

## LEASE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, between the City of Saint Paul, a municipal corporation, ("City") and Tajana's 11th House L.L.C.(LESSEE).

1. **Leased Premises.** The City hereby leases to LESSEE a mooring site on the Public Dock located on the Saint Paul portion of the right descending bank of the Mississippi River in proximity to river mile 839.7, as set forth in Exhibit A, attached hereto and incorporated by reference herein.
2. **Use of Site.** Use of the Site is limited to mooring on the Public Dock of a vessel used as a bed and breakfast operation and does not convey rights to use of the Public Dock for activities other than ingress and egress to the vessel from land.
3. **Term.** This Agreement is effective beginning on November 16, 2021 and continuing through December 31, 2026, unless earlier terminated pursuant to section 10 of this Agreement.
4. **Payments to the City.**
  - A. **Rent.** LESSEE will pay the City as rent 2.5% of its monthly gross revenue for the first three years of the contract. Commission would increase one additional percent in both the fourth and fifth years as well as when annual revenue exceeded \$200,000. Payments are due on or before the twentieth day of the month immediately following the month for which the payment obligation was incurred. For example, the payment for May of a given year is due on or before June 20 of that year.
  - B. LESSEE will guarantee the City an Annual Minimum Payment of \$5,000 each year, regardless of total gross revenues. If LESSEE's aggregate payments have not totaled at least \$5,000 annually, LESSEE must add the full amount of the shortfall to its December payment obligation, (due January 20).

LESSEE may request a commission credit from the City when it can be demonstrated that an investment in the Public Good will be made. Written City approval must be given in advance of the investment for any credit to be applied to the Annual Minimum Payment.
  - C. Along with each month's payment, LESSEE must provide a financial statement (in Microsoft Excel or compatible format) showing its gross receipts for the month. LESSEE must maintain orderly records of its cash register receipts, invoices and all other sales records, which must be made available for City review upon request.
  - D. Annually, by February 15, LESSEE must provide the City with an income statement for the preceding calendar year.

City has the right, at its own expense, to audit the books and records, including all electronic books and records, of LESSEE covering LESSEE 's operation of the vessel, at LESSEE 's corporate or accounting offices. LESSEE agrees to reasonably cooperate with any such audit. If, as a result of the audit, City does not agree with any material determination or representation by LESSEE, City will give written notice to LESSEE within thirty days of completion of the audit.

## 5. **Covenants and Undertakings.**

- A. City Inspections. Annually, by December 31, City will conduct a lease agreement compliance assessment and inform LESSEE in writing of any conditions requiring correction
- B. Accident and Incident Reporting. City will provide LESSEE with City's electronic participant accident and incident report forms, which must be completed by LESSEE's representatives, and delivered to City within 48 hours, in any instance in which an accident or incident on the vessel is reported to or observed by LESSEE's representatives. LESSEE may deliver completed reports to City by U.S. mail, fax or a PDF scan attached to an email.
- C. Laws and Ordinances. LESSEE must comply with all City, State and Federal laws, rules, regulations, or ordinances, including but not limited to safety, health, accessibility, and environmental laws related to its operation of a bed and breakfast.
- D. Park Rules and Regulations. LESSEE will comply with all park rules and regulations and will inform its customers of the relevant rules and regulations.
- E. Public Dock. LESSEE understands that the Public Dock and surrounding grounds are publicly owned and shall conduct the operation of the vessel in the best interests of the City and will maximize opportunities for its use and enjoyment by the public.
- F. Traditional City Uses to Continue. Nothing in this Lease prohibits the City from programming Harriet Island, the Public Dock, or any other City property for events, festivals, or other activities.
- G. Signage. LESSEE may erect signage to advertise and identify its vessel. LESSEE may not erect signage without City's written approval. Signage must meet applicable code requirements.
- H. Parking within Harriet Island. The City will maintain parking within Harriet Island Regional Park that serves the LESSEE, as well as other areas and attractions within the park. Nothing herein is intended to convey exclusive use by LESSEE of any parking facilities at Harriet Island Regional Park. The City will maintain access thereto for LESSEE at all times, including during special events, and properly inform the LESSEE of any event that could hamper in any way access to the leased premises. The City will

accommodate the need for LESSEE staff and authorized guests, as recognized by the City, to park vehicles overnight in the Park, providing as well for the necessary related ingress to and egress from the Park. LESSEE understands that during special events, the City may restrict vehicular access within the Park and relocate parking for use by LESSEE as needed.

- I. Move of Vessel. In the event of a temporary move, required by the City, rent will abate to the extent necessary to cover the above referenced Rent. If the parties cannot agree on a new site, either party may cancel this Agreement by giving the other party sixty days-notice of their intention to do so.
- J. Flood. That in cases of emergency or disaster such as flood or other natural acts, LESSEE will vacate Public Dock if required and otherwise cooperate with directives from the City's Director of Parks and Recreation, Fire Chief, Police Chief, Director of Emergency Management, or other City official delegated such power due to the emergency. LESSEE is required to vacate the Public Dock for safety reasons whenever river flooding is projected to reach 17 feet or more above normal river pool (683.77 feet) by the National Oceanic and Atmospheric Administration. LESSEE will make no claim against the City for lost revenues or added expenses due to such event. In the event of a move required by the City, rent will abate to the extent necessary to cover the above referenced Rent.
- K. Failure of Performance. That failure of performance or delays by either party shall be excused if caused by or if arising out of acts of God, strikes, labor disputes, acts of the public enemy, wars, riots, floods, storms, act of State of Federal government and any other causes whether similar or dissimilar, which are not reasonably within the control of the party claiming Force Majeure.
- L. No Exclusive Rights. That no provisions of this Agreement may be construed as giving LESSEE exclusive rights to this type of vessel in that portions of the river where the vessel is located. The City has the right to evaluate and place other business ventures within the proximity of LESSEE.

## 6. **Maintenance and Repairs.**

- A. Vessel Maintenance. LESSEE must maintain the vessel in clean and orderly condition and in compliance with all relevant health and safety codes.
- B. Waste Removal. LESSEE must provide adequate trash and recycling removal from the Leased Premises and keep the area free of trash and debris at its own costs.
- C. Park Maintenance. The City is responsible for maintenance of the surrounding park area, including snow removal in the parking lots and sidewalks around Harriet Island. LESSEE is responsible for snow removal in the area immediately adjacent to the vessel entrance, Public Dock, ramp, and steps.

- D. Litter Control. LESSEE shall keep Public Dock and on land areas which support the vessel in a clean and safe condition.
- E. Utilities. LESSEE shall pay all utility hook-up and usage costs associated with its operations. This includes water, electrical, gas, sewer, telephone, cable television, internet and any other such service, except charges occasioned by a move compelled by City construction projects-

**7. Insurance and Indemnification.**

- A. Insurance required. LESSEE is required to carry, insurance of the kind and in the amounts shown below for the life of the contract. General Liability insurance certificates should state that the City of Saint Paul, its officials, employees, agents, and representatives are named as Additional Insureds for General Liability and Automobile Insurance.

1) General or Business Liability Insurance

- \$1,500,000 per occurrence
- \$2,000,000 aggregate per project
- \$2,000,000 products/ completed operations total limit
- \$1,500,000 personal injury and advertising

Policy must include an "all services, products, or completed operations" endorsement.

2) Automobile Insurance

- a. Bodily Injury \$750,000 per person  
\$ 1,000,000 per accident
- b. Property damage not less than \$50,000 per accident

i. Workers Compensation and Employer's Liability Insurance

- 1. Worker's Compensation per Minnesota Statute Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.
- 2. If LESSEE is exempt from the requirement of carrying Workers Compensation it must provide City with a completed "Certificate of Compliance" (State of Minnesota form MN LIC 04) verifying their number of employees and the reason for their exemption.

ii. General Insurance Requirements

- 1. The policy is to be written on an occurrence basis or as acceptable to City.

The Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if policy includes errors and omissions coverage.

2. The City reserves the right to review LESSEE's insurance policies at any time, to verify that City requirements have been met.
  3. Nothing precludes City from requiring LESSEE to purchase and provide evidence of additional insurance if City's Risk Manager determines it is necessary to protect the interests of the public.
  4. Satisfaction of policy and endorsement requirements for General Liability and Auto Insurance of "each occurrence" and "aggregate" limits can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance earner.
- c. Indemnification. LESSEE shall defend and indemnify City and its officers, agents, and employees from all claims, actions or suits of any character brought for any claimed or alleged injuries or damages received by any person or property resulting from any act or omission by LESSEE or LESSEE's employees or agents in carrying out the terms of this Agreement.
8. **Administration.** For the purpose of administration of this Lease Agreement, the City's representative is the Special Services Manager of Parks and Recreation, and LESSEE's representative is Calah DeLaurentis, 612-867-8720, e-mail: [calah.delarentis@gmail.com](mailto:calah.delarentis@gmail.com).
9. **Casualty Loss to Public Dock and Ramps.**
- A. Limited Damage to Public Dock. If all or part of the Public Dock and/or ramps are rendered unsuitable for its anticipated use by damage from fire or other casualty which in the reasonable opinion of an architect selected by City can be substantially repaired under applicable laws and governmental regulations within 120 days from the date of such casualty (employing normal construction methods without overtime or other premium) City shall at its own expense, repair such damage.
  - B. Major Damage to Public Dock and Ramps. If all or a substantial part of the Public Dock and/or ramps are rendered unsuitable for its anticipated use by damage from fire or other casualty to such a material extent that in the reasonable opinion of an architect it cannot be substantially repaired under applicable laws and governmental regulations within 120 days from the date of such casualty (employing normal construction methods without overtime or other premium), then City may elect to terminate this agreement as of the date of such casualty by written notice delivered to LESSEE not more than 60 days after the date of such casualty.

- C. Loss or Damage. In the event of damage to the Public Dock and Ramps rendering them unusable, the fees payable by LESSEE to City hereunder shall abate as of the date of the occurrence. In the case of damage which does not render the entire Public Dock and/or Ramps untenable, the above payments shall be equitably apportioned.

The rent specified in section 3 will be abated in any period during which LESSEE's business operations are halted on account of fire, windstorm, floods, other actions of God, except to the extent that any such losses are compensated for by insurance.

- D. Damage Due to LESSEE's Negligence. Notwithstanding the foregoing, if the damage is due to negligent actions or omissions of LESSEE or its agents, it will be solely City's determination as to whether to repair or restore the Public Dock and/or Ramps, and whether to terminate this Agreement.

#### 10. **Termination; Remedies.**

- A. Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the Parties.
- B. Termination for Material Breach. A party claiming a material breach by the other party may elect to terminate this Agreement by providing notice of such intent to terminate to the other party, stating the date upon which the termination will be effective. Other than the notice required in this section 10.2, no written notice is required for a party to terminate this Agreement for a claimed material breach unless failure to cure after notice is specifically listed as a component of the claimed material breach.
- C. Material Breach by LESSEE Defined. The following events will be deemed to be material breaches by the LESSEE:
1. Failure to Pay. In the event that LESSEE fails to make any payment due City as required under this Agreement and the failure continues for a period of more than 30 days after receipt of written notice of such non-payment.
  2. Lapse in Insurance. In the event LESSEE fails to continuously maintain proper insurance as required by the Agreement and the lapse continues for a period of five days after receipt of written notice of such failure.
  3. Failure to Obtain or Maintain License. In the event that LESSEE fails to obtain any permit or license required to perform under this Agreement, or such permits or licenses are suspended or revoked, or allowed to expire and such failure continues for a period of 15 days after receipt of written notice of such failure.
  4. Breach without Cure. LESSEE breaches any obligation under this Agreement and such breach continues for a period of 45 days or more after receipt of

written notice of such breach.

5. Persistent or Repeated Breaches. LESSEE has a pattern of persistent and repeated breaches, whether or not such breaches have been cured.
6. Bankruptcy. In the event that LESSEE files a voluntary petition in bankruptcy, insolvency or a petition for reorganization, or a receiver is appointed for a substantial portion of LESSEE's property, or an order or decree of bankruptcy, insolvency, or reorganization is issued.

D. Material Breach by City Defined. The following events will be deemed to be material breaches by City:

1. Breach without cure. In the event City breaches any obligation under this Agreement and such breach continues for a period of 45 days or more after receipt of written notice of such failure.
2. Persistent or Repeated Breaches. City has a pattern of persistent and repeated breaches, whether or not such breaches have been cured.

E. No Waiver Implied. In the event any provision contained in this Agreement should be breached by either party and said breach thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

F. Remedies Cumulative. No remedy herein conferred upon or reserved to either party under this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

G. Minnesota Law; Severability; Venue. This Agreement shall be construed under the laws of the State of Minnesota; and if any provision or portion thereof, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent provided by law. Any litigation arising out of or relating to this Agreement will be venued in the State of Minnesota Second Judicial District Court, Ramsey County.

## **11. Nondiscrimination; Miscellaneous Provisions.**

A. Nondiscrimination. LESSEE will not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, religion, color,

sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same. This provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising, layoff, or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

LESSEE will not discriminate against any person in the use of a public accommodation because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that customers and visitors are treated during their use without regard to the same.

- B. Pollution and Contaminants. LESSEE agrees to comply with all ordinances, laws, rules, and regulations enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants and the disposal of refuse, solid wastes, or liquid wastes.

LESSEE shall bear all costs and expenses arising from compliance with said ordinances, laws, rules, or regulations and shall indemnify, defend, save, and hold harmless LESSOR from all liability, including without limitation, fines, forfeitures, and penalties arising from the failure by LESSEE to comply with such ordinances, laws, rules, or regulations. LESSOR has the right to perform cleanup and charge LESSEE as Additional Rent for such costs should LESSEE fail to comply.

- C. Liens. LESSEE shall not permit mechanic's liens or other liens to be filed or established or to remain against the Leased Premises for labor, materials or services furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements made to the Leased Premises, or for any other reason; provided that if LESSEE shall first notify LESSOR of its intention to do so and shall deposit in escrow with LESSOR a sum of money or a bond or irrevocable letter of credit acceptable to LESSOR equal to the amount of the claim of lien, LESSEE may in good faith contest any such claims or mechanic's or other liens filed or established and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest. If, in the opinion of LESSOR, the nonpayment of any such items subjects the Leased Premises to any loss or forfeiture, LESSOR may require LESSEE to use the escrow account to promptly pay all such unpaid items and if LESSEE fails to pay from the escrow account, LESSOR may pay and charge the LESSEE as Additional Rent.

- D. Eminent Domain. In the event the entire Leased Premises are taken by eminent domain, or such portion thereof is so taken that in LESSEE'S reasonable judgment it is uneconomic thereafter to restore the Leased Premises and proceed under the terms and provisions of this Lease, LESSEE may terminate this Lease by giving to LESSOR thirty (30) days' written notice of termination, effective as of the date on



which the condemning authority acquires legal title or physical possession of the Leased Premises. LESSEE hereby waives and releases any claim to or share in the Award of Compensation for the taking, notwithstanding any other provision of law, this Lease, or any other agreement. LESSEE may to the extent otherwise permitted in the eminent domain proceeding, remove its own trade fixtures at its own expense.

- E. Alterations. The LESSEE will not make any alterations to the premises without the written consent of the LESSOR, such consent not to be unreasonably withheld. If the LESSEE desires to make any such alterations, an accurate description shall first be submitted to and approved by the LESSOR and such alterations shall be done by the LESSEE at its own expense. All such work shall be performed under the LESSOR'S supervision and any improvements made to the Leased Premises at the LESSEE'S expense shall become the property of the LESSOR at the end of the Lease period. LESSEE agrees that all alterations will be done in a workmanlike manner and in conformance with applicable building codes, that the structural integrity and building systems of the building will not be impaired, and that no liens will attach to the premises by reason thereof.
- F. Notices. Any notice, statements, bills, or other communications required to be given under this Agreement will be deemed will be deemed to be duly delivered if in writing and delivered to the other Party personally, sent by facsimile with confirmed delivery sheet, sent by electronic mail with confirmation of receipt, or sent by certified mail address to the other return-receipt postage prepaid as follows:

AS TO CITY:                    Director of Parks and Recreation  
   400 City Hall Annex  
   25 W. 4<sup>th</sup> Street  
   Saint Paul, MN 55102

AS TO LESSEE:                Calah DeLaurentis  
   Pier #1 Harriet Island  
   Saint Paul, Minnesota 55107

or to such other subsequent address as the respective parties shall designate in writing. The time of giving such notice or communication shall be deemed to be the time when the same is actually delivered to the other party

- G. Holdover. Any holdover after the expiration of the term of this Lease shall be allowed only after receiving the written consent of the LESSOR. Said tenancy shall be deemed to be a tenancy only from month to month. All other terms and conditions of this Lease shall be applicable.
- H. Assignment and Transfer. This Lease may not be transferred nor assigned without the consent of the other party and any attempt to assign without such consent

will render the assignment void.

The rights under the Agreement will not automatically continue upon the sale or transfer of a controlling interest in the LLC holding rights gained through the Agreement (LESSEE). The sale or transfer of a controlling interest in LESSEE will terminate the Agreement unless LESSEE receives prior approval from the City.

- I. Amendments. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.
- J. Captions and Heading. The captions and headings used herein are intended only for the convenience of the reader and are not to be used in construing this Agreement.
- K. Counterparts. The parties may sign this Lease in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- L. Electronic signatures. The Parties agree that the electronic signature of a party to this Lease shall be as valid as an original signature of such party and shall be effective to bind such party to this Lease. The Parties further agree that any document (including this Lease and any attachments or exhibits to this Lease) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Lease.
- M. Entire Agreement. This Agreement constitutes the full and complete agreement between the parties and supersedes any prior negotiations or agreements.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year in this Lease first above-written.

**LESSOR:**

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Mayor

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City Clerk

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Director – Office of Financial Services

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Director of Parks and Recreation

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City Attorney (Form Approval)

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**LESSEE:**

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Its

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Its



**EXHIBIT A**

