



# **AGENDA**

## **BAYFRONT COMMUNITY REDEVELOPMENT AGENCY**

Special Meeting 2019 - 04  
June 20, 2019 – 6:30 p.m.  
City Hall Council Chambers  
120 Malabar Rd SE Palm Bay, FL 32907

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### **CALL TO ORDER:**

### **ROLL CALL:**

### **ADOPTION OF MINUTES:**

1. Regular Meeting 2019-03, May 21, 2019

### **CONSENT AGENDA:**

There will be no separate discussion on those items listed under Consent Agenda (indicated with asterisks(\*)). They will be enacted by the BCRA Commissioners in one motion. If discussion is desired by the BCRA Board, that item will be removed from the Consent agenda by the Board and will be considered in the order that it appears on the agenda.

### **PUBLIC COMMENTS (NON-AGENDA ITEMS):**

Public Comments on Agenda Items – Individuals wishing to address agenda items can do so at the time the agenda item is being considered by the Agency. The Chairperson will ask if there are any public comments prior to the Agency taking action on the item. All speakers will be limited to three (3) minutes for non-agenda items.

### **PRESENTATIONS:**

### **OLD BUSINESS:**

### **NEW BUSINESS:**

1. Lease Agreement for 4220 Dixie Highway NE (Paddling Paradise, LLC)

**COMMISSIONER REPORTS:**

**OTHER AGENCY BUSINESS:**

**ADJOURNMENT:**

If an individual decides to appeal any decision made by the Bayfront Community Redevelopment Agency with respect to any matter considered at this meeting, a record of the proceedings will be required, and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS286.0105). Such person must provide a method for recording the proceedings verbatim. In accordance with the Americans with Disabilities Act and Section 901.6063(4), Florida, Statutes, persons needing special accommodations for this meeting shall, at least 48 hours prior to the meeting, contact the Office of the Bayfront Community Redevelopment Agency at (321) 407-7187 or Florida Relay System at 711.

## City of Palm Bay, Florida

### BAYFRONT COMMUNITY REDEVELOPMENT AGENCY Regular Meeting 2019-03

Held on Tuesday, the 21<sup>st</sup> day of May 2019, at City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Bayfront Community Redevelopment Agency Office, City Hall Annex, Palm Bay, Florida.

The meeting was called to order by Chairperson Capote at approximately 7:00 p.m.

#### ROLL CALL:

<b>CHAIRPERSON:</b>	William Capote	Present
<b>VICE-CHAIRPERSON:</b>	Brian Anderson	Present (Late)
<b>COMMISSIONER:</b>	Harry Santiago, Jr.	Present
<b>COMMISSIONER:</b>	Jeff Bailey	Present
<b>COMMISSIONER:</b>	Kenny Johnson	Present
<b>COMMISSIONER:</b>	James Ritter	Present
<b>COMMISSIONER:</b>	Aaron Parr	Present
<b>BAYFRONT CRA ATTORNEY:</b>	Jennifer Cockcroft	Present

#### STAFF MEMBERS:

Joan Junkala, Bayfront CRA Administrator; Lisa Morrell; City Manager; Andy Anderson, Economic Development & External Affairs Director, Patricia Foutt, Agency Secretary

#### CONSENT AGENDA:

Commissioner Bailey stated he had spoken with staff and requested the minutes format be amended to a vertical format when the votes were not unanimous to clearly account for each board member vote.

Vice-Chairperson Anderson arrived at the meeting at this time.

#### ADOPTION OF MINUTES:

Motion by Commissioner Bailey, seconded by Commissioner Johnson, to approve the minutes with the format change requested by Commissioner Bailey for meeting minutes going forward. Motion carried unanimously.

#### PUBLIC COMMENTS (NON-AGENDA ITEMS):

John Mongioi, resident, spoke regarding the derelict vessel situation. He stated he had previously worked with the issue as Chairman of the Marine Advisory Council and now

worked as an individual in the Bayfront. He said the Palm Bay Police Department were trained to identify the derelict vessels; however, per Lt. Bandish of the Palm Bay Police Department, they were not ready to execute the removal of the vessels. He said there were currently five (5) derelict vessels and that if the Florida Wildlife Commission (FWC) had started their investigation of the derelict vessels, the FWC were required to finish the removal process. He discussed the FWC time table and the changes that had been made for the removal of derelict vessels to shorten the time frame from which vessels were cited to when they could be removed. He requested to see Palm Bay's procedure after it had been completed and stated that the Palm Bay Police Department needed to be officially up and running in order to start removal procedures for any new vessels. He said the Bayfront CRA needed to work with the FWC to stay current on any updates and ensure the FWC followed the time tables for removal of the vessels. Mr. Mongioi stated he had provided several names to Ms. Junkala to help the FWC move forward. He said he wanted to get the FWC grant money that was available to aid in the removal of the derelict vessels. He said that FWC had \$800,000 as of early May and that Brevard County had committed funds to remove every vessel in the County. He stated that no funds from the City of Palm Bay were needed for the removal of the derelict vessels; however, clearance paperwork from the FWC is needed before the derelict vessel could be removed.

Maryann Civil, resident, congratulated the Bayfront CRA staff on getting the past minutes completed. She stated that some items that had been brought up at previous meetings had not been brought up again. She said that some of the outstanding issues were the quitclaim deed for the Pelican Harbor Marina, the status of marketing the Marina, the status of the Steamboat Landings properties, discussion with All Aboard Florida (Virgin Trains) regarding the pedestrian walkway under the railway bridge, the status of the Florida Inland Navigation District (FIND) grant, the Marina lease with Paddling Paradise, and the lack of backup information on the website.

Ms. Junkala responded that not all documents were ADA compliant, but were available through a public records request via email. She advised Ms. Civil that documents could be made available on OneDrive and she could provide a link for download.

## **PRESENTATIONS:**

- 1. Michael Melhado, Vintage Redevelopment Group – Pelican Harbor Marina**

Mr. Junkala introduced Michael Melhado of the Vintage Redevelopment Group and stated that Mr. Melhado had expressed interest in the Pelican Harbor Marina and the adjacent site owned by the Bayfront CRA.

Mr. Melhado said the Vintage Redevelopment Group had been interested in the Pelican Harbor Marina for approximately the last five (5) years and were one (1) of two (2) groups that responded to the Request for Information (RFI) that went out in 2016.

He presented his concept of the Bayfront as a Fisherman's Village with an entertainment center to be completed in two (2) phases. He said the first phase consisted of a destination waterfront restaurant that utilized the Marina and the existing building at the Marina. The second phase consisted of an event center and would continue with a retail center.

Mr. Melhado stated that the highlights of the presentation included a realistic vision that could be implemented in a short period of time. Mr. Melhado suggested that the property fronting Turkey Creek should be maintained for public access utilizing a boardwalk whether through an easement or other means. Mr. Melhado further stated that this private development would return the property to the tax rolls, generate new jobs and additional sales tax revenues, and serve as the beginning of private investment and activity in the Bayfront redevelopment area.

Chairperson Capote asked how the different phases were developed. Mr. Melhado stated the first phase consisted of building off of the existing marina building and the conversion of the building to a restaurant property. Chairperson Capote asked Mr. Melhado if he had a commitment for a restaurant. Mr. Melhado responded that Thornado Hospitality, LLC would operate the restaurant and currently operates River Rocks, Island Pasta Company, and Capt'n Butchers in Sebastian, Florida. Chairperson Capote asked Mr. Melhado if he would see how the first phase was before he committed to a second phase. Mr. Melhado responded that it depended on the acquisition structured, whether land lease, straight acquisition of a public-private partnership (P3).

Chairperson Capote, Vice-Chairperson Anderson, and Commissioner Santiago stated they liked the concept. Commissioner Bailey stated he supported the idea and felt the purchase of the property was the best avenue. Commissioner Ritter stated he would like to see the outright purchase of the property as well and felt it was a great concept.

Commissioner Parr stated he liked the concept and agreed that the full sale of the property would be the best and easiest option.

**OLD BUSINESS:**

There was no old business.

**NEW BUSINESS:**

**1. Bayfront CRA 2018 Annual Report**

Ms. Junkala stated the Bayfront CRA 2018 Annual Report was filed with the City of Palm Bay City Clerk's office on March 29, 2019, per Florida Statute 163, Part III. She said the Annual Report was filed with unaudited financial statements since the Comprehensive Annual Financial Report (CAFR) audit had not been completed. She stated that once the CAFR audit had been completed, the Bayfront CRA 2018 Annual Report with the audited financial statement would be re-filed with the City of Palm Bay's City Clerk and published online. She said the Annual Report was confirmed with Brevard County Commission at the regular meeting held on May 7, 2019 and will go before Palm Bay City Council on June 6, 2019.

Recommendation by Ms. Junkala that the Bayfront CRA Board acknowledge and accept the 2018 Bayfront CRA Annual Report as provided to the City of Palm Bay City Clerk's Office.

Motion by Vice-Chairperson Anderson to acknowledge and accept the 2018 Bayfront CRA Annual Report, seconded by Commissioner Bailey. Motion carried unanimously.

**2. Consideration of prepayment of 2006 Bond Proceeds**

Recommendation by Ms. Junkala to approve staff to initiate prepayment of the 2006 Bond Proceeds by applying current unused proceeds in the amount of \$988,000 toward the principal balance of \$2.13 million. Ms. Junkala stated that the prepayment of the Bond would provide a savings of nearly \$180,000 in interest and allow the CRA to pay off the Bond two years early, by 2022.

Motion by Vice-Chairperson Anderson, seconded by Commissioner Santiago, to approve the consideration of prepayment of the 2006 Bond Proceeds.

Commissioner Bailey asked if consideration had been given to paying off more. Vice-Chairperson stated the issue could be revisited next year.

Motion carried unanimously.

**COMMISSIONER REPORTS:**

Commissioner Ritter commented that he had spoken with previous administration about the overgrown grass and the removal of a bougainvillea in the right-of-way at the Bayfront CRA's property at 1582 Water Drive. He said the previous administration had contacted Public Works and that the mowing was not on the agenda but would be added with time and a half overtime pay. He stated he had mentioned the situation to Lisa Morrell, City Manager, in January. Ms. Morrell responded that Public Works would mow the property and that there was no chargeback to the Bayfront CRA.

Commissioner Johnson asked what steps needed to be taken to remove the City Council from the Bayfront CRA Board and appoint others to the Board. He said he believed it was redundant to sit on both the Bayfront CRA Board and City Council. Commissioner Bailey asked if Commission Johnson meant reinstituting the citizen aspect of the Bayfront CRA Board. Mr. Ritter stated that previously there was a seven (7) member board, but that City Council voted to make the City Council the Bayfront CRA Board. Commissioner Bailey stated he felt there was an advantage to having the citizen aspect of the Board and their participation in the process. He stated he favored returning to the previous Board format, and that it would take an ordinance change by City Council. Commissioner Parr asked if it was possible that the decision could be made by each Council member to serve or have an elected appointee. Chairperson Capote stated it still had to go before City Council.

Chairperson Capote stated the suggestion was made by the previous Bayfront CRA Board to bring the issue to Council for their response.

Vice-Chairperson Anderson explained the board structure was changed to allow for the elimination and duplication of steps by the City Council serving on the Bayfront CRA Board.

Commissioner Santiago stated the reason the Bayfront CRA Board was changed to include City Council was for more efficiency due to the impending sunset date of the CRA.

Commissioner Ritter stated he had been opposed to disbanding the Bayfront CRA Board. He stated that there were previously twelve (12) meetings per year, but that after the City Council became the Board members, meetings had been changed to quarterly.

Commissioner Santiago asked Ms. Junkala if monthly meetings were warranted. Ms. Junkala responded that quarterly meetings were sufficient and special meetings could be scheduled as required. She stated that by-laws would need to be amended if the Board chose to schedule monthly meetings. Chairperson Capote stated he did not feel monthly meetings were necessary and agreed with scheduling special meetings when required.

Chairperson Capote asked for a consensus to bring the issue back to City Council. Commissioner Johnson replied that he would like to bring the issue back to Council.

Commissioner Parr stated that Board members were not required to live or work in the area and felt that it took away from the community. He felt that it would be goodwill toward the community if more community members served on the Bayfront CRA Board.

Ms. Junkala stated she would work with the City Clerk's office to determine the necessary steps for taking the issue back to the City Council for discussion.

Commissioner Bailey reminded the Board that the CRA would sunset this year, but they were in active discussions with Brevard County regarding Memorandums of Understanding (MOUs), which affected or included the CRA.

Vice-Chairperson Anderson asked for clarification of the sunset of the CRA. Chairperson Capote responded the CRA had five (5) years before sunset.

## **OTHER AGENCY BUSINESS:**

### **1. Staff Report**

- The Bayfront CRA Part-time Administrative Secretary submitted her resignation effective May 31, 2019.
- A Business Continuity Workshop for disaster preparedness was planned in coordination with the Greater Palm Bay Chamber of Commerce and the Small Business Development Center for July 18, 2019 at Eastern Florida State College from 9:00 am to 12:00 pm.
- Staff has made inquiries regarding the repair of the monolith at Highway US 1 and Port Malabar Boulevard NE. City staff is working to identify necessary repairs and seeking quotes to be presented to the Bayfront CRA Board for consideration at a later meeting.
- Bayfront CRA and Public Works are working together to move the Living Shoreline forward. 80% plans were received from BKI Consulting Ecologists for the design and engineering of mangroves and oyster bags at Highway US 1. The Bayfront CRA is awaiting further discussions with Florida Department of Transportation (FDOT) before moving forward with permitting since the majority of the Living Shoreline project is located within FDOT right-of-way. FDOT's cooperation and permission is needed to install mangrove and oyster bags within their right-of-way.
- The quitclaim deed on the Pelican Harbor Marina was held off due to the conversations with the County regarding the Interlocal Agreement. Ms. Junkala noted that House Bill 9 cited that a CRA could not sunset earlier than the payment of existing bond debt. A draft Request for Proposal (RFP)



for brokerage services that specialized in waterfront development for proper marketing of the marina properties has been provided to Procurement.

- Paddling Paradise is operating out of the building located on the Pelican Harbor Marina property. Ms. Junkala stated that it is her understanding that there is no formal lease agreement in place, and a meeting has been scheduled to discuss a draft lease agreement and reasonable rent based on comps.
- The Eagle Scout project at Castaway Point Park was completed on Saturday, May 18<sup>th</sup>. Colben Maher had nine (9) volunteers who worked approximately twenty-seven (27) hours. The volunteers pulled weeds and other undesirable vegetation and put down mulch and planted clusia, an alternative to sea grapes. The Parks and Recreation Department vetted and approved all improvements to Castaway Point Park prior to the work. A final presentation and request for reimbursement is scheduled for the Bayfront CRA Regular Meeting on July 23, 2019.
- Five (5) derelict vessels were identified in the Bay. All vessels were cited by FWC; therefore, Palm Bay Police Department is unable to take further action. The derelict vessels included one (1) vessel stickered on April 20, 2019; one (1) vessel stickered on May 3, 2019; one (1) vessel with a public hearing scheduled for June; one (1) vessel with under new ownership which FWC has since issued a new citation; and one (1) that had been declared derelict by Palm Bay Police Department, which later became operational and afloat; however, had begun to take on water and has been declared derelict again by FWC.

**ADJOURNMENT:**

The meeting was adjourned at approximately 7:55 pm

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William Capote, CHAIRPERSON

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Patricia Foutt, AGENCY SECRETARY



## MEMORANDUM

**TO:** Bayfront CRA Board of Commissioners

**FROM:** Joan Junkala, Bayfront CRA Administrator

**DATE:** June 20, 2019 – Special Meeting

**RE:** Lease Agreement for 4220 Dixie Highway NE (Paddling Paradise, LLC)

As it is the desire of the Bayfront CRA Board of Commissioners and City Council to retain Paddling Paradise, LLC to provide recreational amenities within the City of Palm Bay, staff has continued previous dialogue with the owner of the business to draft a lease agreement for consideration by the Bayfront CRA Board of Commissioners with further consideration by City Council. The lease agreement calls for a month-to-month lease of property and the existing 1,600 SF building located at 4220 Dixie Highway NE (also known as Pelican Harbor Marina). Through this lease agreement, the rental payment per month shall be \$500. Several factors were considered when determining the monthly lease rate, including the temporary nature of a month-to-month lease, private investment in improvements already made to the property by Paddling Paradise, LLC, and the goal of retaining and promoting water-based recreational amenities within the City for our residents and visitors.

It is advised that future commercial properties owned by the City or CRA, which become available for lease, go through the competitive bid process to identify other potential users for City and CRA-owned properties and allow for other similar users to compete.

For your review and consideration, please find attached the draft lease agreement between the City of Palm Bay and Paddling Paradise, LLC.

### RECOMMENDATION:

Authorize the Mayor to execute the lease agreement between the City of Palm Bay and Paddling Paradise, LLC for use of property located at 4220 Dixie Highway NE on a month-to-month basis.

Attachment(s): 1) Lease Agreement for 4220 Dixie Highway NE (Paddling Paradise, LLC)  
/JJ

**LEASE AGREEMENT BETWEEN CITY OF PALM BAY AND  
PADDLING PARADISE, LLC**

This Lease Agreement (Agreement) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019 (Commencement Date), between the **PADDLING PARADISE, LLC**, a limited liability company of the State of Florida (Tenant) and the **CITY OF PALM BAY, FLORIDA**, (Landlord).

*WITNESSETH:*

**Section 1. Premises.** Subject to the terms hereof, and to zoning and restrictions of record, and in consideration of the mutual benefits and obligations set forth hereafter, Landlord leases to Tenant and Tenant leases from Landlord the Premises located in Brevard County, Florida, more particularly described as follows (the “Premises”):

**Approximately 1,600 square feet building, and 4.85 acres located at 4220 Dixie Highway NE, Palm Bay, located in Brevard County, Florida.**

**Section 2. Term.** This Agreement shall be for a one-month term commencing upon the final execution by all parties (Commencement Date) and continuing month to month until terminated by notice of the Landlord or Tenant within the terms of this Agreement.

**Section 3. Rent.** Tenant shall pay to Landlord during the term of this Agreement, a monthly rental amount of \$500.00 (five hundred dollars) in advance, without demand, reduction or set-off (the “Rent”).

**Section 4. Use, Obligations and Maintenance.**

**(1) TENANT OBLIGATIONS:**

Tenant shall use and occupy the Premises only for water recreation/eco-tourism use and activities normally related thereto. Tenant shall not use the Premises in a disreputable, ultra-hazardous or unlawful manner, or in any manner that would constitute a public or private nuisance. Tenant shall provide all of its own office and other equipment, furniture and furnishings and shall insure such other equipment, furniture and furnishings, as it deems desirable, but, in no event, shall make a claim against the Landlord for any losses. Tenant shall not perform any acts on the Premises that would generate noxious odors or annoying noises. Further, Tenant agrees that it has an obligation to ensure all employees, contractors, subcontractors and assigns employed by Tenant or working under the direction of Tenant have no felony convictions, unless without the prior written consent of City is obtained.

**(2) LANDLORD OBLIGATIONS:**

The Landlord shall provide electric, internet, water and sewer services to the Premises. Tenant shall be responsible for all landscaping maintenance, to include regular mowing and maintenance of all landscape improvements, provided that

City is given advance notice and consents in writing to any significant changes of same.

**Section 5. Hazardous Substances.** Tenant shall not use, store, generate, dispose of, release or otherwise handle or possess any hazardous substance on or about the Premises. Should Tenant violate this provision, then Tenant shall indemnify, defend, and hold Landlord harmless from all claims, charges, penalties, fines, liabilities, costs (including clean-up costs), and all other obligations and expenses arising directly or indirectly from such violation.

**Section 6. Quiet Enjoyment.** Upon paying the Rent and performing all other covenants and obligations under this Agreement, Tenant shall hold the Premises free from disturbance.

**Section 7. Redelivery.** Tenant covenants that at the termination of this Agreement, whether by expiration, default or otherwise, Tenant shall promptly re-deliver the Premises to Landlord free from subtenancies and in the condition the Premises are presently in, reasonable use and wear excepted. Any personal property or trade fixtures remaining on the Premises three days after termination shall be deemed abandoned by Tenant and may be disposed of as Landlord deems fit at Tenant's expense. All personal property or fixtures located in the Premises on the Commencement Date shall be redelivered in good condition with the Premises.

**Section 8. Acceptance of Premises.** Tenant acknowledges that Landlord has made no representation or warranty that the Premises are fit for Tenant's intended use. Tenant has inspected the Premises, and Tenant accepts the Premises "as is".

**Section 9. Indemnification/Liability/Loss.** The Tenant shall indemnify, defend and save and hold the Landlord harmless, from and against all claims, demands, obligations, liabilities, penalties, fines, charges, costs and expenses, including attorney's fees, costs and expenses for the defense thereof, arising from occurrences on or about the Premises or from the Tenant's or any of Tenant's invitees', agents' or assigns' negligent activities thereon.

The Tenant recognizes that the City of Palm Bay is protected by sovereign immunity to the extent and limits permitted by law including, but not limited to, Section 768.28, *Florida Statutes* and recognizes that nothing contained herein shall be construed as a waiver of same nor an admission of liability by Landlord.

**Section 10. No Assignment without Consent.** Tenant shall not assign this Agreement or any of Tenant's rights hereunder, nor sublet the Premises or any portion thereof, without first obtaining the written consent of Landlord.

**Section 11. Default.** Landlord, at its option, may terminate this Agreement on three days' notice to the Tenant: (a) if any Rent due hereunder is not paid when due; or (b) if the Premises are abandoned by Tenant or otherwise become and remain vacant or

deserted for a period of 10 days or more; or (c) if the Premises are used for some purpose other than the use authorized herein; or (d) if Tenant shall have failed to cure a default in the performance of any other provision of this Agreement or any rule or regulation set forth herein within ten 10 days after written notice thereof to Tenant from Landlord, or if such default cannot be completely cured in such time, if Tenant shall not promptly proceed in good faith to cure such default within said ten 10 days, or shall not complete the curing of such default with due diligence. In the event that Landlord elects to terminate this Agreement, then, upon the expiration of the aforesaid three-day notice period, Tenant shall remain liable for damages to the maximum extent provided herein or permitted by law.

**Section 12. Destruction of Premises.** In the event that the Premises or a portion thereof is destroyed or damaged by fire or other casualty, then Landlord may or may not elect to repair or rebuild the Premises or to terminate this Agreement. If Landlord elects to repair or rebuild, this Agreement shall remain in force, and Landlord shall complete all repairs or rebuilding after such election. If Landlord elects to terminate this Agreement rather than to repair or rebuild, Tenant shall promptly surrender possession of the Premises to Landlord and neither Landlord nor Tenant shall have any remaining obligations hereunder, except any obligations owed by Tenant that accrued before the casualty, which obligations Tenant shall forthwith settle. Landlord shall not be liable for any damages, inconvenience, or annoyance to Tenant resulting from any damage to the Premises or from the repair or replacement thereof and shall not be liable for any delay in restoring the Premises unless arising from the Landlord's negligent or wrongful action. If Tenant's negligence or the negligence of Tenant's agents, employees or invitees results in damage or destruction to the Premises, then notwithstanding any other provision of this Agreement, Tenant shall be obligated to pay the cost or repair, replacement or restoration that exceeds any available insurance proceeds therefore, and Rent shall not abate during the period of repair or restoration.

**Section 13. Liability for Loss of Personal Property.** All personal property placed or moved in the Premises shall be at the risk of Tenant. Landlord shall not be liable for any damage to person or to property occurring on the Premises or related to Tenant's use thereof including, but not limited to, damages arising from the bursting or leaking of water pipes.

**Section 14. Alterations.** Tenant shall not make any alterations to the Premises without first obtaining the written consent of Landlord. Any alterations so approved by Landlord shall (a) be made in a good and workmanlike manner; (b) be paid for in full by Tenant; (c) be made with materials of comparable or better quality than are already in place; and (d) not weaken the Premises or cause a reduction in fair market value of the Premises. Any work done on the premises must be done by a licensed and insured contractor with appropriate permits processed through appropriate governmental entities and receive final inspection of same.

**Section 15. Access to Premises.** Landlord may enter the Premises at any time without notice for the protection or preservation of the Premises.

**Section 16. Waiver of Jury Trial and Recovery of Fees.** In the event of legal proceedings between the parties, the parties agree to waive any right to trial by jury. Further, each party agrees to bear its costs and attorneys' fees, including all costs and attorneys' fees up to and including appellate proceedings.

**Section 17. Liens/Code Enforcement Violations.** Tenant agrees to keep the Premises free and clear of any lien or encumbrance of any kind whatsoever created by Tenant's acts or omissions and Tenant shall indemnify and defend, to the extent and limits permitted by law, Landlord against any claim or action brought to enforce any lien imposed on the Premises because of Tenant's negligent act or omission. Except as specifically provided otherwise herein, Tenant shall have 10 days after receiving notice of any such lien or encumbrance to have such removed. If Tenant fails to have such removed within that time, Tenant shall be in default.

Tenant agrees to maintain the property in accordance with all laws and ordinances, including local City of Palm Bay ordinance and codes. Tenant agrees to maintain the property free of any code enforcement violations and to promptly remedy any upon notice. Further, Tenant warrants that there are currently no outstanding such violations on the location.

**Section 18. Waiver.** No act of a party shall be deemed a waiver of any of the party's rights hereunder, unless such waiver is specifically made in writing. A party's forbearance to enforce any rights hereunder or to exercise any available remedy, or to insist upon strict compliance herewith, shall not be deemed a waiver or forfeiture of such rights, remedies or strict compliance, nor shall such forbearance stop the party from exercising any available rights or remedies or from requiring strict compliance in the future. Landlord's acceptance of any late or inadequate performance including, but not limited to, late or insufficient payments of Rent, shall not constitute a waiver or forfeiture of Landlord's right to treat such performance as an event of default or to require timely and adequate performance in the future.

**Section 19. Notices.** All notices or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be construed as properly given if mailed by registered or certified mail with return receipt requested. It is agreed that notice so mailed shall be reasonable and effective upon the expiration of three business days after its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be the address as follows:

Daniel Smith, President  
Padding Paradise, LLC  
\_\_\_\_\_  
Palm Bay, FL \_\_\_\_\_

City Manager  
City of Palm Bay  
120 Malabar Road  
Palm Bay, FL 32907

**Section 20. Construction.** Whenever the context permits or requires the use of the singular in this Agreement shall include the plural and the plural shall include the singular. Any reference herein to one gender shall likewise apply to the other gender and to the neuter; and any reference herein to the neuter shall refer likewise to one or both genders. Any reference herein to a person shall include trusts, partnerships, corporations, and other entity, as appropriate.

**Section 21. Captions.** The captions to the provisions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way effect the substance of this Agreement.

**Section 22. Applicable Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in the Eighteenth Judicial Circuit Court in and for Brevard County, Florida

**Section 23. Survivability.** The parties agree that all of Tenant's indemnities, representations and warranties made herein, shall, to the extent and limits permitted by law, survive the termination or expiration of this Agreement and that the termination or expiration hereof shall not release Tenant from any accrued, unfulfilled or unsatisfied liabilities or obligations.

**Section 24. Merger.** No prior or present agreements or representations shall be binding upon the parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless a writing is executed by the parties to be bound thereby.

**Section 25. Parties Bound.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. In the event Landlord or any successor-owner of the Premises shall convey or otherwise dispose of the Premises, all liabilities and obligations of Landlord, or any successor-owner as Landlord, to Tenant under this Agreement shall terminate upon such conveyance or disposal and the giving of written notice thereof to Tenant.

**Section 26. Severability.** If any provision of this Agreement should be determined to conflict with any public policy, statute or rule of law, or is otherwise determined to be invalid or unenforceable, then such provision shall be deemed null and void to the extent of such conflict, but without invalidating the remaining provisions.

**Section 27. Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earlier Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or Rent payment be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Agreement.

**Section 28. Time Periods.** Time is of the essence in this Agreement. Any reference herein to time periods of less than six days shall exclude Saturdays, Sundays and legal holidays; and any time period provided for herein that ends on a Saturday, Sunday or legal holiday shall extend to 5:00 PM of the next full business day.

**Section 29. Recording.** This Agreement shall not be recorded in the Land Records of Brevard County.

**Section 30. Insurance.** Tenant agrees to maintain insurance in the following minimum amounts:

- A. **Commercial General Liability:** Minimum limits of \$1,000,000.00 each occurrence, \$2,000,000.00 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, broad form property damage, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing with any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured. The policy of insurance shall be written on an “occurrence” form.
- B. **Automobile:** Tenant shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:
- Owned Automobiles
  - Hired Automobiles
  - Non-Owned Automobiles
- C. **Umbrella/ Excess Liability:** Tenant shall provide umbrella/excess coverage with limits of no less than \$1,000,000.00 excess of Commercial General Liability, Automobile Liability and Employers Liability. [OPTIONAL COVERAGE IF COMMERCIAL GENERAL LIABILITY IN AMOUNTS ABOVE PROVIDED.]
- D. **Workers' Compensation:** Tenant shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Florida. Said policy must include Employers' Liability insurance with limits of no less than statutory limits:
- |                         |               |
|-------------------------|---------------|
| Each Accident           | \$ 100,000.00 |
| Disease – Policy Limit  | \$ 100,000.00 |
| Disease – Each Employee | \$ 500,000.00 |



**IN WITNESS WHEREOF**, the undersigned have hereunto set their hands and seals on the date stated.

**TENANT**  
**PADDLING PARADISE, LLC**

\_\_\_\_\_  
By: Daniel Smith, President

**STATE OF FLORIDA**  
**COUNTY OF BREVARD**

**SWORN AND SUBSCRIBED** before me this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by Daniel Smith as President of Paddling Paradise, LLC, and who did / did not take an oath and provided the following: \_\_\_\_\_ as identification OR \_\_\_\_\_ is personally known to me.

NOTARY SEAL:

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires on: \_\_\_\_\_

\_\_\_\_\_  
**LANDLORD**  
**CITY OF PALM BAY, FLORIDA**

\_\_\_\_\_  
**William Capote, Mayor**  
City of Palm Bay, Florida  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

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

APPROVED BY THE BAYFRONT COMMUNITY REDEVELOPMENT AGENCY  
ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

**BAYFRONT COMMUNITY  
REDEVELOPMENT AGENCY**

\_\_\_\_\_  
**William Capote, BCRA Chairman**

\_\_\_\_\_  
APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
CITY ATTORNEY

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