

EXPLANATION OF CONSENT AGENDA ITEM E.2.c. (5) June 7, 2017

ITEM:

Consideration of approving consent of assignment of Lease Agreement dated March 30, 2010 by and between Canaveral Port Authority and Port Canaveral Marine Center, LLC to Cape Canaveral Marine Center, LP. The consent to assignment has been reviewed and approved by General Counsel and the Port Attorney. (Scott Shepard)

EXPLANATION:

Canaveral Port Authority and Port Canaveral Marine Center, LLC entered into a thirty (30) year lease on March 30, 2010 (the "Lease"). The Lease was assigned in lieu of foreclosure to HB Realty Corporation (HB Realty) on December 10, 2010 and is currently held by Midland States Bank (Midland) as a result of its merger with Heartland Bank (approved by the Board on March 23, 2016).

Pursuant to Section 14(a) of the Lease, Midland is requesting the Port's consent to assignment of the Lease from Midland States Bank to Cape Canaveral Marine Center, LP. As part of the assignment, Cape Canaveral Marine Center, LP assumes all of the responsibilities, duties liabilities, and conditions of the Lease and agrees to fully and completely comply with its terms and conditions.

Staff has received the Lease assignment fee, confirmation of assignment of the security deposit to the assignee, and documentation of environmental conditions at the site through a Phase I and Limited Phase II Environmental Site Assessment.

Staff recommends approval.

Prepared by Scott Shepard

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Prepared by and return to:

Thompson Burton PLLC
One Franklin Park
6100 Tower Circle, Suite 200
Franklin, Tennessee 37067
Attn: William W. Burton, Esq.

LEASE ASSIGNMENT

THIS LEASE ASSIGNMENT (this "Assignment") is made and entered into this ____ day of _____, 2017, by **MIDLAND STATES BANK**, an Illinois state chartered bank, successor by merger to HB Realty Corp., whose mailing address is 1201 Network Centre Drive, Effingham, Illinois 62401, Attn: Glory Breese ("Assignor"), in favor of **CAPE CANAVERAL MARINE CENTER, LP**, a Florida limited partnership, whose mailing address is 7001 Edgeworth Drive, Orlando, FL 32819, Attn: Mark Skrzpek ("Assignee").

WITNESSETH, that the Assignor, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration paid by the Assignee, the receipt of which is hereby acknowledged, hereby assigns and transfers to Assignee all of the Assignor's right, title and interest in, to and under that certain Lease Agreement between the Canaveral Port Authority, as Lessor, and the Port Canaveral Marine Center, LLC, as Lessee, executed by the parties thereto on March 25, 2010 and March 30, 2010 and recorded in Official Records Book 6138, Page 2709 of the public records of Brevard County, Florida, as assigned by Port Canaveral Marine Center, LLC to Assignor by Special Warranty Deed and Assignment dated December 10, 2010 and recorded in Official Records Book 6298, Page 723 of the public records of Brevard County, Florida for real property situated in the County of Brevard and State of Florida and described in Exhibit "A" attached hereto (the "Property") together with all rights and appurtenances to the Property, subject, however, to those matters listed on Exhibit "B" attached hereto and incorporated herein.

[Signatures Commence on the Following Page]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment, the day, month and year first above written.

Signed, sealed and delivered as to all Assignors
in the presence of:

MIDLAND STATES BANK,
an Illinois state chartered bank,
successor by merger to HB Realty Corporation, a
Missouri state chartered bank

Signature of Witness 1

By: _____

Print Name of Witness 1

Name: Brian Dickmann

Its: Director of Special Assets

Signature of Witness 2

Print Name of Witness 2

State of _____

County of _____

The foregoing instrument was acknowledged before me, a Notary Public, this ___ day of _____, _____, by Brian Dickmann, as Director of Special Assets of Midland States Bank, an Illinois state chartered bank, successor by merger to HB Realty Corporation, a Missouri state chartered bank, on behalf of said company. He is [] personally known to me or [] has produced a driver's license as identification.

(NOTARY SEAL)

Signature of Notary

Printed Name: _____

My Commission Expires: _____

ASSUMPTION OF LEASE

For the aforesaid consideration of Assignment, the undersigned Assignee does hereby fully and completely accept said Assignment and assumes all of the responsibilities, duties, liabilities and conditions imposed upon Lessee of the aforesaid Lease, and agrees to fully and completely comply with said terms and conditions, as Lessee, with the effective date of this Assignment and Assumption being the date the Lessor consents to the same.

CAPE CANAVERAL MARINE CENTER, LP
a Florida limited partnership

Signature of Witness 1

By: Cape Canaveral Marine Center GP, LLC,
a Florida limited liability company
its general partner

Print Name of Witness 1

By: _____
Name: Bruce A. Lack
Its: President

Signature of Witness 2

Print Name of Witness 2

State of _____

County of _____

The foregoing instrument was acknowledged before me, a Notary Public, this ___ day of _____, _____, by Bruce A. Lack, as President of Cape Canaveral Marine Center GP, LLC, a Florida limited liability company, the general partner of Cape Canaveral Marine Center, LP, a Florida limited partnership, on behalf of said company. He is [] personally known to me or [] has produced a driver's license as identification.

(NOTARY SEAL)

Signature of Notary

Printed Name: _____

My Commission Expires: _____

CONSENT TO ASSIGNMENT

The undersigned, CANAVERAL PORT AUTHORITY, an independent special taxing district and political subdivision of the State of Florida, does hereby consent to the above and foregoing Assignment of Lease.

IN WITNESS WHEREOF, the CANAVERAL PORT AUTHORITY, by its undersigned officers duly authorized, has executed this Consent and affixed its seal this ___ day of _____, 2017.

CANAVERAL PORT AUTHORITY,
an independent special taxing district and political
subdivision of the State of Florida

By: _____
Thomas W. Weinberg, Chairman

ATTEST: _____
Jerry W. Allender, Secretary/Treasurer

STATE OF FLORIDA }
COUNTY OF BREVARD }

The foregoing instrument was acknowledged beforeme this _____ day of _____, 2017, by Thomas W. Weinberg and Jerry W. Allender, as Chairman and Secretary/Treasurer, respectively, of the CANAVERAL PORT AUTHORITY, an independent special taxing district and political subdivision of the State of Florida, who are known to me personally or produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA
PrintedName: _____
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Parcel A:

A parcel of land lying in Section 9, Township 24 South, Range 37 East, Brevard County, Florida, and more particularly described as follows:

Commence at the Southeast corner of said Section 9, thence North 88 degrees 25'40" West, along the South line of said Section 9, a distance of 1,027.83 feet; thence run North 01 degrees 34'20" East, a distance of 159.48 feet to a point on the North right-of-way line of Mullet Road; thence run North 85 degrees 23'20" West along said North right-of-way line, a distance of 191.52 feet; thence run North 78 degrees 27'20" West along said North right-of-way line, a distance of 525.84 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING, thence run North 00 degrees 04'30" West, a distance of 229 feet to a point at the internal corner of the Bulkhead cap; thence run North 24 degrees 25'50" West, along said Bulkhead cap, a distance of 400 feet; thence run South 65 degrees 34'10" West, a distance of 249.5 feet, more or less, to the North right-of-way of Mullet Road; thence Southeasterly along the North right-of-way line of Mullet Road on a curve concave to the Northeast, a distance of 323 feet, more or less, to a point of tangency; thence South 45 degrees 58'30" East, along said North right-of-way, a distance of 279.38 feet; thence South 78 degrees 27'20" East, continuing along said North right-of-way line, a distance of 82.99 to the POINT OF BEGINNING (said property being also designated as Lots W-25, W26, W-27, W-28, T-1 and T-2 on that certain map by the Canaveral Port Authority designated as "Lease Parcels-South-Job No. 55-I-WO-45").

Parcel B:

A parcel of land lying in Section 9, Township 24 South, Range 37 East, Brevard County, Florida, and being more particularly described as follows:

Commence at the Southeast corner of said Section 9, thence North 88 degrees 25'40" West along the South line of said Section 9, a distance of 1,225.5 feet; thence North 00 degrees 04'50" West, a distance of 495.34 feet to a point on the external face of the Bulkhead Cap; thence South 89 degrees 55'30" West, along said Bulkhead Cap, a distance of 200.0 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING, thence continue South 89 degrees 55'30" West, along said Bulkhead Cap, a distance of 200.0 feet; thence South 00 degrees 04'50" East, a distance of 249.57 feet to the North right-of-way line of Mullet Road; thence South 78 degrees 27'20" East, along said North right-of-way line, a distance of 203.79 feet; thence North 00 degrees 04'50" West, a distance of 290.72 feet to the POINT OF BEGINNING. (Said property being also designated as Lots W-22 and W-23 on that certain map by the Canaveral Port Authority as "Lease Parcels - South - Job No. 55-1-W045").

Parcel C:

A parcel of land lying in Section 9, Township 24 South, Range 37 East, Brevard County, Florida, and more particularly described as follows:

Commence at the Southeast corner of said fractional Section 9, thence North 88 degrees 25'40" West, along the South line of said Section 9, a distance of 1,027.83 feet; thence run North 01 degrees 34'20" East, a distance of 159.48 feet to a point on the North right-of-way line of Mullet Road; thence run North

85 degrees 23'20" West along said North right-of-way line, a distance of 191.52 feet; thence run North 78 degrees 27'20" West along said North right-of-way line, a distance of 525.84 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING, thence North 00 degrees 04'30" West a distance of 229.0 feet to a point on the face of a bulkhead; thence run North 89 degrees 55'30" East along the face of said bulkhead a distance of 100 feet; thence South 00 degrees 04'30" East a distance of 249.57 feet to a point on the North right-of-way line of Mullet Road; thence North 78 degrees 27'20" West, along said North right-of-way line, a distance of 101.98 feet to said POINT OF BEGINNING.

TOGETHER WITH:

WATER RIGHTS EASEMENT:

Commence at monument "CPA-11 ", having a Northing of 1480540.0923, and an Easting of 774412.9794, thence N 83 degrees 50' 42" E, a distance of 950.44 feet to a point on the North right-of-way line of Mullet Road; thence run N 00 degrees 04' 50" W, a distance of 288.21 feet to the Point of Beginning; thence run South 89 degrees 55' 30" West, a distance of 300.00 feet; thence run North 24 degrees 23' 06" West, a distance of 409.20 feet; thence run North 65 degrees 34' 04" East, a distance of 41.48 feet; thence run North 24 degrees 23' 06" West, a distance of 256.09 feet; thence run North 89 degrees 41' 10" East, a distance of 536.04 feet; thence run South 00 degrees 04' 50" East, a distance of 625.65 feet to the Point of Beginning.

AND TOGETHER WITH:

WATER INGRESS & EGRESS EASEMENT & USE RIGHT:

An easement over and a right to use the water area described below for the purpose of ingress and egress for boats coming to, and going from, the PCMC docks, to wit:

Commencing at monument "CPA- 11, having a Northing of 1480540.0923, and an Easting of 774412.9794, thence run N 83 degrees 50' 42" E, a distance of 950.44 feet to a point on the North right of-way line of Mullet Road, thence N 00 degrees 04' 50" W, a distance of 288.21 feet, thence S 89 degrees 55' 30" W, a distance of 300.00 feet, thence N 24 degrees 23' 06" W, a distance of 409.20 feet to the Point of Beginning, thence N 65 degrees 34' 04" E, a distance of 41.48 feet, thence N 24 degrees 23' 06" W, a distance of 256.09 feet, thence S 89 degrees 41' 10" W, a distance of 45.45 feet, to the East boundary line of Ports End Park, thence S 24 degrees 23' 22" E, along said boundary line, a distance of 274.67 feet to the Point of Beginning.

AND TOGETHER WITH:

DRAINAGE AND LANDSCAPE EASEMENT:

Commencing at monument "CPA-11", having a Northing of 1480540.0923, and an Easting of 774412.9794, thence run North 83 degrees 50' 42" East, a distance of 950.44 feet to a point on the North right-of-way line of Mullet Road and the Point of Beginning; thence South 00 degrees 04' 50" East, a distance of 17.51 feet, thence North 78 degrees 16' 50" West, a distance of 297.00 feet; thence North 74 degrees 41' 32" West, a distance of 53.49 feet; thence North 64 degrees 39' 38" West, a distance of 43.19 feet; thence North 57 degrees 12' 53" West, a distance of 62.82 feet; thence North 46 degrees 35' 24" West, a distance of 105.05 feet; thence North 46 degrees 04' 39" West, a distance of 133.87 feet; thence North 44 degrees 35' 05" West, a distance of 73.76 feet; thence North 28 degrees 49' 23" West, a distance of 65.47 feet; thence North 11 degrees 35' 23" West, a distance of 74.59 feet; thence North 00 degrees 58' 13" West, a distance of 75.32 feet; thence North 07 degrees 23' 03" East, a distance of 21.42 feet; thence

North 65 degrees 34' 04" East, a distance of 11.33 feet; thence South 00 degrees 03' 13" East, a distance of 101.71 feet to the beginning of a curve tangent to said line; thence Southerly and Southeasterly a distance of 138.83 feet along the curve concave to the Northeast, having a radius of 173.53 feet and a central angle of 45 degrees 50' 19"; thence South 45 degrees 53' 32" East tangent to said curve, a distance of 368.10 feet; thence South 78 degrees 31' 57" East, a distance of 384.01 feet to the Point of Beginning.

NOTE: Parcel A, Parcel B, and Parcel C above are also described as follows:

COMMENCING AT MONUMENT "CPA-11", HAVING A NORTHING OF 1480540.092, AND AN EASTING OF 774412.9794, THENCE RUN N83°50'42"E, A DISTANCE OF 950.44 FEET TO THE POINT OF BEGINNING; THENCE RUN NORTH 78°31'57" WEST, A DISTANCE OF 384.01 FEET; THENCE RUN NORTH 45°53'32" WEST, A DISTANCE OF 368.10 FEET TO THE BEGINNING OF A CURVE TANGENT TO SAID LINE; THENCE NORTHWESTERLY AND NORTHERLY A DISTANCE OF 138.83 FEET ALONG THE CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 173.53 FEET AND A CENTRAL ANGLE OF 45°50'19"; THENCE RUN NORTH 00°03'13" WEST TANGENT TO SAID CURVE, A DISTANCE OF 101.71 FEET; THENCE RUN NORTH 65°34'04" EAST, A DISTANCE OF 246.19 FEET; THENCE RUN SOUTH 24°23'06"EAST, A DISTANCE OF 409.20 FEET; THENCE RUN NORTH 89°55'30" EAST, A DISTANCE OF 300.00 FEET; THENCE RUN SOUTH 00°04'50" EAST, A DISTANCE OF 288.21 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

PERMITTED EXCEPTIONS