

LICENSE AGREEMENT

This License Agreement (this "Agreement") is made this 25th day of October 2023 (the "Effective Date"), by and among **MANHATTAN BEACH CLUB STREET LLC**, a Delaware limited liability company having an address of 200 Meeting Street, Suite 200, Charleston, SC 29401 (the "Licensor") and the **CITY OF SOUTH AMBOY**, a public body corporate and politic of the State of New Jersey having an address of 140 North Broadway, South Amboy, New Jersey 08879 (the "Licensee").

WITNESSETH:

- A. Licensor is the owner of certain real property referred to as Block 161.02, Lot 6.08 (f/k/a Lot 90) in the City of South Amboy, Middlesex County, New Jersey as depicted on Exhibit "A" attached hereto and incorporated herein by reference (the "Licensor Property").
- B. Licensee is the owner of certain real property referred to as Block 161.02, Lot 90.01 in the City of South Amboy, Middlesex County, New Jersey which is adjacent to the Licensor Property (the "Licensee Property").
- C. Licensee is constructing a new ferry terminal with facilities for parking and terminal access on the Licensee Property, in a location that is adjacent to the Licensor Property (the "New Ferry Terminal").
- D. While the New Ferry Terminal is being constructed, the Licensee has provided a temporary ferry terminal for the public use, which is located on the Licensee Property (the "Temporary Ferry Terminal").
- E. The temporary ferry service to and from the Temporary Ferry Terminal is operated by the Port Imperial Ferry Corp., doing business as NY Waterway (the "Operator") pursuant to that Ferry Service and Landing Agreement dated as of August 10, 2022, as amended (the "Ferry Agreement").
- F. Licensee has installed a gravel access road, gravel parking lot and gravel path to the pier on a portion of the Licensor Property for the purpose of providing automobile parking to patrons utilizing the temporary ferry service located at the Temporary Ferry Terminal (the "Parking Lot").
- G. The Licensee desires to utilize portions of the Licensor Property to facilitate the continuation of the Temporary Ferry Service during the construction of the New Ferry Terminal, and Licensor is willing to grant Licensee a non-exclusive temporary license over a portion of the Licensor Property, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound, agree as follows:

1. **Background.** The background paragraphs set forth above are incorporated into this Agreement as substantive provisions of this Agreement.

2. **License.** Subject to the terms of this Agreement, Licensor, for and on behalf of its successors and assigns does hereby grant unto Licensee, a non-exclusive temporary license (the "License") to the portion of the Licensor Property depicted on Exhibit "B" attached hereto and incorporated herein by reference (the "Licensed Area") for the Permitted Use (as hereinafter defined) during the Term (as hereinafter defined).

3. **Term.** The term of this Agreement shall commence on the Effective Date and expire on the earlier of (a) two (2) years after the Effective Date, subject to extension in Licensor's sole discretion, or (b) the date Licensee completes construction of a permanent parking lot for the New Ferry Terminal, as confirmed by Licensor (the "New Ferry Terminal Parking Completion") (the "Term"). Upon expiration or earlier termination of this Agreement, the parties' rights and obligations hereunder shall be null and void, except for those provisions that specifically survive expiration or early termination.

4. **Permitted Use; Transfers.** Subject to the terms and conditions hereof, Licensee shall have the right to use the Licensed Area solely for the purpose of (A) providing public pedestrian access to and from the Temporary Ferry Terminal and the Parking Lot, (B) providing non-commercial passenger vehicle parking for automobiles of patrons of the Temporary Ferry Service, (C) conducting necessary inspections, repairs, maintenance, replacements, and any other activities deemed essential for the upkeep of the Licensed Area; and (D) installing, maintaining, repairing and removing the Installations (collectively, the "Permitted Use"). The use of the Licensed Area shall be restricted to the hours of operation from 5:00 AM to 11:00 PM, Monday through Friday ("Hours of Operation"). Licensor, in accordance with the terms of this Agreement, reserves the right to relocate the Licensed Area at its sole discretion, provided that the new location accomplishes the purpose for which the License was originally intended. The Licensee shall strictly adhere to the Permitted Use and is prohibited from (i) using the Licensed Area for any purpose other than the Permitted Use, including but not limited to vehicle repair or maintenance or equipment storage of any kind, and (ii) engaging in any activity on the Licensed Area that violates any applicable law. For the avoidance of doubt, under no circumstances shall the Licensed Area be utilized for parking of vehicles other than non-commercial vehicles designed primarily for the transportation of passengers. Commercial vehicles, including but not limited to trucks, trailers, recreational vehicles, and any other vehicles not primarily intended for passenger transportation are strictly prohibited from parking within the Licensed Area. Licensee has no right to transfer or assign this Agreement or its rights hereunder or to grant to others the use of, or rights to, the Licensed Area, provided however, the Operator shall be a permitted invitee of Licensee's, subject to the terms and conditions hereof.

5. **Reservation of Rights.** Licensor, reserves, for itself and others, the right to use and occupy for any purpose whatsoever any portion (both above and below) of the Licensor Property, including, without limitation, any portion of the Licensor Property which may be affected by the Agreement granted hereunder, to the extent it does not materially interfere with Licensee's use and enjoyment of the Licensed Area.

6. **Conditions and Obligations of License Use.** The use of the Licensed Area by the Licensee, shall be in accordance with all statutes, laws, ordinances, rules, regulations, orders and other

requirements of all agencies, bureaus, departments, and officials of Federal, State, City and municipal and local governments, public authorities and utility companies having or claiming jurisdiction over the Licensed Area, the Licensor Property or any part thereof or any actions being taken thereon, or over Licensor or Licensee, with respect to this Agreement, which are applicable to the Licensor Property or any part thereof or the manner or use thereof, including but not limited to complying with all applicable environmental laws and regulations. Any such use of the Licensed Area by the Licensee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Licensor's use of the Licensor Property to the greatest extent practicable.

- a) Licensee shall, at its sole cost and expense and subject to Licensor's reasonable approval, erect (or cause to be erected) a chain-link fence around the Licensed Area (as defined herein) and install (or cause to be installed) temporary lighting, bathroom facilities and kiosks necessary for the operation of the Temporary Ferry Terminal, the ("Installations") as depicted on Exhibit "B" attached hereto and incorporated herein by reference.
- b) In addition to, and without limiting the foregoing, Licensee shall notify Licensor at least five (5) business days prior to the initial construction of the Installations and coordinate the commencement of such construction or other activities to occur on a date reasonably acceptable to Licensor.
- c) Licensee at its sole cost and expense, shall operate, repair, replace and continuously maintain the Parking Lot and Installations on or within the Licensed Area, and comply with all laws, ordinances, rules and regulations pertaining to the maintenance or condition of the Licensed Area and any portion of the Licensor Property required to access the Licensed Area, including, but not limited to, obtaining all required authorizations, permits or approvals prior to undertaking any construction, maintenance or repair activities.
- d) At all times during Hours of Operation, Licensee shall (i) employ (or cause to be employed) parking attendants to manage the Parking Lot and an on-site manager to supervise the Licensed Area, and (ii) cause the Licensed Area to be patrolled by South Amboy Police Department. Licensee shall close and lock the access gate (to be installed as part of the Installations) to prohibit public access to the Licensed Area outside of the Hours of Operations, provided however, Licensee shall provide the South Amboy Fire and Police Departments with access to the Licensed Area for emergency purposes, and Licensor shall have uninterrupted access to the Licensed Area for any purposes in its sole discretion.
- e) Licensee shall be solely responsible for any fees, costs, and expenses incurred in connection with the construction, maintenance, operation, repair, reconstruction and replacement of the Parking Lot and Installations. The Parking Lot, Licensed Area and the Licensor Property shall remain free and clear of all liens and other encumbrances arising out of the exercise by the Licensee of its rights hereunder.
- f) Any construction, maintenance, repair or other work or activities performed on the Parking Lot or within the Licensed Area by Licensee or Licensee Parties shall be done in a good workmanlike manner, and the Licensed Area and the Licensor Property shall

be left in a clean and good condition, with all debris removed therefrom and with trenches and cuts properly filled so that all grades, paved areas, permitted landscaped and grassed areas and other permitted improvements which may have been disturbed by such work are restored to the condition that existed prior to Licensee's construction of the Parking Lot and Installations.

- g) Within thirty (30) days of the New Ferry Terminal Parking Completion, unless otherwise agreed by both parties, Licensee shall cause the Licensed Area to be restored to its original condition existing prior to the entry by Licensee on the Licensed Area. Such restoration work shall include removal of all Installations, structures or fixtures brought onto the Licensed Area, as well as restoration of any permanent fixtures destroyed or removed by the Licensee. In the event that the Licensee fails to restore the Licensed Area to its original condition, as confirmed by Licensor in its sole but reasonable discretion, within thirty (30) days of the New Ferry Terminal Parking Completion, the Licensor shall have the right, but not the obligation to undertake the restoration of the Licensed Area. Licensor shall provide written notice to the Licensee of its intent to undertake the restoration, outlining the estimated costs involved. Licensee shall reimburse the Licensor for all costs and expenses incurred, plus a 10% construction management fee calculated on such costs and expenses, within ten (10) days from the date of receipt of written demand from Licensor.
- h) Except in the event of an emergency, Licensee shall provide Licensor with at least ten (10) days' prior written notice of any construction, maintenance, repair or other work or activities to be performed on the Parking Lot or within the Licensed Area by Licensee. Licensor shall be entitled to limit the timing, scope and duration of such construction, maintenance, repair or other work or activities.

7. **Damage to the Licensed Area.** In the event that the Licensee, its employees, agents, invitees (including but not limited to any patrons of the Temporary Ferry Service) or assigns ("Licensee Parties"), damage the Parking Lot, Licensed Area, the Licensor Property or any other property in the vicinity of the Licensed Area, then, at Licensee's sole cost and expense and within thirty (30) days after receipt of written notice from Licensor that Licensee has caused such damage, Licensee shall repair, or cause to be repaired, such damage in a good, clean, and workmanlike manner, and to substantially the same condition that existed prior to the damage, to the reasonable satisfaction of Licensor. In the event that Licensee shall fail to timely repair damage done to the Parking Lot, the Licensed Area, the Licensor Property or other property owned by Licensor, then Licensor shall have the right, but not the obligation to repair such damage and, promptly upon receipt of written demand therefore, Licensee shall reimburse Licensor for all costs and expenses incurred in repairing such damage, plus a 10% construction management fee calculated on such costs and expenses, within ten (10) days from the date of receipt of written demand from Licensor.

8. **Interruptions.** In the event that the Licensee breaches any terms or conditions outlined in this Agreement, the Licensor, shall have the right to interrupt, suspend or revoke the use of the Licensed Area by Licensee or Licensee Parties at any time, upon ten (10) days' notice to the Licensee. The suspension, interruption or revocation of the use of the Licensed Area shall not relieve

the Licensee of any liabilities or obligations which stem from its use of the Licensed Area on or prior to the date of interruption, suspension, or revocation.

9. **Covenants of Licensor.** This Agreement is being made on an “as-is, where-is” basis, without representations or warranties of any kind by Licensor, express or implied, or otherwise, including any representation or warranty concerning the physical condition of the Licensed Area or the compliance of the Licensed Area with applicable laws and regulations (including, without limitation, zoning codes and regulations). Licensee assumes all of the risks associated with the use of the Licensed Area. Licensee acknowledges that the Licensed Area will not be supervised by Licensor, Licensor will not be responsible for providing any security on or about the Licensed Area or for ensuring the safety of any personal property on or about the Licensed Area, and access by Licensee or any Licensee Parties to any portions of the Licensor’s Property outside the Licensed Area is strictly prohibited. As a material inducement to Licensor entering into this Agreement, Licensee agrees to release, discharge, waive, indemnify, defend, and hold harmless Licensor and any Licensor Parties from any and all causes of action, claims, rights, counterclaims, suits, covenants, controversies, agreements, promises, damages, proceedings, losses, costs and demands (including reasonable legal fees), in law or equity, fixed or contingent, known or unknown, now or before or hereafter existing, against Licensor and the Licensor Parties arising from or related in any way to this Agreement or the acts or omissions of Licensor and the Licensor Parties, other than the willful misconduct or gross negligence of Licensor. The provisions of this section shall survive the expiration or sooner termination of this Agreement.

10. **Insurance.** Licensee shall maintain (i) commercial general liability insurance insuring against losses on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the exercise of the rights granted to Licensee herein, and (ii) during maintenance or repair, workers’ compensation insurance covering all persons employed in connection with such work with respect to whom death or bodily injury claims could be asserted against any Licensor Parties (as hereafter defined) or any of the Licensee Parties. Such insurance must be carried by a reputable insurance company or companies qualified to do business in the State of New Jersey and have limits of not less than Two Million Dollars (\$2,000,000.00) combined single limit occurrence and in the aggregate as applicable for bodily injury or property damage. Licensee shall each maintain, or cause to be maintained, contractual liability insurance naming Licensor, Hutson Street LLC, and any other additional insureds as reasonably requested by Licensor, as an additional insured specifically endorsed to cover Licensee’s agreement to indemnify as set out in Section 11 of this Agreement. Licensee shall, upon written request from Licensor, furnish to Licensor certificates of insurance and endorsements evidencing the existence of the insurance required to be carried pursuant to this Section 10. All such insurance must include provisions denying to the insurer subrogation rights against Licensor to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Notwithstanding anything to the contrary contained herein, the Licensee hereby waives any rights of recovery against Licensor for any damage or loss covered by such policies, against which Licensee is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss was caused by any acts or omissions of the Licensor or Licensor Parties.

11. **Indemnification.** Licensee shall indemnify, defend and hold harmless Licensor and its successors, assigns, employees, affiliates, agents, tenants, subtenants, licensees, contractors and invitees (collectively, the “Licensor Parties”) from all demands, claims, liabilities, fines, violations, damages, losses, costs and expenses (including, but not limited to, reasonable attorneys’ fees and other reasonable costs of defense) arising from or relating to (i) any acts or omissions of Licensee or any of

the Licensee Parties on the Licensors Property, including the Licensed Area, including but not limited to any violations of environmental laws and remediation required in connection therewith, (ii) any damage to personal property, or any incident, harm, injury, death to individuals, including wrongful death as a result of unauthorized access or presence outside the Licensed Area, including but not limited to areas outside the Licensed Area that are owned by Licensors, or (iii) any breach of this Agreement by Licensee or Licensee Parties. This Section 11 shall survive the expiration or early termination of this Agreement.

12. **Dedication.** Nothing contained in this Agreement shall be deemed to be a present gift or dedication of any portion of the Licensors Property to the general public, it being the intention of the parties hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and Licensors successors and assigns, any rights or remedies under or by reason of this Agreement. In addition, nothing herein contained shall be understood or construed to create or grant any third-party benefits, rights or property interest unless the person claiming such rights is identified herein and the rights claimed are expressly set forth herein.

13. **Default/Remedies.** In the event of any actual or threatened violation hereof by Licensee or any of the Licensee Parties, Licensors shall be entitled to all legal and equitable remedies including injunctive relief and specific performance. If Licensee shall default in the performance of any of its obligations under this Agreement, including but not limited to, failing to comply with any of the covenants set forth in Section 3 and Section 6 above, and such default continues for thirty (30) days after notice (except in the case of an emergency, in which case such cure period shall be reduced to an amount of time necessary under the circumstances) is given to Licensee specifying the default and demanding that the default be cured, Licensors shall have the right (but not the obligation), without waiving or releasing any other right or remedy in connection with the default, to cure such default on the account of Licensee, and Licensee shall reimburse Licensors for all costs and expenses (including reasonable attorneys' fees) associated with such cure.

14. **Notices.** Any notice or communication which may be given or is required to be given pursuant to the terms of this Agreement shall be in writing and shall be personally delivered, mailed by certified or registered mail, return receipt requested, delivered by a nationally recognized overnight courier with a copy by electronic mail, to the other party as follows:

If to Licensors: Manhattan Beach Club Street LLC
c/o Sherman Capital Markets, LLC
200 Meeting Street, Suite 200
Charleston, SC 29401
Attention: Todd Kuhl
Email: tkuhl@sfg.com

with a copy to: Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
Attn: Andrew J. Camelotto, Esq.
Email: acamelotto@gibbonslaw.com

If to Licensee: City of South Amboy

140 North Broadway
South Amboy, NJ 08879
Attn: City Clerk
Email: clerk@southamboynj.gov

with a copy to: City of South Amboy
140 North Broadway
South Amboy, NJ 08879
Attn: City Attorney
Email: macwomack3d@gmail.com

or to such other address as any party may from time to time designate by written notice to the other. A notice or communication which is mailed or personally delivered shall be deemed to be given and received on the actual date of receipt. Attorneys for a party are authorized to give notices on behalf of such party.

15. **Subordination.** This Agreement is and shall be subject and subordinate in all respects to all ground leases, mortgages or declarations which may now or hereafter affect the Licensor Property, whether or not such agreements shall also cover other lands or buildings, to each and every advance made or hereafter to be made under such agreements, and to all renewals, modifications, replacements and extensions of such agreements. This section shall be self-operative and no further instrument of subordination shall be required. However, in confirmation of this subordination, Licensee shall execute any reasonable agreement that Licensor may request within five (5) business days after receipt from Licensor.

16. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties and understanding between Licensor and Licensee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid. No written waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision herein, or consent to any subsequent breach of the same or any other provision. The failure of either party to insist upon compliance with any provision or covenant herein or to exercise any right or privilege herein shall not constitute or be construed as the waiver of such or any similar provision or covenant, but the same shall continue and remain in full force and effect as if no such forbearance had occurred. This Agreement has been prepared and reviewed by counsel for Licensor and Licensee, and shall be construed as if both parties were equally responsible for drafting it.

17. **Signatures.** The Licensee shall not record this Agreement or any memorandum thereof in any official land records. This Agreement may be executed in two or more counterparts, each of which when executed and delivered as prescribed shall constitute an original, but all of which taken together shall constitute one agreement. This Agreement may be executed and legally delivered

by signing and emailing a pdf counterpart signature to the other party or its legal counsel, without the necessity of exchanging originally executed counterparts.

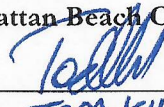
18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

INTENDING TO BE LEGALLY BOUND, the parties hereto have entered into this Agreement as of the day and year first set forth above.

LICENSOR:

Manhattan Beach Club Street LLC

By: 

Name: TOOD KUHN

Title: AUTHORIZED SIGNATORY

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LICENSEE:

CITY OF SOUTH AMBOY, a municipal
corporation of the State of New Jersey

By: *Fred Henry*
Name: Fred Henry
Title: Mayor

on 10/23/23 Fred Henry
came before me.

Deborah Brooks

**DEBORAH BROOKS
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 15, 2025**

EXHIBIT "A"

Depiction of Licensor Property

[See attached]