RESOLUTION NO. ______

A RESOLUTION TO APPROVE AN ESTOPPEL AGREEMENT BETWEEN THE CITY OF LITTLE ROCK, ARKANSAS, JAPB, LLC, D/B/A ROCK CITY YACHT CLUB AND FIRST SERVICE BANK TO ACCOMMODATE A FINANCING ARRANGEMENT FOR THE DEVELOPMENT OF THE MARINA ON THE ARKANSAS RIVER; AND FOR OTHER PURPOSES.

WHEREAS, after a competitive selection process JAPB, LLC, was deemed the successful bidder to develop a marine, a portion of the Arkansas River Trail, and to assist in the development of a City Park ("the Project") pursuant to Little Rock, Ark., Resolution No. 13,089 (February 26, 2010); and,

WHEREAS, JAPB, LLC, is ready to move forward with the development of the marina, and pursuant to Section 13.1 of the Lease Agreement entered on December 19, 2013, between the City and JAPB, LLC, the City has agreed to execute any necessary and appropriate estoppel agreements to assist with financing of the improvements to be built at the Project; and,

WHEREAS, after review of the documents it has been determined that an Estoppel Certificate between the City, JAPB, LLC, and First Service Bank is in order and appropriate;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF LITTLE ROCK, ARKANSAS:

Section 1. The Mayor and City Clerk, and any other City Officials deemed necessary to do so, are authorized to execute a Estoppel Agreement between the City, JAPB, LLC, and First Security Bank in the form approved by the City Attorney and attached as Exhibit A to this resolution.

Section 2. Severability. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the resolution which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the resolution.

Section 4. Repealer. All laws, ordinances, resolutions, or parts of the same, that are inconsistent with the provisions of this resolution, are hereby repealed to the extent of such inconsistency.

ADOPTED: February 21, 2017

ATTEST:                                             APPROVED:

____________________________________   ____________________________________
Susan Langley, City Clerk        Mark Stodola, Mayor
APPROVED AS TO LEGAL FORM:

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Thomas M. Carpenter, City Attorney

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EXHIBIT A

ESTOPPEL AGREEMENT

This Agreement Prepared By:
Timothy W. Grooms, Esq.
Quattlebaum, Grooms & Tull, PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
(501) 379-1700

LANDLORD'S WAIVER, ESTOPPEL AND NONDISTURBANCE AGREEMENT

Landlord: CITY OF LITTLE ROCK
Office of the City Manager
500 West Markham Street
Little Rock, Arkansas 72201

Tenant: JAPB, LLC, an Arkansas limited liability company
d/b/a Rock City Yacht Club
26 Collins Industrial Place
North Little Rock, Arkansas 72113
Attn: John Burkhalter

Lender: FIRST SERVICE BANK
an Arkansas banking corporation
12921 Cantrell Road, Suite 204
Little Rock, Arkansas 72223
Attn: Bill Puddephatt, President-Little Rock Market

RECITALS:

Landlord is the owner and landlord of the "Land" as defined in that certain Ground Lease, dated December 19, 2013, by and between Landlord and Tenant (the "Lease"). The Lease is memorialized by that certain Memorandum of Lease by and between Landlord and Tenant, dated ______, 20__, and recorded on ______, 2017 in the real property records of Pulaski County, Arkansas as Instrument #____________.

Lender has been, and may in the future be, requested to make secured loans to Tenant and/or Tenant's affiliates from time to time covering the construction of a marina and the consumer goods, equipment, inventory, accessions and fixtures (collectively the "Personal Property") that may hereafter be delivered to or installed on the Land. Lender has required the execution of this Landlord's Waiver, Estoppel and Nondisturbance Agreement ("Agreement") as a condition precedent to making a loan to Tenant, and Landlord acknowledges that benefits will inure to the undersigned because of the loan.

AGREEMENT:

In consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Landlord hereby agrees as follows:

[Page 3 of 8]
1. Landlord hereby consents to Tenant granting Lender a mortgage on Tenant's leasehold interest under the Lease, including without limitation Tenant's interest in the Land and the marina. Landlord further consents to Tenant granting Lender a security interest in and to the Personal Property.

2. Landlord hereby waives and subordinates as to the Lender all rights that Landlord now has, or may hereafter have, under the laws of the State of Arkansas, in which the Land is located, or by virtue of any lease, mortgage or deed of trust affecting the Land, now in effect or hereafter executed by Tenant, to levy upon or distrain the Personal Property for rent, or to claim or assert title to or any interest in any of the Personal Property.

3. The Personal Property shall remain personal property notwithstanding its attachment to or installation on the Land and none of the Personal Property shall become a fixture. The Personal Property may be installed, kept, maintained, used and operated on the Land, and the Lender's interest in the Personal Property shall be superior to any interest which the Landlord may now have, or hereafter may acquire in the Personal Property, by operation of law or otherwise.

4. In the event of a default by Tenant in the payment or performance of any of its obligations to Lender, Lender may (i) enter upon the Land and remove the Personal Property or any part thereof from the Land, or (ii) enter upon the Land and maintain the Personal Property on the Land with full right of access thereto for a reasonable period of time for purposes of disposing of the same, either privately or publicly, provided Lender pays any rent or other payments to Landlord that Tenant would have been required to pay during the same period under any rental or lease agreement or mortgage or deed of trust between Tenant and the Landlord. Except for payment of rent or other payments during periods in which it occupies the Land, Lender shall have no obligation for rent or any other payments or obligations of Tenant to the Landlord. Upon default, if Lender chooses to remove some or all of the Personal Property, without obligation to do so, Landlord may require Lender, to the extent of conditions caused by removal by Lender of some or all of the Personal Property, to restore the Land to a reasonably safe condition acceptable to Landlord at the expense of the Tenant or Lender.

5. The initial term of the Lease commenced on December 19, 2013 and ends on December 18, 2112.

6. The Lease is in full force and effect.

7. As of the date hereof, the rent obligation under the Lease is as set forth in Article 2.2 of the Lease has been paid in full. Landlord does not currently hold a security deposit from Tenant.

8. To the best of Landlord's knowledge, there is no existing default or claimed default by either Landlord or Tenant under the Lease. To the best of Landlord's knowledge, no event has occurred that, with the passage of time or the giving of notice, or both, would constitute a default by either Landlord or Tenant under the Lease.
9. If any proceedings are brought by Lender to (a) foreclose its lien or security interest or (b) to succeed to the interest of Tenant by foreclosure, deed in lieu thereof or otherwise, Landlord and Lender agree that the Lease shall in accordance with all terms, conditions and covenants remain in full force and effect as a direct lease and easement between Lender (or the purchaser through foreclosure or other sale) and Landlord for the unexpired balance (and any extensions or renewals provided for in the Lease, including, without limitation, any extensions or renewals pursuant to options contained in the Lease and previously, at that time or thereafter exercised by Tenant) of the term of the Lease, with the same force and effect as if originally entered into with Lender. If any default occurs in the Lease following succession to Lender (or the purchaser through foreclosure or other sale), this Agreement shall have no impact on future estoppel agreements between Landlord and future lenders.

10. In the event of any such foreclosure or succession to the interest of Tenant by deed in lieu thereof or otherwise by Lender or by any purchaser of such interest through foreclosure or other sale, Landlord shall attorn to and shall be bound to Lender or such purchaser under all of the terms, conditions and covenants in the Lease for the unexpired balance (and any extensions or renewals provided for in the Lease, including, without limitation, any extensions or renewals pursuant to options contained in the Lease and previously, at that time or thereafter exercised by Tenant) of the term of the Lease without the execution of any further instrument on the part of the parties hereto.

11. Notwithstanding anything to the contrary contained herein or in the Lease or Easement, in the event of foreclosure of, or other execution on, Lender's lien or security interest (by judicial process, power of sale or otherwise) or conveyance in lieu of foreclosure, Lender shall in no event or to any extent:

(1) be liable to Landlord for any past act, omission or default on the part of Tenant except acts, omissions or defaults which continue subsequent to the time Lender acquires Tenant's interest in the Lease, and only to the extent of such continuation;

(2) be subject to any defenses which Landlord might have against Tenant, unless Landlord has given Lender notice and opportunity to cure any default pursuant to the provisions below;

(3) bound by any Lease amendment after the effective date of this Agreement that is made without Lender's written consent which shall not be unreasonably withheld, conditioned or delayed. Lender shall be deemed to have given its consent to any amendment of the Lease to which Lender would not otherwise be bound, if Lender fails to respond, either by reasonably requesting additional information or by disapproving the request, within ten (10) days after Lender's receipt of such request from Landlord or Tenant.

12. Landlord agrees to give Lender a copy of any notice of default served upon Tenant. Lender shall thereafter have the right, but not the obligation, to cure the default within the longer of (i) the
expiration of Tenant's cure period, if any, under the Lease; (ii) thirty (30) days after Lender receives
a copy of such notice of default, or (iii) such other period negotiated between Landlord and Lender.

13. This Agreement shall inure to the benefit of the successors and assigns of the Lender and shall be
binding upon the successors and assigns of Landlord, and upon any purchaser of the undersigned's
interest in the Land.

14. Whenever in this Agreement or in any proceedings involving the foreclosure of Lender's liens or
security interests in the leasehold interests or the exercise of any power of sale it shall be required
or desired that notice or demand be given or served by any party hereto, such notice or demand
shall be in writing and shall be given by United States certified or registered mail, postage prepaid,
return receipt requested, or by messenger or overnight delivery, addressed to the party for whom it
is intended at the address provided at the beginning of this Agreement.

15. The obligations and covenants of the parties hereto shall be binding upon and shall inure to the
benefit of the parties hereto, their respective successors and assigns.

16. The parties hereto agree that this Agreement may be recorded in the public records in the county
where the Premises are located.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed this
__day of __________, 2017.

LANDLORD:

CITY OF LITTLE ROCK

By:______________________________________
Name:   Mark Stodola
Title:   Mayor

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STATE OF ARKANSAS  )  
COUNTY OF _PULASKI _ )  

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named Mark Stodola, to me well known, who stated he was the Mayor of the City of Little Rock, an Arkansas municipality, and was duly authorized in such capacity to execute the foregoing instrument for and in the name and on behalf of the municipality, and further stated and acknowledged he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of ___________, 2017.

____________________________________  
Notary Public

My commission expires:

_____________________________
(SEAL)

TENANT:  
JAPB, LLC,  
an Arkansas limited liability company  
d/b/a Rock City Yacht Club  
By: _____________________________  
John C. Burkhalter, Manager

STATE OF ARKANSAS  )  
COUNTY OF _PULASKI _ )  

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named John C. Burkhalter, to me well known, who stated he was the Manager of JAPB, LLC, an Arkansas limited liability company, and was duly authorized in such capacity to execute the foregoing instrument for and in the name and on behalf of the company, and further stated and acknowledged he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of ___________, 2017.

____________________________________  
Notary Public

My commission expires:

_____________________________
(SEAL)

LENDER:  
FIRST SERVICE BANK,  
an Arkansas banking corporation  
By: _____________________________  
Bill Puddefhatt, President-Little Rock Market
STATE OF ARKANSAS )

)ss. ACKNOWLEDGMENT

COUNTY OF _PULASKI _)

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named Bill Puddephatt, to me well known, who stated he was the President-Little Rock Market of First Service Bank, an Arkansas banking corporation, and was duly authorized in such capacity to execute the foregoing instrument for and in the name and on behalf of the company, and further stated and acknowledged he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of ___________, 2017.

______________________________
Notary Public

My commission expires:

______________________________
(SEAL)

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