Assessments		512. Assessments	
<b>220. Total Paid by / for Borrower: 36,000,000.00</b>		<b>520. Total Reductions in Amount Due Seller:</b>	
<b>300. Cash at Settlement from / to Borrower:</b>		<b>600. Cash at Settlement to / from Seller:</b>	
301. Gross Amount due from Borrower (line 120) 36,319,773.36		601. Gross Amount due to Seller (line 420)	
302. Less Amount Paid by/for Borrower (line 220) 36,000,000.00		602. Less Reductions Amount due Seller (line 520)	
<b>303. Cash From Borrower: 319,773.36</b>		<b>603. Cash From Seller:</b>	
<b>Borrower Initials:</b> Earl E. Weber, Jr.			

EXHIBIT

F

L. Settlement Charges			
700. Total Sales / Broker's Commission:		Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
Division of Commission as follows			
701.			
702.			
703.	Commission Paid at Settlement		
800. Items Payable in Connection with Loan:			
801.	Loan Origination Fee \$2,290,000.00 (\$130,000.00 POC by Borrower) to Jericho All-Weather Opportunity Fund, L.P.	2,160,000.00	
802.	Loan Discount		
803.	Appraisal Fee		
804.	Credit Report		
805.	Lender's Inspection Fee		
806.	Flood Certification Fee		
807.	Tax Service Fee		
808.	First Interest Reserve to Jericho All-Weather Opportunity Fund, L.P.	150,000.00	
809.	Second Interest Reserve \$5,100,000.00 unfunded		
810.	Lender Legal Fees \$50,350.00 (\$10,000.00 POC by Borrower) to Cohen, Norris, Scherer, Weinberger & Wolmer	40,350.00	
811.	Credit Review Fee to Jericho All-Weather Opportunity Fund, L.P.	5,000.00	
812.	Construction Reserve \$15,302,000.00 unfunded		
813.	Mortgage Broker Fee to Tavermer Capital Partners	360,000.00	
814.	Mortgage Broker Fee to Kensington Capital	340,000.00	
815.	Senior Loan Principal Reserve \$7,646,446.97 unfunded		
900. Items Required by Lender to be Paid in Advance:			
901.	Interest from Mar 31, 2008		
902.	Mortgage Insurance Premium		
903.	Hazard Insurance Premium		
904.	Flood Insurance Premium		
905.	Flat Fee for adding Additional Insured to Liability Policy	106.10	
1000. Reserves Deposited with Lender:		187,604.04	
1001.	Escrow for renewal of insurance and 2008 property taxes deposited with Escrow Agent		
1002.	Mortgage Insurance		
1003.	City Property Taxes		
1004.	County Property Taxes		
1005.	Annual Assessments		
1100. Title Charges:		2,500.00	
1101.	Settlement or Closing Fee to McDonald Fleming Moorhead, Attorneys at Law	375.00	
1102.	Abstract or Title Search to Titor Title Insurance Company of Florida		
1103.	Title Examination		
1104.			
1105.	Document Preparation		
1106.	Notary Fees		
1107.	Attorney Fees to McDonald Fleming Moorhead, Attorneys at Law (includes above item numbers)	25,000.00	
1108.	Title Insurance to McDonald Fleming Moorhead/TICOR (includes above item numbers)	64,303.00	
1109.	Lender's Coverage 36,000,000.00 Premium	64,303.00	
1110.	Owner's Coverage 0.00 Premium	0.00	
1111.	Courier Fees to McDonald Fleming Moorhead, Attorneys at Law	300.00	
1112.	Wire Fee to Bank of Pensacola	90.00	
1113.	Satisfaction / Handling Fees	6,430.30	
1114.	Endorsement Navigational Servitude to McDonald Fleming Moorhead/TICOR	6,430.30	
1115.	Endorsement FL Form 9 to McDonald Fleming Moorhead/TICOR	100.00	
1116.	Confingity Endorsement to McDonald Fleming Moorhead/TICOR	100.00	
1117.	Survey Endorsement to McDonald Fleming Moorhead/TICOR	1,350.00	
1118.	Reimburse for Transfer Fees on Letters of Credit to McDonald Fleming Moorhead, Attorneys at Law		
1200. Government Recording and Transfer Charges:			
1201.	Recording Fees: Deed 0.00 Mortgage 265.00 Releases 0.00	265.00	
1202.	City/County Tax/Stamp: Deed 0.00 Mortgage 0.00		
1203.	State Tax/Stamp: Deed 0.00 Mortgage 126,000.00	126,000.00	
1204.	Intangible Tax to Broward County Board of Commissioners	72,000.00	
1205.	Record Assignment of Leases and Rents to Broward County Board of Commissioners	61.00	
1206.	Record Notice of Termination to Broward County Board of Commissioners	61.00	
1207.	Record UCC-1 (Fixtures & Permits) to Broward County Board of Commissioners	2,220.00	
1208.	File UCC-1 (Fixtures & Permits) to State of Florida	805.00	
1209.	File UCC-1 (Interest in Entity) to State of Florida	28.00	
1210.	File UCC-1 (Letters of Credit) to State of Florida	52.00	
1211.	File UCC-1 in Louisiana (Fixtures & Permits) to Recorder of Mortgages, Orleans Parish	552.00	
1212.	File UCC-1 in Louisiana (Interest in Entity) to Recorder of Mortgages, Orleans Parish	32.00	
1213.	File UCC-1 in Louisiana (Letters of Credit) to Recorder of Mortgages, Orleans Parish	46.00	
1214.	Record UCC-1 (Letters of Credit) to Broward County Board of Commission	78.00	
1215.	Recording Fee Escrow to McDonald Fleming Moorhead, Attorneys at Law	200.00	
1216.	Record Lease Modification to Broward County Board of Commission	146.00	
1217.	Record Collateral Assignment of Submerged Land Lease to Broward County Board of Commission	18.50	
1218.	Record Notice Limiting Future Advances to Broward County Board of Commission	44.00	
1219.	Record Collateral Assignment of Property Rights and Agreements Affecting Real Estate to Broward County Board of Commission	2,237.00	
1300. Additional Settlement Charges:			
1301.	Survey		
1302.	Pest Inspection		
1303.	Reimburse for Lease Modification Fee to McDonald Fleming Moorhead, Attorneys at Law	525.00	
1304.	Property Search to Florida Property Search	715.00	
1305.	UCC Searches to CSC	469.00	
1306.	2007 Property Taxes on Parcel 10216-35-02800 to Broward County Revenue Department	10,620.07	
1307.	2007 Property Taxes on Parcel 10216-35-12900 to Broward County Revenue Department	5,667.96	
1308.	2007 Property Taxes on Parcel 10216-35-03400 to Broward County Revenue Department	5,615.69	
1309.	2007 Property Taxes on Parcel 10216-35-03500 to Broward County Revenue Department	5,636.91	
1310.	2007 Property Taxes on Parcel 10216-02-01800 to Broward County Revenue Department	114,093.79	
1311.	2007 Property Taxes on Parcel 10216-02-01900 to Broward County Revenue Department	18,045.90	

Settlement Date: March 31, 2008

File Number: SRM-07-2327

1312. 2007 Property Taxes on Parcel 10216-12-00100 to Broward County Revenue Department	10,052.61
1313. 2007 Tangible Tax on Parcel 3C000-00-017402 to Broward County Revenue Department	5,620.63
1314. Principal reduction of Regions Bank Loan to Regions Bank	4,539,469.59
<b>1400. Total Settlement Charges (Enter on line 103, Section J and line 502, Section K)</b>	<b>\$8,271,326.39</b>

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of HUD-1 Settlement Statement. SUBSTITUTION FORM 1099 SELLER STATEMENT. The information contained in Blocks E, G, H and I on line 401 (or if 401 is asterisked, line 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

Pier Seventeen Marina and Yacht Club, LLC

Borrower:

Ean E. Weber, Jr., manager

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent:

Date: March 31, 2008

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

**LETTERS OF CREDIT AGREEMENT**

THIS LETTERS OF CREDIT AGREEMENT is entered into this March 11, 2008 by and between PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Borrower") and JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership ("Lender").

**WITNESSETH:**

WHEREAS, JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership ("Lender") has provided financing to PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Borrower") in reliance upon all parties executing this Letters of Credit Agreement; and

WHEREAS, the letters of credit described on Exhibit "B" (collectively "Letters of Credit") have been issued for the benefit of Borrower; and

Now therefore, in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon, the parties hereto agree as follows:

1. The recitals set forth hereinabove are true and correct and are incorporated herein by reference and made a part hereof as if restated.
2. All parties hereby agree and acknowledge that no payments will be made under the Letters of Credit to any party other than Lender unless written authorization from Lender to disburse otherwise is provided. Prior to such time, any monies drawn down upon such Letters of Credit by Borrower or Lender will be paid to Lender.
3. All parties agree that Lender shall have any and all rights of Borrower under the Letters of Credit to draw down on such monies, which will be payable to Lender pursuant to the terms of the Letters of Credit as set forth above and Borrower assigns all rights to Lender to do so. Furthermore, Lender shall have the same rights of Borrower to demand payment pursuant to the terms of the Letters of Credit to draw down such monies. In furtherance of same, without limitation, Lender will be deemed the "Beneficiary" under the Letters of Credit.
4. No later than fifteen days prior to the expiration of any Letter of Credit, an extension will be provided to same, or in the alternative, a new Letter of Credit equal to the same amount as the expiring Letter of Credit will be issued in favor of Borrower, and assigned to Lender.
5. This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties hereto, and facsimile copies shall serve as originals.

**[SIGNATURE PAGES TO FOLLOW]**

[SIGNATURE PAGE TO LETTERS OF CREDIT AGREEMENT]

BORROWER

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company

By: \_\_\_\_\_

Earl E. Weber, Jr., Manager

[SIGNATURE PAGE TO LETTERS OF CREDIT AGREEMENT]

LENDER

JERICO ALL-WEATHER OPPORTUNITY  
FUND, L.P., a Delaware limited partnership  
Svirsky Asset Management, Inc.

By: [Signature]  
Print: Scott Svirsky  
Its: President





EXHIBIT "8"  
LETTERS OF CREDIT

(a) Irrevocable Standby Letter of Credit No. 3094, dated August 28, 2007 and issued by South Valley National Bank, in the amount of \$180,000.00, as amended, for the account of Balbir S. Rataul and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Mouet, LLC, for Slip Unit Number 6 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(b) Irrevocable Standby Letter of Credit No. CTCS-383532 dated August 31, 2007 and issued by JPMorgan Chase Bank, N.A., in the amount of \$180,000.00, as amended, for the account of Michael Noonan and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Cajun Boat Slip, LLC, for Slip Unit Number 8 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(c) Irrevocable Stand-by Letter of Credit Ref. No. 7540012005-900 dated July 11, 2007 and issued by Morgan Stanley Bank, in the amount of \$180,000.00, as amended, for the account of Michael Noonan and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Michael Noonan, for Slip Unit Number 9 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(d) Irrevocable Standby Letter of Credit Ref. No. 13-SB-4765, dated October 16, 2007 and issued by Citizens Business Bank, in the amount of \$180,000.00, as amended, for the account of Devon Wright Hartman and Mary Ellen Beierle, as Trustees of The Hartman-Beierle Family Trust dated June 14, 2000, and for the benefit of Pier Seventeen Marina and Yacht Club,

LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Home 4 the Summer, LLC, for Slip Unit Number 11 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(e) Irrevocable Standby Letter of Credit No. 07OSL00973, dated August 16, 2007 and issued by East West Bank, in the amount of \$180,000.00, as amended, for the account of Thanh T. Nguyen and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Pier 17 Slip#14, LLC, for Slip Unit Number 14 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(f) Irrevocable Standby Letter of Credit No. 29771, dated August 28, 2007 and issued by Gulf Coast Bank & Trust Company, in the amount of \$43,650.00, as amended, for the account of Stephen A. Broussard and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Pier 17 New Orleans, LLC, for Slip Unit Number 13 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(g) Irrevocable Standby Letter of Credit No. S905396, dated January 10, 2008 and issued by RBS Citizens, N.A., in the amount of \$43,650.00, as amended, for the account of Edward C. Mikkelsen and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Pier 17 New Orleans, LLC, for Slip Unit Number 8 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(h) Irrevocable Letter of Credit No. NZS903797, dated September 7, 2007 and issued by Wells Fargo Bank, N.A., in the amount of \$180,000.00, as amended, for the account of Linda



S. Rauchle and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Rauchle Investments, LLC, for Slip Unit Number 16 of Pier Seventeen Marina and Yacht Club, a commercial condominium; and

(i) Irrevocable Standby Letter of Credit No. 3093, dated August 28, 2007 and issued by South Valley National Bank, in the amount of \$180,000.00, as amended, for the account of Balbir S. Rataul and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Balbir S. Rataul, for Slip Unit Number 17 of Pier Seventeen Marina and Yacht Club, a commercial condominium.



### ESCROW AGREEMENT

THIS ESCROW AGREEMENT, entered into this March 11, 2008, by and between PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Borrower") and McDonald Fleming Moorhead\* ("Escrow Agent") for the benefit of JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership ("Lender").

#### WITNESSETH:

WHEREAS, the Lender has loaned Thirty Six Million and No/100 (\$36,000,000.00) Dollars this date to Borrower, secured by that property set forth in Exhibit "A" ("Property"); and

WHEREAS, it is necessary for the parties hereto to enter into an Escrow Agreement for the purpose of escrowing the sum of \$ ~~167,604.04~~ for real estate taxes on the Property to become due for 2008 and for a renewal of the previous insurance on the Property;

~~\$167,604.04~~ \$187,604.04

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true, and correct and incorporated herein.
2. Escrow Agent shall hold the sum of \$ ~~167,604.04~~ ("Escrow Account") to be applied for real estate taxes on the Property to become due for 2008 and for a renewal of the previous insurance on the Property.
3. Between November 1, 2008 and November 16, 2008, Escrow Agent shall release monies from the Escrow Account to be paid to the taxing authority for the Property to satisfy all real estate taxes on the Property for 2008. On or before June 11, 2009, Escrow Agent shall release monies to renew the previous insurance on the Property.
4. It is recognized that this Escrow Agreement has been entered into by Escrow Agent and Borrower in Broward County, Florida; that the property which is the subject of this Escrow Agreement is located in Broward County, Florida. Therefore, it is agreed that venue with respect to any matter arising herefrom shall only lie in Broward County, Florida, except to the extent, and only to the extent, that this provision with respect to venue is deemed in contravention of any applicable law. Further, this Escrow Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement may be signed in counterparts and facsimile signatures shall operate as originals.
5. This Escrow Agreement and the instructions herein are irrevocable unless an agreement is executed in writing by Lender and Borrower modifying same.

#### ESCROW AGENT:

McDonald Fleming Moorhead\*

By: [Signature]

Print: Stephen R. Moorhead

Its: partner

#### BORROWER:

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company

By: [Signature]

Earl E. Weber, Jr., Manager

\*McDonald, Fleming, Moorhead, Ferguson, Green, Smith, Blankenship, Heath & deKozan, LLP, a Florida limited liability partnership

EXHIBIT "A"  
LEGAL DESCRIPTION

PARCEL 1 (FEE SIMPLE ESTATE):

The East 65.84 feet of the West 1121.84 feet of Tract A; AND Tract A, LESS the West 1121.84 feet, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

The East 128 feet of the West 798 feet of Tract A, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

All that portion of the West three-fourths (W 3/4) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) and the East one-half (E 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) in Section 16, Township 50 South, Range 42 East, lying North of the Channel of the South Fork of New River, said lands situate, lying and being in Broward County, Florida;

AND

The East one-half (E 1/2) of the East one-half (E 1/2) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4), North of New River, LESS the East 100 feet, Section 16, Township 50 South, Range 42 East, in the County of Broward, State of Florida.

AND

All that parcel of land described as follows: Beginning at the Northeast corner of the Southwest one-quarter (SW 1/4) of Section 16, Township 50 South, Range 42 East, run thence West along the North line of said Southwest one-quarter (SW 1/4), 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence Easterly along the South Fork of New River to the East line of said Southwest one-quarter (SW 1/4); thence North along said East line of the Southwest one-quarter (SW 1/4) to the Point of Beginning; said parcel being also described as all that part of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION of Government Lots 1, 2, 3, and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4) of Section 16, Township 50 South, Range 42 East, as recorded in Plat Book 1, Page 2, of Broward County, Florida, Public Records; beginning at a point on the South Fork of New River where the East line of the Southwest one-quarter (SW 1/4) of said Section 16 intersects said South Fork of New River; thence Northerly along said East line of said Southwest one-quarter (SW 1/4) projected Northerly to the point where the same as projected intersects the North line of said Lot 17; thence West along the North line of said Lot 17, 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence along the South Fork of New River to the Point of Beginning.

AND

That certain parcel of land known as Block A, of the Amended Plat of YELLOWSTONE PARK, as per Plat thereof, recorded in Plat Book 15, Page 3, of the Public Records of Broward County, Florida; said parcel being also described as all that portion of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION, of Government Lots 1, 2, 3 and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4), Section 16, Township 50 South, Range 42 East, as per Plat thereof, recorded in Plat Book 1, Page 2, of the Public Records of Broward County, Florida, lying East of the East line of the Southwest one-quarter (SW 1/4) of said Section 16 projected to a point where the same as so projected intersects the North line of said Lot 17.

AND TOGETHER WITH AND SUBJECT TO those non-exclusive easement rights for road purposes, access purposes and/or ingress and egress purposes, as set forth in that certain Agreement recorded in Official Records Book 747, Page 370, of the Public Records of Broward County, Florida.

PARCEL 2 (LEASEHOLD ESTATE): The Leasehold interest created under that certain Board of Trustees of the Internal Improvement Trust Fund of the State of Florida Sovereignty Submerged Lands Lease, recorded in Official Records Book 28991, Page 265, together with: Modification to Increase Square Footage recorded in Official Records Book 37567, Page 1279; Modification To Reflect a Change In Ownership recorded in Official Records Book 40816, Page 208; Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership recorded in Official Records Book 42722, Page 1649; Surveyor's Affidavit recorded in Official Records Book 43631, Page 1704 and Corrective Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership to be recorded, all in the Public Records of Broward County, Florida, to wit:

Seven (7) Parcels of Submerged land lying in the South Fork of New River in Section 16, Township 50 South, Range 42 East, Broward County, Florida, said Submerged Land Parcels being more fully described as follows:

PARCEL "A":

Commencing (1) at the Northeast corner of the Southwest one-quarter (SW 1/4) of said Section 16; thence North 90°00'00" East, on the North line of said Southeast one-quarter (SE 1/4), a distance of 52.88 feet to the Point of Beginning (1); thence North 16°47'35" West, a distance of 1.19 feet to a point on the wetface of an existing seawall cap; thence North 04°19'49" East, on said wetface, a distance of 93.20 feet to a point of curve; thence Northerly through Northwesterly on said wetface and said curve to the left, with a radius of 20.82 feet, a central angle of 51°49'04", an arc distance of 18.83 feet to a point; thence South 88°56'14" East, a distance of 40.02 feet; thence South 04°19'49" West, distance of 106.07 feet; thence South 85°40'11" East, a distance of 8.28 feet; thence South 04°19'49" West, a distance of 28.35 feet; thence North 85°40'11" West, a distance of 31.56 feet to a Reference Point "A"; thence North 16°47'35" West a distance of 23.01 feet to the Point of Beginning (1).

TOGETHER WITH PARCEL "B":

Commencing (2) at the aforementioned Reference Point "A"; thence South 16°47'35" East, a distance of 11.16 feet to the Point of Beginning (2); thence continuing South 16°47'35" East, a distance of 42.79 feet to a Reference Point "B"; thence North 90°00'00" East, a distance of 20.44 feet; thence North 00°00'00" East, a distance of 40.96 feet; thence North 90°00'00" West, a distance of 32.80 feet to the Point of Beginning (2).

ALSO TOGETHER WITH PARCEL "C":

Commencing (3) at the aforementioned Reference Point "B"; thence South 16°47'35" East, a distance of 11.18 feet to the Point of Beginning (3); thence South 14°52'33" West, a distance of 35.56 feet; thence South 33°50'47" West, a distance 48.63 feet to a point on the wetface of an existing 2.50 foot seawall cap; thence South 26°35'58" West, on the Northeasterly extension of the wetface of an existing 1.30 foot seawall cap and on the wetface of said 1.30 foot seawall cap, a distance of 19.36 feet; thence South 81°16'24" West, on said wetface and Westerly extension thereof, a distance of 123.73 feet to a Reference Point "C"; thence South 08°43'36" East, a distance of 32.00 feet; thence North 81°16'24" East, a distance of 137.40 feet; thence North 27°41'14" East, a distance of 32.14 feet; thence North 25°53'10" East, a distance of 6.87 feet; thence North 18°07'24" East, a distance of 86.41 feet; thence North 75°07'27" West, a distance of 18.93 feet to the Point of Beginning (3).

AND ALSO TOGETHER WITH PARCEL "D":

Beginning (4) of the aforementioned Reference Point "C"; thence North 76°54'00" West, a distance of 24.19 feet to the corner of the wetface of an existing 1.70 foot seawall cap; thence North 88°49'49" West, on said wetface of a distance of 21.31 feet to a Reference Point "D"; thence South 01°10'11" West, a distance of 14.61 feet; thence South 88°49'49" East, a distance of 46.65 feet; thence North 08°43'36" West, a distance of 9.75 feet to the Point of Beginning (4).

AND ALSO TOGETHER WITH PARCEL "E":

Commencing (4) at the aforementioned Reference Point "D"; thence North 88°49'49" West, on the wetface of an existing 1.70 foot seawall cap and Westerly extension thereof, a distance of 58.96 feet; thence North 89°09'21" West, a distance of 280.74 feet to the Point of Beginning (5); thence continuing North 89°09'21" West, a distance of 72.44 feet; thence South 89°50'47" West, a distance of 50.00 feet; thence South 84°38'49" West, a distance of 79.73 feet to a Reference Point "E"; thence South 00°41'48" West, a distance of 6.47 feet; thence North 90°00'00" East, a distance of 201.89 feet; thence North 00°00'00" East, a distance of 12.97 feet to the Point of Beginning (5).

AND ALSO TOGETHER WITH PARCEL "F":

Beginning (6) at the aforementioned Reference Point "E"; thence South 84°38'49" West, a distance of 55.98 feet to a Reference Point "F"; thence South 00°11'29" East, a distance of 9.25 feet; thence North 89°48'31" East, a distance of 55.53 feet; thence North 00°41'48" East, a distance of 14.29 feet to the Point of Beginning (6).

AND ALSO TOGETHER WITH PARCEL "G":

Commencing (5) at the aforementioned Reference Point "F"; thence South 84°38'49" West, a distance of 28.00 feet to the Point of Beginning (7); thence continue South 84°38'49" West, a distance of 91.27 feet; thence South 76°18'50" West, a distance of 5.38 feet to the corner of the wetface of an existing 2.00 foot seawall cap thence South 76°26'28" West, on said wetface and the Westerly extension thereof, a distance of 144.35 feet; thence South 16°29'31" East, a distance of 46.08 feet; thence North 77°42'48" East, a distance of 177.52 feet; thence North 57°48'51" East, a distance of 21.53 feet; thence North 39°23'59" East, a distance of 49.91 feet to the Point of Beginning (7).

All of said Submerged Lands situate, lying and being in the City of Fort Lauderdale, Broward County.

### **CONSTRUCTION RESERVE AND SECURITY AGREEMENT**

Agreement, dated March 11, 2008, by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company having an address at 1500 SW 17<sup>th</sup> Street, Fort Lauderdale, Florida 33309 ("Borrower") and JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership having an address at 3835 NW Boca Raton Blvd., Building 200, Boca Raton, Florida 33431 ("Lender").

#### **WITNESSETH:**

WHEREAS, Borrower has received a loan (the "Loan") from Lender in the sum of Thirty Six Million and No/100 (\$36,000,000.00) Dollars.

WHEREAS, to evidence the indebtedness of said Loan, Borrower has executed and given Lender a Promissory Note (the "Note") dated the date hereof in the sum of Thirty Six Million and No/100 (\$36,000,000.00) Dollars; and

WHEREAS, to secure the Note, Borrower has given to Lender a Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") on the property described on Schedule "A" (the "Premises") in the sum of Thirty Six Million and No/100 (\$36,000,000.00) Dollars; and

WHEREAS, Borrower and Lender have agreed that a portion of the proceeds of the Loan equal to \$ 15,302,000.00 ("Reserve") is to be deposited with Lender, to be released in accordance with the terms and conditions hereof.

WHEREAS, Borrower and Lender wish to confirm their Agreement with respect to the Reserve.

NOW, therefore, in consideration of ten dollars and other good and valuable consideration, Borrower and Lender hereby agree as follows:

1. Borrower and Lender agree that the Reserve shall be retained by Lender from the proceeds of the Loan and shall be held and disbursed by Lender in accordance with the terms hereof. Lender shall not be required to hold the Reserve as a trust fund and Borrower shall not be entitled to interest thereon.
2. Provided there shall be no Event of Default by Borrower under the Note, the Mortgage or any other document evidencing or securing the Loan ("Loan Documents"), the Reserve shall be released by Lender in reimbursement or direct payment of pre-development expenses to third party contractors used in connection with the Premises, which expenses shall be directly related to vertical development of the Premises and shall not include items that do not directly improve the Premises such as developer's fees, which is set forth on Schedule "B" attached, or to be attached, which must be approved by Lender ("Work").

A. Disbursements from the Reserve shall be made in such amounts and at such times as are requested by Borrower pursuant to an itemized statement of Borrower setting forth the amounts sought in the form approved by Lender ("Request for Advance"). Once any monies are disbursed, such monies are deemed funded under the Note. Each Request for Advance shall (i) be duly executed by the Borrower, (ii) be submitted to Lender and Lender's designated construction consultant ("Lender's Representative") not less than ten (10) days prior to the proposed date for such advance, (iii) specify the specific items and costs of Work theretofore performed by Borrower to be paid or reimbursed with the proceeds of the requested advance, (iv) include the documentation required to be included therewith under this Section 2, and (v) constitute an affirmation that all of the representations and warranties set forth in the other Loan Documents remain true and correct as of the date thereof and will be true and correct on the date for the requested advance. In no event shall the disbursement for any particular category of the Work exceed the maximum amount specified for such category of the Work on the budget for the Work, a copy of which is attached hereto as Schedule B, provided, however, that if all work in a particular category has been completed, Borrower may reallocate any surplus in such category to another budget item. It is understood, however, that Lender's approval of such budget is for Lender's own benefit, and Borrower may not rely on Lender's approval thereof, nor shall same be deemed a representation by Lender as to the adequacy or sufficiency thereof.

B. Disbursements shall be made no more often than two times per month and each disbursement shall be subject to such reasonable out-of-pocket expenses (including travel expenses) that Lender or Lender's Representative may incur. Each disbursement shall be in the minimum amount of One Hundred Thousand and No/100 (\$100,000.00) Dollars.

C. A 10% retainage will be held from each disbursement. Such retainage will be disbursed only upon the final completion of the renovation to which it relates, a final inspection by Lender, and receipt of all applicable permits and approvals with respect to such work, including a permanent certificate of occupancy (if required for such Work).

D. Each Request for Advance shall include a certification by Borrower's architect and/or Borrower's engineer (who shall be approved by Lender) of the total costs incurred in connection with the Work to the date of the Request for Advance in question, the estimated cost of completing the Work in accordance with the plans and specifications that shall have previously been submitted to and approved by Lender and that the remaining Work can be completed for an amount not greater than the aggregate amount of the undisbursed sums hereunder, including a contingency factor as shall be determined by Lender, and that the Work is on schedule to be completed within the required timeframe. Such certificate shall be subject to the review and approval of Lender's Representative. With each Request for Advance, Borrower shall certify that all Work has been performed in accordance with all applicable legal requirements, applicable insurance requirements, and any plans and specifications previously approved by Lender and shall provide Lender evidence reasonably satisfactory to Lender of completion. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided, waivers of lien from each contractor providing materials, labor or services and, unless Lender has agreed



to make payment directly to the contractor or subcontractor in connection with a particular item, evidence satisfactory to Lender of payment of all such amounts.

E. Lender shall not be obligated hereunder to make any disbursement of the Reserve unless and until (i) Lender has received and approved all contracts regarding the Work to be performed, (ii) Borrower shall have furnished to Lender copies of all permits and approvals required by all governmental authorities having jurisdiction, allowing the performance of the Work, (iii) Borrower shall have furnished to Lender, concurrently with any disbursement made hereunder, sworn statements, waivers of lien, affidavits and assurances of payment by the contractor(s) performing the Work to which such disbursement relates and as to all prior disbursements, and (iv) Lender shall have received such endorsements to Lender's title policy as shall be satisfactory to Lender.

F. In addition to the foregoing conditions, Lender shall not be required to disburse the retainage for the Work until thirty (30) days after Lender shall have received all of the following:

(i) Evidence of the approval by the applicable Governmental Authority of the Work in its entirety, to the extent any such approval is a condition of the lawful use of the Premises;

(ii) A Certificate from Borrower dated at or about the date of completion of the Work, certifying that (i) such Work has been satisfactorily performed in accordance with the approved plans and specifications, (ii) no notices of any claimed violations of ordinances arising from the Work or operation of the Premises which have not been cured were served on the party making such certification or any contractor or subcontractor or their respective agents or representatives and (iii) the party making such certification is not aware of any circumstances which could give rise to the issuance of any such notice of violation;

(iii) All final waivers of lien and sworn statements from contractors, subcontractors and material suppliers with respect to the Work including, but not limited to, a final contractor's affidavit and all other documents required pursuant to the Florida Construction Lien Laws of the Florida Statutes; and

(iv) Violation searches indicating no notices of violation have been issued with respect to the Premises (other than immaterial violations) other than violations which have been cured and removed of record or otherwise discharged.

G. In the event Lender determines, in its reasonable discretion, that any Work is not being performed or has not been completed in a workmanlike or timely manner, Lender shall have the option to withhold disbursement for such unsatisfactory Work. If Borrower shall not cure such unsatisfactory Work after notice from Lender thereof within the time periods specified in Section 5 below, or if the Work shall not be completed on or before twelve (12) months from the date hereof, such failure shall be an Event of Default, and, in addition to all other rights Lender may have under this Agreement upon an Event of Default and under the Note, the Mortgage and the other Loan Documents, Lender may proceed under existing contracts or contract with third parties to complete such Work and either apply the Reserve toward the labor and materials necessary to complete such Work or demand payment for such Work from Borrower. In order to facilitate Lender's completion or making of such Work, Lender is hereby granted the right, but not the obligation, to enter onto the Property to perform such Work and/or employ watchmen to protect the Property from damage. All sums so expended by Lender shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower irrevocably constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution, which appointment shall be deemed to be coupled with an interest, to complete or undertake the Work in the name of Borrower. Borrower specifically agrees that all power granted to Lender under this Agreement may be assigned by Lender to its successors or assigns as holder of the Note.

Nothing in this Section shall be construed in such a way as to: (i) make Lender responsible for making or completing any Work; (ii) require Lender to expend funds in addition to the Reserve to make or complete any Work; (iii) obligate Lender to proceed with any Work; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Work. Lender's approval of the plans and specifications shall be for Lender's benefit and shall not be deemed a representation or warranty by Lender that same are adequate or in accordance with applicable law.

H. Borrower shall perform all Work when required as specified in this Agreement and, if not otherwise specified, in such manner as necessary in order to keep the Property in good order and repair in a good marketable condition and to keep the Property or any portion thereof from deteriorating. Once commenced, Borrower shall not abandon or cease any Work, unless such cessation results from causes beyond the control of Borrower (but Borrower promptly shall complete such Work upon the resumption of its ability to do so). Borrower shall pay all costs necessary for completion of the Work without regard to the sufficiency of the funds in any Reserve which may be established therefore. Borrower shall complete all Work in a good and workmanlike manner as soon as practicable following the commencement of the performance of such Work. All Work shall comply with all Applicable Laws and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters. Borrower shall pay all applicable fees and charges of such authorities. All Work and all materials, equipment, fixtures, or any other item comprising of a part thereof shall be constructed, installed or completed, as applicable, by Borrower free and clear of all mechanic's, materialman's or other liens.

I. Notwithstanding anything to the contrary herein, all deposit monies under any purchase contracts for the dock slips to be used for construction as set forth in the such purchase contracts [in no event will this amount be less

than One Million Six Hundred Thousand and No/100 (\$1,600,000.00) Dollars as of the date of the closing of the Loan], will be used/funded/drawn down on for construction prior to any funding of the Reserve.

3. Borrower shall permit Lender, Lender's Representative, and any representatives of either, free access to the Premises and shall make available for audit and inspection at any reasonable time by Lender or its representatives all property, equipment, books, contracts, records and other papers relating to the Premises. Borrower shall promptly respond to any inquiry made by Lender or Lender's Representative with respect to any of the foregoing. Borrower shall cause its contractors and any subcontractors working on the Premises to cooperate with Lender, Lender's Representative or any representative of either to enable that party to perform his functions hereunder.

4. All Work shall be performed by a contractor approved by Lender pursuant to a construction agreement approved by Lender. Such contractor and construction agreement shall be fully bonded in favor of Lender by an indemnitor and on such terms and conditions as shall be acceptable to Lender but which shall include, without limitation, (i) that the bond shall cover all cost overruns and (ii) that the indemnitor shall be obligated to have the construction completed within the specified time frame in accordance with the plans and specifications approved by Lender.

5. An "Event of Default" shall be deemed to occur if Borrower fails to comply with any provision of this Agreement and such failure is not cured within five (5) days after notice from Lender if such failure can be cured by the payment of a sum of money or within fifteen (15) days after notice from Lender in the case of any other failure. Borrower understands that an Event of Default under this Agreement shall be deemed to be an Event of Default under the terms of the Note, the Mortgage and the other Loan Documents, and that in addition to the remedies specified in this Agreement, Lender shall be able to exercise all of its rights and remedies under the Note, the Mortgage and the other Loan Documents upon an Event of Default thereunder. If an Event of Default occurs under the Note, the Mortgage or any of the other Loan Documents, such event shall be deemed an Event of Default hereunder. Upon the occurrence of a default under this Agreement or under any of the Loan Documents, Lender shall (i) have no further obligation to release the Reserve, regardless of whether such default is later cured, and (ii) have the right to withdraw and apply the Reserve to payment of any and all debts, liabilities and obligations of Borrower to Lender pursuant to or in connection with the Note, the Mortgage, the other Loan Documents and this Agreement, in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Reserve shall be in addition to all other rights and remedies provided to Lender under this Agreement, the Note, the Mortgage, the other Loan Documents, and at law or in equity as a result of Borrower's default.

6. As security for full payment of the Loan and timely performance of Borrower's obligations under the Note, the Mortgage, the other Loan Documents, and this Agreement, Borrower hereby pledges, transfers and assigns to Lender, and grants to Lender a continuing security interest in and to the Reserve and all profits and proceeds thereof. Borrower acknowledges that Lender has control of the Reserve for the purposes of Florida Uniform Commercial Code now in effect and, therefore, Lender has a valid, perfected first security interest therein. Borrower agrees to execute, acknowledge, deliver, file or do, at its sole cost and expense, all other acts, assignments, notices, agreements or other instruments as Lender may reasonably require in order to perfect the foregoing security interest, pledge and assignment or otherwise to fully effectuate the rights granted to Lender by this Section.

7. Indemnification. Borrower agrees to indemnify Lender and to hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including, without limitation, litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the performance of the Work or the holding of the Reserve.

8. Fees and Expenses. In addition to any other fees payable by Borrower to Lender in connection with the Loan and this Agreement, Borrower shall pay within ten (10) days of request from Lender (i) all reasonable costs and expenses incurred by Lender in connection with collecting, holding and disbursing the Reserve pursuant to this Agreement, and (ii) all reasonable fees, charges, costs and expenses incurred by Lender in connection with inspections made by Lender or Lender's representatives in carrying out Lender's responsibility to make certain determinations under this Agreement.

9. No Third Party Beneficiary. This Agreement is intended solely for the benefit of Borrower and Lender and their respective successors and assigns, and no third party shall have any rights or interest in the Reserve, this Agreement, the Note, the Mortgage or any of the other Loan Documents. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party, nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Agreement.

10. No Warranty by Lender. Lender's approval of any plans for any Work, release of funds from the Reserve, inspection of the Property, whether by Lender or Lender's agents, or other acknowledgment of completion of any Work in a manner satisfactory to Lender shall not be deemed an acknowledgment, representation or warranty to any person or entity that the Work has been completed adequately or in accordance with Applicable Laws. All provisions of this Agreement requiring Lender's consent, approval, inspection, review or verification are for the sole benefit of Lender.

11. Miscellaneous.

(a) Notices. All notices and other communications under this Agreement will be made in writing and given in accordance with this Section. Notices are to be addressed to each party as provided below and will be deemed to

have been duly given (i) on being given by hand, if such party's receipt thereof is acknowledged in writing, (ii) one Business Day after having been timely deposited for overnight delivery, fee prepaid, with any reputable overnight courier service with a reliable tracking system, (iii) three Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested or (iv) on being sent by facsimile as of when confirmation of receipt is electronically recorded. Each party may establish a new address from time to time by written notice to the other given in accordance with this Section; provided, however, that no change of address will be effective until written notice thereof actually is received by the party to whom such change of address is sent. Notice to outside counsel designated by a party entitled to receive notice is for convenience only and is not required for notice to a party to be effective in accordance with this Section.

Address for Lender:

JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.,  
a Delaware limited partnership  
3835 NW Boca Raton Blvd., Building 200  
Boca Raton, Florida 33431  
Attention: Glenn Chwatt  
Telecopy: (561) 362-7199

With a copy to:

Cohen, Norris, Scherer, Weinberger & Wolmer  
712 US Highway One, Suite 400  
North Palm Beach, Florida 33408  
Attention: Gregory R. Cohen  
Telecopy: (561) 842-4104

Address for Borrower:

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company  
1500 SW 17<sup>th</sup> Street  
Fort Lauderdale, Florida 33309

(b) Entire Agreement; Modification. This Agreement and the Loan Documents set forth the entire agreement between the parties hereto with respect to the subject matter hereof and supercede all prior discussions, representations, communications and agreements (oral and written) by and among the parties hereto with respect thereto. Neither this Agreement nor any terms hereof shall be waived, modified, supplemented or terminated in any manner whatsoever, except by a written instrument signed by all parties hereto and then only to the extent expressly set forth in such writing.

(c) Binding Effect; Joint and Several Obligations. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors, and assigns, whether by voluntary action of the parties or by operation of law. The foregoing shall not be construed, however, to permit assignments or transfers otherwise prohibited under the Note, the Mortgage or the other Loan Documents.

(d) Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute a fully executed agreement even though all signatures do not appear on the same document.

(e) Unenforceable Provisions. If any provision of this Agreement is found by competent judicial authority to be invalid or unenforceable, the other provisions of this Agreement that can be carried out without the invalid or unenforceable provision will not be affected, and such invalid or unenforceable provision will be ineffective only to the extent of such invalidity or unenforceability and otherwise construed to the greatest extent possible to accomplish fairly the purposes and intentions of the parties hereto.

(f) Ambiguity; Headings and Construction of Certain Terms. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender by virtue of the fact that such document has originated with Lender as drafter. The parties to this Agreement agree that this Agreement shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of the parties hereto. Words used in this Agreement may be used interchangeably in singular or plural form, and any pronoun shall be deemed to cover all genders. Section headings are for convenience only and shall not be used in interpretation of this Agreement. "Herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or other subdivision; and "section" refers to the entire section and not to any particular subsection, paragraph or other subdivision. Reference to days for performance shall mean calendar days unless Business Days are expressly indicated. References to the "Note," "Mortgage," or "other Loan Documents" shall mean such original documents and all renewals, modifications and supplements to the foregoing.

Borrower and Lender have executed this Agreement as of the date first above written.

[SIGNATURE PAGE TO FOLLOW]

[SIGNATURE PAGE TO CONSTRUCTION RESERVE AND SECURITY AGREEMENT]

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company

By: \_\_\_\_\_

Earl E. Weber, Jr., Manager

[SIGNATURE PAGE TO CONSTRUCTION RESERVE AND SECURITY AGREEMENT]

JERICO ALL-WEATHER OPPORTUNITY  
FUND, L.P., a Delaware limited partnership  
Svirsky Asset Management, Inc.

By: Scott Svirsky  
Print: Scott Svirsky  
Its: President

SCHEDULE "A"  
PREMISES

PARCEL 1 (FEE SIMPLE ESTATE):

The East 65.84 feet of the West 1121.84 feet of Tract A; AND Tract A, LESS the West 1121.84 feet, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

The East 128 feet of the West 798 feet of Tract A, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

All that portion of the West three-fourths (W 3/4) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) and the East one-half (E 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) in Section 16, Township 50 South, Range 42 East, lying North of the Channel of the South Fork of New River, said lands situate, lying and being in Broward County, Florida;

AND

The East one-half (E 1/2) of the East one-half (E 1/2) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4), North of New River, LESS the East 100 feet, Section 16, Township 50 South, Range 42 East, in the County of Broward, State of Florida.

AND

All that parcel of land described as follows: Beginning at the Northeast corner of the Southwest one-quarter (SW 1/4) of Section 16, Township 50 South, Range 42 East, run thence West along the North line of said Southwest one-quarter (SW 1/4), 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence Easterly along the South Fork of New River to the East line of said Southwest one-quarter (SW 1/4); thence North along said East line of the Southwest one-quarter (SW 1/4) to the Point of Beginning; said parcel being also described as all that part of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION of Government Lots 1, 2, 3, and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4) of Section 16, Township 50 South, Range 42 East, as recorded in Plat Book 1, Page 2, of Broward County, Florida, Public Records; beginning at a point on the South Fork of New River where the East line of the Southwest one-quarter (SW 1/4) of said Section 16 intersects said South Fork of New River; thence Northerly along said East line of said Southwest one-quarter (SW 1/4) projected Northerly to the point where the same as projected intersects the North line of said Lot 17; thence West along the North line of said Lot 17, 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence along the South Fork of New River to the Point of Beginning.

AND

That certain parcel of land known as Block A, of the Amended Plat of YELLOWSTONE PARK, as per Plat thereof, recorded in Plat Book 15, Page 3, of the Public Records of Broward County, Florida; said parcel being also described as all that portion of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION, of Government Lots 1, 2, 3 and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4), Section 16, Township 50 South, Range 42 East, as per Plat thereof, recorded in Plat Book 1, Page 2, of the Public Records of Broward County, Florida, lying East of the East line of the Southwest one-quarter (SW 1/4) of said Section 16 projected to a point where the same as so projected intersects the North line of said Lot 17.

AND TOGETHER WITH AND SUBJECT TO those non-exclusive easement rights for road purposes, access purposes and/or ingress and egress purposes, as set forth in that certain Agreement recorded in Official Records Book 747, Page 370, of the Public Records of Broward County, Florida.

PARCEL 2 (LEASEHOLD ESTATE): The Leasehold interest created under that certain Board of Trustees of the Internal Improvement Trust Fund of the State of Florida Sovereignty Submerged Lands Lease, recorded in Official Records Book 28991, Page 265, together with: Modification to Increase Square Footage recorded in Official Records Book 37567, Page 1279; Modification To Reflect a Change In Ownership recorded in Official Records Book 40816, Page 208; Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership recorded in Official Records Book 42722, Page 1649; Surveyor's Affidavit recorded in Official Records Book 43631, Page 1704 and Corrective Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership to be recorded, all in the Public Records of Broward County, Florida, to wit:

Seven (7) Parcels of Submerged land lying in the South Fork of New River in Section 16, Township 50 South, Range 42 East, Broward County, Florida, said Submerged Land Parcels being more fully described as follows:

PARCEL "A":

Commencing (1) at the Northeast corner of the Southwest one-quarter (SW 1/4) of said Section 16; thence North 90°00'00" East, on the North line of said Southeast one-quarter (SE 1/4), a distance of 52.88 feet to the Point of Beginning (1); thence North 16°47'35" West, a distance of 1.19 feet to a point on the wetface of an existing seawall cap; thence North 04°19'49" East, on said wetface, a distance of 93.20 feet to a point of curve; thence Northerly through Northwesterly on said wetface and said curve to the left, with a radius of 20.82 feet, a central angle of 51°49'04", an arc distance of 18.83 feet to a point; thence South 88°56'14" East, a distance of 40.02 feet; thence South 04°19'49" West, distance of 106.07 feet; thence South 85°40'11" East, a distance of 8.28 feet; thence South 04°19'49" West, a distance of 28.35 feet; thence North 85°40'11" West, a distance of 31.56 feet to a Reference Point "A"; thence North 16°47'35" West a distance of 23.01 feet to the Point of Beginning (1).

TOGETHER WITH PARCEL "B":

Commencing (2) at the aforementioned Reference Point "A"; thence South 16°47'35" East, a distance of 11.16 feet to the Point of Beginning (2); thence continuing South 16°47'35" East, a distance of 42.79 feet to a Reference Point "B"; thence North 90°00'00" East, a distance of 20.44 feet; thence North 00°00'00" East, a distance of 40.96 feet; thence North 90°00'00" West, a distance of 32.80 feet to the Point of Beginning (2).

ALSO TOGETHER WITH PARCEL "C":

Commencing (3) at the aforementioned Reference Point "B"; thence South 16°47'35" East, a distance of 11.18 feet to the Point of Beginning (3); thence South 14°52'33" West, a distance of 35.56 feet; thence South 33°50'47" West, a distance 48.63 feet to a point on the wetface of an existing 2.50 foot seawall cap; thence South 26°35'58" West, on the Northeasterly extension of the wetface of an existing 1.30 foot seawall cap and on the wetface of said 1.30 foot seawall cap, a distance of 19.36 feet; thence South 81°16'24" West, on said wetface and Westerly extension thereof, a distance of 123.73 feet to a Reference Point "C"; thence South 08°43'36" East, a distance of 32.00 feet; thence North 81°16'24" East, a distance of 137.40 feet; thence North 27°41'14" East, a distance of 32.14 feet; thence North 25°53'10" East, a distance of 6.87 feet; thence North 18°07'24" East, a distance of 86.41 feet; thence North 75°07'27" West, a distance of 18.93 feet to the Point of Beginning (3).

AND ALSO TOGETHER WITH PARCEL "D":

Beginning (4) of the aforementioned Reference Point "C"; thence North 76°54'00" West, a distance of 24.19 feet to the corner of the wetface of an existing 1.70 foot seawall cap; thence North 88°49'49" West, on said wetface of a distance of 21.31 feet to a Reference Point "D"; thence South 01°10'11" West, a distance of 14.61 feet; thence South 88°49'49" East, a distance of 46.65 feet; thence North 08°43'36" West, a distance of 9.75 feet to the Point of Beginning (4).

AND ALSO TOGETHER WITH PARCEL "E":

Commencing (4) at the aforementioned Reference Point "D"; thence North 88°49'49" West, on the wetface of an existing 1.70 foot seawall cap and Westerly extension thereof, a distance of 58.96 feet; thence North 89°09'21" West, a distance of 280.74 feet to the Point of Beginning (5); thence continuing North 89°09'21" West, a distance of 72.44 feet; thence South 89°50'47" West, a distance of 50.00 feet; thence South 84°38'49" West, a distance of 79.73 feet to a Reference Point "E"; thence South 00°41'48" West, a distance of 6.47 feet; thence North 90°00'00" East, a distance of 201.89 feet; thence North 00°00'00" East, a distance of 12.97 feet to the Point of Beginning (5).

AND ALSO TOGETHER WITH PARCEL "F":

Beginning (6) at the aforementioned Reference Point "E"; thence South 84°38'49" West, a distance of 55.98 feet to a Reference Point "F"; thence South 00°11'29" East, a distance of 9.25 feet; thence North 89°48'31" East, a distance of 55.53 feet; thence North 00°41'48" East, a distance of 14.29 feet to the Point of Beginning (6).

AND ALSO TOGETHER WITH PARCEL "G":

Commencing (5) at the aforementioned Reference Point "F"; thence South 84°38'49" West, a distance of 28.00 feet to the Point of Beginning (7); thence continue South 84°38'49" West, a distance of 91.27 feet; thence South 76°18'50" West, a distance of 5.38 feet to the corner of the wetface of an existing 2.00 foot seawall cap thence South 76°26'28" West, on said wetface and the Westerly extension thereof, a distance of 144.35 feet; thence South 16°29'31" East, a distance of 46.08 feet; thence North 77°42'48" East, a distance of 177.52 feet; thence North 57°48'51" East, a distance of 21.53 feet; thence North 39°23'59" East, a distance of 49.91 feet to the Point of Beginning (7).

All of said Submerged Lands situate, lying and being in the City of Fort Lauderdale, Broward County.



SCHEDULE B  
BUDGET AND SCOPE OF WORK

### ACKNOWLEDGEMENT AGREEMENT

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company ("Customer") hereby acknowledges that Jericho All-Weather Opportunity Fund, L.P. ("Jericho") has pledged its interest in and granted a security interest to Alpha Asset Managers, Limited, for and on behalf of JAWOF Portfolio ("Alpha"), pursuant to that certain Loan and Security Agreement, dated \_\_\_\_\_, 2008, between Jericho and Alpha (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used herein shall have the meanings ascribed to such terms in the Loan Agreement except to the extent such capitalized terms are otherwise defined or limited herein), in the following documents executed by or on behalf of the Customer (collectively "Customer Loan Documents");

(i) That certain Promissory Note dated March 11, 2008, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company, in favor of Jericho in the original principal amount of Thirty Six Million and No/100 (\$36,000,000.00) Dollars ("Note");

(ii) That certain Mortgage, Assignment of Leases and Rents and Security Agreement dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company for the benefit of Jericho, recorded in Book \_\_\_\_\_ (to be determined), Page \_\_\_\_\_ (to be determined), Deed Records, Broward County, Florida, pertaining to the real property described on Exhibit "A" attached hereto (the "Property");

(iii) Those certain Personal Guaranty of Payment dated the date of the Note, executed by Earl E. Weber, Jr. for the benefit of Jericho and by Michelle J. Weber for the benefit of Jericho;

(iv) That certain Assignment of Leases and Rents dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company to Jericho, recorded in Volume \_\_\_\_\_ (to be determined), Page \_\_\_\_\_ (to be determined), Deed Records, Broward County, Florida;

(v) That certain Environmental Indemnity Agreement dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company and the Guarantors in favor of Jericho;

(vi) Those UCC-1's filed on \_\_\_\_\_, 2008, naming PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company and Earl E. Weber, Jr., as debtors, and Jericho, as secured party, relating to the fixtures on the Property, recorded in Book \_\_\_\_\_ (to be determined), Page \_\_\_\_\_ (to be determined), Deed Records, Broward County, Florida and as to membership interests of PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company;

(vii) That certain Collateral Assignment of Property Rights and Agreements Affecting Real Property dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company to Jericho, recorded in Book \_\_\_\_\_ (to be determined), Page \_\_\_\_\_ (to be determined), Deed Records, Broward County, Florida;

(viii) That certain Collateral Assignment of Contract Rights dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company to Jericho;

(ix) That certain Anti-Coercion Statement dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company and Earl E. Weber, Jr. for the benefit of Jericho;

(x) That certain Americans With Disabilities Act Certificate and Indemnification Agreement dated the date of the Note, executed PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company and Earl E. Weber, Jr. for the benefit of Jericho;

(xi) That certain Borrower's Affidavit dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company for the benefit of Jericho;

(xii) That certain Certificate of Borrower dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company for the benefit of Jericho;

(xiii) Those certain Certificates of Guarantor dated the date of the Note, executed by Earl E. Weber, Jr. and Michelle J. Weber for the benefit of Jericho;

(xiv) That certain Resolution of Borrower dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company for the benefit of Jericho;

(xv) That certain Loan Agreement dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company and all Guarantors for the benefit of Jericho;

(xvi) All "Other Loan Documents".

For purposes hereof, "Other Loan Documents" shall mean all documents in the possession of Jericho pertaining to the loan evidenced by the Notes, including but not limited to, loan agreements, guaranties, security agreements, affidavits and certificates, general credit information, credit records from Jericho, payment histories, signed loan applications, appraisals, property insurance policies, certificates of mortgage insurers, title insurance policies, escrow accounts and attorneys' opinions.

Customer hereby agrees to fully cooperate with Alpha and provide such information as may reasonably be requested in connection with Alpha enforcing and otherwise protecting its rights and interest in, and with respect to, the Customer Loan Documents, including, without limitation, upon the request of Alpha and after a Default under the Loan Agreement, furnish all reports, information and payments directly to Alpha.

IN WITNESS WHEREOF, the parties have caused this Acknowledgement Agreement to be executed under seal effective this March 11, 2008.

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company

By: \_\_\_\_\_

Earl E. Weber, Jr., Manager

IN WITNESS WHEREOF, the parties have caused this Acknowledgement Agreement to be executed under seal this effective \_\_\_\_\_, 2008.

Acknowledged and Agreed:

JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership

By: Svirsky Asset Management, Inc., a General Partner

By: \_\_\_\_\_

Name: Scott Svirsky

Its: President

(xi) That certain Borrower's Affidavit dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company for the benefit of Jericho;

(xii) That certain Certificate of Borrower dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company for the benefit of Jericho;

(xiii) Those certain Certificates of Guarantor dated the date of the Note, executed by Earl E. Weber, Jr. and Michelle J. Weber for the benefit of Jericho;

(xiv) That certain Resolution of Borrower dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company for the benefit of Jericho;

(xv) That certain Loan Agreement dated the date of the Note, executed by PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company and all Guarantors for the benefit of Jericho;

(xvi) All "Other Loan Documents".

For purposes hereof, "Other Loan Documents" shall mean all documents in the possession of Jericho pertaining to the loan evidenced by the Notes, including but not limited to, loan agreements, guaranties, security agreements, affidavits and certificates, general credit information, credit records from Jericho, payment histories, signed loan applications, appraisals, property insurance policies, certificates of mortgage insurers, title insurance policies, escrow accounts and attorneys' opinions.

Customer hereby agrees to fully cooperate with Alpha and provide such information as may reasonably be requested in connection with Alpha enforcing and otherwise protecting its rights and interest in, and with respect to, the Customer Loan Documents, including, without limitation, upon the request of Alpha and after a Default under the Loan Agreement, furnish all reports, information and payments directly to Alpha.

IN WITNESS WHEREOF, the parties have caused this Acknowledgement Agreement to be executed under seal effective this March 11, 2008.

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company

By: \_\_\_\_\_  
Earl E. Weber, Jr., Manager

IN WITNESS WHEREOF, the parties have caused this Acknowledgement Agreement to be executed under seal this effective \_\_\_\_\_, 2008.

Acknowledged and Agreed:

JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership

By: Svirsky Asset Management, Inc., a General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

### INTERCREDITOR AGREEMENT

Agreement ("Agreement") dated as of the \_\_\_\_ day of \_\_\_\_\_, 2008, by and among PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana limited liability company having an address of 1500 SW 17<sup>th</sup> Street, Fort Lauderdale, Florida 33309 ("Borrower"), JERICHO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership having an address at 2500 N. Military Trail, Suite 240, Boca Raton, Florida 33431 ("Subordinate Lender"), and REGIONS BANK, an Alabama banking corporation, having an address at 301 St. Charles Avenue, New Orleans, Louisiana 70130 ("Prior Lender").

#### WITNESSETH:

WHEREAS, the Borrower is the owner of certain real property located in Broward County, Florida ("Real Estate"), which is more particularly described in Exhibit "A" attached to this Agreement and by this reference incorporated in this Agreement.

WHEREAS, the Prior Lender has made a loan ("Prior Loan") to the Borrower, which is evidenced by a promissory note dated June 20, 2006, in the original principal amount of Twenty Seven Million Four Hundred Fifty Four Thousand and No/100 (\$27,454,000.00) Dollars ("Prior Note"), with an outstanding principal balance of \$ 7,646,446.97, which loan is secured by, among other things, a mortgage ("Prior Mortgage") dated the same date as the Prior Note (the Borrower, and each guarantor or other obligor with respect to the Prior Loan being called an "Obligor"). The Prior Mortgage is a first mortgage against the Real Estate and certain other collateral as described in the Mortgage (the Real Estate and such other collateral being collectively called "Collateral"). [The Prior Note, the Prior Mortgage, and all other documents evidencing or securing the Prior Loan (including, without limitation, any guaranties) are hereinafter collectively referred to as "Prior Loan Documents").]

WHEREAS, the Subordinate Lender intends to make a loan ("Subordinate Loan") to the Borrower which will be evidenced by a promissory note dated the date hereof and having a principal balance of Thirty Six Million and No/100 (\$36,000,000.00) Dollars ("Subordinate Note") which is to be secured by, among other things, a mortgage ("Subordinate Mortgage") dated the same date as the Subordinate Note, which Subordinate Mortgage has been or is intended to be recorded against the Real Estate. The Subordinate Note, the Subordinate Mortgage, and all other documents evidencing or securing the Subordinate Loan (including, without limitation, any guaranties) are hereinafter collectively referred to as "Subordinate Loan Documents").

NOW THEREFORE, in consideration of the mutual agreements herein contained the parties to this Agreement agree as follows:

1. "WHEREAS" Clauses. The Borrower, the Prior Lender and the Subordinate Lender, each acknowledge that "WHEREAS" clauses in this Agreement are true and accurate, and are hereby incorporated in, and made a part of, this Agreement.
2. Subordination. Except as hereinafter provided, the Subordinate Lender hereby agrees that (a) the Subordinate Loan, and all advances made pursuant to the Subordinate Loan and the liens of the Subordinate Loan Documents (except as provided in Section 14.14 hereof), shall at all times be wholly subordinate to: i) the liens of the Prior Loan and the Prior Loan Documents; and thereafter, ii) any and all advances (whether or not obligatory) now or hereafter advanced or incurred in accordance with any of the terms, covenants, and conditions of the Prior Loan Documents, up to the principal amount of \$ 7,646,446.97 plus all interest that accrues thereon, plus any advance made to protect, defend, maintain or enforce the Prior Lender's liens or security interests including, without limitation, any real estate and personal property taxes and assessment, review, insurance premiums, collection costs, default rates of interest, legal fees and costs and any advances made pursuant to this Agreement to cure any monetary defaults under the Prior Loan. Prior Lender will acknowledge a Notice of Limitations of Future Advance referencing the foregoing.
3. Application Of Insurance And Condemnation Proceeds. In the event the Prior Lender shall release or permit the use of (for the purposes of the restoration of all or any part of any improvements on the Real Estate or any other Collateral) either: (a) the proceeds under policies of insurance or (b) any condemnation awards, or other compensation, made for any damages, losses or compensation for other rights by reason of a taking in eminent domain (such proceeds, awards, and other compensation being collectively called "Proceeds"), then the Subordinate Lender (and each holder of any interest in the Subordinate Loan Documents) shall likewise for such purpose, release, or permit the use of, all of its respective right, title and interest, if any, in and to all such Proceeds. The Subordinate Lender agrees that the Proceeds may be distributed and applied in the manner provided in the Prior Loan Documents (which include their retention by Prior Lender and application to the Prior Loan), which provisions shall govern and control the provisions of the Subordinate Loan Documents.
4. Notice By Subordinate Lender Of Default. The Subordinate Lender shall give the Prior Lender: (a) notice of default by the Borrower under the Subordinate Loan Documents at the time notice of such default is given to the Borrower, (b) copies of each further notice to the Borrower relating to such default, and (c) copies of each pleading

and other document filed in connection with any foreclosure action by or on behalf of, or against, the Subordinate Lender and involving the Borrower, any Obligor, or any of the Collateral.

5. Notice By Prior Lender

5.1 Notices Required To Be Given To Subordinate Lender.

(a) Prior to Prior Lender commencing any Enforcement Action under the Prior Loan Documents, Prior Lender shall provide written notice to Subordinate Lender of the default which would permit the Prior Lender to commence such Enforcement Action, whether or not Prior Lender is obligated to give notice thereof to Borrower (each, a "Prior Loan Default Notice") and shall permit Subordinate Lender an opportunity to cure such default in accordance with the provisions of this Section 5.1. If the default is a monetary default relating to a liquidated sum of money, Subordinate Lender shall have until ten (10) days after the later of (i) the giving by Prior Lender of the Prior Loan Default Notice and (ii) the expiration of Borrower's cure provision, if any, (a "Monetary Cure Period") to cure such monetary default. Subordinate Lender shall not be required, in order to effect a cure hereunder (other than the cure by Subordinate Lender of a default in the payment of the Prior Loan in full on the maturity date thereof or the reimbursement of interest on advances for monthly payments of principal and/or interest and/or on any advances), to pay any interest calculated at the default rate under the Prior Loan Documents to the extent the same is in excess of the rate of interest which would have been payable by Borrower in the absence of such default (and irrespective of any cure of such default by Subordinate Lender pursuant to the provisions of this Agreement), and no interest shall accrue at the default rate as against Subordinate Lender pursuant to the provisions of this Agreement, and no interest shall accrue at the default rate as against Subordinate Lender for such period. If the default is of a non-monetary nature, Subordinate Lender shall have the same period of time as the Borrower under the Loan Documents to cure such non-monetary default; provided, however, if such non-monetary default is susceptible of cure but cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by Subordinate Lender, Subordinate Lender shall be given an additional period of time as is reasonably necessary for the Subordinate Lender in the exercise of due diligence to cure such non-monetary default. For purposes of this Section 5.1, "Enforcement Action" shall mean any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Real Estate or Borrower, including, without limitation, the taking of possession or control of the Real Estate, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Real Estate (other than giving of notices of default and statements of overdue amounts) or (iii) exercise of any right or remedy available to Prior Lender under the Prior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Real Estate.

(b) Until the expiration of the cure periods set forth in Section 5.1(a) hereof and so long as no Event of Default shall be continuing under the Prior Loan Documents, all funds held and applied pursuant to the Prior Loan Documents, shall continue to be applied pursuant thereto and shall not be applied by Prior Lender to prepay outstanding principal balance of the Prior Loan.

5.2 Notice of Prior Loan Change.

(a) Prior Lender shall have the right without the consent of Subordinate Lender in each instance to enter into any amendment, deferral, extension, modification, renewal, replacement, consolidation, supplement or waiver (collectively, a "Prior Loan Change") of the Prior Loan or the Prior Loan Documents provided that no such Prior Loan Change shall (i) increase the interest rate or principal amount of the Prior Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Prior Loan Documents, (iii) extend or shorten the maturity date of the Prior Loan (except that Prior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Prior Loan Documents), (iv) convert or exchange the Prior Loan into or for any other indebtedness or subordinate any of the Prior Loan to any indebtedness of Borrower, (v) amend or modify the provisions limiting transfers of interests in the Borrower or the Real Estate, (vi) modify or amend the terms and provisions of the Prior Loan Documents with respect to cash management or the manner, timing and method of the application of payments under the Prior Loan Documents, (vii) cross default the Prior Loan with any other indebtedness, (viii) consent to higher strike price with respect to any new or extended interest rate cap agreement entered into in connection with the extended term of the Prior Loan, (ix) the cash flow or appreciation of the Real Estate, (or other similar equity participation), or (x) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge.

(b) Prior Lender shall deliver to Subordinate Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Prior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or

delivered by Prior Lender) within twenty (20) days after any such applicable instruments have been executed by Prior Lender.

6. Notice of Subordinate Loan Change. Subordinate Lender shall have the right without the consent of Prior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Subordinate Loan Change") of the Subordinate Loan or the Subordinate Loan Documents provided that no such Subordinate Loan Change shall (i) shorten the scheduled maturity date of the Subordinate Loan, or (ii) convert or exchange the Subordinate Loan into or for any other indebtedness or subordinate any of the Subordinate Loan to any indebtedness of Subordinate Borrower. Subordinate Lender shall deliver to Prior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Subordinate Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Subordinate Lender) within twenty (20) days after any of such applicable instruments have been executed by Subordinate Lender.

7. Cross-Default.

7.1 A default under the Subordinate Loan Documents shall constitute a default or Event of Default under the Prior Loan Documents.

7.2 A default under the Prior Loan Documents shall constitute a default or Event of Default under the Subordinate Loan Documents.

8. Rights.

8.1 Payments After Default; Foreclosure upon Real Estate by Subordinate Lender. In the event of: (a) a default under the Prior Loan Documents, after the Subordinate Lender has received notice from the Prior Lender of such default and an opportunity to cure such default in accordance with the terms hereof, or (b) a foreclosure sale under either the Prior Loan Documents or the Subordinate Loan Documents, or (c) any liquidation or dissolution of any Obligor, or of any execution sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or other similar proceeding relative to any Obligor or its property, then the Prior Lender may exercise any rights it may have under the Prior Loan Documents or applicable law with respect to a foreclosure or other realization upon the Real Estate.

8.2 (a) After an Event of Default under the Subordinate Loan Documents (after expiration of all grace and cure periods) and delivery of notice to Prior Lender required under Section 4 hereof, Subordinate Lender may exercise any rights it may have under the Subordinate Loan Documents or applicable law with respect to a foreclosure or other realization upon the Real Estate. To the extent that Subordinate Lender and/or their designee acquires the Real Estate in accordance with the provisions and conditions of this Agreement and/or the Subordinate Loan Documents, Subordinate Lender and/or their designee shall acquire the same subject to the Prior Loan and the terms, conditions and provisions of the Prior Loan Documents for the balance of the term thereof, such acquisition shall not constitute a default under the Prior Loan and Prior Loan Documents, and the Prior Loan shall not be accelerated by Prior Lender solely due to such acquisition and shall remain in full force and effect. In the event Subordinate Lender and/or its designee at a foreclosure and/or UCC sale obtains title to the Real Estate, Prior Lender hereby acknowledges and agrees that any transfer, acquisition, assumption or other fee in the Prior Loan Documents shall be waived as a condition to such transfer and any such transfer shall not constitute a breach or default under the Prior Loan Documents. Prior Lender also acknowledges and agrees that it will not impose any unreasonable fees or delays in connection with such transfer. To the extent Subordinate Lender and/or their designee acquires all of the membership interests of Borrower in accordance with the provisions and conditions of this Agreement and/or the Subordinate Loan Documents, Subordinate Lender and/or their designee shall acquire such interests subject to the Prior Loan and the terms, conditions and provisions of the Prior Loan Documents for the balance of the term thereof, such acquisition shall not constitute a default under the Prior Loan and Prior Loan Documents, and the Prior Loan shall not be accelerated by Prior Lender solely due to such acquisition and shall remain in full force and effect. In the event Subordinate Lender and/or its designee at a foreclosure and/or UCC sale obtains title to the membership interests of Borrower, Prior Lender hereby acknowledges and agrees that any transfer, acquisition, assumption or other fee in the Prior Loan Documents shall be waived as a condition to such transfer and any such transfer shall not constitute a breach or default under the Prior Loan Documents. Prior Lender also acknowledges and agrees that it will not impose any unreasonable fees or delays in connection with such transfer.

9. Right to Purchase Prior Loan. Upon an event of default under the Prior Loan or the Subordinate Loan, upon Prior Lender's acceleration of the Prior Note, upon the date a foreclosure of the Prior Mortgage has been commenced, and/or upon the date a bankruptcy has commenced against Borrower and/or any guarantor, then, upon at least five (5) days prior written notice to Prior Lender ("Purchase Notice"), Subordinate Lender and/or their designee shall have the right to purchase, in whole but not in part, the Prior Loan for a price equal to the outstanding

principal balance thereof, together with all accrued interest thereon ("Loan Purchase Price"). Concurrently with payment to the Prior Lender of the Loan Purchase Price, Prior Lender shall deliver or cause to be delivered Subordinate Lender all Prior Loan Documents held by or on behalf of Prior Lender and will execute in favor of Subordinate Lender or its designee assignment documentation, in form and substance reasonably acceptable to Subordinate Lender and Prior Lender, at the sole cost and expense of Subordinate Lender to assign the Prior Loan and its rights under the Prior Loan Documents (with customary representations or warranties, including representations as to the outstanding balance of the Prior Loan and as to Prior Lender's not having assigned or encumbered its rights in the Loan).

10. Bankruptcy Issues.

(a) This Agreement shall be applicable both before and after commencement, whether voluntary or involuntary, of any case by or against the Borrower or any Obligor under the United States Bankruptcy Code and all references in this Section 10 to the Borrower or any Obligor shall be deemed to apply to the Borrower or any Obligor as a debtor-in-possession and to any trustee in bankruptcy for the estate of the Borrower or any Obligor.

(b) The Subordinate Lender hereby agrees that the Subordinate Lender shall not make any election, give any consent, file any motion or take any other action in any case by or against the Borrower or any Obligor under the Bankruptcy Code without the prior written consent of the Prior Lender, which consent shall not be unreasonably withheld, delayed or conditioned.

11. Representations and Warranties of Prior Lender. Prior Lender hereby represents and warrants as follows:

(a) Schedule B attached hereto and made a part hereof is a true, correct and complete listing of the Prior Loan Documents as of the date hereof.

(b) Prior Lender is the legal and beneficial owner of the Prior Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(c) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(d) Prior Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(e) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Prior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(f) Prior Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Prior Lender enforceable against Prior Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(g) To Prior Lender's knowledge, no consent of any third party and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Prior Lender of this Agreement or consummation by Prior Lender of the transactions contemplated by this Agreement.

(h) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Prior Lender, (w) to Prior Lender's knowledge, violate, conflict with, or result in the breach or termination of, otherwise give any other third party the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Prior Lender is a party or to which any of its properties are subject, (x) to Prior Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Prior Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument, (y) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Prior Lender has knowledge against, or binding upon, Prior Lender or upon any of the securities, properties, assets, or business of Prior Lender or (z) to Prior Lender's knowledge, constitute a violation by Prior Lender of any statute, law or regulation that is applicable to Prior Lender.

(i) The Prior Loan is not cross-defaulted with any other loan. The Real Estate does not secure any other loan from Prior Lender to Borrower or any other affiliate of Borrower.

12. Representations and Warranties By Subordinate Lender. Subordinate Lender hereby represents and warrants as follows:

(a) Schedule C attached hereto and made a part hereof is a true, correct and complete listing of the Subordinate Loan Documents as of the date hereof.



(b) Subordinate Lender is the legal and beneficial owner of the Subordinate Loan free and clear of any lien, security interest, option or other charge of encumbrance.

(c) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(d) Subordinate Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(e) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Subordinate Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(f) Subordinate Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Subordinate Lender enforceable against Subordinate Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(g) To Subordinate Lender's knowledge, no consent of any third party and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Subordinate Lender of this Agreement or consummation by Subordinate Lender of the transactions contemplated by this Agreement.

(h) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Subordinate Lender, (w) to Subordinate Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other third party the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Subordinate Lender is a party or to which any of its properties are subject, (x) to Subordinate Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Subordinate Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument, (y) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Subordinate Lender has knowledge against, or binding upon, Subordinate Lender or upon any of the securities, properties, assets, or business of Subordinate Lender or (z) to Subordinate Lender's knowledge, constitute a violation by Subordinate Lender of any statute, law or regulation that is applicable to Subordinate Lender.

(i) Subordinate Lender has not provided any other loans to Borrower. The Real Estate does not secure any other loan from Subordinate Lender to Borrower or any other affiliate of Borrower.

#### 13. Consent By Prior Lender and Subordinate Lender.

(a) The Subordinate Lender hereby consents to and approves all provisions of the Prior Loan Documents. Prior Lender hereby consents to of the execution of the Subordinate Loan Documents.

(b) The Prior Lender hereby agrees that it shall not declare a default under the Prior Loan Documents by virtue of: a) the making of the Subordinate Loan, or b) the execution and delivery by any Obligor of, or the existence of, one or more of the Subordinate Loan Documents.

#### 14. General Provisions

14.1 Third Parties Not Beneficiaries. The provisions of this Agreement are for the sole benefit of the parties to this Agreement and not for the benefit, directly or indirectly, of any other person or entity.

14.2 Notices. Any notice, request, or demand made under this Agreement (each such notice, request, or demand shall be called a "Notice") shall be in writing and shall be either: a) hand delivered, or b) sent by Federal Express, or other reputable courier service, or c) sent by postage pre-paid registered or certified mail, return receipt requested. Each Notice which is given by a party to this Agreement (the party giving the Notice is called "Sending Party") to any other party to this Agreement (such other party being called "Receiving Party") shall be deemed given: (a) when received by the Receiving Party at its address set forth below, if such Notice is hand delivered or is sent by Federal Express (or other reputable courier service) to such address, and (b) three (3) business days after being postmarked and addressed to such Receiving Party at its address set forth above if sent by registered or certified mail, return receipt requested.

Each party may designate a change of address by Notice given, as provided in this Agreement, to the other party at least fifteen (15) days prior to the date such change of address is to become effective.

14.3 No Verbal Modification. This Agreement may only be modified, amended or changed by an agreement in writing signed by each of the parties to this Agreement. Each such party acknowledges that this Agreement sets

forth the entire agreement and understanding of the parties to this Agreement, with respect to the subordination of the Subordinate Loan to the Prior Loan, and the subject matter of this Agreement.

**14.4 Applicable Law.** In all respects, including, without limitation, matters of construction, validity and performance, this Agreement and the obligations arising under this Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida applicable to contracts made and performed in such State and any applicable laws of the United States of America. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be unenforceable or prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Agreement.

**14.5 Joint and Several.** If the Subordinate Lender consists of more than one person, the obligations and liabilities of each such person under this Agreement shall be joint and several. If the Prior Lender consists of more than one person, the obligations and liabilities of each such person under this Agreement shall be joint and several.

**14.6 Headings Have No Legal Effect.** The headings and captions of this Agreement are for convenience of reference only, and have no legal effects, and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions of this Agreement.

**14.7 Duplicate Counterparts.** This Agreement may be executed in any number of duplicate counterparts and facsimile signatures will operate as originals. If there is more than one Subordinate Lender, then each such counterpart need not be signed by each signatory. Each such duplicate counterpart which has been signed by at least one signatory, when combined with other counterparts which have been signed by the other signatories, shall be deemed an original. Facsimile signatures shall operate as originals.

**14.8 Other Transactions with Any Obligor.** Nothing in this Agreement shall restrict the ability of the Prior Lender or Subordinate Lender to lend money and to generally engage in any kind of business with any Obligor other than Borrower. Neither Prior Lender nor Subordinate Lender shall be under any obligation whatsoever to offer its business opportunities to the other party or any other party to this Agreement.

**14.9 Prevailing Party's Costs and Expenses.** In the event any action is brought to enforce this Agreement, then the prevailing party in such action shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys fees.

**14.10 Termination of Subordination Agreement.** This Agreement shall continue until the earliest of: a) all indebtedness under the Prior Loan Documents has been paid, and the Borrower has no further obligation under the Prior Loan Documents, or b) until termination of this Agreement in accordance with the terms and provisions of this Agreement.

**14.11 Nonrecourse.** Notwithstanding anything in this Agreement to the contrary, in no event shall the shareholders, directors, trustees, officers, employees or agents of the Prior Lender or the Subordinate Lender have any personal liability for the obligations of the Prior Lender or the Subordinate Lender, as the case may be, pursuant to this Agreement or otherwise.

**14.12 Successors and Assigns.** The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon the Prior Lender and the Subordinate Lender and the successors and assigns of each, and shall inure to the benefit of Prior Lender and Subordinate Lender, their respective directors, officers, shareholders, employees, agents and successors and assigns. All references in this Agreement to Subordinate Lender or to the Prior Lender shall be deemed to include all such parties' successors and assigns, and the terms "Prior Lender" and "Subordinate Lender" as used herein shall also mean and refer to any lawful holder or owner, including pledges and participants, of any of the indebtedness secured hereby.

**14.13 Further Assurances Agreement.** Each party shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further documents, instruments, agreements and assurances as the other party shall require for accomplishing the purposes of this Agreement.

**14.14 Letters of Credit/Membership Interests.** Notwithstanding anything to the contrary set forth in any of the Prior Loan Documents and/or Subordinate Loan Documents, the following collateral has been pledged, granted and/or assigned in favor of Subordinate Lender only and a security interest in the following collateral has been granted and created in favor of Subordinate Lender only:

(a) Those letters of credit set forth on Exhibit "B", together with all additional letters of credit provided as deposits under any contracts for sale and purchase of any of the real estate set forth on Exhibit "A" including, but not limited to, (i) any slips, units and/or dockominiums arising under a Declaration of Condominium affecting any and/or all of such real estate; (ii) all cash and non-cash proceeds arising therefrom; (iii) any and all other rights arising therefrom; and (iv) all of Borrower's right, title and interest in the foregoing. (b) All Membership Interests in the Borrower (collectively (a) and (b) are referred to as "Additional Collateral")

Prior Lender waives any and all claims and rights in and to such Additional Collateral. To the extent any documentation of Prior Lender now or in the future creates a security interest in the Additional Collateral in favor of Prior Lender, Prior Lender agrees such security interest is cancelled and terminated, and of no force and effect. Upon request of Subordinate Lender, Prior Lender will execute any necessary amendments to UCC-1 Financing Statements against the Additional Collateral.

It is further specifically understood and agreed that the Subordinate Lender will have first priority as to their security interest in and to such Additional Collateral and all rights in and to such Additional Collateral over all other parties. Subordinate Lender can exercise any rights and remedies with respect to the Additional Collateral upon an event of default under the Prior Loan or the Subordinate Loan, upon Prior Lender's acceleration of the Prior Note, upon the date a foreclosure of the Prior Mortgage has been commenced, and/or upon the date a bankruptcy has commenced against Borrower and/or any guarantor.

**[SIGNATURE PAGE TO FOLLOW]**

[SIGNATURE PAGE TO INTERCREDITOR AGREEMENT]

The parties to this Agreement have executed this agreement as of the date first set forth above.

Borrower:

PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a  
Louisiana limited liability company

By: [Signature]  
Earl E. Weber, Jr., Manager

STATE OF LOUISIANA

COUNTY OF JEFFERSON

I hereby certify that the foregoing instrument was acknowledged before me this March 19,  
2008, by Earl E. Weber, Jr., as Manager of PIER SEVENTEEN MARINA AND YACHT CLUB, LLC, a Louisiana  
limited liability company, who is personally known to me or has produced [Signature] as identification and  
did not take an oath.

Sign: [Signature]  
Notary Public

Print: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**STEPHEN J. BROUSSARD**  
Attorney at Law, Bar #1268  
Notary Public  
Parish of Jefferson, State of Louisiana  
My Commission is for Life

[SIGNATURE PAGE TO INTERCREDITOR AGREEMENT]

The parties to this Agreement have executed this agreement as of the date first set forth above.

Prior Lender:

REGIONS BANK, an Alabama banking corporation

By: \_\_\_\_\_

Print: Jorge E. Gori's

Its: \_\_\_\_\_

Senior Vice President

STATE OF Louisiana  
COUNTY OF Orleans

I hereby certify that the foregoing instrument was acknowledged before me this March 19, 2008, by Jorge E. Gori's, as Senior Vice President of REGIONS BANK, an Alabama banking corporation, who is personally known to me or has produced N/A as identification and did not take an oath.

Sign: \_\_\_\_\_

Elizabeth F. Waterman  
Notary Public

Print: \_\_\_\_\_

My commission expires: \_\_\_\_\_

ELIZABETH F. WATERMAN

NOTARY PUBLIC

PARISH OF ORLEANS, STATE OF LOUISIANA

MY COMMISSION IS FOR LIFE

NOTARY ID 55750

[SIGNATURE PAGE TO INTERCREDITOR AGREEMENT]

The parties to this Agreement have executed this agreement as of the date first set forth above.

Subordinate Lender:

JERICO ALL-WEATHER OPPORTUNITY FUND, L.P., a  
Delaware limited partnership  
Swirsky Asset Management, Inc.

By: Scott Swirsky

Print: Scott Swirsky

Its: President

STATE OF Florida  
COUNTY OF Palm Beach

I hereby certify that the foregoing instrument was acknowledged before me this  
25 of March, 2008, by Scott Swirsky as President of JERICO  
ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership, who is personally known to me or  
has produced \_\_\_\_\_ as identification and did not take an oath.

Sign: Pamela N. O'Brien

Notary Public

Print: Pamela N. O'Brien

My commission expires: \_\_\_\_\_



**Pamela N. O'Brien**

Commission # DD567204

Expires June 25, 2010

Bonded Troy Fain - Insurance, Inc. 800-385-7019

EXHIBIT "A"  
DESCRIPTION OF REAL ESTATE

PARCEL 1 (FEE SIMPLE ESTATE):

The East 65.84 feet of the West 1121.84 feet of Tract A; AND Tract A, LESS the West 1121.84 feet, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

The East 128 feet of the West 798 feet of Tract A, BOSSERT ISLES, according to the Plat thereof, recorded in Plat Book 46, Page 42, of the Public Records of Broward County, Florida.

AND

All that portion of the West three-fourths (W 3/4) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) and the East one-half (E 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) in Section 16, Township 50 South, Range 42 East, lying North of the Channel of the South Fork of New River, said lands situate, lying and being in Broward County, Florida;

AND

The East one-half (E 1/2) of the East one-half (E 1/2) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4), North of New River, LESS the East 100 feet, Section 16, Township 50 South, Range 42 East, in the County of Broward, State of Florida.

AND

All that parcel of land described as follows: Beginning at the Northeast corner of the Southwest one-quarter (SW 1/4) of Section 16, Township 50 South, Range 42 East, run thence West along the North line of said Southwest one-quarter (SW 1/4), 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence Easterly along the South Fork of New River to the East line of said Southwest one-quarter (SW 1/4); thence North along said East line of the Southwest one-quarter (SW 1/4) to the Point of Beginning; said parcel being also described as all that part of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION of Government Lots 1, 2, 3, and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4) of Section 16, Township 50 South, Range 42 East, as recorded in Plat Book 1, Page 2, of Broward County, Florida, Public Records; beginning at a point on the South Fork of New River where the East line of the Southwest one-quarter (SW 1/4) of said Section 16 intersects said South Fork of New River; thence Northerly along said East line of said Southwest one-quarter (SW 1/4) projected Northerly to the point where the same as projected intersects the North line of said Lot 17; thence West along the North line of said Lot 17, 100 feet; thence South 212 feet, more or less, to the South Fork of New River; thence along the South Fork of New River to the Point of Beginning.

AND

That certain parcel of land known as Block A, of the Amended Plat of YELLOWSTONE PARK, as per Plat thereof, recorded in Plat Book 15, Page 3, of the Public Records of Broward County, Florida; said parcel being also described as all that portion of Lot 17, of MRS. E. F. MARSHALL'S SUBDIVISION, of Government Lots 1, 2, 3 and 4; the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) and the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4), Section 16, Township 50 South, Range 42 East, as per Plat thereof, recorded in Plat Book 1, Page 2, of the Public Records of Broward County, Florida, lying East of the East line of the Southwest one-quarter (SW 1/4) of said Section 16 projected to a point where the same as so projected intersects the North line of said Lot 17.

AND TOGETHER WITH AND SUBJECT TO those non-exclusive easement rights for road purposes, access purposes and/or ingress and egress purposes, as set forth in that certain Agreement recorded in Official Records Book 747, Page 370, of the Public Records of Broward County, Florida.

PARCEL 2 (LEASEHOLD ESTATE): The Leasehold interest created under that certain Board of Trustees of the Internal Improvement Trust Fund of the State of Florida Sovereignty Submerged Lands Lease, recorded in Official Records Book 28991, Page 265, together with: Modification to Increase Square Footage recorded in Official Records Book 37567, Page 1279; Modification To Reflect a Change In Ownership recorded in Official Records Book 40816, Page 208; Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership recorded in Official Records Book 42722, Page 1649; Surveyor's Affidavit recorded in Official Records Book 43631, Page 1704 and Corrective Modification to Increase the Preempted Area, Reconfigure the Docking Facility and Change in Upland Ownership to be recorded, all in the Public Records of Broward County, Florida, to wit:

Seven (7) Parcels of Submerged land lying in the South Fork of New River in Section 16, Township 50 South, Range 42 East, Broward County, Florida, said Submerged Land Parcels being more fully described as follows:

PARCEL "A":

Commencing (1) at the Northeast corner of the Southwest one-quarter (SW 1/4) of said Section 16; thence North 90°00'00" East, on the North line of said Southeast one-quarter (SE 1/4), a distance of 52.88 feet to the Point of Beginning (1); thence North 16°47'35" West, a distance of 1.19 feet to a point on the wetface of an existing seawall cap; thence North 04°19'49" East, on said wetface, a distance of 93.20 feet to a point of curve; thence Northerly through Northwesterly on said wetface and said curve to the left, with a radius of 20.82 feet, a central angle of 51°49'04", an arc distance of 18.83 feet to a point; thence South 88°56'14" East, a distance of 40.02 feet; thence South 04°19'49" West, distance of 106.07 feet; thence South 85°40'11" East, a distance of 8.28 feet; thence South 04°19'49" West, a distance of 28.35 feet; thence North 85°40'11" West, a distance of 31.56 feet to a Reference Point "A"; thence North 16°47'35" West a distance of 23.01 feet to the Point of Beginning (1).

TOGETHER WITH PARCEL "B":

Commencing (2) at the aforementioned Reference Point "A"; thence South 16°47'35" East, a distance of 11.16 feet to the Point of Beginning (2); thence continuing South 16°47'35" East, a distance of 42.79 feet to a Reference Point "B"; thence North 90°00'00" East, a distance of 20.44 feet; thence North 00°00'00" East, a distance of 40.96 feet; thence North 90°00'00" West, a distance of 32.80 feet to the Point of Beginning (2).

ALSO TOGETHER WITH PARCEL "C":

Commencing (3) at the aforementioned Reference Point "B"; thence South 16°47'35" East, a distance of 11.18 feet to the Point of Beginning (3); thence South 14°52'33" West, a distance of 35.56 feet; thence South 33°50'47" West, a distance 48.63 feet to a point on the wetface of an existing 2.50 feet seawall cap; thence South 26°35'58" West, on the Northeasterly extension of the wetface of an existing 1.30 foot seawall cap and on the wetface of said 1.30 feet seawall cap, a distance of 19.36 feet; thence South 81°16'24" West, on said wetface and Westerly extension thereof, a distance of 123.73 feet to a Reference Point "C"; thence South 08°43'36" East, a distance of 32.00 feet; thence North 81°16'24" East, a distance of 137.40 feet; thence North 27°41'14" East, a distance of 32.14 feet; thence North 25°53'10" East, a distance of 6.87 feet; thence North 18°07'24" East, a distance of 86.41 feet; thence North 75°07'27" West, a distance of 18.93 feet to the Point of Beginning (3).

AND ALSO TOGETHER WITH PARCEL "D":

Beginning (4) of the aforementioned Reference Point "C"; thence North 76°54'00" West, a distance of 24.19 feet to the corner of the wetface of an existing 1.70 foot seawall cap; thence North 88°49'49" West, on said wetface of a distance of 21.31 feet to a Reference Point "D"; thence South 01°10'11" West, a distance of 14.61 feet; thence South 88°49'49" East, a distance of 46.65 feet; thence North 08°43'36" West, a distance of 9.75 feet to the Point of Beginning (4).

AND ALSO TOGETHER WITH PARCEL "E":

Commencing (4) at the aforementioned Reference Point "D"; thence North 88°49'49" West, on the wetface of an existing 1.70 foot seawall cap and Westerly extension thereof, a distance of 58.96 feet; thence North 89°09'21" West, a distance of 280.74 feet to the Point of Beginning (5); thence continuing North 89°09'21" West, a distance of 72.44 feet; thence South 89°50'47" West, a distance of 50.00 feet; thence South 84°38'49" West, a distance of 79.73 feet to a Reference Point "E"; thence South 00°41'48" West, a distance of 6.47 feet; thence North 90°00'00" East, a distance of 201.89 feet; thence North 00°00'00" East, a distance of 12.97 feet to the Point of Beginning (5).

AND ALSO TOGETHER WITH PARCEL "F":

Beginning (6) at the aforementioned Reference Point "E"; thence South 84°38'49" West, a distance of 55.98 feet to a Reference Point "F"; thence South 00°11'29" East, a distance of 9.25 feet; thence North 89°48'31" East, a distance of 55.53 feet; thence North 00°41'48" East, a distance of 14.29 feet to the Point of Beginning (6).



AND ALSO TOGETHER WITH PARCEL "G":

Commencing (5) at the aforementioned Reference Point "F"; thence South 84°38'49" West, a distance of 28.00 feet to the Point of Beginning (7); thence continue South 84°38'49" West, a distance of 91.27 feet; thence South 76°18'50" West, a distance of 5.38 feet to the corner of the wetface of an existing 2.00 foot seawall cap thence South 76°26'28" West, on said wetface and the Westerly extension thereof, a distance of 144.35 feet; thence South 16°29'31" East, a distance of 46.08 feet; thence North 77°42'48" East, a distance of 177.52 feet; thence North 57°48'51" East, a distance of 21.53 feet; thence North 39°23'59" East, a distance of 49.91 feet to the Point of Beginning (7).

All of said Submerged Lands situate, lying and being in the City of Fort Lauderdale, Broward County.

SCHEDULE B  
PRIOR LOAN DOCUMENTS

1. Promissory Note in the original principal amount of Twenty Seven Million Four Hundred Fifty Four Thousand and No/100 (\$27,454,000.00) Dollars dated June 20, 2006 executed and delivered by Borrower to Prior Lender ("Prior Note").
2. Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement dated June 20, 2006 by Borrower in favor of Prior Lender recorded in Official Record Book 42265, Page 283 of the Public Records of Broward County, Florida securing the Prior Note ("Prior Mortgage").
3. Construction Loan Agreement dated June 20, 2006 between Borrower and Prior Lender ("Prior Loan Agreement").
4. Spreader and Modification of Mortgage Agreement recorded in Official Record Book 42986, Page 1712, of the Public Records of Broward County, Florida between Borrower and Prior Lender.
5. Collateral Assignment of Sovereignty Submerged Land Lease recorded in Official Record Book 42265, Page 309 of the Public Records of Broward County, Florida from Borrower in favor of Prior Lender
6. UCC-1 Financing Statement recorded in Official Record Book 42399, Page 485, of the Public Records of Broward County, Florida from Borrower in favor of Prior Lender
7. Collateral Assignment of Sovereignty Submerged Land Lease recorded in Official Record Book 42986, Page 1726, of the Public Records of Broward County, Florida from Borrower in favor of Prior Lender.
8. All other Loan Documents executed by Borrower for the benefit of Prior Lender as defined in the Prior Loan Agreement and/or in connection with any of the foregoing documents.

SCHEDULE C  
SUBORDINATE LOAN DOCUMENTS

1. Promissory Note executed and delivered by Borrower to Subordinate Lender
2. Mortgage, Assignment of Leases and Rents and Security Agreement executed and delivered by Borrower to Subordinate Lender ("Mortgage")
3. Loan Agreement
4. Assignment of Leases and Rents executed and delivered by Borrower to Subordinate Lender
5. Environmental Indemnity Agreement executed and delivered by Obligors to Subordinate Lender
6. Personal Guarantees
7. Certificate of Borrower
8. Guarantor's Financial Certificate
9. Document Re-Execution Agreement
10. All other loan documents referenced in the Mortgage and/or Loan Agreement

EXHIBIT B – LETTERS OF CREDIT

(a) Irrevocable Standby Letter of Credit No. 3094, dated August 28, 2007 and issued by South Valley National Bank, in the amount of \$180,000.00, as amended, for the account of Balbir S. Rataul and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Mouet, LLC, for Slip Unit Number 6 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(b) Irrevocable Standby Letter of Credit No. CTCS-383532 dated August 31, 2007 and issued by JPMorgan Chase Bank, N.A., in the amount of \$180,000.00, as amended, for the account of Michael Noonan and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Cajun Boat Slip, LLC, for Slip Unit Number 8 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(c) Irrevocable Stand-by Letter of Credit Ref. No. 7540012005-900 dated July 11, 2007 and issued by Morgan Stanley Bank, in the amount of \$180,000.00, as amended, for the account of Michael Noonan and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Michael Noonan, for Slip Unit Number 9 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(d) Irrevocable Standby Letter of Credit Ref. No. 13-SB-4765, dated October 16, 2007 and issued by Citizens Business Bank, in the amount of \$180,000.00, as amended, for the account of Devon Wright Hartman and Mary Ellen Beierle, as Trustees of The Hartman-Beierle Family Trust dated June 14, 2000, and for the benefit of Pier Seventeen Marina and Yacht Club,

LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Home 4 the Summer, LLC, for Slip Unit Number 11 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(e) Irrevocable Standby Letter of Credit No. 07OSL00973, dated August 16, 2007 and issued by East West Bank, in the amount of \$180,000.00, as amended, for the account of Thanh T. Nguyen and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Pier 17 Slip#14, LLC, for Slip Unit Number 14 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(f) Irrevocable Standby Letter of Credit No. 29771, dated August 28, 2007 and issued by Gulf Coast Bank & Trust Company, in the amount of \$43,650.00, as amended, for the account of Stephen A. Broussard and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Pier 17 New Orleans, LLC, for Slip Unit Number 13 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(g) Irrevocable Standby Letter of Credit No. S905396, dated January 10, 2008 and issued by RBS Citizens, N.A., in the amount of \$43,650.00, as amended, for the account of Edward C. Mikkelsen and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Pier 17 New Orleans, LLC, for Slip Unit Number 8 of Pier Seventeen Marina and Yacht Club, a commercial condominium;

(h) Irrevocable Letter of Credit No. NZS903797, dated September 7, 2007 and issued by Wells Fargo Bank, N.A., in the amount of \$180,000.00, as amended, for the account of Linda

S. Rauchle and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Rauchle Investments, LLC, for Slip Unit Number 16 of Pier Seventeen Marina and Yacht Club, a commercial condominium; and

(i) Irrevocable Standby Letter of Credit No. 3093, dated August 28, 2007 and issued by South Valley National Bank, in the amount of \$180,000.00, as amended, for the account of Balbir S. Rataul and for the benefit of Pier Seventeen Marina and Yacht Club, LLC, and in connection with the Real Estate Purchase Agreement by and between Pier Seventeen Marina and Yacht Club, LLC and Balbir S. Rataul, for Slip Unit Number 17 of Pier Seventeen Marina and Yacht Club, a commercial condominium.