

SUBLEASE AGREEMENT

This Sublease Agreement is made and entered into this ____ day of _____, 2022 by and between **Bar-O-W, LLC** (hereinafter "Sub-Lessee") and the City of Branson, Missouri, (hereinafter "Sub-Lessor").

WITNESSETH:

WHEREAS, Sub-Lessee's predecessors-in-interest have been operating its business, a commercial boat dock, under Sublease agreements with Sub-Lessor since November 14, 1985, on property owned by Liberty Utilities, successor-in-interest to Empire District Electric Company, and leased by Sub-Lessor from the owner of said property, shown on Exhibit A to this Agreement; and described as follows:

An area of land, located in the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest Quarter of Section 4, Township 22 North, Range 21 West, in Taney County Missouri, being more particularly described as follows:

Commencing at the Northwest corner of said Section 4, Township 22 North, Range 21 West; thence, along the West line of said Section 4, South 0° 52' 58" West, a distance of 2,978', to the left bank of Lake Taneycomo descending; thence Easterly and Northerly, along the left bank of Lake Taneycomo descending, a distance of 975' to the Point of Beginning; thence, continuing Easterly and Northerly along the left bank of Lake Taneycomo descending, a distance of 250'; thence, North 30° 29' 30" West, a distance of 54'; thence, South 65° 34' 42" West, a distance of 175'; thence, South 82° 58' 31" West, a distance of 54'; thence South 15° 08' 26" East, a distance of 38' to the Point of Beginning; containing 13,295 sq ft, more or less.

WHEREAS, Sub-Lessee has obtained the rights, title and interest of its immediate predecessor-in-interest, Patton Companies, LLC, in the subleased property and the business located thereon; and

WHEREAS, Sub-Lessee desires to sublease the property and Sub-Lessor desires to more clearly define the rights and obligations of each party;

NOW, THEREFORE, it is contracted and agreed by and between the parties as follows:

1. All Sublease Agreements previously entered into by and between the parties are hereby abandoned and for naught held.
2. The term of this Sublease shall be from the date of approval by the owner of the property Liberty Utilities, successor-in-interest to Empire District Electric Company, (hereinafter

"Liberty") and the Federal Energy Regulatory Commission (hereinafter "Commission") and the date of execution by Sub-Lessee, whichever occurs last, until December 31, 2055. The parties recognize that this Sublease may be terminated by any governmental regulatory agency having jurisdiction over the property.

3. Sub-Lessee shall operate a commercial boat dock on the premises subject to the following:

- a. The dock shall not exceed a total of 25,000 square feet and not exceed one-third of the width of Lake Taneycomo as determined by the United States Corp of Engineer regulations and Empire.
- b. The dock and its moorings shall not use more than 250 lineal feet of shoreline.
- c. The dock shall be located approximately 500 feet downstream from the railroad bridge which crosses Lake Taneycomo on the bank descending from Sub-Lessor's city limits, as shown on Exhibit A.
- d. No modifications shall be made to the dock without the prior written consent of Sub-Lessor, and Liberty.
- e. The dock must serve the general public.
- f. The dock and its operations shall not exceed one-third of the width of Lake Taneycomo up to 25,000.00 square feet, as determined by the United States Corp of Engineer regulations, and Liberty.

4. On the effective date of the commencement of the Sublease term, the annual rent payable by Sub-Lessee to Sub-Lessor for the first twelve (12) months shall be \$13,387.68, payable in monthly installments of \$1,115.64 on the first day of each month. In the event that the effective commencement date shall be other than the first day of the month, then the rent for the balance of the first partial month shall be pro-rated. At the end of the first twelve (12) months of the sublease, sublease payments shall be adjusted in accordance with the provisions of paragraph of paragraph 5 of this Sublease Agreement. In the event that the rent for any month is not paid within ten days of the date due, Sub-Lessee shall pay to Sub-Lessor a late payment fee of ten percent of the monthly rental amount. Contemporaneous with the commencement of this sublease Sub-Lessee shall execute and deliver to its bank such documents as may be necessary for said bank to withdraw the monthly rental from Sub-Lessee's account and pay same to Sub-Lessor, together with all late payments due in accordance with the terms of this sublease. A true copy of said executed agreement between Sub-Lessee and its bank shall be delivered to Sub-Lessor contemporaneous with Sub-Lessee's execution of this sublease.

- a. Default Provisions. If any default shall be made in the payment of rent or any part thereof at the time provided and the default shall continue for 10 days after written notice is given to Sub-Lessee, or if Sub-Lessee shall abandon or vacate the premises, or shall become bankrupt, or shall make a general assignment for the benefit of creditors, or if, after ten (10) days written notice setting forth the default, default shall continue by Sub-Lessee in the performance or observance of any other covenant, term, or condition herein contained to be performed on Sub-Lessee's part, Sub-Lessor may, at its election, terminate this sublease by giving Sub-Lessee notice thereof; and thereupon Sub-Lessee shall pay Sub-Lessor all sums then due under this sublease and Sub-Lessor may, with or without demand, re-enter and take possession of the demised premises, and in either case Sub-Lessee shall peacefully surrender possession thereof to Sub-Lessor, and all rights and interests of Sub-Lessee to possession or control hereunder shall cease and terminate, but nothing herein contained shall affect Sub-Lessor's right to the rental for the term herein specified. Upon taking possession hereunder Sub-Lessor may, at its election, terminate this sublease by giving Sub-Lessee written notice thereof, or Sub-Lessor may relet said property and Sub-Lessee shall be liable for and shall pay as it accrues the difference in rental for the balance of the term and all other sums of money due under the sublease.

5. On each and every anniversary of Sub-Lessee's execution of this sublease the annual rental payable by Sub-Lessee to Sub-Lessor shall be increased as follows:

- a. The published index figure of the United States Consumer Price Index, All Items Index, as determined by the United States Department of Labor, Bureau of Labor Statistics, for the last month of the preceding twelve month period shall be compared against the first month of the preceding twelve month period and the resulting percent of increase shall be multiplied against the existing annual rent to determine the amount of increase in the rent payable by Sub-Lessee to Sub-Lessor, which shall be retroactive to the anniversary of the sublease. However, regardless of the percentage of increase shown by said computation, the rental for the succeeding year shall never be less than one percent increase and shall never be greater than a three percent increase. In no instance shall the rent for the succeeding year be lower than the rent for the previous year. The monthly rental for any fractional month shall be prorated on a per diem basis. All rental payments shall be paid to the City of Branson, Director of Finance, 110 W. Maddux Street, Branson, Missouri 65616, unless Sub-Lessor designates another address in writing.

6. Sub-Lessee agrees to operate said dock in compliance with all current and published safety rules and regulations as promulgated by the Sub-Lessor and as approved by its Board of Aldermen from time to time.

7. As a material and substantive provision of this Sublease, Sub-Lessee consents and agrees that Sub-Lessor has the absolute right to control the lands subleased hereunder, including any lands previously utilized by Sub-Lessee. Sub-Lessee waives each and every right in the land, property, or contract, in law or equity, that would give Sub-Lessee any right, other than this Sublease, to remain located on the lakefront. The parties understand that notwithstanding the legality and enforceability of any other paragraph, phrase or clause in this Sublease, that Sub-Lessee gives an unconditional waiver thereof in favor of the Sub-Lessor in the following rights:

- a. Any contract right alleged to arise from any previous contracts or promises made by Sub-Lessor, through any person, to the right of the undersigned Sub-Lessee to occupy space at any location on Lake Taneycomo.
- b. Any right in land that may have come by the passing of time or might be enforced by laches or estoppel in any way, said defenses being hereby unconditionally and freely waived, and Sub-Lessee promises that such defenses shall not be raised at any time in the future.
- c. Any right that might be Sub-Lessee's by virtue of a court action filed in any court, including but not limited to the actions in the Circuit Court of Taney County, Missouri concerning the interpretation, clarification and enforcement of the rights of predecessors who had docks on Lake Taneycomo. All arguments or positions relating to a right to continue to operate by virtue of the fact that an operation has been maintained in the past, including all arguments and positions or rights that might be gained by virtue of the contributions made by the Sub-Lessee in years past in the development of the lakefront and to downtown Branson, all these and any other known defenses or arguments or positions are now unconditionally waived and for naught held, and the parties consent that the courts shall take judicial notice that all such rights and any rights at law and equity are now waived and for naught held, and that the relationship of the parties now is, and shall be in the future, governed solely by this Sublease, as modified from time to time by mutually agreeable action of the Board of Aldermen of Sub-Lessor and Sub-Lessee.

8. The parties further and additionally agree to the following provisions, to wit:

- a. That it is in the best interest of Sub-Lessor to encourage the orderly development of the lakefront in such a way as to compliment the tourist industry and the community of Southwest Missouri while contemporaneously providing employment in a clean, environmentally

safe, recreational and tourist-oriented operation, and to operate the lakefront in such a manner that will enhance and preserve the natural beauty and cleanliness of Lake Taneycomo.

- b. The parties understand and agree that Sub-Lessor has the right to seek the orderly enhancement and development of the lakefront in such a manner as would be, in its sole discretion and in the long-term best interest of Sub-Lessor, and the undersigned Sub-Lessee has no right to discourage or obstruct said orderly development.
- c. The parties recognize and agree that Sub-Lessee possesses no rights other than those specifically set forth in this Sublease.
- d. Sub-Lessee shall pay all taxes that may be levied or assessed on its property, all sales taxes and any other lawfully assessed taxes, and the failure to pay any such taxes when currently due shall be a breach of this Sublease.
- e. Sub-Lessee shall, during the entire term of this Sublease, keep in full force and effect insurance coverage with respect to the Subleased premises and the business operated by Sub-Lessee, (or any Sub-Tenants of Sub-Lessee) on the Subleased premises as follows:
 - i. General Liability Insurance with a company authorized to do business in the State of Missouri with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death) and property damage. The Sub-Lessor must be named as an additional insured.
 - ii. True copies of the described policies of insurance shall be delivered to Sub-Lessor contemporaneous with the execution of this Sublease and, subsequently, on the renewal date of each policy.
 - iii. Sub-Lessee understands and agrees that the insurance required under the terms of the contract in no way precludes the Sub-Lessee from carrying such other insurance as may be deemed necessary by the Sub-Lessee for the operation of the Sub-Lessee's business or for the benefit of the Service Provider's employees.
 - iv. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Sub-Lessee shall be construed to constitute a waiver of any sovereign immunity as set forth in section 537.600 through 537.650 of the Missouri Revised Statutes, or any other governmental or official immunity, which is barred under said doctrines of sovereign, governmental or official immunity available

to the City, its Board of Aldermen, salaried officers or employees, nor constitute waiver of any available defense. The Sub-Lessee shall cause all policies of insurance related to the contract to be endorsed in accord to this subparagraph.

- f. Sub-Lessee will protect and indemnify Sub-Lessor and save it harmless from and against any and all claims, actions, damages, liability and expense including reasonable attorney's fees and costs in connection with injury to any person or damage to any property arising from or out of any occurrence in, upon, or at the Subleased premises.
- g. Sub-Lessee agrees not to conduct or permit any nuisance on the subleased premises, and to maintain the area adjacent to and in front of the docks in a clean and attractive condition, and to not operate the business in any way as to create a nuisance.
- h. Sub-Lessee agrees at the expiration of the term of this Sublease or any extension thereof, or sooner if termination shall come by virtue of a default, upon a 10 day demand by Sub-Lessor to peaceably surrender and yield up to Sub-Lessor the lands, and all of them, and to remove and cause to be removed the dock from in front of the location where same is located and Sub-Lessor reserves the right, and Sub-Lessee hereby designates the Sub-Lessor as its agent for the purpose of cutting away said dock and to move said dock to a location away from the Sub-Lessor at the expense of Sub-Lessee, and Sub-Lessee shall pay such moving expense and all such reasonable storage expenses prior to claiming said dock.
- i. Sub-Lessee may encumber by mortgage or Security Agreement or other proper instrument, Sub-Lessee's Leasehold interest, together with all improvements placed by Sub-Lessee thereon as security for any indebtedness of Sub-Lessee. The execution of any such mortgage, Security Agreement, or other instrument, or the foreclosure thereof, or any sale thereunder, either by judicial proceeding or by virtue of any power or privilege reserved in any mortgage or Security Agreement shall not be considered as a violation of any of the terms or conditions of this Sublease or as an assumption by the holder of such secured interest of any of the obligations hereof. No such encumbrances, foreclosure, conveyance, or exercise of right shall relieve the Sub-Lessee from its liability hereunder.
- j. If Sub-Lessee shall encumber its leasehold interest and estate in the subleased premises, and if Sub-Lessee or the holder of the secured interest by such encumbrance shall give notice to Sub-Lessor of the existence thereof, and the address of such holder, then Sub-Lessor will deliver to such holder, a duplicate copy of all notices in writing which Sub-Lessor may

from time to time give or serve on Sub-Lessee under and pursuant to the terms and provisions hereof; such copies shall be mailed or delivered to said holder at or as near as possible to the same time as such notices are given to or served on Sub-Lessee. Such holder may, at its option, at any time before the rights of Sub-Lessee shall be terminated as provided herein, pay any of the rents due hereunder, or pay any taxes and assessments or do any other act or thing required of Sub-Lessee by the terms hereof, or do any other act or thing that may be necessary and proper to be done in the observance of the covenants and conditions hereof, in order to prevent the termination hereof; all payments so made, and all things so done and if fully performed by such holder, to the satisfaction of Sub-Lessor, shall be effective to prevent a foreclosure of the rights of Sub-Lessee hereunder as if the same would have been done or performed by Sub-Lessee.

- k. Sub-Lessee shall not have the right to assign this Sublease or to sublet said premises or parts thereof without the prior written consent of Sub-Lessor and Empire. The City shall not unreasonably withhold said approval or a request for assignment. However, any approval of said assignment will not relieve Sub-Lessee of Sub-Lessee's obligations, under this Sublease.
- l. It is understood that from time to time the Sub-Lessee may be renting boat pace to the public and this activity may be carried on without the approval of the City of Branson and as a part of the operation of the business itself.
- m. If any action at law or equity shall be brought to recover any rent under this Sublease or for or on account of any breach of, or to enforce or to interpret any of the covenants, terms or conditions of this Sublease, or for recovery of possession of the subleased premises, the prevailing party shall be entitled to recover from the other party all reasonable costs, expenses and attorney fees, the amount of which shall be fixed by the court and shall be made a part of the judgment or decree rendered.
- n. No oral representations, agreements or understandings altering, remodifying, taking from or adding to the terms and provisions of this Sublease shall have any force or effect unless the same is reduced to writing and signed by Sub-Lessor and Sub-Lessee with the approval of the Board of Aldermen of Sub-Lessor.

9. Neither this Sublease nor the leasehold estate of Sub-Lessee hereunder in the subleased premises or in the improvements constructed thereon shall be subject to involuntary assignment, transfer or sale by operation of law in any manner whatsoever (except through statutory merger or consolidation or devise or intestate succession) and any such attempt at involuntary assignment or transfer shall be void and of no effect.

10. In the event any proceedings under the Bankruptcy Act or any amendment thereto be commenced by or against Sub-Lessee and, if against Sub-Lessee, such proceedings shall not be dismissed before either an adjudication in bankruptcy or in confirmation of a composition, arrangement, or plan or reorganization, or in the event Sub-Lessee is adjudged insolvent or makes an assignment for the benefit of Sub-Lessee's creditors, or if a receiver is appointed in any proceeding or action to which the Sub-Lessee is a party, with authority to take possession or control of the subleased premises or the business conducted thereon by Sub-Lessee, and such receiver is not discharged within a period of 90 days after his appointment, any event or any such involuntary assignment prohibited by the provisions of the preceding paragraph of this section shall be deemed to constitute a breach of this Sublease by Sub-Lessee and shall, at the election of Sub-Lessor, but not otherwise, without notice, or entry, or other action of Sub-Lessor, terminate this Sublease and also all rights of Sub-Lessee under this Sublease in and to the subleased premises and the improvements constructed thereon, and also all rights of any and all persons claiming under Sub-Lessee.

11. The obligations of this agreement shall be binding upon and the benefits hereof shall inure to the successors and assigns of the respective parties hereto.

12. All notices, demands or other writings in this Sublease provided to be given or made or sent, or which may be given or made or sent by either party hereto to the other shall be deemed to have been fully given, made or sent when made in writing and deposited in the U. S. Mail, certified or registered, postage prepaid, and addressed as follows:

TO SUB-LESSOR: City Administrator
City of Branson
110 W. Maddux St.
Branson, MO 65616

TO SUB-LESSEE: H.P. Wright
400 South Boxcar Willie
Branson, MO 65616

13. The claiming of some right not enunciated and declared in this Sublease by Sub-Lessee that arises prior to the date of this Sublease shall be and is an act of default justifying the termination of the Sublease, and this Sublease shall be terminated, and Sub-Lessee shall vacate the premises, and the rights of the Sub-Lessor to remove said dock may be exercised at such time.

IN WITNESS WHEREOF, the parties have caused this Sublease to be executed this ____ day of _____, 2022, by their respective authorized representatives.

ATTEST:

THE CITY OF BRANSON
("SUB-LESSOR")

By: _____
Lisa K. Westfall
City Clerk

By: _____
Larry Milton, Mayor

BAR-O-W, LLC

By: _____
H.P. Wright,
Managing Member of Bar-O-W, LLC

APPROVED AS TO FORM

By: James E. Meadows #50874
James E. Meadows
Interim City Attorney

GUARANTY

The undersigned H. P. Wright and Megan Wright, his wife being the sole owners of Bar-O-W, LLC, a Missouri Limited Liability Company, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby unconditionally guarantee the full performance of each and every term, covenant and condition of a certain Sublease Agreement dated the _____ day of _____, 2022, between the City of Branson, Missouri, (hereinafter "Sub-Lessor") and Bar-O-W, LLC, (hereinafter "Sub-Lessee"), including, but not limited to, the payment of all rentals and other charges to accrue thereunder.

The undersigned do hereby further agree that this covenant and agreement on their part shall continue in favor of Sub-Lessor notwithstanding any extension of the above-referenced Sublease, any assignment of said Sublease, with or without the consent of Sub-Lessor; and, no extension, modification, alteration or other assignment of said Sublease shall in any manner release or discharge the undersigned, whether entered into with or without the consent of the undersigned.

This Guaranty shall continue unchanged by any bankruptcy, reorganization or insolvency of the Sub-Lessee or any successors or assigns of Sub-Lessee or any heirs, personal representatives, successors or assigns of the undersigned.

The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of Sub-Lessor, H.P. Wright and Megan Wright and Sub-Lessee, any revocable or irrevocable trust executed by H.P. Wright and Megan Wright who transfer any assets of theirs from themselves individually to a revocable or irrevocable trust.

IN WITNESS WHEREOF, the undersigned have executed this Guaranty contemporaneous with the execution of said Sublease Agreement dated the _____ day of _____, 2022.

Dated: _____

H. P. Wright

Dated: _____

Megan Wright

EXHIBIT A

