LEASE AGREEMENT

BETWEEN

THE CITY OF MIAMI

AND

FOR THE USE OF

A CERTAIN PORTION OF
THE CITY-OWNED PROPERTY LOCATED AT

3385 Pan American Drive, Miami, Florida
3349 Pan American Drive, Miami, Florida
& 3351 & 3377 Charthouse Drive, Miami, Florida
LEASE AGREEMENT

This LEASE AGREEMENT (“Lease”) is made as of the _____ day of _____________, 2013, by and between the CITY OF MIAMI, FLORIDA (“Lessor”), a municipal corporation of the State of Florida having its offices at 3500 Pan American Drive, Miami, Florida 33133 and __________________________, a Florida ____________, having its offices at __________________________, Miami, Florida (“Lessee”).

The Lessor and Lessee, together the “Parties,” agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions.

Any word contained in the text of this Lease shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context. More specifically, however, for the purposes of this Lease, the following words shall have the meanings attributed to them in this Section:

1.1.1 “Additional Rent” means all additional sums, charges, or amounts of whatever nature to be paid by Lessee, not defined as Minimum Base Rent or monthly Percentage Rent, in accordance with the provisions of this Lease, whether or not such sums, charges or amounts are referred to as additional rent.

1.1.2 “Applicable Law” means all laws of the United States, Florida Statutes, City of Miami and Miami-Dade County ordinances, codes, rules, regulations, resolutions, orders, judgments, decrees and injunctions from courts having jurisdiction over the Property, rules, and requirements of State and local boards and agencies with jurisdiction over the Property, now existing or hereafter enacted, adopted, foreseen and unforeseen, ordinary and extraordinary, which may be applicable to the Property or any part of it.

1.1.3 “Assignment” means the complete transfer of the rights and obligations of the Lessee under the Lease to a third party, whereupon the third party Assignee becomes the Lessee under the Lease and takes over all of the Property and the rent and other obligations associated with the Lease, thereby substituting the old tenant’s rights and obligations.

1.1.4 “Assignee” means the third-party entity taking over the rights and obligations of the Lessee or assignor or owner of the Leasehold Estate.

1.1.5 “Minimum Base Rent” means the annual Minimum Base Rent due and payable by the Lessee on a monthly basis for the use of the subject Property and which commences at $1,000,000 per annum.

1.1.6 “Business Days” means Monday through Friday excluding legal holidays.

1.1.7 “City” means the City of Miami, a municipal Corporation of the State of Florida.

1.1.8 “City Manager” means the administrative head of the City’s government who is authorized to execute this Agreement and other documents included notices hereunder.

1.1.9 “Date of Taking” means the earlier of (i) the date on which actual possession of all or less than all of the Property, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of Applicable Law; or (ii) the date on which title to all or less than all of the Property, as the case may be, has vested in any lawful power or authority pursuant to the provisions of Applicable Law.

1.1.10 “DEP” means the State of Florida Department of Environmental Protection.

1.1.11 “Effective Date” means the date this Lease is fully executed and legally binding upon the Parties, only after final approval by the City and a public referendum.

1.1.12 “Equity Contribution” means that the equity in the Project provided by Lessee personally or through one or more Persons which are wholly owned by the Lessee and over which Lessee has Voting and Operational Control, shall equal not less than $14,000,000. The foregoing sum shall include all demonstrable hard costs and soft costs reasonably related to the Project expended or reimbursed by the foregoing parties prior to or after the date hereof. Notwithstanding the Equity Contribution, the Lessee has deposited funds in escrow in the amount of $7,000,000, which funds shall be available to Lessee in order to ensure that Leasehold Improvements required by the terms of this Lease are paid.

1.1.13 “Fair Market Rent” means the rent that a similar property being used as set forth herein, with such additional uses as may be located on the Property, would bring in a competitive and open market under all conditions requisite to an arm’s length transaction, the parties each acting prudently,
knowledgeably, and assuming the rent is not affected by undue stimulus. Implicit in this definition is
consummation of an agreement as of a specified date under conditions whereby:

(i) Both parties are typically motivated;
(ii) Both parties are well-informed or well-advised and acting in what they consider
their own best interest;
(iii) A reasonable time is allowed for exposure in the open market;
(iv) Payment is made in terms of cash in U.S. dollars in terms of financial
arrangements comparable thereto; and
(v) The rent represents the normal consideration for property leased, under the
current market conditions unaffected by special or creative financing or
concessions granted by anyone associated with the Lease.

1.1.14 “Force Majeure” means any period of delay which arises from or through acts of God;
strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war; fire
or other casualty; legal requirements; delays caused by the other party; and causes beyond the reasonable
control of a party.

1.1.15 “Gross Revenues” shall have the meaning described in Section 4.1.3 of the Lease.

1.1.16 “Impositions” means all governmental assessments, including assessments imposed by
the City and the State of Florida, franchise fees, fire fees, excises, license and permit fees, submerged land
fees, levies, charges, and taxes, including ad valorem real estate taxes on the Property and the Leasehold
Estate, general and special, ordinary and extraordinary properly levied against the Property and the
Leasehold Improvements and/or the Lessee’s Leasehold Estate which constitute a lien on the Property or
the Leasehold Improvements, due as a result of the Lessee use of the leasehold and/or due to the Lessee’s
operation of a commercial business on the Property.

1.1.17 “Leasehold Estate” means all of Lessee's right, title and interest as Lessee in, to and under
this Lease, the Property and the Leasehold Improvements.

1.1.18 “Leasehold Improvements” means a description of remodeling/renovation work to be
done to the physical plant as described in Exhibit “A” entitled “Schedule of Leasehold Improvements” and
all furnishings, fixtures, or equipment to be installed in accordance with Section 6.1, and all other items and
improvements installed or constructed thereafter, from time to time during the Lease Term that are
hereafter located upon the Property.

1.1.19 “Lease Term” means the period of time fixed in Section 3.1 and shall be deemed to
include the additional period of time fixed in Section 3.2 if Lessee exercises Lessee's right to renew the
Lease.

1.1.20 “Lease Year” means twelve (12) consecutive months commencing on the Effective Date.
The first Lease Year shall begin on the Effective Date. Each succeeding Lease Year shall commence upon
the anniversary date of the Effective Date.

1.1.21 “Lessee” has the meaning ascribed to it in the opening paragraph of this Lease as well as
Lessee’s successors and assigns.

1.1.22 “Licensee” means Grove Key Marina, Inc., the current operator of the marina and casual
restaurant located on the Property.

1.1.23 “Net Condemnation Award” means the actual amount of the award paid in connection
with or arising from the acquisition or other taking of all or less than all of the Property, as the case may be,
less all reasonable out-of-pocket expenses incurred by Lessor or Lessee in connection with obtaining such
award, including, without limitation, all reasonable attorneys’ fees and disbursements incurred in
connection therewith.

1.1.24 “Net Insurance Proceeds” means the actual amount of insurance proceeds paid following
an insured casualty to the Leasehold Improvements less all costs and expenses including reasonable
attorneys’ fees incurred by the Lessee and/or Lessor with respect to the collection thereof.

1.1.25 “Net Sale Proceeds” shall mean the net proceeds to Lessee, or owner transferring such
interest, (pursuant to Article XI herein), remaining after payment of (i) any other debt relating to the
Property as prorated proportionately to the interest being transferred; and (ii) all reasonable costs and
expenses of the sale or Transfer, including commissions, fees, and closing costs.

1.1.26 “Parking Facilities” means the approximately 400 parking space parking garage and retail
spaces the Miami Parking Authority will construct to service the Property.

1.1.27 “Percentage Rent” means a percentage of Gross Revenues from Lessee’s
operations, which includes revenues from those operations, services or activities furnished by the Lessee
and Sub-lessees that enter into agreements with Lessee to provide the activities or vending machines on the Property and collect payment directly from patrons or invitees to the site.

1.1.28 “Possession Date” means the date on which Lessee is entitled to possession of the Property.

1.1.29 “Project” means to the plan, design, renovate or redevelop, lease, manage and operate a mixed use waterfront facility.

1.1.30 “Property” means the land, buildings, improvements and authorized submerged lands located at 3385 Pan American Drive, 3349 Pan American Drive, 3351 & 3377 Chart House Drive, Miami, Florida, as more particularly described in Exhibit “B1” and Exhibit “B2” attached herewith and incorporated herein by reference.

1.1.31 “Proposal” means the document received by the Lessor dated _______________ in response to the RFP.

1.1.32 “Rent” means Minimum Base Rent or Percentage Rent, as such amounts are described and fixed in Section 4.1.1 and 4.1.3, and adjusted pursuant to the terms of Section 4.1.2 herein.

1.1.33 “RFP” means the document entitled “Request for Proposals (“RFP”) No. 12-13-001 Lease of City-owned Waterfront Property for Marina/Restaurant/Garage Retail Uses” located at 3385 Pan American Drive and 51 Chart House Drive, Miami Florida, issued by the City of Miami on January 11, 2013, a copy of which is available at the City Clerk’s Office and incorporated herein by this reference.

1.1.34 “Sublease” means any lease (excluding this Lease), sublease, license, concession, permit agreement, or other agreement by which Lessee or any person or other entity claiming under Lessee, demises, leases, subleases, licenses or sublicenses to or permits the use or occupancy by another person or entity of any part of the Property and Leasehold Improvements.

1.1.35 “Subleasehold Estate Transfer” means any direct or indirect, voluntary or involuntary, sale, transfer, or assignment of any right, title or interest in and to any Sublease or any Subleasehold Estate.

1.1.36 “Sub-lessee” means any person, firm, corporation or other legal entity using or occupying or entitled to use or occupy any part of the Property or the Leasehold Improvements under a Sublease.

1.1.37 “Submerged Lands” means any Submerged Lands within the Property which have been authorized for marina or marine-related uses by the Lessor and/or the Lessee by the State of Florida Board of Trustees for Internal Improvement Trust Fund or by its administrative arm, the DEP.

1.1.38 “Submerged Land Fees” means all fees, waivers, rentals and taxes as determined by DEP and any and all government agencies for the use of the Submerged Lands area.

1.1.39 “Transferee” means the receiving entity of a transfer in accordance with Article XI herein.

1.1.40 “Transfer of Control” means any interest assignment which results in a change in voting and operational control of Lessee.

1.1.41 “Transferor” means the owner who is transferring in accordance with Article XI herein.

ARTICLE II
LEASE OF PROPERTY

Section 2.1 Lease of Property.

The Lessor does hereby lease, let and demise to the Lessee, and the Lessee hereby leases from the Lessor the Property, subject to the terms and conditions in this Lease, to have and to hold the Property, with all of the rights, privileges and appurtenances, thereunto belonging or pertaining unto Lessee for the term herein specified, unless this Lease shall be sooner terminated in a manner hereinafter provided.

Section 2.2 Purpose of Use and Occupancy.

The Lessee will use and occupy the Property as a full-service, dry storage marina, with ancillary minor boat repair functions, other ancillary marine-related services, fuel sales, other related food services, a casual restaurant, a formal restaurant and retail uses and for no other purpose or use of any kind without first obtaining the permission of the City Manager, which permission may be withheld or conditioned at the City Manager’s sole discretion.

The marina shall provide for a minimum of 400 boats on dry storage racks or comparable storage equipment. Vessels stored at the marina shall be 28 feet or lesser in length. The retail uses shall be located on the ground floor of the Parking Facility adjacent to the Property and throughout the leased area. The parking garage portion of Parking Facility will be managed, operated and leased out by the Miami Parking Authority (“MPA”).
Section 2.3  Use of Submerged Lands.

The use of any submerged land owned by the State of Florida, shall be subject to approval by the State of Florida DEP and may contain restrictions set forth by DEP for the use of said Property, as more particularly described in prospective Exhibit “C” attached hereto to be incorporated and made a part hereof. In the event DEP fails to issue an agreement for the use of the Submerged Lands, then either party shall have the right to terminate this Agreement pursuant to Section 14.5 herein, without liability or recourse.

Section 2.4  Suitability of Property.

Lessee acknowledges that neither the Lessor nor any of Lessor's officers, representatives, or employees has made any representation or warranty with respect to the Property or with respect to the suitability or fitness of the Property for the conduct of Lessee's marina and/or restaurant operations or for any other purpose, except as set forth in this Lease or in the RFP. The execution of this Lease by Lessee shall establish that the Lessee accepts the condition of the Property "AS IS".

Section 2.5  Limited Representations by Lessor.

Lessor makes the following representations, covenants and warranties which shall survive the execution of this Lease and Lessee’s taking of possession of the Property:

(a) That Lessor has taken all requisite actions to make this Lease binding upon the Lessor, and the Lessor is indefeasibly seized of marketable, fee simple title to the Property, and is the sole owner of and has good right, title and authority to convey and transfer all property, rights and benefits which are the subject matter of this Lease.

(b) That no party except Lessee shall, on the Effective Date, be in or have any right to possession of the Property, except for those certain dry slip users as shall be disclosed to the Lessee.

(c) That there is on the Effective Date legal and physical ingress and egress to the Property from a paved public street for vehicular traffic and perpetual legal and physical ingress and egress for pedestrian traffic.

(d) The Property may be used and operated only for the purpose set forth and as contemplated by the RFP and this Lease; and there are no Applicable Laws, private restrictions or other conditions which restrict or prevent the Property from being used and operated for restaurant operations on the Effective Date.

(e) All of the representations and warranties of Lessor contained in this Lease shall continue to be true as of the Effective Date and said representations and warranties shall be deemed to be restated and affirmed by Lessor as of the Effective Date without the necessity of Lessor's execution of any document with regard thereto, and the Lessor's liability (except with respect to the environmental condition of the Property which is expressly addressed in Article XII of this Lease) therefore, shall survive the signing of this Lease. Should any of the representations and warranties prove to be incorrect, it shall be Lessor’s obligation to cure those warranties and representations which are set forth herein forthwith at Lessor’s expense.

Section 2.6  Lease Execution.

Lessee shall execute this Lease no later than thirty (30) days after final City Commission approval, or referendum approval, whichever is first.

ARTICLE III

TERM

Section 3.1  Term of Lease.

The initial term of this Lease is for a period of Fifty (50) years (“Term”), commencing on the Effective Date.

Section 3.2  Option to Renew.

The Lessee has the option of extending this Lease for two (2) fifteen-year (15) periods (“Renewal Term(s)”). Lessee may not exercise this option to extend if the Lessee has uncured defaults on the terms and conditions of this Lease. To exercise the Renewal option, the Lessee must be in compliance with the Lease and give Lessor written notice not less than three hundred and sixty five (365) days before the expiration date of the current Lease Term. The Renewal Term will be on the same terms and conditions as the Lease, except that the Rent will be adjusted as set forth in Article IV below.
ARTICLE IV
RENT, FEES AND PAYMENTS

Section 4.1  Amount of Rent.
The Lessee covenants that, it shall pay to the Lessor as Rent for the Property, the Minimum Base Rent in accordance to Sections 4.1.1 and 4.1.2 herein from the Possession Date of the Lease until six (6) months following receipt of a Temporary Certificate of Occupancy or Certificate of Occupancy for the Parking Facilities (“Operation Date”). From and after the Operation Date forward continuously for the duration of the Lease Term, the Lessee agrees to pay an amount equal to the greater of the Minimum Base Rent (as defined in Section 4.1.1) or Percentage Rent to the Lessor. The Parties shall memorialize the Operation Date through the execution of an appropriate document establishing the exact date.

4.1.1  Minimum Base Rent.
From and after the Possession Date the Lessee shall pay to the Lessor, Minimum Base Rent payable in advance on the first day of each month in equal monthly installments. The Minimum Base Rent shall initially be $1 million per annum and shall increase to $1.4 million per annum upon the Operation Date. In Lease Years 15, 30, 50 and 65, the Minimum Base Rent shall be adjusted according to fair market rent, as established by an independent appraisal. Lessee shall pay for the appraisal. Lessor shall select the appraisal company from the City’s general appraisers services list. In no event shall an appraisal result in a reduction in rent.

4.1.2  Consumer Price Index (CPI) Escalation.
Lessee agrees that, except as provided in 4.1.1 above, the Minimum Base Rent shall be increased every five years from the Lease Effective Date by any increase during the prior year in the consumer price index (“CPI”), which is the monthly indices for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor as the Consumer Price Index for All Items, Miami-Ft. Lauderdale, Florida, Base Year 1982-84=100. The CPI adjustment shall be hereinafter referred to as the “CPI Escalation”. The CPI Escalation shall be capped at five percent (5%) each time the CPI Escalation is made. The first CPI Escalation shall be at Lease Year 5 (“CPI Escalation Date”).

The CPI Escalation of the Minimum Base Rent shall be equal to Minimum Base Rent in effect for the immediately preceding Lease Year plus the product of that Minimum Base Rent multiplied by the “CPI Percentage” (as defined below). The CPI Percentage shall equal the fraction (i) whose numerator equals the total of (a) the monthly Index published immediately prior to the anniversary date (or the nearest reported previous month), minus (b) the monthly Index published immediately prior to the anniversary date (or the nearest reported previous month) and (ii) whose denominator is the same monthly Index as (b) above. If the Index is discontinued with no successor Index, Lessor shall select a comparable index.

Lessor shall compute the CPI Escalations and send a notice, with calculations, to Lessee setting forth the adjusted Minimum Base Rent within sixty (60) days of the commencement of each CPI Escalation Date or as soon as such Index is available. In the event the Minimum Base Rent increases, Lessee shall pay to Lessor within thirty (30) days of receiving such notice, the Additional Rent owed for the months, which have elapsed in the current Lease Year.

4.1.3  Percentage Rent.
Commencing on the Possession Date and continuing throughout the Lease Term, the Percentage Rent shall be due and payable to the Lessor. Percentage Rent shall be equal to the combined Gross Revenues of the Lessee and any and all sub-lessee(s) for any preceding calendar month as follows:

The Percentage Rent shall be an amount equal to the cumulative total of the following percentages of Gross Revenue:

i) 5% percent of the Gross Revenues from the formal restaurant;
ii) 10.3% percent of the Gross Revenues from the casual restaurant;
iii) 15% percent of the Gross Revenues from marina operations (non-fuel);
iv) 15% percent of marina gross fuel profits (gross fuel profits defined as gross fuel sale price per gallon minus cost of delivered fuel per gallon);
v) 5% percent of any allowable uses or any other ancillary sales;
vii) $10 per square foot for the Rent of all occupied or vacant ground floor retail space under the Parking Facilities. In Lease Years 15, 30, 50 and 65, this Rent shall be adjusted according to fair market rent, as established by an independent appraisal. The Lessee
shall pay for the appraisal. Lessor shall select the appraisal company from the City’s general appraisers services list. In no event shall an appraisal result in a reduction in Rent.

If there is any underpayment of Percentage Rent, Lessee shall pay the Lessor the amount of the deficiency within thirty (30) days of the Lessor receipt of the Percentage Rent payment. If the Percentage Rent is not paid after thirty (30) days, Lessee shall be charged a late payment fee in accordance with Section 16.4 until the amount of underpayment is paid in full.

4.1.4 Gross Revenues,

Gross Revenues shall include the entire amount of all revenues and percentages of revenues actually collected and received by the Lessee and its Sub-lessees or its Assignees and derived from the following sales sources, including without limitation:

(i) all revenue from the commercial business and services Lessee and its Sub-lessees and/or Assignees) conduct on or from the Property;
(ii) all revenue from sale of food, beverage, wine, beer, merchandise or services from the Property;
(iii) all revenue derived from advertising and sponsorships conducted on the Property, including but not limited to, movie, television commercials, etc.;
(iv) all amounts received from any catering food operations in any way conducted at or from the Property;
(v) all amounts received from valet concession sales or parking valet services (not reported in (i) above);
(vi) delivery charges;
(vii) sales made or performed by means of mechanical or other vending sales and services devices or machines on the Property, including without limitation, pay telephones, vending machines, and entertainment devices both for cash and on credit, rendered in or upon the Property;
(viii) all revenue received by Lessee in connection with the special events uses of the Property, any facility thereon, or any portion thereof for any period of time, including without limitation, banquets, parties, receptions held on or initiated from the Property;
(ix) internet or telephone food/beverage orders received or filled at the Property, or procured from the Property by house-to-house or other canvassing, all deposits not refunded to purchasers, and orders taken, although said orders may be filled elsewhere, including proceeds of all video games;
(x) all grants, subsidies, rebates, credits or similar benefits received from any federal, state, regional or local body, agency, authority, department or organization which revenues are unrestricted or are to be used for general operating expenses;
(xi) all donations and contributions received, the revenues of which are unrestricted or are to be used for general operating expenses; and
(xii) all other receipts whatsoever derived from other commercial operations conducted in or from the Property by the Lessee and its Sub-lessees (if any).

Gross Revenues shall not include the following:

(i) any sums collected and paid out by Lessee for any sales, use or excise tax imposed by any federal, state or governmental authority directly on sales and collected from customers and accounted for by Lessee and/or Sub-lessees, provided that the amount is added to the selling price therein and paid by the Lessee to such governmental authority;
(ii) the exchange of merchandise between the stores of Lessee, a party controlled by Lessee, or Sub-lessees, if any, where such exchange of goods or merchandise is made solely for the convenient operation of the business of Lessee and not for the purpose of consummating a sale which has theretofore been made in or from the Property and/or for the purpose of depriving Lessor of the benefit of a sale which otherwise would be made in or from the Property;
(iii) the amount of returns to shippers or manufacturers;
(iv) proceeds from the sale of trade fixtures, operating equipment or similar assets after use thereof in the conduct of Lessee’s and Sub-lessees’ business on the Property;
(v) all sums and credits received in settlement of claims for loss or damage to merchandise;
(vi) funds collected with regard to the Property which are not actually related to the day-to-day business of the Property such as, but not limited to the financing of the Lessee’s interest in the Property;
(vii) collection of insurance proceeds;
(viii) collection of eminent domain proceeds;
(ix) monies collected for events that are done for charities wherein the total amounts collected are paid to the charitable sponsor or not-for-profit organizations;
(x) all gratuities paid to employees;
(xi) amounts received by Lessee as reimbursements of expenses and cost sharing (for example, reimbursement of taxes, insurance or utility bills);
(xii) any grants, subsidies, rebates, credits or similar benefits received by Lessee or Sub-lessee from any federal, state, regional or local body, agency, authority, department or organization;
(xiii) interest earned on Lessee’s deposit accounts, earnings or profits on Lessee’s investments;
(xiv) interest income from loans or credit facilities granted by Lessee and similar passive or investment income of Lessee related to Lessee’s liquid assets, investments or loans/credit facilities granted by Lessee;
(xv) rents or percentage rents and commissions paid to Lessee by any Sub-lessee where the Lessor is collecting rent based on a percentage of Sub-lessee’s Gross Revenues as provided in Section 10.1.
(xvi) Amounts received by a valet parking concessionaire when Lessee is remitting the respective percentage due to Lessor as provided above.
(xvii) Any restricted donations or contributions whose revenues are earmarked for capital expenditures, as approved by the Lessor, to the Property.

If a sale is by credit card no deduction shall be allowed for any commission associated with such sale. A "sale" shall be deemed to have been consummated for the purpose of this Lease, and the entire amount of sales price collected by Lessee and Sub-lessees, shall be included in Gross Revenues, at such time that (i) the transaction is initially reflected in the books or records of Lessee or Sub-lessee(s); or (ii) Lessee or Sub-lessee(s) receives all or any portion of the sales price; or (iii) the applicable goods or services are delivered to the customer and payment is made to Lessee or Sub-lessee(s), whichever first occurs, irrespective of whether payment is made in installments, the sale is for cash or for credit, or otherwise, or all or any portion of the sale price has actually been paid at the time of inclusion in Gross Revenues or at any other time.

No deduction shall be allowed for direct or indirect discounts, rebates, or other reductions on sales, unless generally offered to employees or the public on a uniform basis. Gross Revenues, whether for cash, credit, credit cards or otherwise, shall be recognized in the period the service was provided or sale took place. Payments received in advance are deferred and are recognized as revenue in the period the service is rendered or sale takes place. Grants shall be recorded as income during the period designated by the grants or when the Lessee has incurred expenditures in compliance with the restrictions of the grantor. If a sale is by credit card, no deduction shall be allowed for any commission associated with such sale. Gross Revenues shall be reduced by the amount of any refund made upon any sale in or from the Property, provided said amounts had been previously included in “Gross Revenues,” not to exceed the sum so previously included, where the merchandise sold is thereafter returned by the purchaser and accepted by the Lessee or Sub-lessees, and if such refund is in the form of a credit to customer, such credit shall be included in Gross Revenues when used.

4.1.5 Sales Tax.

The Lessee shall be liable for the prevailing State of Florida Use Tax imposed on the amount of rent paid to Lessor under this Agreement, in the absence of an exemption or other reduction by the State of
Florida. This Sales and Use Tax shall be payable to the Lessor when rent is due, and in turn, Lessor will remit the same, less any authorized handling deductions, if any, to the State. Said tax is applicable to the Minimum Base Rent payments, unless otherwise determined by the State of Florida.

4.1.6 Manner of Payment.

Every 15th day of the calendar month, Lessee shall pay the Lessor the monthly Minimum Base Rent and the difference between the Minimum Base Rent and Percentage Rent, as applicable, along with the corresponding Gross Revenue Report for the preceding calendar month to the City of Miami, Department of Finance at the address noted below:

City of Miami
Department of Finance
Attention: Treasury Management/Receipts
444 SW 2nd Avenue, 6th Floor
Miami, Florida 33130

Lessee shall use a Gross Revenue Report, a sample of which is attached herewith and incorporated herein as Exhibit “E” to itemize any and all reportable Gross Revenues as described in Section 1.1.15 herein.

Section 4.2 Security Deposit.

Simultaneously with the execution of this Lease on the Effective Date, Lessee shall initially deposit with the Lessor, the sum of Seven Hundred Thousand Dollars ($700,000), which shall be equal to 50% of the annual Minimum Base Rent (“Security Deposit”) in the form of cash or a letter of credit. The Security Deposit shall be adjusted in the manner described in Section 4.3.1 herein. No interest shall be paid on the Security Deposit. For so long as the Security Deposit has not been repaid by Lessor, it shall constitute an account payable by Lessor to Lessee within thirty (30) days following termination of this Lease to the extent, if any, that the Security Deposit has not been applied by Lessor as hereunder provided.

If Lessee shall default with respect to any covenant duty, or obligation of Lessee under this Lease, then the Security Deposit or any part thereof may be applied by Lessor (but Lessor shall not be obligated to do so) to the damages sustained by Lessor by reason of any such default or to indebtedness owing by reason of any failure of Lessee to make any required monetary payment under this Lease. No such application shall be construed as an agreement to limit the amount of Lessor’s claim or as a waiver of any damage or release of any indebtedness, and any claims of Lessor under this Lease not recovered in full from the Security Deposit shall remain in full force and effect. At any time or times when Lessor has made any such application of all or any part of the Security Deposit, Lessor shall have the right (but not the obligation) at any time thereafter to request in writing that Lessee pay to Lessor a sum or sums equal to the amounts so applied by Lessor so that Lessor will always be in possession of a sum equal to 50% of the annual Minimum Base Rent. Lessee shall make each such requested remittance within ten (10) days following such request from Lessor and each such remittance received by Lessor shall thereupon constitute a part of the Security Deposit subject to the terms and provisions thereof. Failure to make any such requested remittance within such ten (10) day period may be treated by Lessor as a failure by Lessee to make timely payment of rent and as an Event of Default. In the event of any conveyance or other transfer of the Property by the Lessor, Lessor’s remittance of the Security Deposit or any remaining portion thereof to the purchaser of the Property shall release and relieve Lessor of any further obligation or liability to Lessee with respect to the Security Deposit.

Section 4.3 Adjustments to Rent.

4.3.1 Adjustment to Security Deposit.

The Security Deposit shall be adjusted according to the CPI Escalation on the CPI Escalation Dates, simultaneously with the CPI escalation of Minimum Base Rent (“Adjusted Security Deposit”). In addition, the Security Deposit shall be adjusted every 15 years after an appraisal, as set forth in 4.3.2.2 herein. In the instance where the Lessor deducts any amount of the Security Deposit, the Security Deposit shall be replenished by the Lessee by the adjusted amount of the Security Deposit within fifteen (15) days of the drawdown of the Security Deposit. The Security Deposit must at all times be equal to the Adjusted Security Deposit for the Lease Year.

4.3.2 Appraisal Rent Adjustment.

4.3.2.1 Determination of Fair Market Rent.

The Minimum Base Rent and Percentage Rent shall be evaluated no later than three hundred and sixty five (365) days prior to Lease Years 15, 30, 50 and 65 by an independent appraiser (“Scheduled
4.3.2.2 **Appraisers.**

The Scheduled Appraisal shall be conducted by one (1) independent business appraiser who is a member of the American Institute of Real Estate Appraisers and who has not less than ten (10) years experience in appraising restaurant, café or food establishments. Lessee shall pay for the appraisal. Lessor shall select the appraisal company from the City’s general appraisers’ services list. In no event shall an appraisal result in a reduction in the minimum rent due to the City. The appraiser shall be hired the year prior to the year that the newly appraised Minimum Base Rent and Percentage Rent should take effect.

4.3.2.3 **Method.**

The appraiser shall proceed promptly to prepare an appraisal of the Property. The appraiser shall use the income and comparable approach to determine the fair market rental value. The appraiser, in his discretion, may dispense with formal hearings, it being agreed that his task will be solely that of appraisal.

4.3.2.4 **Effect of Appraisal.**

The fair market rent determined by the appraiser shall be binding and conclusive on the Lessor and the Lessee, except that in no event shall the fair market rent be adjusted below the Minimum Base Rent and the Percentage Rent from the current Lease Year.

4.3.2.5 **Appraisal Fee.**

The Lessee shall be responsible for one hundred percent (100%) of the costs associated with the hiring of the appraiser. In the event the Lessee disputes the first appraisal, Lessee shall select a second appraiser from the City’s general appraisers service list and bear the full cost of such appraisal.

4.3.2.6 **Delayed Appraisal.**

If prior to the commencement of the Renewal Term, the adjusted Rent has not been determined by independent appraisal, the Lessee shall continue to pay all Rent(s) and their respective increase(s), subject to the CPI Escalation as provided in Section 4.1.2 above.

Following the determination of the Rent by independent appraisal, the Rent will be adjusted as provided retroactively to the commencement of the respective Renewal Term and the Lessee shall pay to the Lessor with the next installment of Rent due, the amount, if any, by which the Rent, as adjusted, exceeds the Rent that has been paid by the Lessee for the retroactive period.

4.3.2.7 **Appraisal Dispute.**

If prior to the commencement of the Renewal Term in question, the adjusted Rent has been determined by the independent appraisal but is disputed by Lessee and Lessee is unwilling to pay the adjusted Rent, then Lessee shall be deemed to be in default under Section 16.1(h) of the Lease.

Section 4.4 **Submerged Land Fees.**

In addition to the rent described in Sections 4.1.1 to 4.1.2 herein, commencing upon the later of the Effective Date of this Agreement or the effective date of an agreement with the DEP for use of the Submerged Lands area, Lessee shall be obligated to pay all Submerged Land Fees as determined by the DEP for the use of the Submerged Lands Area of the Property and pay for all expenses incurred in obtaining the State’s approval and waiver. The Annual Submerged Lands Fee shall be paid to the City at the same location as the Use Fee and the City shall remit payment to DEP. Lessee shall remit the annual Submerged Lands Fees to the City within five (5) Business Days of being billed by the City for the same. Lessee shall further be obligated to submit to the Lessor for remittance to DEP any and all documents required by DEP which may include, but is not limited to, disclosure of any income from wet slips for the Submerged Lands.

Except as otherwise provided, the annual Submerged Lands fee shall be the greater of the state base fee, the minimum annual fee or six percent of the annual rental value from any wet slip rental area and shall include discounts, surcharges and other payments as provided in Florida Department of Environmental Protection, Administrative Rule 18-21.011(1)(b), as may be amended. The minimum annual fee and base fee shall be established and defined by DEP Administrative Rule 18-21.011(1)(b). These fees shall be subject to yearly consumer price index (CPI) increases by DEP.

Section 4.5 **Lessee's Records.**

Lessee shall prepare and keep full, complete and proper books and source documents in accordance with generally accepted accounting principles, of the Gross Revenues, whether for cash, credit or otherwise, of each separate department at any time operated in the Property. The books and source documents to be kept by Lessee shall include, without limitation, true copies of all federal, state and local tax returns and reports, records of inventories and receipts of merchandise, daily receipts from all sales and
other pertinent original sales records and records of any other transactions conducted in or from the Property by Lessee.

Pertinent original sales records shall include, without limitation: (i) sales reports of back office systems fed from point of sale terminals, (ii) cash register tapes, including tapes from temporary registers, if any, (iii) serially pre-numbered sales slips, (iv) the original records of all mail, internet and telephone orders at and to the Property, if any, (v) settlement report sheets of transactions with any person conducting business in the Premise, if any, (vi) original records indicating that merchandise returned by customers was purchased at the Property by such customers, (vii) memorandum receipts or other records of merchandise taken out on approval, (viii) detailed original records of any exclusions or deductions from Gross Revenues, (ix) sales tax records, and (x) such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Lessee's sales.

Lessee shall record, at the time of each sale or other transaction, in the presence of the customer, all receipts from, such sale or other transaction, whether for cash, credit or otherwise, in a cash register or cash registers having a cumulative total which shall be sealed in a manner approved by Lessor and which shall possess such other features as shall be required by Lessor. Lessee shall be required to install point of sale terminals, pollable, point of sales cash register systems or such other point of sale equipment of a make and model mutually agreed to by the Parties.

Section 4.6 Reports by Lessee.

Within ninety (90) days after the end of each Lease Year, Lessee shall also furnish to Lessor a financial report by an independent certified public accountant (the "Annual Report"), showing in all reasonable detail the amount of such Gross Revenues made by Lessee from the Property during the preceding Lease Year. Lessee shall in all events furnish to Lessor within fifteen (15) days after the end of each month of the Lease Term a written statement of Gross Revenues covering the preceding month, the statement to be in such form and style and contain such details and breakdown as Lessor may reasonably require. Any intentional misstatement of Gross Revenues will constitute a default under this Lease.

Section 4.7 Right to Examine Books.

Notwithstanding the acceptance by Lessor of payments of Minimum Base Rent and Percentage Rent, Lessor shall have the right to all Rents and other charges actually due hereunder, and the right to examine, make extracts from and copy, at the Property or Lessee's main accounting office, Lessee's books, source documents, accounts, records and sales tax reports filed with applicable government agencies by Lessee in order to verify the amount of Gross Revenues in and from the Property. For a period of three (3) years after the expiration of each Lease Year, Lessee shall make all such documents and records available at the Property or Lessee's main accounting office upon ten (10) days prior written notice from Lessor.

Section 4.7 Audit.

(a) At its option, Lessor may at any time, upon ten (10) days, prior written notice to Lessee, arrange for an auditor selected by Lessor to conduct a complete audit (including a physical inventory) of the entire records and operations of Lessee and Sub-lessee included in Gross Revenues from the Property during the period covered by any statement issued by Lessee. Lessee shall make available to the Lessor's auditor at the Property or Lessee's main accounting office on the day set forth in Lessor's notice, requiring such audit, all of the books, source documents, accounts and records referred to in Section 4.6 hereof and any other materials which such auditor deems necessary or desirable for the purpose of making such audit. Lessee shall promptly pay to Lessor the amount of any deficiency in Percentage Rent payments disclosed by any such audit. If such audit shall disclose that Lessee's statement of Gross Revenues is at variance to the extent of five percent (5%) or more, Lessor may bill to Lessee the cost of such audit, which shall be paid by Lessee within thirty (30) days after Lessee's receipt of Lessor's invoice. If such audit shall disclose that Lessee's statement of Gross Revenues is at variance to the extent of ten percent (10%) or more, then Lessor, in addition to the foregoing remedy and other remedies available to Lessor, shall have the option, upon Lessee's failure to pay such additional sums within thirty (30) days after written notice to the Lessee, to declare this Lease terminated and the Lease Term ended, in which event this Lease shall cease and terminate on the date specified in such notice with the same force and effect as though the date set forth in such notice were the date originally set forth herein and fixed for the expiration of the Lease Term, and Lessee shall vacate and surrender the Property but shall remain liable for all obligations arising during the balance of the original stated term as provided in this Lease. If such audit shall disclose an overpayment, Lessor shall credit such overpayment towards the next payment of Minimum Base Rent due. In addition to the foregoing, and in addition to all other remedies available to Lessor, in the event Lessee's auditor and
Lessor's auditor shall schedule a date for an audit of Lessee's records in accordance with this Section 4.7, and Lessee shall fail to be available or shall otherwise fail to comply with the requirements for such audit, Lessee shall pay all costs and expenses associated with the canceled audit.

(b) In addition to all other remedies available to Lessor, in the event that any such audit shall disclose that Lessee's records and other documents as referred to in Section 4.4, 4.5 and 4.6 hereof and such other materials provided by Lessee to Lessor's auditor are inadequate, in the opinion of an independent CPA serving as Lessor's auditor, to disclose accurately Lessee's Gross Revenues, then Lessee shall have thirty (30) days to cure any deficiencies raised by Lessor's auditor and shall then notify Lessor so that Lessor's auditor can continue its audit. If the audit findings show a greater than two percent (2%) or greater variance, said audit costs will be charged to the Lessee. Lessor's exercise of the foregoing remedy shall in no way limit or otherwise affect Lessor's ability to exercise other remedies available to it, nor shall Lessee's obligations pursuant to the terms, covenants and conditions of this Lease (including, without limitation, Lessee's obligation with respect to reporting Gross Revenues and payment of Percentage Rent) be in any manner reduced or diminished by the exercise of such remedy.

Section 4.8 Lien for Rent.

The whole amount of the Rent, Additional Rent, and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and Impositions paid by the Lessee under the provisions of this Lease, and all costs, attorneys fees and other expenses which may be incurred by the Lessor in enforcing the provisions of this Lease, or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease, shall be and they are deemed to constitute a valid lien upon the Leasehold Improvements, and upon the Lessee's Leasehold Estate.

Section 4.9 Parking Trust Fund Contribution.

The Lessee shall be required to contribute $10,000 per parking space required to meet the Lessee's parking requirement pursuant to the Miami21 Zoning Code, for a total minimum requirement of 400 parking spaces or a total minimum contribution of $4,000,000 ("Parking Trust Fund Contribution"). Lessee shall have the option of financing the Parking Trust Fund Contribution. The Parking Trust Fund Contribution shall be paid by cashier's check or money order and delivered to the Finance Director, 444 SW 2nd Avenue, 7th Floor, Miami, Florida 33130 upon the Effective Date of the Lease.

ARTICLE V PAYMENT OF TAXES, ASSESSMENTS AND OTHER IMPOSITIONS

Section 5.1 Payment of Taxes and Impositions

Lessee shall pay before any fine, penalty, interest or costs is added for non-payment, any and all Impositions levied against the Property or against personal property of any kind, owned by or placed in, upon or about the Property by Lessee.

Section 5.2 Installment Payments of Ad Valorem Taxes and Impositions

Lessee agrees that to the extent the Property or any interest thereon is subject to ad valorem taxation, Lessee, at its option, may enroll in the Miami-Dade County Ad Valorem Tax Payment Plan. If by law, any taxes, assessments or other Impositions are payable or may, in the case of taxes, at the option of the taxpayer, be paid in installments (whether or not interest shall accrue on the unpaid balance of the Imposition), the Lessee may pay the same (and any accrued interest on the unpaid balance of the Imposition), in installments before any fine, penalty, interest or cost is added for the nonpayment of any installment and interest. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included before the Effective Date and part of which is included after the Effective Date shall be adjusted as between the Lessor and the Lessee as of the Effective Date of the Lease Term, so that the Lessee shall pay that portion of the Imposition attributable to that part of the fiscal period included in the Lease Term, and the Lessor shall pay the remainder, if applicable. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Lease Term and a part of which is included in a period of time after Lease Term shall be adjusted as between the Lessor and the Lessee as of the termination of the Lease Term, so that the Lessee shall pay that proportion of the Imposition attributable to that part of the fiscal period included in the term of this Lease, and the Lessor shall pay the remainder, if applicable.
Section 5.3  **Proof of Payment.**

The Lessee shall furnish to Lessor, within thirty (30) days after the date whenever any Imposition is payable by or in behalf of the Lessee, official receipts of the appropriate taxing authority, photocopies or other proof satisfactory to the Lessor, evidencing the payment.

Section 5.4  **Lessee's Right to Contest Impositions.**

Anything herein to the contrary notwithstanding, Lessee shall have and retain the right to appeal or contest by legal proceedings, or in such other manner as it may deem suitable, any Imposition, or any valuation in connection therewith, without the consent of Lessor, even if the same ultimately results in the payment of any interest, costs or penalties. In the event that Lessee contests any Imposition, Lessee shall immediately notify the City Manager or his/her authorized designee of its intention to appeal said Imposition.

If at any time during the last three (3) years of the initial Lease Term or Renewal Term, Lessee shall contest an Imposition, Lessee may defer payment of a contested item upon the condition that, before instituting any such proceedings, Lessee shall furnish and keep in effect a surety bond, cash deposit or other security satisfactory to the City Manager or his/her designee in an amount sufficient to pay one hundred percent (100%) of the contested Imposition or assessment, with all interest on it and costs and expenses, including reasonable attorneys’ fees to be incurred in connection with it. The legal proceedings herein referred to shall include appropriate proceedings to review tax assessments and appeals from an order issued therein and appeals from any judgments, decrees or orders. Any such contest shall delay the time periods set forth in Section 5.2 above.

Lessor agrees to pay such Impositions in a lump sum payment or on an installment basis. Failure of the Lessee to pay such Impositions or assessments or any installment payment thereof shall constitute a default under this Agreement.

**ARTICLE VI**

**LEASEHOLD IMPROVEMENTS.**

Section 6.1  **Lessee's Obligation to Provide and Fund Leasehold Improvements.**

Within one hundred and twenty days (120) days of the Effective Date, Lessee, at its own cost and expense, shall submit to Lessor its plans for the commencement and completion of the construction, and the acquisition and installation of the Leasehold Improvements. The plans shall include: a layout of the Property, a lighting plan, a depiction of all fixtures to be added to Property, interior and exterior finishes and material samples, typical display technique, interior and exterior signage plan, landscaping plans, store front and any work or equipment to be done or installed by Lessee affecting any structural, mechanical or electrical part of the Property (“Plans”). Within ten (10) Business Days of receipt of the Plans, the Lessor shall give Lessee written notice of either, Lessor's approval or Lessor's disapproval setting forth the reasons therefore. In the event that Lessor disapproves the Plans, the Lessee shall within ten (10) Business Days of receipt of the notice modify the Plans in accordance with the reasons set forth in Lessor's disapproval notice. The modified Plans shall be resubmitted to Lessor for Lessor's final review and approval. Notwithstanding the above, the Lessee shall cause the new dry rack storage slips to be installed within one hundred and eighty days (180) following the Effective Date, or earlier if Licensee removes the dry rack storage slips currently on the Property prior to the one hundred and eighty days.

Lessee, at its sole cost and expense, shall complete construction, acquisition and installation of the initial Leasehold Improvements as more fully described in Exhibit “A” attached hereto and made a part hereof, and acquire and install the furnishings, fixtures and equipment required for operation of the Property within three hundred and sixty five (365) days from the receipt of all required permits for construction of the approved plans (except for the Dry Rack Storage Slips which shall be installed within one hundred and eighty (180) days as provided above). Lessee hereby covenants that Lessee shall expend no less than Fourteen Million, Four Hundred Thousand Dollars ($14,400,000.00) to complete all capital Leasehold Improvements (“Minimum Level of Investment”) for building, facilities, docks and equipment, environmental remediation costs, the $700,000 security deposit and minimum $4 million total contribution to the Parking Trust Fund. Upon completion of the construction, acquisition and installation of the Leasehold Improvements, and acquisition and installation of the furnishings, fixtures and equipment, Lessee shall furnish to Lessor copies of all receipts, releases and bill of sales in connection therewith.
Section 6.2 Payment and Performance Bond.

Within ten (10) days after the Lessor approves the plans for commencement and completion of the construction, and the acquisition and installation of the permanent Leasehold Improvements by the Lessee (as described in Exhibit “A” attached), but in any event prior to the commencement of any construction, the Lessee shall, at Lessee’s sole cost and expense, furnish the Lessor with a Payment and Performance Bond.

The Payment and Performance Bond shall be issued by a bonding company which shall be approved by Lessor, in an amount equal to one hundred percent (100%) of the costs to construct the Leasehold Improvements, plus professional design fees, related to the preparation of the construction documents for the Leasehold Improvements described in Exhibit “A” naming the Lessor as the owner/obligee, and the Lessee or Lessee’s general contractor, as the principal guaranteeing the payment and performance of Lessee's obligations with respect to any and all construction work pertaining to the Leasehold Improvements, free of construction or other liens. The conditions of the Payment and Performance Bond shall be to insure that the Lessee or Lessee’s general contractor will:

(i) promptly make payment to all claimants, as defined in Section 255.05, Florida Statutes (2012), as amended, supplying the Lessee with labor, materials, or supplies, used directly or indirectly by the Lessee in the prosecution of the work related to the Leasehold Improvements under this Lease; and

(ii) to pay the Lessor all losses, damages, expenses, costs, and attorneys fees, including appellate proceedings, that the Lessor sustains because of the Lessee under this Lease pursuant to claims made under Section 255.05, Florida Statutes (2012), as amended; and

(iii) perform the guarantee of all obligations of the Lessee's under this Lease with respect to the construction, and the acquisition and installation of the Leasehold Improvements, as described in Exhibit “A”.

The Payment and Performance Bond may be terminated at such time as the construction, and the acquisition and installation of the Leasehold Improvements are completed as evidenced by issuance of a certificate of occupancy and reasonably satisfactory evidence thereof is provided by the Lessee to the City Manager, including certification by the Lessee’s architect that all requirements of the Payment and Performance Bond have been satisfactorily concluded, and by the issuance of a certificate of occupancy. The form of the Payment and Performance Bond, a sample of which is attached herewith by reference as Exhibit “F,” shall be approved by the City Manager, which approval shall not be unreasonably be withheld.

The Lessor agrees that in the event the Lessee cannot obtain the above Payment and Performance Bond, the Payment and Performance Bond may be provided by the General Contractor(s) (in an amount acceptable to the Lessor with respect to the work to be performed by the General Contractor(s), together with such Payment and Performance Bonds of the subcontractors as shall be required by the Lessor, in lieu of the Lessee providing the same as Principal of the Project. Said Payment and Performance Bond(s) shall comply with all the requirements listed under in subsections (i) through (iii) above.

Section 6.3 Contractor’s Insurance.

The Lessee shall require every contractor performing any work pertaining to the Leasehold Improvements to furnish certificates of insurance including Builder's Risk Insurance, if applicable, to the satisfaction of the City protecting the Lessor and its respective commissioners, officers, agents, and employees, against any claim for personal injuries, death and property damage that may be asserted because of the construction, or the acquisition or installation of the Leasehold Improvements.

Section 6.4 Additional Consideration.

(a) The Lessor hereby, in consideration for the promises and covenants contained in this Lease to be kept and performed by the Lessee, shall simultaneously with the execution of this Lease on the Effective Date, grant and convey unto the Lessee all existing Improvements (including improvements, furnishings, fixtures and equipment) listed in Exhibit "D", in its “as is” and “where is” condition.

(b) The Lessee hereby, in consideration of the granting of this Lease shall upon termination or expiration of this Lease:

(i) grant and convey unto the Lessor, free and clear of all liens, title to all Leasehold Improvements of a permanent character including but not limited to, dry racks, refrigerators, stoves, freezers, hood systems, grills, dishwashers, sinks, kitchen work stations and light fixtures, and

(ii) In addition to the Leasehold Improvements to be conveyed to Lessor as referenced above, Lessee shall further grant to the Lessor the right to purchase from the
Lessee, all of Lessee's personal property added to or installed at the Property by the Lessee during the Lease Term, including all furnishings, and equipment at actual cost less actual "observed" depreciation as determined by an appraisal, provided that the Lessor by notice in writing to the Lessee of at least forty-five (45) days prior to the expiration, or earlier termination of the Lease Term, notifies the Lessee of its election.

Section 6.5 Lessor's Property to Remain Free of Liens.
The Lessee shall make, or cause to be made, prompt payment of all money due and legally owing to all persons doing any work, including subcontractors, or providing supplies and equipment in connection with the construction, reconstruction or operation of the Property. The Lessee shall have no power or right to and shall not in any way encumber the Lessor's fee simple interest in the Property. If any lien shall at any time be filed against the Property, the Lessee shall promptly take and diligently pursue a cause of action to have the same discharged or to contest in good faith the amount or validity thereof and if unsuccessful in such contest, to have the same discharged. Upon the Lessee's failure to do so, the Lessor, in addition to any other right or remedy that it may have, may take such action as may be reasonably necessary to protect its interest, and the Lessee shall be responsible for any and all costs incurred by the Lessor in connection with such action, including all reasonable legal fees, costs and expenses.

Section 6.6 Lessor Approval.
All Plans furnished under this Lease are expressly subject to Lessor's written approval, which the City Manager is hereby authorized to act on behalf of for purposes of such approval, and which approval he or she may not unreasonably withhold or delay.

No approval by the City Manager of any Plans furnished under this Lease pursuant to this Section shall relieve Lessee of any obligation it may have at law to file such Plans with any department of the City or any other governmental authority having jurisdiction over the issues; or to obtain any building or other permit or approval required by law. Lessee acknowledges that any approval given by the City Manager pursuant to this Section shall not constitute an opinion or agreement by the City that the Plans are structurally sufficient or in compliance with any laws, codes or other applicable regulations.

ARTICLE VII
CONDUCT OF BUSINESS BY LESSEE

Section 7.1 Use of Property.
The Lessee shall occupy the Property and commence operations on the Possession Date. If however, after the referendum concerning the subject Property is approved, and if the Licensee vacates the Property or abandons the operations, Lessee shall occupy the Property within fifteen (15) days of said vacation or abandonment of the Property by said Licensee.

Upon possession of the Property, Lessee shall occupy the Property without delay, and covenants to continuously conduct its permitted business therein throughout the Lease Term. Lessee shall use the Property solely for marina and restaurant operations. Lessee shall not use, permit or suffer the use of the Property for any other business or purpose. Lessee agrees to conduct its business upon the Property in accordance with the highest ethical and operating standards of the marina and restaurant industry of which Lessee forms a part.

Section 7.2 Operation of Lessee's Business.
At all times during the Lease Term, Lessee shall manage the marina and restaurant operations at the Property with due diligence and efficiency, in Lessee's sole and absolute discretion, and in a manner prudent and in accord with the current business techniques within the locale for Lessee's business so as to maximize the amount of Gross Revenues, subject to Force Majeure. Lessee shall carry at all times in the Property a stock of merchandise of such quantity, character and quality as shall be in accord with advanced and highest quality business practices within the locale for Lessee's business.

Section 7.3 Signs.
Lessee will not place or permit to be placed or maintained on any exterior door, wall or window of the Property, or within the interior of the Property, any signage or advertising matter of any kind, without first obtaining Lessor's written approval and consent, which may not be unreasonably withheld. Lessee shall erect an exterior sign of type, composition and design in conformance with the Miami 21 Zoning Code. Lessee further agrees that such signs, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved shall be maintained in good condition and repair at all times and shall conform to the criteria established from time to time by Lessor.
ARTICLE VIII
MAINTENANCE, REPAIR AND ALTERATION OF PROPERTY

Section 8.1  Lessee's Maintenance Obligations.
Lessee, at its sole cost and expense, agrees to provide the necessary management and labor, to continuously maintain the Property, including all operating equipment, utility services, and connections on the Property. Lessee, at its sole cost and expense, agrees to provide, janitorial and custodian services, trash and garbage removal services, and any and all other related services necessary to have the Property, and the Leasehold Improvements remain in good, safe, sanitary condition and repair throughout the Lease Term. Lessee shall be responsible for painting the interior and exterior of the Property and maintaining its equipment, fixtures, furnishings, and other personal property in good condition and repair. All maintenance shall be at the Lessee’s sole cost and expense and will be subject to general inspection by the Lessor to insure a continuing quality of maintenance and appearance and physical condition of the Property commensurate with maintenance, health, and safety standards established by the Lessor and Applicable Law.

Section 8.2  Lessee's Repair Obligation.
Lessee, at Lessee’s sole cost and expense, at all times during the Lease Term, shall make all interior, exterior, structural repairs, including repairs to the roof, wires, pipes, conduits and other equipment or facilities for supplying heat, light, power, hot and cold water services, all drainage and waste pipes or facilities leading from the Property, and to all heating, ventilating and air-conditioning equipment and any other repair or replacement to the Property and to the Leasehold Improvements.

Section 8.3  Preventative Maintenance and Services.
Lessee shall, at its sole cost and expense, provide the following preventive maintenance and services:

a.  Daily cleaning and janitorial services for the Property;
b.  Grounds services including lawn, shrub and tree maintenance and removal of any rubbish or obstructions from the Property;
c.  Interior and exterior window cleaning to be performed as needed but no less than once every one hundred and twenty days;
d.  Vermin control as necessary, but no less than once every thirty (30) days;
e.  Periodic maintenance and cleaning of kitchen and exhaust equipment, and grease traps or grease inceptors, if applicable, but no less than once every thirty (30) days; and
f.  Painting of interior and exterior of building including caulking of all windows and door frames painting of signs, if applicable, and restriping of parking spaces on Property as necessary, but no less than once every four (4) years.

In addition to the above, commencing on the fifth year of the Effective Date, and once every five years thereafter, the Lessee, at its sole cost and expense shall have a qualified engineer perform a physical inspection of the Property including, but not limited to all structural components, plumbing, life safety, electrical, heating and air conditioning systems and mechanical equipment as well as any and all structural trade fixtures on the Property, as part of a preventive maintenance program. The Lessee shall submit the engineer’s report along with a proposed plan for the funding and implementation of the recommendations contained in the engineer’s to the Lessor by the end of the Lease Year in which such report is due for the Lessor’s review.

If the Lessee refuses, neglects or fails to provide the services required herein or does not provide adequate services within thirty (30) days after written demand from the Lessor, the Lessor may take corrective measures or cause the Property to be cleaned or repaired without waiving its right based upon any default of the Lessee and without releasing the Lessee from any obligations hereunder. The Lessee shall pay the Lessor the full cost of such work within fifteen (15) days of receipt of an invoice indicating the cost of such corrective measures or cleanup. Failure to pay such invoice shall constitute a default of this Lease. Notwithstanding the above, the Lessee’s failure to perform the corrective measures or cleanup to the Property as directed shall constitute a default of this Lease.

Nothing herein shall imply that maintenance, repair and inspections should be performed by the Lessee only at the suggested intervals. The Lessee shall, at all times, be responsible for the condition of the Property and shall perform repairs required in a timely manner so as to prevent injury to persons and waste to Property.

Section 8.4  Changes/Alterations.
Lessee shall not make any major changes, alterations, including without limitation, installing or
causing to be installed any trade fixtures, exterior signs, exterior machinery, floor covering, interior or exterior lighting, plumbing fixtures, shades, awnings in and to the Property or any part thereof, without the prior written consent of the Lessor, which consent the City Manager is hereby authorized to give, and may be withheld in his or her sole discretion.

No approval by the City Manager of any changes or alterations shall relieve Lessee of any obligation it may have at law to file the required documents with any department of the City or any other governmental authority having jurisdiction over the issues; or to obtain any building or other permit or approval required by law. Lessee acknowledges that any approval given by the City Manager pursuant to this Section shall not constitute an opinion or agreement by the City that the changes or alterations are in compliance with any laws, codes or other applicable regulations.

**ARTICLE IX
INSURANCE AND INDEMNITY**

Section 9.1  **Insurance on the Property.**

In connection herewith, Lessee shall obtain and maintain or cause to be obtained and maintained in full force and effect throughout the period of this Agreement, the types and amounts of insurance coverage set forth in Exhibit “G” attached hereto and incorporated herein by reference. If required by state, county, or city laws from time to time for work conducted on or use of municipal properties, Lessee shall obtain and maintain or cause to be obtained and maintained throughout or during the term of this Agreement, as applicable, such types and amounts of payment, performance, maintenance, or restoration bond(s) as shall be required to be reviewed and approved by the City’s Risk Management Department in coordination with Lessee’s Risk Management or other appropriate Department.

The Lessor reserves the right to reasonably amend the herein insurance requirements by the issuance of a notice in writing to the Lessee, which amended insurance requirements shall be subject to the reasonable approval by Lessee, which approval shall not be unreasonably withheld.

Section 9.2  **Delivery of Insurance Policies.**

All public liability, workers compensation and employer’s liability policies shall be retained by the Lessee. Except as otherwise specifically provided, all other policies of insurance required to be furnished shall be held by and be payable jointly to the Lessor and the Lessee with the proceeds to be distributed in accordance with the terms of this Lease. Insurance company certificates evidencing the existence of all of these policies of insurance shall be delivered to the Lessor. All policies of insurance required to be provided and obtained shall provide that they shall not be amended or canceled on less than thirty (30) days prior written notice to the Lessor and all insured and beneficiaries of the policies shall contain waiver of subrogation rights endorsements, as required below. The Lessor shall have no obligation to pay premiums or make contributions to the insuring company or any other person or satisfy any deductible. On or before the Effective Date and not less than thirty (30) days prior to the expiration date of any policy required to be carried pursuant to this Section, the Lessee shall deliver to the Lessor the applicable respective policies and insurance company certificates evidencing all policies of insurance and renewals required to be furnished. Receipt of any documentation of insurance by the Lessor or by any of its representatives which indicates less coverage than required does not constitute a waiver of the Lessee’s obligation to fulfill the insurance requirements herein.

Section 9.3  **Adjustment of Loss.**

Subject to the requirements of any Net Insurance Proceeds recovered on account of any damage or destruction by any casualty shall be made available for the payment of the cost of the reconstruction, replacement or repairs. All of the Net Insurance Proceeds plus the amount of any deductible applicable to said damage or destruction shall be deposited by the insurance company or by the Lessee (in the case of the deductible) with an escrow agent acceptable to the City Manager, with instructions to the escrow holder that the escrow holder shall disburse the funds to the Lessee, with notice thereof to the Lessor, as the work of the reconstruction, replacement or repairs progresses upon certificates of the architect or engineer supervising the work that the disbursements then requested, plus all previous disbursements made from such Net Insurance Proceeds, plus the amount of any deductible, do not exceed the cost of the work already completed and paid for, and that the balance in the escrow fund is sufficient to pay for the reasonably estimated cost of completing the required work. The escrow holder shall be any bank mutually agreeable to Lessor and Lessee. If the amount of the Net Insurance Proceeds is less than the cost of the required work, then Lessee shall pay the excess cost; and if the amount of the Net Insurance Proceeds is greater than the cost of the required work, then the excess shall be paid to and belong to the Lessee.
Section 9.4 Insurer to Be Approved-Premium Receipts.
All policies of insurance of the character described in Exhibit “G” shall be written by companies of recognized responsibility reasonably acceptable to the Lessor. On request by Lessor, Lessee shall provide photocopies of receipts showing the payment of premium for all insurance policies required to be maintained by this Lease.

Section 9.5 Indemnification of Lessor.
Lessee shall indemnify, defend and save Lessor harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to or destruction of Property arising from or out of any occurrence in, upon or at the Property, or the occupancy or use by Lessee of the Property, or any part thereof, or occasioned wholly or in part by any act of omission of Lessee, its agents, contractors, employees, servants, customers, invitees, Lessees, Sub-lessees or concessionnaires. In case Lessor shall be made a party to any litigation commenced by or against Lessee covered by this indemnity provision, then Lessee shall protect and hold Lessor harmless and pay all costs and attorney’s fees incurred by Lessor in connection with such litigation, and any appeals thereof. Lessee shall also pay all costs, expenses and reasonable attorneys’ fees that may be incurred or paid by Lessor in enforcing the covenants and agreements in this Lease.

Section 9.6 Waiver of Subrogation.
Lessee waives all rights to recover against the Lessor for any damages arising from any cause covered by any insurance required to be carried by Lessee, or any insurance actually carried by Lessee. The Lessee shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Property.

Section 9.7 Release of Lessor.
The Lessee for and in consideration of the leasing and the demise of the Property to the Lessee hereby release, remise and discharge the Lessor, its officers and employees, of and from all claims, demands, actions, whether in law or in equity which may be filed or asserted by the Lessee or its Assignees for or on account of improvements made and furniture, fixtures and equipment installed in the Property, and from any and all costs and expenses, of Lessee or its Assignees in connection with this Lease, including, but not limited to the development of the Property and acquisition of the Leasehold Improvements, which may result from a third party challenging the validity or legality of this transaction under the City Charter or Code or the laws of the State of Florida, or arising out of the award of this Lease, or any subsequent Assignment of this Lease by the Lessee or its Assignees (“Claim”). It is the intent of the Parties that this provision shall control over any other provision in this Lease and that notwithstanding any limited representations provided by Lessor under Section 2.5 of this Lease, neither the Lessee, nor its Assignees shall seek to recover from the Lessor compensation for, or reimbursement of any costs, losses, fees or expenses incurred by the Lessor or its Assignees, including expenses incurred in connection with the acquisition of this Lease or the financing, and/or installation of the Leasehold Improvements, or otherwise, as a result of any adverse judgment which may be entered or relief granted in connection with the Claim. The terms of this provision shall expressly be made a part of any future assignment or mortgage of the Leasehold Interest.

In the event a Claim is filed or asserted within forty (40) days of the Effective Date, either party shall have the right to terminate this Lease and except as otherwise hereafter provided in this paragraph, the Parties shall thereupon be relieved of any and all further responsibility hereunder and neither Party shall have any further obligation under this Lease. In the event of such termination, Lessor shall return the Security Deposit to the Lessee, without interest. Lessor shall further prorate the Minimum Base Rent due, without a discount, from the Effective Date to the date of termination and shall refund to the Lessee the difference between the pre-paid rent and the amount of rent due.

In the event a Claim is filed or asserted after the forty (40) day period has expired, or in the event the Parties agree not to terminate this Lease as provided above, Lessor agrees that it will defend against the Claim in good faith and with reasonable diligence. Lessee agrees that it shall continue to comply with the terms and conditions of this Lease including the timely performance of all construction obligations under this Lease, and the Claim shall not constitute an Event of Force Majeure under this Lease.

Notwithstanding anything to the contrary in this Lease, in the event this Lease is terminated as a result of a Claim within the first two years of the Lease Term, Lessee shall be permitted to remove such movable trade fixtures installed as part of the initial Leasehold Improvements so long as same does not damage the Property. Lessee shall not be permitted to remove any equipment outlined in Exhibit “D” attached hereto and made a part hereof even if same was reconditioned by Lessee.
ARTICLE X
SERVICES AND UTILITIES

Section 10.1  Lessee to Provide and Pay for Utilities.

The Lessee shall pay, or cause to be paid, all proper charges for gas, electricity, light, heat, water and power, for telephone, protective and other communication services, and for all other public or private utility services, which shall be used, rendered or supplied upon or in connection with the Property and the Leasehold Improvements, or any part of it, at any time during the Lease Term, and the Lessee shall comply with all contracts relating to any such services and will do all other things required for the maintenance and continuance of all services as are necessary for the proper maintenance and operation of the Property and the Leasehold Improvements. The Lessee shall also at its sole expense procure any and all necessary permits, licenses or other authorization required for the lawful and proper installation and maintenance upon the Property of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such utilities, services or substitutes to the Property.

Section 10.2  Lessor Not Liable for Failure of Utilities.

The Lessor shall not be liable for any failure of water supply, sewer, gas or electric current, or for any injury or damage to any person or the Property caused by or resulting water, gas or electricity which may leak or flow from the water or gas mains on to any part of the Property or the Leasehold Improvements. The Lessor shall not be required to make any alteration to any service or utility system of the Property on behalf of Lessee. Lessor shall not be liable for temporary failure of services, and same shall not be deemed to constitute actual or constructive eviction, nor entitle Lessee to any abatement or diminution in rent payable under this Lease.

ARTICLE XI
TRANSFERS AND SUBLETTING

Section 11.1  Lessee shall have the authority to enter into Sub-leases or assignments for portions of the Property, so long as such Sub-leases or assignments conform to the permitted uses pursuant to this Lease or RFP. Any Sub-leases or assignments not conforming to the permitted uses shall be void and of no force or effect and shall not confer any interest or estate in the purported Sub-lessee or assignee, and shall constitute a default under this Lease and the Lessor, at its election, may terminate this Lease.

It is agreed that all terms and conditions of the RFP and this Lease shall extend to and be binding on all Sub-lessees as may be approved by Lessor and shall be for a period of time equal to or less than the Lease Term. Lessee shall be liable for acts and omissions by any Sub-lessee affecting this Lease. Lessor reserves the right to directly terminate the rights and interests of any Sub-lessee under any sub-lease for any cause for which Lessee’s Leasehold Interest may be terminated.

Lessee shall reimburse to Lessor, as Additional Rent, all costs and expenses, including attorneys’ fees, which Lessor incurs by reason of or in connection with a sub-lease, and all negotiations and actions with respect thereto, such Additional Rent to be due and payable within thirty (30) days of receipt of a statement of such costs and expenses from Lessor.

(b)  Procedure for Sub-lease or Assignment.

Should Lessee desire to enter into a sub-lease or assign its interest in this Lease, Lessee shall, in each instance, give written notice of its intention to do so to the City Manager at least sixty (60) days prior to the effective date of any such proposed sub-lease or assignment, specifying in such notice the nature of such proposed sub-lease or assignment and the proposed date thereof and specifically identifying the proposed Sub-lessee or Assignee. Such notice shall be accompanied by a copy of the proposed sub-lease, license, concession or permit agreement.

(c)  Additional Consideration Payable to Lessor.

Except as provided below with respect to a valet concession, if Lessor gives its consent to any sub-lease, Lessee shall, in consideration therefore, include in Lessee’s Gross Revenues the amount of Sub-lessee’s Gross Revenues which shall be listed separately on Lessee’s Semi-Annual Report. Sub-lessee’s records shall be kept in accordance with Section 4.4. Gross revenues shall not include garage retail revenues based on square foot rental fees. Additionally, Lessor reserves the right to examine Sub-lessee’s books and audit Sub-lessee’s entire records in accordance with Sections 4.6 and 4.7 of this Lease.
Lessee shall collect a fee from all valet concessionaires allowed on the Property. Lessee shall include any and all amounts Lessee receives from the valet concessionaire in Lessee’s Gross Revenues and Lessor shall receive Percentage Rent from Lessee pursuant to Article IV.

The acceptance by Lessor of the payment of Rent following any sub-lease prohibited by this Article shall not be deemed to be a consent by Lessor to any such sub-lease nor shall the same be deemed to be a waiver of any right or remedy of Lessor hereunder.

Section 11.2 Definitions.
As used in this Article the term:
(a) “Transfer” means:
(i) any total or partial sale, or Assignment of Lessee’s business or Leasehold Estate or any contract or agreement to do any of the same;
(ii) any transfer of the stock of Lessee if the transfer results in the beneficial ownership of ______________ being less than 51% of the Lessee;
(iii) any merger, consolidation or sale or lease of all or substantially all of the assets of the Lessee or of any Owner, other than an owner whose shares are publicly traded.
(b) “Owner” means:
(i) any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, more than fifteen percent (15%) of the stock of the Lessee, but shall not include any shareholder of an Owner whose shares are publicly traded.
(c) “Owner whose shares are publicly traded” means an Owner:
(i) who has filed an effective registration statement with the Securities & Exchange Commission (or its successor) with respect to the shares of any class of its voting stock or of all classes of any other form of ownership interest which includes voting rights; and
(ii) whose voting stock and other form of ownership interest described in clause (i) is listed for trading purposes on a securities exchange subject to the regulatory jurisdiction of the Securities & Exchange Commission (or its successor) or is publicly traded over the counter.

Section 11.3 Transfers.
The Lessee recognizes that the operational experience of the Lessee as set forth in the Proposal was given special consideration by the Lessor in the public selection process undertaken by the Lessor for the award of this Lease. Therefore, Lessee agrees that except as permitted pursuant to subparagraphs (a), (b) and (c) below, or as specifically approved pursuant Section 11.7 below, no transfer may be made, suffered or created by the Lessee, or any Owner without the prior written consent of the City Manager which consent shall not be unreasonably withheld or delayed. The City Manager, in his sole discretion, may, but shall not be obligated to, present any request for transfer to the City Commission for its final approval. The following transfers shall be permitted hereunder:

(a) Any transfer directly resulting from the foreclosure of Lessee’s Leasehold Estate, provided that such purchaser or grantees is an institutional investor or an agent, designee or nominee of an institutional investor which is wholly owned or controlled by an institutional investor, and that such purchaser or grantees within six (6) months after taking possession of the Property, shall have entered into an agreement for the management and operation of the Property with an acceptable operator or is itself an acceptable operator;
(b) any transfer to an acceptable operator consented to by the City Manager;
(c) the issuance of stock or stock options to Lessee’s directors, officers, or employees, provided the stock or stock options issued constitute, in the aggregate, less than fifteen percent (15%) of the issued and outstanding stock of Lessee;

The Parties hereby acknowledge and agree that anything herein to the contrary notwithstanding, the “going public” by Lessee, including, but not limited to, the filing of a registration statement with the Securities and Exchange Commission, the creation of one or more classes of stock and the offering of shares of stock to the public for purchase, shall not constitute a transfer hereunder and shall not require the consent of the Lessor.

Any consent to a transfer shall not waive any of the Lessor’s rights to consent to a subsequent transfer. Any transfer made in violation of the terms hereof shall be null and void and of no force and effect.
Section 11.4  Notice of Transfer.

With respect to any transfer which must be approved by the City Manager, the Lessee shall give or cause to be given to the Lessor written notice (including all information necessary for the Lessor to make an evaluation of the proposed acceptable operator according to the requirements of this Lease) of any transfer of which Lessee, or its officers shall have knowledge, not less than sixty (60) days prior to any such proposed transfer, and the Lessor shall within thirty (30) days of its receipt of such information, advise Lessee in writing if it shall consent to same. If the Lessor shall not consent to a transfer, the City Manager shall state the reasons for such disapproval in his notice to Lessee. If the Lessor is not required to consent to a transfer pursuant to the terms hereof, the Lessee shall notify the Lessor in writing of same within thirty (30) days after the date of transfer. In the event the City Manager elects to present any request for transfer to the City Commission for its approval, the City Manager shall use due diligence to present the request for transfer to the City Commission as soon as practicable and the time for performance by Lessor shall be reasonably extended to provide sufficient time for presentation to the City Commission.

Section 11.5  Information as to Shareholders, etc.

Lessee shall from time to time throughout the Lease Term, as the Lessor shall reasonably request, furnish the Lessor with a complete statement, subscribed and sworn to by the President or Vice-President and the Secretary or Assistant Secretary of the Lessee, setting forth the full names and addresses of holders of stock interests in Lessee, and the extent of their holdings, and in the event any other parties have a beneficial interest in such stock, their full names and addresses and the extent of such interest as determined or indicated by the records of Lessee. Notwithstanding the foregoing, the information required by this Section 11.5 shall not be required to be furnished with respect to the shareholders of any owner whose shares are publicly traded.

Section 11.6  Effectuation of Permitted Transfers.

No transfer of the nature described in Subsection 11.3(b) above shall be effective unless and until:
(a) all Rents, taxes, assessments, Impositions, insurance, permitting and other charges required to be paid by the Lessee under this Lease shall be paid by the Lessee up to the date of transfer, and all other covenants and agreements to be kept and performed by the Lessee shall be substantially complied with at the date of transfer; and
(b) the entity to which such transfer is made, by instrument in writing reasonably satisfactory to the City Manager and in a form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of the Lessor expressly assume all of the obligations of Lessee under this Lease, and agree to be subject to all conditions and restrictions to which Lessee is subject; provided, however, that any Transferee shall not be required to assume any personal liability under this Lease with respect to any matter arising prior or subsequent to the period of such Transferee's actual ownership of the Leasehold Estate created by this Lease (it being understood, nevertheless, that the absence of any such liability for such matters shall not impair, impede or prejudice any other right or remedy available to the Lessor for default by Lessee). Nothing herein shall be construed to relieve or release the Lessee from liability for the performance of all of the obligations of Lessee under this Lease, unless the Lessor in writing expressly provides for such a release.

Section 11.7  Criteria for Consent for Transfer.

The Lessor may condition its consent to a permitted transfer upon satisfaction of all or any of the following conditions:
(i) The net assets of the Transferee immediately prior to the transfer shall not be less than:
(a) the net assets of the Transferor whose interest is being transferred immediately prior to the transfer; (b) the net assets of said Transferor on the Effective Date adjusted for inflation; or (c) an amount reasonably necessary to discharge Lessee’s remaining obligations hereunder;
(ii) Such transfer shall not adversely affect the quality and type of business operation which the Lessee has conducted theretofore;
(iii) Such Transferee, shall possess qualifications for the Lessee’s business substantially equivalent to an acceptable operator, or shall engage an acceptable operator and shall have demonstrated recognized experience in successfully operating such a business, including, without limitation, experience in successfully operating a similar quality business;
(iv) Such Transferee shall continue to operate the business conducted at the Property pursuant to all the provisions of this Lease;

(v) Such Transferee shall assume in writing, in a form acceptable to Lessor, all of Lessee’s obligations hereunder, and Lessee shall provide Lessor with a copy of all documents pertaining to such transfer;

(vi) Lessee shall pay to Lessor a Transfer Fee of _________ dollars ($______) prior to the effective date of the transfer in order to reimburse Lessor for all of its internal costs and expenses incurred with respect to the transfer, including, without limitation, costs incurred in connection with the review of financial materials, meetings with representatives of Transferee, and preparation, review, approval and execution of the required documents;

(vii) Lessee shall pay to the Lessor any due, but unpaid Rent.

Section 11.8 Liability of Lessee.

If a Transferee does not meet all of the criteria set forth in Section 11.7, Lessor, at its sole option, may require Lessee transferring such interest to remain liable under this Lease for the performance of all terms, including, but not limited to, payment of Rent due under this Lease.

Section 11.9 Payment Upon Transfer or Sale of Lessee Business or Stock.

Lessee recognizes and agrees that: (i) the experience of Lessee was given special consideration by Lessor in the selection process which resulted in the award of this Lease; (ii) the qualifications and identity of Lessee are of particular concern to the community and Lessor; and (iii) it is partially because of such qualifications and identity that Lessor is entering into this Lease. Accordingly, at all times prior to the date of transfer: (A) the Lessee’s Equity Contribution shall be maintained; and (B) Lessee shall retain voting and operational control of Lessee. Furthermore, at all times prior to the Lessee’s date of transfer, there shall be no Leasehold Estate transfer, Lessee transfer of Control or Sub-leasehold Estate transfer. Any waiver of the foregoing requirement shall require the City Manager’s prior written consent, which may be granted or withheld in his or her sole and absolute discretion. During the initial five (5) years of the Term, the Transfer Fee for any sale or transfer shall be 2.5% of the Gross Sale Amount; between Years 5 to 10 of the Term the Transfer Fee shall be 1.5% of the Gross Sale Amount; between Years 10 – 20 of the Term the Transfer Fee shall be 1.5% of the Gross Sale Amount; and after Year 20 of the Term, the Transfer Fee shall be .75% of the Gross Sale Amount. The Lessee shall pay to the Lessor the Transfer Fee at the time the transfer becomes effective, or in the case of the sale of the Lessee’s stock at the time the shares of stock are sold.

Section 11.10 Acceptance of Rent from Transferee.

The acceptance by Lessor of the payment of Rent following any Transfer prohibited by this Article shall not be deemed to be a consent by Lessor to any such, nor shall the same be deemed to be a waiver of any right or remedy of Lessor hereunder.

Section 11.11 Transfers of the City’s Interest.

At the Lessee’s request, Lessor shall provide the Lessee copies of any and all agreements or contracts pertaining to the total or partial sale, Assignment, conveyance, mortgage, trust or power, or other transfer in any mode or form of or with respect to the Lessor’s reversionary or fee interest in the Property, or any part thereof, or any interest therein, or any contract or agreement to do any of the same, to any purchaser, Assignee, mortgagee, or trustee. Lessor hereby agrees to incorporate the terms and conditions set forth in this Lease or in any agreement or contract with such purchaser, Assignee, mortgagee, or trustee.

ARTICLE XII
COMPLIANCE WITH LAWS

Section 12.1 Compliance with Laws.

Lessee shall, at Lessee’s sole cost and expense, comply with all regulations of all Applicable Laws now in force, or which may hereafter be in force, pertaining to Lessee or its use of the Property, and shall faithfully observe in the use of the Property or in the performance of any alterations (including, without limitation, Lessee’s work) all Applicable Laws now in force or which may hereafter be in force. Lessee shall indemnify (and such indemnity will survive the termination or expiration of the Lease for a period of five (5) years), defend and save Lessor harmless from penalties, fines, costs, expenses, suits, claims, or damages resulting from Lessee’s failure to perform its obligations in this Lease.
ARTICLE XIII
ENVIRONMENTAL LIABILITY

Section 13.1 Definition of Terms. For purposes of this Article XIII the following terms shall have the meaning attributed to them herein:

13.1.1 “Hazardous Materials” means any toxic or hazardous substance, material, or waste, and any other contaminant, pollutant or constituent thereof, whether liquid, solid, semi-solid, sludge and/or gaseous, including without limitation, chemicals, compounds, pesticides, petroleum products including crude oil and any fraction thereof, asbestos containing materials or other similar substances or materials which are regulated or controlled by, under or pursuant to any federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders or decrees including, but not limited to, all Applicable Laws.


(i) The existence, cleanup and/or remedy of contamination of the Property;
(ii) The protection of the environment from spilled, deposited or otherwise emplaced contamination;
(iii) The control of hazardous or toxic substances or wastes; or
(iv) The use, generation, discharge, transportation, treatment, removal or recovery of Hazardous Materials.

13.1.3 “Costs” shall mean all costs incurred in connection with correcting any violations of any Environmental Laws and/or in connection with the clean-up of contamination on the Property.

13.1.4 “Clean Up” shall mean any remediation and/or disposal of Hazardous Materials at or from the Property which is ordered by any federal, state, or local environmental regulatory agency.

13.1.5 “Underground Storage Tanks” shall mean any fuel oil, petroleum or gas underground storage tanks which may be located on the Property (“USTs”).

Section 13.2 Lessee’s Environmental Covenants.
The Lessee shall not cause or permit any Hazardous Materials to be brought upon, treated, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about or beneath the Property or any portion thereof by the Lessee, its agents, employees, contractors, Lessees, or invitees except as may be customarily used and required to conduct marina and restaurant operations.

Lessee shall not permit any activities on the Property that would violate Environmental Laws. If Lessee should breach this covenant, Lessee shall take all actions necessary to comply with all Environmental Laws and shall, at Lessee’s sole cost and expense, perform any Clean Up. Lessee’s obligation under this section shall survive the expiration or earlier termination of this Lease for a period of one (1) year.

13.2.1 Environmental Testing Obligations
Lessee shall conduct a Phase Two Environmental Assessment and soil analysis of the Property before and after the Lease Term (or Renewal Term) to determine if it has left any contaminants on the Property. If contamination is found to be left on the Property, Lessee shall, at its sole cost and expense, pay to clean up the contamination, subject to the limitations within Section 13.4 herein. Additionally, upon
request by the City, Lessee shall conduct such soil analysis tests the City may require from time to time during the Lease Term and Renewal Term, if any.

Section 13.3  **Representation by Lessor.**

The Lessor represents and warrants that no lawsuits, claims, legal or administrative, have been brought against Lessor, in connection with the environmental condition of the Property or the USTs as a result of the Lessor’s or any prior Lessee’s use or occupancy of the Property, nor is Lessor aware of the existence of any Hazardous Materials thereon, except as may be present in connection with the USTs and/or the asbestos containing materials as expressly provided for herein.

Section 13.4  **Lessee’s Indemnification.**

Lessee shall indemnify, protect, defend and hold Lessor free and harmless from and against any and all suits, actions, claims, regulatory actions, liabilities, penalties, losses, injuries, and expenses, including attorney’s fees, resulting from the death or injury to any person, destruction or damage to property, arising from or caused by the presence, in or about the Property, of any Hazardous Materials placed on or about the Property by Lessee, or its agents, employees or Assignees, or at Lessee’s direction, or by Lessee’s failure to comply with all applicable Environmental Laws.

Section 13.5  **Asbestos.**

The Lessee acknowledges that prior to the Effective Date, the Lessee has undertaken an environmental site assessment of the Property and accordingly, the Lessee knows that there may be asbestos containing materials (“ACM”) in the form of ceiling tiles, plaster walls and roofing material. The Lessee shall, at Lessee’s sole cost and expense, Clean Up any such ACM in the event that as a result of building renovations or modifications such ACM becomes friable.

Section 13.6  **Survival of Lessee’s and Lessor’s Obligations.**

The respective rights and obligations of Lessor and Lessee under this Article XIII shall survive the expiration or termination of this Lease for a period of one (1) year.

Section 13.7  **Cost of Environmental Remediation.**

Lessee’s initial liability to satisfy environmental permitting requirements provided herein shall be One Million Dollars ($1,000,000). In the event the cost of remediation exceeds $1,000,000, the amount which exceeds $1,000,000 will be split on a 50/50 basis between the City and the Lessee. One hundred percent (100%) of the remediation costs paid by Lessee’s remediation will be counted towards the Minimum Investment Level requirement. The Lessee shall be required to submit acceptable documentation to the City in order to facilitate the City’s verification of Lessee’s expenditures for any such remediation costs.

**ARTICLE XIV**

**DAMAGE OR DESTRUCTION OF PROPERTY**

Section 14.1  **Definitions.** For the purposes of this Article XIV, the following words shall have the meanings attributed to them in this Section 14.1:

(a)  “Completely Destroyed” means the destruction of the safe, leasable use or occupancy of a substantial portion of the Property under this Lease which damage cannot reasonably be repaired, restored or replaced within one hundred and eighty (180) calendar days from the date on which the damage occurred.

(b)  “Partial Destruction” means any damage to the Property which damage can reasonably be repaired, restored or replaced within one hundred eighty (180) calendar days from the date on which the damage occurred.

Section 14.2  **Lessee’s Duty to Repair, Restore or Replace the Property After Damage.**

In the event of damage by fire or otherwise of the Property including any machinery, fixtures or equipment which is a part of the Property, the Parties agree as follows:

(i)  In the event of Partial Destruction, within sixty (60) calendar days of the damage (subject to reasonable delay and/or Force Majeure), the Lessee shall use the Net Insurance Proceeds and/or Lessee’s own funds to commence and diligently pursue to completion within one hundred eighty (180) calendar days from the date the damage occurred (subject to reasonable extension and/or Force Majeure), the repair, restoration or replacement of the damaged or destroyed portion of the Property (“Restoration Work”), and this Lease shall remain in full force and effect, with no abatement in Rent.
In the event the Property is Completely Destroyed at any time during Lease Years One (1) through Thirty-nine (39) of the Lease Term, and in Lease Years Forty (40) through Forty-eight (48), if the Renewal Term has been exercised, within sixty (60) days of the damage, the Lessee, in its sole discretion, shall have the option (a) at the Lessee’s sole cost and expense, (together with Net Insurance Proceeds available for that purpose), to commence and diligently pursue to completion the Restoration Work, in accordance with the provisions of Section 14.3 below, and Lessee shall complete the Restoration Work within twelve (12) months from the date the damage occurred and this Lease shall remain in full force and effect, with no abatement in Rent, or (b) to elect not to undertake the Restoration Work by providing written notice to Lessor and in which event this Lease shall terminate, and the Lessee shall, at the Lessee’s sole cost and expense, (but using along with the Lessee’s own funds, Net Insurance Proceeds available for that purpose) deliver possession of the Property to Lessor free and clear of all debris and Lessor and Lessee shall each be released thereby from any further obligations hereunder accruing after the effective date of such termination, except that such release shall not apply (aa) to any Rent or Additional Rent or other sums accrued or due (bb) Lessee’s obligations regarding surrender of the Property including the removal of debris, and (cc) environmental liability as provided for in Article XIII.

(ii) In the event the Property is Completely Destroyed at any time during Lease Years Thirty-nine (39) or Forty (40), if the Renewal Term option has not been exercised, and at any time during Lease Years Forty-seven (47), Forty-eight (48) and Forty-nine (49), either Party, in its sole discretion, shall have the right to terminate this Lease by giving written notice to the other Party within ninety (90) days from the date the damage occurred. In the event this Lease is terminated as provided above, the Lessee shall, at the Lessee’s sole cost and expense, (but using along with the Lessee’s own funds, Net Insurance Proceeds available for that purpose) deliver possession of the Property to Lessor free and clear of all debris and Lessor and Lessee shall each be released thereby from any further obligations hereunder accruing after the effective date of such termination, except that such release shall not apply (aa) to any Rent or Additional Rent or other sums accrued or due (bb) Lessee’s obligations regarding surrender of the Property including the removal of debris, and (cc) environmental liability as provided for in Article XIII.

Section 14.3 Performance of Restoration Work.
In the event Lessee undertakes any Restoration Work in accordance with the provisions of this Article, such Restoration Work by Lessee shall be substantially as possible to the condition that existed immediately prior to the damage, and shall be performed in accordance with the provisions of Article VI applicable to the construction of the initial Leasehold Improvements. Lessor hereby acknowledges and agrees that Lessee's obligations hereunder and the time periods set forth above are subject to Force Majeure, and reasonable extensions based on the severity of the damage.

Section 14.4 No Right to Terminate.
Except for the Lessee’s right to terminate this Lease in accordance with the provisions of Subsections 14.2(ii)(b) and (iii), Lessee waives the provisions of any statute, code or judicial decision which grants Lessee the right to terminate this Lease in the event of damage or destruction of the Property.

Section 14.5 Lessee’s Right to Terminate.
If Lessee or Lessor elects to exercise the option given under Subsections 14.2(ii) or (iii), respectively, to terminate this Lease, then any and all Net Insurance Proceeds paid for damage or destruction of the Property shall be applied as follows:

(i) First toward debris removal; and
(ii) Second, toward the balance of the proceeds, if any, after payment of any Rent and/or Additional Rent due, shall be paid to the Parties as their respective interests may then appear.

Section 14.6 Payment for Construction of the Restoration Work.
All Net Insurance Proceeds shall be applied by the Parties to the payment of the cost of the Restoration Work (pursuant to this Article and Section 9.3) to restore the Property. The Net Insurance Proceeds shall be paid out, the Restoration Work shall be performed, and the Lessee shall make additional deposits with an escrow agent, if any are required, all in accordance with Section 9.3, as may be applicable.
Section 14.7  Collection of Insurance Proceeds.
The Lessor shall in no event be responsible for the non-collection of any insurance proceeds under this Lease but only for insurance money that shall come into its hands.

Section 14.8  Unused Insurance Proceeds and Deposits.
In the event any Net Insurance Proceeds or sums deposited with an escrow agent or Lessor in connection with the Restoration Work shall remain in the hands of an escrow agent or the Lessor, if the Parties have agreed to allow the Lessor to hold the insurance proceeds until completion of the Restoration Work, and if the Lessee shall not then be in default under this Lease in respect of any matter or thing of which notice of default has been served on the Lessee, then the remaining funds shall be applied first towards any unpaid Rent, and the balance paid to the Lessee.

ARTICLE XV
EMINENT DOMAIN

Section 15.1  Total Condemnation.
In the event that all of the Property (or such portion thereof as shall, in the good faith opinion of Lessor or Lessee, render it economically unfeasible to effect restoration thereof for its intended purpose) shall be taken for any public purpose by the right of eminent domain or shall be conveyed by the Lessor and Lessee acting jointly to avoid proceedings of such taking, the Rent and money to be treated as Additional Rent pursuant to this Lease shall be prorated and paid by the Lessee to the Date of Taking or conveyance in lieu thereof, and this Lease shall terminate and become null and void as of the Date of Taking or such conveyance; and the amount of damages resulting to Lessor and Lessee, respectively, and to their respective interests in and to the Property, the Leasehold Improvements, and in connection with this Lease, shall be separately determined and computed by the court having jurisdiction and separate awards and judgments with respect to damages to Lessor and Lessee, respectively, and to each of their respective interests, shall be made and entered.

In the event that a court shall make a single Net Condemnation Award without separately determining the respective interests of Lessor and Lessee, and if Lessor and Lessee shall not agree in writing as to their respective portions of an award within twenty (20) days after the date of the final determination by the court of the amount of it, Lessor and Lessee agree to submit the matter to the court on stipulation for the purpose of a judgment determinative of their respective shares. In the event for any reason the trial judge refuses to permit a determination by judgment, then the respective interests of Lessor and Lessee shall be determined by arbitration under the provisions set forth in Section 16.6 of this Lease. In any event, the Lessor shall be entitled to receive its reversionary interest in the Property and Leasehold Improvements and Lessor’s present value of Rent and Additional Rent due under the terms of the Lease. Lessee shall be entitled to the then value of its Leasehold Estate and the Leasehold Improvements which a buyer willing but not obligated to buy, would pay therefore in an arm’s length transaction. In no event shall Lessee be entitled to compensation for any fee simple ownership interest in the Property at the time of condemnation.

Section 15.2  Partial Condemnation.
(a)  In the event less than all of the Property shall be taken for any public use or purpose by the right or the exercise of the power of eminent domain, or shall be conveyed by the Lessor and Lessee acting jointly to avoid proceedings of such taking, and Lessee shall be of the good faith opinion that it is economically feasible to effect restoration thereof, then this Lease and all the covenants, conditions and provisions hereunder shall be and remain in full force and effect as to all of the Property not so taken or conveyed (except as provided in Section 15.5). Lessee shall to the extent the proceeds of the Net Condemnation Award are made available to it, pursuant to the terms hereof, remodel, repair and restore the Property so that it shall be comparable to the Property prior to the condemnation, taking into consideration the fact of the condemnation; provided, however, that in so doing, Lessee shall not be required to expend more than the amount of any Net Condemnation Award actually received by Lessee.

(b)  The Net Condemnation Award allowed to Lessor and Lessee shall be paid to and received by the Parties as follows:

(i)  There shall be paid to the Lessor the value of the portion of the land so taken and Lessor’s reversionary interest in the improvements so taken, which land and reversionary improvements shall be valued as if unencumbered. Lessor shall further be paid an amount by which Lessor’s Rent and Additional Rent have been reduced by the taking;

(ii)  There shall be paid to the Lessee any amount by which Lessee’s profits and
value of Lessee’s interest in the Lease and the Property have been reduced by the taking after any payment required by the Lease:

(iii) There shall be paid to the Lessee the amount required to complete the remodeling and repairs to the Property pursuant to Section 14.2 above;

(iv) The Lessor and Lessee shall be paid portions of the balance of the Net Condemnation Award or awards, if any, which are allocable to and represented by the value of their respective interest in the Property as found by the court in its condemnation award. In the event that a court shall make a single Net Condemnation Award without separately determining the respective interests of Lessor and Lessee, and if Lessor and Lessee shall not agree in writing as to their respective portions of such award within twenty (20) days after the date of the final determination by the court of the amount of it, Lessor and Lessee agree to submit the matter to the court on stipulation for the purpose of a judgment determinative of their respective shares. In the event for any reason the trial judge refuses to permit a determination by judgment, then the respective interests of Lessor and Lessee shall be determined by the arbitration provisions set forth under Section 16.6 of this Lease.

Section 15.3. Adjustment of Rent Upon Partial Taking.

In the event a part of the Property shall be taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by Lessor and Lessee acting jointly to avoid proceedings of such taking, then Rent, and money to be treated as Additional Rent pursuant to this Lease shall be paid by Lessee to the Date of Taking or conveyance in lieu thereof, and after such date the Rent for the remainder of the Property shall be reduced in the same proportion that Gross Revenues have been reduced due to such taking compared to the Gross Revenues immediately prior to the taking.

Section 15.4. Deposit of Condemnation Award with Escrow Agent.

Unless the effect of a condemnation proceeding shall be to terminate this Lease by operation of law or as provided in Section 14.2 above, any Net Condemnation Award made in respect to the Property in a condemnation proceeding shall be deposited with an escrow agent selected by the Lessor and Lessee escrow agent) to be disbursed for the cost of restoring the Property and for other related purposes.

Section 15.5. Temporary Taking.

In the event that all or any portion of the Property shall be taken by the right of condemnation or the exercise of the power of eminent domain for governmental use or occupancy for a temporary period, this Lease shall not terminate and Lessee shall continue to perform and observe all of its obligations (including the obligation to pay Rent as provided throughout this Lease) as though the temporary taking had not occurred except only to the extent that it may be prevented from so doing by the terms of the order of the authority which make the temporary taking or by the conditions resulting from the taking, including the loss of its possession of all or any part of the Property. In the event the taking for governmental occupancy is for a period entirely within the term of this Lease, then Lessee shall be entitled to receive the entire amount of any Net Condemnation Award made for the taking, whether paid by way of damages, Rent or otherwise. If the period of governmental occupancy extends beyond the termination of the Lease Term, the Lessor shall only be entitled to receive that portion of the Net Condemnation Award allocable to the period beyond the termination of the Lease Term. The amount of any Net Condemnation Award payable to Lessee, on account of a temporary taking of all or any part of the Leasehold Improvements, shall be deemed a part of the Lessee’s Leasehold Estate for all purposes in this Lease. If the Net Condemnation Award does not separately determine the amount applicable to the taking of the interest of the Lessor in this Lease and in the Leasehold Improvements and if Lessor and Lessee shall not agree in writing as to the proportion of the award so applicable to the respective Parties, then Lessor and Lessee shall submit the matter to the court on stipulation for the purpose of a judgment determinative of the interest of the Parties in accordance with the terms of this Section 15.5. In the event for any reason the trial judge refuses to permit a determination by judgment, then the respective interests of Lessor and Lessee shall be determined by the arbitration provisions set forth under Section 16.6 of this Lease.
ARTICLE XVI
LESSEE DEFAULTS & LESSOR REMEDIES FOR DEFAULT

Section 16.1 Lessee Default.

The occurrence of any one or more of the following events is deemed a “Lessee Default:”

(a) If the Lessee defaults in the due and punctual payment of any installment of Minimum Base Rent, Percentage Rent or any other sums required to be paid hereunder as Additional Rent, as and when due and payable in accordance with this Lease, and such default continues for more than (10) ten days after the sum is due;

(b) Except with respect to an event of Force Majeure, in the event Lessee shall cease to operate its business, unless permitted by Lessor in connection with alterations or renovations, for a period of fifteen (15) consecutive days;

(c) In the event a petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings or voluntary insolvency filing) be filed by or against Lessee and such petition is not dismissed within Thirty (30) days from the filing thereof, or in the event Lessee is adjudged a bankrupt;

(d) In the event an Assignment for the benefit of creditors is made by Lessee;

(e) In the event of an appointment by any court of a receiver or other court officer of Lessee's Property and such receivership is not dismissed within thirty (30) days from the date of such appointment;

(f) In the event Lessee removes, attempts to remove, or permits to be removed from the Property, except in the usual course of trade, the Leasehold Improvements (furnishings, fixtures, and equipment) installed or placed upon the Property by the Lessee during the Lease Term;

(g) In the event Lessee, before the expiration of the term of this Lease, and without the written consent of Lessor, vacates the Property or abandons the possession thereof, or uses the same for purposes other than the purposes for which the same are hereby leased, or ceases to use the Property for the purposes herein contained;

(h) In the event Lessee does not accept the adjusted Minimum Base Rent and Percentage Rent rates determined by the independent appraiser established for the Renewal Term;

(i) In the event an execution or other legal process is levied upon the goods, furniture, effects or other personal property of Lessee brought on the Property, or upon the interest of Lessee in this Lease, and the same is not satisfied, dismissed or bonded within thirty (30) days from such levy; or

(j) In the event Lessee defaults in the due performance or observance of any lease covenant, condition or provision or any RFP covenant, condition or provision, and such default continues for more than for more than sixty (60) days (“Cure Period”) after written notice of the default from the Lessor to the Lessee, unless such default be one which cannot be cured within sixty (60) days and the Lessee within such sixty (60) day period shall have commenced and thereafter shall continue to diligently prosecute all actions necessary to cure such defaults, such failure shall constitute an “Event of Lessee’s Default.”

Section 16.2 Remedies of Lessor.

(a) If any Lessee Default occurs, Lessor shall have the right after the expiration of the applicable Cure Period, at the option of Lessor, to terminate this Lease upon providing fifteen (15) days written notice if the default has not been cured by the expiration of such fifteen (15) day period. An Event of Default shall be deemed to have occurred at the expiration of the Cure Period if the default has not been cured by the expiration of such fifteen (15) day period. Additionally, if any Event of Default occurs, Lessor may, at its option, from time to time, without terminating this Lease, re-enter and re-let the Property, or any part thereof, as the agent and for the account of Lessee upon such terms and conditions as Lessor may deem advisable or satisfactory, in which event the rents received on such re-letting shall be applied first to the expenses of such re-letting and collection including but not limited to, necessary renovation and alterations of the Property, reasonable attorneys fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due to Lessor hereunder, and if a sufficient sum shall not be thus realized or secured to pay such sums and other charges, at Lessor's option, Lessee shall pay Lessor any deficiency immediately upon demand therefore, notwithstanding that Lessor may have received periodic rental in excess of the periodic rental stipulated in this Lease in previous or subsequent rental periods, and Lessor may bring an action therefore as such deficiency shall arise. Nothing herein, however, shall be construed to require Lessor to re-enter and re-let the Property in any event. Lessor shall not, in any event,
be required to pay Lessee any surplus of any sums received by Lessor on a re-letting of said Property in excess of the Rent provided in this Lease.

(b) If any Event of Default occurs, Lessor shall have the right to obtain injunctive and declaratory relief, temporary and/or permanent, against Lessee or any acts, conduct or omissions of Lessee, and to further obtain specific performance of any term, covenant or condition of this Lease.

(c) If any Event of Default occurs, Lessor shall have the right, at its option, to declare all Rent (or any portion thereof) for the entire remaining Lease Term, and other indebtedness owing by Lessee to Lessor, if any, immediately due and payable without regard to whether possession of the Property shall have been surrendered to or taken by Lessor, and may commence action immediately thereupon and recover judgment therefore.

(d) If any Event of Default occurs, Lessor, in addition to other rights and remedies it may have, shall have the right to remove all or any part of Lessee's personal property from the Property and any personal property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Lessee, and Lessor shall not be responsible for the care or safekeeping thereof whether in transport, storage or otherwise, and Lessee hereby waives any and all claim against Lessor for loss, destruction and/or damage or injury which may be occasioned by any of the aforesaid acts.

(e) No such re-entry or taking possession of the Property by Lessor shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such re-letting without termination, Lessor may at all times thereafter elect to terminate this Lease for such previous default. Any such re-entry shall be allowed by Lessee without hindrance, and Lessor shall not be liable in damages for any such re-entry, or guilty of trespass or forcible entry.

(f) Any Rent which may be due Lessor, whether by acceleration or otherwise as herein provided in this Article, shall include Minimum Base Rent, Percentage Rent and any other rents, costs and expenses denominated as Additional Rent in this Lease.

(g) It is expressly agreed that the forbearance on the part of Lessor in the institution of any suit or entry of judgment for any part of the Rent herein reserved to Lessor, shall not serve as a defense against nor prejudice a subsequent action for such Rent. Lessee hereby expressly waives Lessee's right to claim a merger or waiver of such subsequent action in any previous suit or in the judgment entered therein. Furthermore, it is expressly agreed that claims for liquidated Minimum Base Rent and/or Percentage Rent may be regarded by Lessor, if it so elects, as separate and independent claims capable of being separately assigned.

(h) Any and all rights, remedies and options given in this Lease to Lessor shall be cumulative and in addition to and without waiver of, or in derogation of, any right or remedy given to it under any laws now or hereafter in effect.

Section 16.3 No Waiver by Lessor.

The waiver (either expressed or implied by law) by Lessor of any default of any term, condition or covenant herein contained shall not be a waiver of any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by Lessor to or of any act by Lessee requiring Lessor’s consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee. No re-entry hereunder shall bar the recovery of rents or damages for the default or delay on the part of Lessor to enforce any right hereunder and shall not be deemed a waiver of any preceding default by Lessee of any term, covenant or condition of this Lease, or a waiver of the right of Lessor to annull this Lease or to re-enter the Property or to re-let same.

Section 16.4 Late Payments.

In the event any payment due Lessor under this Lease shall not be paid on the due date, Lessee agrees to pay, in addition to the payment then due, one-half (0.5%) percent of the amount due or the sum of Two Hundred and 0/100 Dollars ($200.00), whichever is greater, for each day that the payment is late, ("Late Fee"), and in the event that any check, bank draft, order for payment or negotiable instrument given to Lessor for any payment under Lease shall be dishonored for any reason whatsoever not attributable to Lessor, Lessor, in addition to the Late Fee, shall be entitled to make an administrative charge to Lessee of One Hundred and 0/100 Dollars ($100.00), or the actual charge, to Lessor by Lessor's bank for dealing with such dishonored tender, whichever is greater. In the event that it shall be necessary for Lessor to give more than one (1) written notice to Lessee of any violation of this Lease, during the term hereof, Lessor shall be entitled to make an administrative charge to Lessee of One Hundred and 0/100 Dollars ($100.00) for each such subsequent notice after the first notice. Lessee recognizes and agrees that the charges which Lessor is
entitled to make upon the conditions stated in this section represent, at the time this Lease is made, a fair and reasonable estimate and liquidation of the costs of Lessor in the administration of the Property resulting from the events described which costs are not contemplated or included in any Rent, or other charges provided to be paid by Lessee to Lessor in this Lease. Any charges becoming due under this Section of this Lease shall be added to and become due with the late payment for which the charge was assessed and shall be collectible as a part thereof.

Section 16.5 Remedies Cumulative.

No remedy conferred upon or reserved to the Lessor or the Lessee shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute; and every power and remedy given by this Lease to the Lessor or the Lessee may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the Lessor or the Lessee. No delay or omission of Lessor or Lessee to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

Section 16.6 Arbitration.

(a) Request to Arbitrate. The Parties hereby agree that, subject to the consent of the City Manager and the Lessee, which consent may be withheld by either party for any reason, any dispute, disagreement or controversy arising under this Lease, or with respect to the interpretation or enforcement of this Lease may be settled by arbitration. Either Party may request to arbitrate by providing written notice to the other Party setting forth the nature of the request to arbitrate. Within fifteen (15) days of receipt of such request to arbitrate, the other Party shall respond as to its agreement or disagreement to arbitrate. Failure of the other Party to respond shall be deemed denial of a request to arbitrate.

(b) Procedures. In the event arbitration is agreed to, the following procedures will govern any arbitration according to this Lease.

(i) Within ten (10) days of the Parties agreeing to arbitrate, each party shall designate an arbitrator.

(ii) Within ten (10) days after the appointment of the two arbitrators, the two arbitrators shall meet and appoint a third arbitrator which shall constitute the Arbitration Panel.

(iii) Every member of the Arbitration Panel must be a member of the American Arbitration Association ("Member"). In addition to the foregoing criterion, each Member shall satisfy the following conditions: (i) no Member shall be a person who is or has been an employee of either the Lessor or Lessee during the five (5) year period immediately preceding his or her appointment; (ii) each Member shall be neutral and independent of the Parties to this Lease; (iii) no Member shall be affiliated with either Parties’ auditors; and (iv) no Member shall have a conflict of interest with (including, without limitation, any bias towards or against) a Party hereto.

(iv) If either party shall fail to designate a Member within ten (10) days after receipt of the written notice from the other party, then such other party may request the President of the Florida Chapter of the American Arbitration Association to designate a Member, who, when so designated, shall act in the same manner as if he had been the Member designated by the party so failing to designate an arbitrator.

(v) If the two Members appointed by the Parties are unable to agree upon the third Member within ten (10) days from the last date of designation, then upon the request of either of the two (2) Members, or either Party, such third Member shall be designated by the President of the Florida Chapter of the American Arbitration Association, who shall appoint such third Member within ten (10) days of the request.

(vi) A hearing shall be commenced within thirty (30) days following the selection of the Arbitration Panel. The Parties shall each make a good faith effort to cooperate with each other in all respects in connection with the exchange of documents relevant to the subject dispute. A court reporter shall make a transcript of the hearing. The Parties and the Arbitration Panel shall use their best efforts to conclude the hearing within ten (10) days. The Parties shall be entitled to such pre-trial discovery as they may agree, or as determined by the Arbitration Panel. The Arbitration Panel shall have the right to question witnesses at the hearing, but not to call witnesses. The Arbitration Panel may grant continuances only by the agreement of both Parties. The Arbitration Panel may render a decision at the close of the hearing, or may request briefs on any or all issues. Any and all such briefs, including reply briefs, shall be filed with the terms and on the schedule set by the Arbitration Panel, but in any event no later than forty-five (45) days following the commencement of the hearing. The Arbitration Panel shall render a
determination within thirty (30) days from the conclusion of the hearing, and in the event briefs are submitted, within thirty (30) days after receipt of said briefs. If no determination is rendered within such time, unless the Parties agree otherwise, a new Arbitration Panel shall be selected as described above, but the new Arbitration Panel shall render a determination solely upon review of the record of the hearing without a further hearing.

(vii) All actions, hearings and decisions of the Arbitration Panel shall be conducted, based upon and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In determining any matter before them, the Arbitration Panel shall apply the terms of this Lease, and shall not have the power to vary, modify or reform any terms or provisions of the Lease in any respect. No Arbitrator is authorized to make an award of punitive or exemplary damages. The Arbitration Panel shall afford a hearing to the Lessor and to the Lessee who shall each have the right to be represented by counsel at such hearing and to call witnesses, and the right to submit evidence with the privilege of cross-examination on the question at issue. All arbitration hearings shall be held at a place designated by the Arbitration Panel in Miami-Dade County, Florida.

(viii) The Arbitration Panel selected hereunder shall agree to observe the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the American Arbitration Association and the American Bar Association, or any successor code. The decision of a majority with respect to any matter referred to it under this Lease shall be final, binding and conclusive on the Lessor and Lessee and enforceable in any court of competent jurisdiction. Together with the determination, the Arbitration Panel shall provide a written explanation of the basis for the determination. Each party shall pay the fees and expenses of the Member of the Arbitration Panel designated by such party, such party’s counsel and witness fees, and one-half (½) of all expenses of the third Member of the Arbitration Panel. The decision of the Arbitration Panel will be final, and may be enforced according to the laws of the State of Florida and judgment upon the award rendered by the Arbitration Panel shall be entered in any Court having jurisdiction thereof.

ARTICLE XVII
ACCESS BY LESSOR

Section 17.1 Right of Entry.
Lessor and Lessor’s agents shall have the right to enter the Property at all reasonable times upon reasonable notice to the Lessee (except in the case of an emergency when no notice is required), to examine the same. If Lessee shall not be personally present to open and permit entry into the Property at any time when for any reason an entry therein shall be necessary or permissible, Lessor or Lessor’s agents may enter the same without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Lessor any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Property or any part thereof, except as otherwise herein specifically provided.

ARTICLE XVIII
DAMAGE TO LESSEE’S PROPERTY

Section 18.1 Loss and Damage.
Lessor shall not be responsible for any damage to any property of Lessee (including without limitation appliances, equipment, machinery, stock, inventory, fixtures, furniture, improvements, displays, decorations, carpeting and painting), or of others located on the Property, nor for the loss of or damage to any property of Lessee, or of others by theft or otherwise. Lessor shall not be liable for any injury or damage to persons or Property resulting from fire, smoke, explosion, falling plaster, steam, gas, electricity, water, rain, or leaks from any part of the Property or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place by dampness or by any other cause of whatsoever nature.-Lessor shall not be liable for any latent defect in the Property. All property of Lessee kept or stored on the Property shall be so kept or stored at the risk of Lessee only and Lessee shall hold Lessor harmless from any and all claims arising out of damage to same, including subrogation claims by Lessee’s insurance carriers.
ARTICLE XIX
HOLDING OVER, SUCCESSORS

Section 19.1 Holding Over.
In the event Lessee remains in possession of the Property after the expiration of the Lease Term, Lessee, at the option of Lessor, shall be deemed to be occupying the Property as a Lessee at sufferance at a monthly rental equal to two (2) times the Minimum Base Rent and the Percentage Rent of the preceding Lease Year, payable during the last month of the Lease Term hereof. In addition, Lessee agrees to pay monthly: (a) one-twelfth (1/12) of the ad valorem taxes for the Property based upon the total ad valorem taxes payable for the Lease Year immediately prior to the Lease Year in which the expiration occurs; (b) cost of insurance for which Lessee would have been responsible if this Lease had been renewed on the same terms contained herein; (c) all sales taxes assessed against such increased rent, and (d) any and all Additional Rent otherwise payable by Lessee hereunder. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Lease. Lessee's obligation to pay any rents or sums provided in this Lease shall survive the expiration or earlier termination of this Lease.

Section 19.2 Successors.
All rights and liabilities herein given to, or imposed upon, the respective Parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and the assigns of the said Parties; and if there shall be more than one Lessee, they shall be bound jointly and severally by the terms, covenants and agreements herein. Nothing contained in this Lease shall in any manner restrict Lessor's right to assign or encumber this Lease and, in the event Lessor sells its interest in the Property and the purchaser assumes Lessor's obligations and covenants, Lessor shall thereupon be relieved of all further obligations hereunder.

ARTICLE XX
EQUAL OPPORTUNITY & NON-DISCRIMINATION

Section 20.1 Equal Employment Opportunities.
The Lessee agrees that during the Lease Term; (a) it will not discriminate against any employee or applicant for employment because of race, creed, color, place of birth, religion, national origin, sex, age, marital status, veteran and disability status and will take affirmative action to assure that applicants are employed and that employees are treated during employment without regard to race, creed, color, place of birth, religion, national origin, sex, age, marital status, veteran and disability status; (b) post in conspicuous places, available to employees and applicants for employment, notices, the form of which is to be provided by the Lessor, setting forth provisions for this nondiscrimination clause; (c) in all solicitations or advertisements for employees placed by or on behalf of the Lessee shall state that all qualified applicants will receive consideration for employment without regard to race, creed color or national origin; and (d) if applicable, to send to each labor union or representative of workers with which the construction contractor has a collective bargaining agreement or other contract or understanding a notice, the form of which is to be provided by the Lessor, advising the union or representative of the Lessee’s commitment and posting copies of the notice in a conspicuous places available to employees and applicants for employment.

Section 20.2 Non-Discrimination.
Lessee represents and warrants to the Lessor that it will comply with Sections 18-188 through 18-190 of the Code of the City of Miami Code, as amended, and incorporated herein by reference (“Code”). Lessee hereby represents and warrants that it does not and will not engage in discriminatory practices and shall not discriminate in connection with Lessee’s use of the Property on account of race, national origin, ancestry, color, sex, religion, age, handicap, familial status, marital status or sexual orientation. Furthermore, should the Lessee have existing or introduce membership rules for patrons at the Property, that it will comply with the non-discrimination provisions incorporated within the Code.

ARTICLE XXI
MISCELLANEOUS

Section 21.1 Accord and Satisfaction.
No payment by Lessee or receipt by Lessor of a lesser amount than the Rent herein stipulated to be paid shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord
and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such Rent or pursue any other remedy provided herein or by law.

Section 21.2  Entire Agreement.

This Lease, the RFP and the Exhibits attached hereto and forming a part thereof as if fully set forth herein constitute all of the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Property and there are no covenants, promises, conditions or understandings, either oral or written, between them other than as are herein set forth. Neither Lessor nor Lessor's agents have made nor shall be bound to any representations with respect to the Property except as herein expressly set forth, and all representations, either oral or written, shall be deemed to be merged into this Lease. No course of prior or future dealings between the Parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the Parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. Except as herein otherwise provided, no subsequent alteration, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by the Parties. This Lease has been negotiated "at arm's length" by and between Lessor and Lessee, each having the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Lease, and therefore in construing the provisions of this Lease neither party will be deemed disproportionately responsible for draftsmanship.

Section 21.3  Independent Parties.

It is understood and agreed by the Parties hereto that this Lease does not create a fiduciary or other relationship between Lessor and Lessee, other than Lessor and Lessee or contracting parties, as applicable. Lessor and Lessee are and shall be independent contracting parties and nothing in this Lease are intended to make either Party a general or special agent, joint venturer, partner or employee of the other for any purpose.

Section 21.4  Notices.

Any notice by the Parties required to be given must be served by certified mail return receipt requested, or by hand delivery, addressed to Lessor or Lessee at:

If to Lessor at:
City Manager
City of Miami
444 SW 2nd Avenue, 10th Floor
Miami, Florida  33130

With a copy to:
City Attorney
Office of City Attorney
444 SW 2nd Avenue, 9th Floor
Miami, Florida  33130

City of Miami
Dept. of Public Facilities
Asset Management Division
444 SW 2nd Avenue, Suite 325
Miami, Florida  33130

If to Lessee at:

With a copy to:
City Attorney
Office of City Attorney
444 SW 2nd Avenue, 9th Floor
Miami, Florida  33130

City of Miami
Dept. of Public Facilities
Asset Management Division
444 SW 2nd Avenue, Suite 325
Miami, Florida  33130

All notices given hereunder shall be effective and deemed to have been given upon receipt by the party to which notice is being given, said receipt being deemed to have occurred upon hand delivery or posting, or upon such date as the postal authorities shall show the notice to have been delivered, refused, or undeliverable, is evidenced by the return receipt or proof of deliver. Notwithstanding any other provision hereof, Lessor shall also have the right to give notice to Lessee in any other manner provided by law. If there shall be more than one Lessee, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given to all thereof.
Section 21.5 Captions and Section Numbers.
The captions, section numbers, and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

Section 21.6 Partial Invalidity.
If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 21.7 Estoppel Certificate.
Lessee agrees that it will, at any time and from time to time, within ten (10) Business days following written notice by Lessor specifying that it is given pursuant to this Section, execute, acknowledge and deliver to Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect and stating the modifications), and the date to which the Minimum Base Rent, Percentage Rent and any other payments due hereunder from Lessee have been paid in advance, if any, and stating whether or not there are defenses or offsets claimed by Lessee and whether or not to the best knowledge of Lessee, Lessor is in default in performance of any, covenant, agreement or condition contained in this Lease, and if so, specifying each such default of which Lessee may have knowledge. The failure of Lessee to execute, acknowledge and deliver to Lessor a statement in accordance with the provisions of this Section within said ten (10) Business day period shall constitute an Event of Default hereunder and shall also constitute an acknowledgment by Lessee, which may be relied on by any person holding or proposing to acquire an interest in the Property or any party thereof or this Lease from or through the other party, that this Lease is unmodified and in full force and effect and that such rents have been duly and fully paid to and including the respective due dates immediately preceding the date of such notice and shall constitute, as to any person entitled as aforesaid to rely upon such statement, a waiver of any defaults which may exist prior to the date of such notice. It is agreed that nothing contained in the provisions of this Section shall constitute waiver by Lessor of any default in payment of Rent or other charges existing as of the date of such notice and, unless expressly consented to in writing by Lessor and, Lessee shall still remain liable for the same.

Section 21.9 Waiver.
Failure on the part of either part of complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act by such party.

Section 21.10 Time is of the Essence.
Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

Section 21.11 Governing Law.
It is the intent of the Parties hereto that all questions with respect to the construction of the Lease and the rights and the liabilities of the Parties hereto shall be determined in accordance with the laws of Florida and that all disputes arising hereunder shall be heard and decided in Miami-Dade County, Florida.

Section 21.12 Waiver of Counterclaims.
Lessee shall not impose any counterclaim or counterclaims for damages in a summary proceeding or other action based on termination or holdover, it being the intent of the Parties hereto that Lessee is strictly limited in such instances to bringing a separate action in the court of appropriate jurisdiction. The foregoing waiver is a material inducement to Lessor making, executing and delivering this Lease and Lessee’s waiver of its right to counterclaim in any summary proceeding or other action based on termination or holdover is done so knowingly, intelligently and voluntarily.

Section 21.13 Waiver of Jury Trial.
Lessor and Lessee hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on, or in respect of, any matter whatsoever arising out of or in
any way connected with this Lease, the relationship of Lessor and Lessee hereunder, Lessee’s use or
occupancy of the Lease Property and/or any claim of injury or damage.

Section 21.14 Quiet Enjoyment.
Subject to the terms of this Lease, upon the observance by the Lessee hereunder of all the terms,
provisions, covenants and conditions imposed upon the Lessee, the Lessor covenants to the Lessee that the
Lessee shall peaceably and quietly hold, occupy and enjoy the Property for the Lease Term without any
interruption, disturbance or hindrance by the Lessor, its successors and assigns, or by persons claiming by,
through or under the Lessor for the Property leased herein, or by persons with title superior to the Lessor,
its successors and assigns.

Section 21.15 Surrender of Possession.
Upon the expiration or earlier termination of the Lease pursuant to the provisions hereof, the
Lessee shall deliver to the Lessor possession of the Property in good repair and condition, reasonable wear
and tear excepted.

Section 21.16 Joint and Several Liability.
If two or more individuals, corporations, partnerships or other business associations (or any
combination of two or more thereof) shall sign this Lease as Lessee, or by virtue of a Transfer assume the
rights and obligations of the Lessee hereunder, the liability of each such individuals, corporations,
partnerships or other business associations (or any combination of two or more thereof) to pay Rent and
perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments
and agreements given or made by, with or to any one of such individuals, corporations, partnerships or
other business associations (or any combination of two or more thereof) shall be deemed to have been
given or made by, with or all of them.

Section 21.17 Third Party Beneficiary.
Nothing contained in this Lease shall be construed so as to confer upon any other party the rights
of third party beneficiary.

Section 21.18 Radon.
Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in
sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon
that exceed Federal and State guidelines have been found in buildings in Florida. Additional information
regarding Radon and Radon testing may be obtained from your county public health unit.

Section 21.19 No Liability for Act of other Party
Lessee shall not sign any contract, application for any license or permit or do anything that may
result in liability to the Lessor for any indebtedness or obligation of Lessee, unless expressly provided
herein or approved in writing by the Lessor. Except as expressly authorized in writing, neither Lessor nor
Lessee shall make any express or implied agreement, warranties, guarantees or representations or incur any
debt, or represent that their relationship is other than Lessor and Lessee, unless otherwise agreed to herein
for the management and operation of the Property and neither Lessor nor Lessee shall be obligated by or
have any liability under any agreements or representations made by the other that are not expressly
authorized as aforesaid. Lessor reserves the right, at its sole option, to refuse an agreement for any Federal,
State or local grants and loans when the acceptance of same by either Lessor or Lessee may impose a
hardship upon Lessor or include obligations which extend beyond the Lease Term.

Section 21.20 Rights, Privileges and Immunities; Covenants.
The Lessee shall have, and the Lessor shall fully cooperate in providing to the Lessee, for its use
and enjoyment, all rights, privileges and immunities as shall from time to time be granted or afforded by
Federal, State or local law to restaurant operators or proprietors.

The Parties agree that each of the terms, covenants and conditions hereof agreed to be observed or
performed by each party shall constitute concurrent conditions of exchange.

Section 21.21 City of Miami Hiring
Lessee agrees to hire at least forty percent (40%) of its operating staff from City residents once Lease
improvements have been completed. Lessee also agrees to make good faith efforts to work in coordination
with local employment services providers such as the South Florida Work Force and the City’s Economic
Initiatives and Access Miami programs to fill its entry level positions.

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IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease, or have caused the same to be executed, as of the date and year first above written.

**LESSOR:**
CITY OF MIAMI, a municipal corporation of the State of Florida

By: __________________________
Johnny Martinez
City Manager

**ATTEST:**
By: ______________________
Todd Hannon
City Clerk

**APPROVED AS TO INSURANCE REQUIREMENTS:**
By: __________________________
Calvin Ellis, Director
Risk Management Department

**APPROVED AS TO FORM AND CORRECTNESS:**
By: __________________________
Julie O. Bru
City Attorney

**LESSEE:**
By: __________________________

________________________
Print Name

________________________
Title

**ATTESTED BY:**
By: __________________________

________________________
Name

________________________
Title

________________________
Company Name

By: __________________________

________________________
Name

________________________
Title

________________________
Company Name
EXHIBIT “A”
SCHEDULE OF LEASEHOLD IMPROVEMENTS

Minimum Marina Renovations
- Complete interior/exterior restoration of the two (2) hangar buildings to afford best utilization of available space for dry rack storage and other uses.
- Construction/refurbishment of visually appealing concrete pavement design and construction of marina/boatyard to meet appropriate vehicles and loads to result from proposed marina use.
- Complete dock/bulkhead restoration or replacement alongside marina in a manner homogeneous in appearance with the restoration of the adjoining bulkhead for the casual and formal restaurant portions of the Property.

Minimum Casual Restaurant Renovations
- Installation of outdoor covering to facilitate patio use.
- Installation of air conditioning.
- Complete renovation of restaurant according to federal, state and local regulations and code requirements.
- Complete dock/bulkhead restoration or replacement alongside casual restaurant in a manner homogeneous in appearance with the restoration of the adjoining bulkhead for the marina and formal restaurant portions of the Property.
- All applicable ADA requirements and improvements.

Minimum Formal Restaurant Renovations
- Complete remodeling of the interior to reflect the appearance of modern restaurants.
- Complete renovation of restaurant in compliance with all applicable federal, state and local regulations.
- Structural modifications to windows so as to provide full height windows to improve waterfront visibility.
- Repair of entire dock/bulkhead alongside formal restaurant in a manner homogeneous in appearance with the restoration of the adjoining bulkhead for the marina/casual restaurant portions of the Property.
- All applicable ADA improvements.

Dock Renovations
- Construction of a fixed dock in front of formal restaurant portion of Property;
- Renovation of finger pier at casual restaurant.

Garage Retail
- Build-out of 40,000 square foot shell to be provided by City
LEGAL DESCRIPTION (PARCEL 1)
(MARINA/BOATYARD UPLANDS)

A portion of Tract A of Dinner Key, according to the plat thereof as recorded in plat book 34, at page 2, of the Public Records of Miami Dade County, Florida and a portion of Section 22, Township 54 South, Range 41 East, Miami-Dade County, Florida, more particularly described as follows:

Commence at the Southwest corner, of the Northwest ¼, of said Section 22; Thence South 02°24'44" East, along the Southerly extension of the West line of the NW 1/4 of said Section 22, for 436.51 feet; Thence North 86°27'43" East for 75.86 feet to a point labeled HL-78-C said point being a point of intersection with the U.S. Pier-Head Bulkhead line of 1939 as recorded in Plat Book 74, at Page 3, of the Public Records of Miami-Dade County, Florida; Thence along said U.S. Pier-Head Bulkhead line, for the following described four (4) courses; 1) Thence South 77°01'17" East, for 669.48 feet to a point labeled HL-78-B; 2) Thence North 74°08'10" East for 526.25 feet to a point labeled HL-78-A; 3) Thence North 43°08'20" East for 250.00 feet; 4) Thence North 12°08'10" East for 88.25 feet; Thence North 45°44'46" West, departing the previously described line, for 3.75 feet to a point on the outside face of an existing Seawall; Thence along the outside face of said seawall for the following described twelve (12) courses; 1) Thence continue North 45°44'46" West for 12.58 feet; 2) Thence North 46°50'16" West for 262.72 feet to the Point of Beginning of the hereinafter described parcel; 3) Thence North 47°06'49" West for 73.59 feet; 4) Thence North 02°02'56" East for 0.70 feet; 5) Thence North 47°07'52" West for 59.52 feet; 6) Thence North 43°12'49" East for 100.72 feet; 7) Thence South 46°47'08" East for 61.00 feet; 8) Thence North 88°45'00" East for 0.64 feet; 9) Thence South 47°14'37" East for 41.99 feet; 10) Thence North 61°42'01" East for 21.07 feet; 11) Thence South 30°14'35" East for 2.75 feet; 12) Thence North 62°06'03" East for 5.43 feet to a point of intersection with the Southerly extension of an existing chain link fence; Thence along said chain link fence and its southerly extension for the following described three (3) courses; 1) Thence North 49°34'23" West for 26.67 feet; 2) Thence South 49°46'11" West for 14.07 feet; 3) Thence North 46°34'27" East for 48.90 feet to a point of intersection with the Southeasterly extension of the edge of an existing concrete slab; Thence along the previously described edge of concrete and its Southwesterly and Northerly extensions for the following described five (5) courses; 1) Thence North 41°51'16" East for 19.89 feet; 2) Thence North 45°40'17" West for 20.02 feet; 3) Thence North 41°51'16" East for 10.30 feet; 4) Thence North 48°08'44" West for 26.07 feet; 5) Thence North 43°17'10" East for 63.60 feet to a point of intersection with the Boundary line of the tract of land described under Exhibit A in that certain Lease Agreement recorded in Official Records Book 9916, at Page 1110, of the Public Records of Miami Dade County, Florida; Thence along the previously described boundary line, and its Northerly extension, for the following described two (2) courses; 1) Thence North 76°17'34" West for 63.38 feet; 2) Thence North 12°55'28" East for 2.75 feet to a point on the outside face of an existing Seawall; Thence along the back of said concrete sidewalk, for the following described twenty one (21) courses; 1) Thence North 47°44'58" West for 12.22 feet to a point of curvature of a circular curve concave to the Northeast; 2) Thence Northwesterly, along the arc of said curve to the right, having a radius of 98.00 feet and a central angle of 16°31'40" for a distance of 28.27 feet to the point of tangency; 3) Thence North 31°13'18" West for 14.48 feet to a point of curvature of a circular curve concave to the Northwest; 4) Thence Northwesterly, along the arc of said curve to the left, having a radius of 100.00 feet and a central angle of 11°38'35" for a distance of 20.32 feet to a point of tangency; 5) Thence North 42°51'53" West for 5.10 feet to a point of curvature of a circular curve concave to the Southwest; 6) Thence Northwesterly, along the arc of said curve to the left, having a radius of 33.00 feet and a central angle of 33°27'08" for a distance of 19.27 feet to the point of tangency; 7) Thence North 76°19'01" West for 64.42 feet; 8) Thence South 13°57'56" West for 1.47 feet; 9) Thence North 75°50'29" West for 25.93 feet; 10) Thence North 45°02'51" West for 18.31 feet to a point of curvature of a circular curve concave to the Southwest; 11) Thence Northwesterly, along the arc of said curve to the left, having a radius of 64.79 feet and a central angle of 11°21'21" for a distance of 12.84 feet to the point of tangency; 12) Thence North 56°24'12" West for 5.41 feet to a point of curvature of a circular curve concave to the Northeast; 13) Thence Northwesterly, along the arc of said curve to the right, having a radius of 23.50 feet

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and a central angle of 30°58'59" for a distance of 12.71 feet to the point of tangency; 14) Thence North 25°25'13" West for 6.96 feet to a point of curvature of a circular curve concave to the South; 15) Thence Northwesterly, along the arc of said curve to the left, having a radius of 3.00 feet and a central angle of 51°39'10" for a distance of 2.70 feet to the point of tangency; 16) Thence North 77°04'23" West for 125.67 feet to a point of curvature of a circular curve concave to the South; 17) Thence Northwesterly, Westerly and Southwesterly along the arc of said curve to the left, having a radius of 10.15 feet and a central angle of 14°26'49" for a distance of 2.56 feet to the point of tangency; 18) Thence South 88°28'48" West for 17.55 feet; 19) Thence North 76°52'13" West for 28.42 feet; 20) Thence South 76°07'58" West for 40.18 feet to a point of curvature of a circular curve concave to the Northwest; 21) Thence Southwesterly, along the arc of said curve to the right, having a radius of 43.33 feet and a central angle of 09°48'56" for a distance of 7.42 feet to a point of intersection with a line parallel with and 95.00 feet Northwesterly of, as measured at right angles, the Northwesterly outside face of an existing building; Thence South 13° 01'32" West, along the previously described line, for 135.78 feet; Thence South 12 46'52" West, departing the previously described line, for 37.38 feet to a point of intersection with a line parallel with and 95.00 feet Northwesterly of, as measured at right angles, the Northwesterly outside face of an existing building; Thence South 13° 07'29" West, along the previously described line and its southerly extension, for 148.75 feet; Thence South 07°43'57" West for 9.81 feet; Thence South 49°47'35" West for 4.49 feet; Thence South 43°01'12" East for 77.73 feet; Thence South 43°33'00" East for 54.15 feet; Thence South 43°26'13" East for 4.55 feet; Thence South 48°06'57" East for 20.77 feet to a point of curvature of a circular curve concave to the northeast; Thence Southeasterly, along the arc of said curve to the left, having a radius of 374.00 feet and a central angle of 09°28'16" for a distance of 61.82 feet to the point of tangency; Thence South 57°35'13" East for 23.28 feet; Thence South 80°19'31" East for 172.00 feet; Thence South 79°19'15" East for 13.23 feet to a point of intersection with the back of an existing concrete sidewalk running along the north side of Pan American Drive; Thence along the back of said existing sidewalk and its northeasterly extension, for the following described five (5) courses; 1) Thence South 74°54'37" East for 28.80 feet; 2) Thence South 77°42'57" East for 5.71 feet to a point of curvature of a circular curve concave to the Southwest; 3) Thence Southeasterly, along the arc of said curve to the right, having a radius of 222.00 feet and a central angle of 21°55'13" for a distance of 84.93 feet to a point on said curve; 4) Thence North 87°54'54" East for 5.28 feet; 5) Thence North 42°23'11" East for 11.27 feet to the Point of Beginning.

Containing 195,848 sq. ft. or 4.50 acres more or less.
LEGAL DESCRIPTION (PARCEL 2)
(FORMAL RESTAURANT & RESTAURANT PARKING)

A portion of Tract A of Dinner Key, according to the plat thereof as recorded in plat book 34, at page 2, of the Public Records of Miami Dade County, Florida and a portion of Section 22, Township 54 South, Range 41 East, Miami-Dade County, Florida, more particularly described as follows:

Commence at the Southwest corner, of the Northwest ¼, of said Section 22; Thence South 02°24'44" East, along the Southerly extension of the West line of the NW ¼, of said Section 22, for 436.51 feet; Thence North 86°27'43" East for 75.86 feet to a point of intersection with the U.S. Pier-Head Bulkhead line of 1939 as recorded in Plat Book 74, at Page 3, of the Public Records of Miami-Dade County, Florida, said point labeled HL-78-C and said line also being the Northwesterly line of T.I.I.F. Deed No. 19448 to City of Miami, recorded in Deed Book 3130, at Page 260, of the Public Records of Miami-Dade County, Florida; Thence along said U.S. Pier-Head Bulkhead line, for the following described four (4) courses; 1) Thence South 77°01'17" East, for 669.48 feet to a point labeled HL-78-B on the previously named plat; 2) Thence North 74°08'10" East for 526.25 feet to a point labeled HL-78-A on the previously named plat; 3) Thence North 43°08'20" East for 250.00 feet to a point labeled HL-76 on the previously named plat; 4) Thence North 12°08'10" East for 88.25 feet; Thence North 45°44'46" West, departing the previously described line, for 3.75 feet to a point on the outside face of an existing Seawall: Thence along the outside face of said seawall for the following described fifteen (15 ) courses; 1) Thence continue North 45°44'46" West for 12.58 feet; 2) Thence North 46°50'16" West for 262.72 feet; 3) Thence North 47°06'49" West for 73.59 feet; 4) Thence North 02°02'56" East for 0.70 feet; 5) Thence North 47°07'52" West for 59.52 feet; 6) Thence North 43°12'49" East for 100.72 feet; 7) Thence South 46°47'08" East for 61.00 feet; 8) Thence North 88°45'00" East for 0.64 feet; 9) Thence South 47°14'37" East for 41.99 feet; 10) Thence North 61°42'01" East for 21.07 feet; 11) Thence South 30°14'35" East for 2.75 feet; 12) Thence North 62°06'03" East for 87.88 feet to the Point of Beginning of the hereinafter described parcel; 13) Thence continue North 62°06'03" East for 114.64 feet to a point of curvature of a circular curve concave to the West; 14) Thence Northwesterly, Northerly and Northwesterly, along the arc of said curve to the left, having a radius of 75.00 feet and a central angle of 80°48'49" for a distance of 105.78 feet to the point of tangency; 15) Thence Northerly, Northerly and Northwesterly, along the arc of said curve to the left, having a radius of 273.78 feet and a central angle of 33°37'09" for a distance of 18.48 feet to the point of tangency; 3) Thence South 40°50'09" East for 37.58 feet to a point on the northerly end of an existing C.B.S. wall; Thence South 49°09'51" West, along the northerly end of said existing C.B.S. wall for 0.43 feet to a point on the southerly face of said existing C.B.S. wall; Thence South 38°59'48" East, along the southerly face of said existing C.B.S. wall and its southerly extension, for 84.41 feet to the Point of Beginning. Containing 58,242 sq. ft. or 1.34 acres more or less.
LEGAL DESCRIPTION (PARCEL 3)  
(CASUAL RESTAURANT UPLANDS)

A portion of Section 22, Township 54 South, Range 41 East, Miami-Dade County, Florida, more particularly described as follows:

Commence at the Southwest corner, of the Northwest ¼, of said Section 22; Thence South 02°24'44" East, along the Southerly extension of the West line of the NW ¼ of said Section 22, for 436.51 feet; Thence North 86°27'43" East, departing the previously described line, for 75.86 feet to a point labeled HL-78-C said point being a point of intersection with the U.S. Pier-Head Bulkhead line of 1939 as recorded in Plat Book 74, at Page 3, of the Public Records of Miami-Dade County, Florida, said line also being the Northwesterly line of T.I.F. Deed No. 19448 to City of Miami, recorded in Deed Book 3130, at Page 260, of the Public Records of Miami-Dade County, Florida; Thence along said U.S. Pier-Head Bulkhead line, for the following described four (4) courses; 1) Thence South 77°01'17" East, for 669.48 feet to a point labeled HL-78-B; 2) Thence North 74°08'10" East for 526.25 feet to a point labeled HL-78-A; 3) Thence North 43°08'20" East for 250.00 feet to a point labeled HL-76; 4) Thence North 12°08'10" East for 88.25 feet to a point of intersection with the southerly extension of the outside face of an existing Seawall; Thence along the outside face of said seawall and its southerly extension for the following described twelve (12) courses; 1) Thence North 45°44'46" West for 16.33 feet; 2) Thence North 46°50'16" West for 262.72 feet; Thence North 47°06'49" West for 73.59 feet; 3) Thence North 02°02'56" East for 0.70 feet; 4) Thence North 47°07'52" West for 59.52 feet; 5) Thence North 43°12'49" East for 100.72 feet; 6) Thence South 46°47'08" East for 61.00 feet; 7) Thence North 88°45'00" East for 0.64 feet; 8) Thence South 47°14'37" East for 41.99 feet; 9) Thence North 61°42'01" East for 21.07 feet; 10) Thence South 30°14'35" East for 2.75 feet; 11) Thence North 62°06'03" East for 5.43 feet to the Point of Beginning of the hereinafter described parcel; 12) Thence continue North 62°06'03" East for 82.45 feet; Thence North 38°59'48" West, departing the previously described face of the seawall and running along the southerly face of an existing C.B.S. wall and its southerly extension, for 84.41 feet; Thence North 49°09'51" East along the northerly end of said C.B.S. wall for 0.43 feet to a point on the Edge of an existing Asphalt Pavement; Thence along the Edge of said Asphalt Pavement and its Northwesterly extension, for the following described three (3) courses; 1) Thence North 40°50'09" West for 37.58 feet to a point of curvature of a circular curve concave to the Southwest; 2) Thence Northwesterly, along the arc of said curve to the left, having a radius of 31.50 feet and a central angle of 33°37'09" for a distance of 18.48 feet to the point of tangency; 3) Thence North 74°27'18" West for 13.19 feet to a point on the Northwesterly extension of the edge of an existing concrete; Thence along the previously described edge of said concrete and its Northwesterly and Southwesterly extensions for the following described five (5) courses; 1) Thence South 43°17'10" West for 69.37 feet; 2) Thence South 48°08'44" East for 26.07 feet; 3) Thence South 41°51'16" West for 10.30 feet; 4) Thence South 45°40'17" East for 20.02 feet; 5) Thence South 41°51'16" West for 19.89 feet to a point of intersection with an existing chain link fence; Thence along said chain link fence and its southerly extension for the following described three (3) courses; 1) Thence South 46°34'27" East for 48.90 feet; 2) Thence North 49°46'11" East for 14.07 feet; 3) Thence South 49°34'23" East for 26.67 feet to the Point of Beginning.

Containing 12,356 sq. ft. or 0.284 acres more or less.
LEGAL DESCRIPTION
PARKING GARAGE PARCEL
[TO BE INSERTED PRIOR TO LEASE EXECUTION]
EXHIBIT B2

LEGAL DESCRIPTION (PARCEL 6A)
(MARINA SUBMERGED LANDS)

A portion of Tract A of Dinner Key, according to the plat thereof as recorded in plat book 34, at page 2, of the Public Records of Miami Dade County, Florida and a portion of Section 22, Township 54 South, Range 41 East, Miami-Dade County, Florida, more particularly described as follows:

Commence at the Southwest corner, of the Northwest ¼, of said Section 22; Thence South 02°24'44" East, along the Southerly extension of the West line of the NW ¼ of said Section 22, for 436.51 feet; Thence North 86°27'43" East for 75.86 feet to a point of intersection with the U.S. Pier-Head Bulkhead line of 1939 as recorded in Plat Book 74, at Page 3, of the Public Records of Miami-Dade County, Florida, said point labeled HL-78-C and said line also being the Northwesterly line of T.I.I.F. Deed No. 19448 to City of Miami, recorded in Deed Book 3130, at Page 260, of the Public Records of Miami-Dade County, Florida; Thence along said U.S. Pier-Head Bulkhead line, for the following described six (6) courses; 1) Thence South 77°01'17" East, for 669.48 feet to a point labeled HL-78 on the previously named plat; 2) Thence North 74°08'10" East for 526.25 feet to a point labeled HL-78-A on the previously named plat; 3) Thence North 43°08'20" East for 250.00 feet to a point labeled HL-76 on the previously named plat; 4) Thence North 12°08'10" East for 88.25 feet; Thence along the outside face of an existing seawall and its Southerly extension for the following described twelve (12) courses; 1) Thence North 45°44'46" West for 16.33 feet; 2) Thence North 46°50'16" West for 262.72 feet to the Point of Beginning of the hereinafter described parcel; 3) Thence North 47°06'49" West for 73.59 feet; 4) Thence North 02°02'56" East for 0.70 feet; 5) Thence North 47°07'52" West for 59.52 feet; 6) Thence North 43°12'49" East for 100.72 feet; 7) Thence South 46°47'08" East for 61.00 feet; 8) Thence North 47°14'37" East for 41.99 feet; 10) Thence North 61°42'01" East for 21.07 feet; 11) Thence South 30°14'35" East for 2.75 feet; 12) Thence North 62°06'03" East for 87.88 feet; Thence South 27°53'57" East, departing the previously described existing seawall, for 60.00 feet; Thence South 62°06'03" West for 118.88 feet; Thence North 47°14'37" West for 26.50 feet; Thence South 42°45'23" West for 71.49 feet to the Point of Beginning.

Containing 20,317 sq. ft. or 0.47 acres more or less.
LEGAL DESCRIPTION (PARCEL 6B)
(SUBMERGED LANDS ABUTTING FORMAL RESTAURANT)

A portion of Tract A of Dinner Key, according to the plat thereof as recorded in plat book 34, at page 2, of the Public Records of Miami Dade County, Florida and a portion of Section 22, Township 54 South, Range 41 East, Miami-Dade County, Florida, more particularly described as follows:

Commence at the Southwest corner, of the Northwest ¼, of said Section 22; Thence South 02°24'44" East, along the Southerly extension of the West line of the NW ¼ of said Section 22, for 436.51 feet; Thence North 86°27'43" East for 75.86 feet to a point of intersection with the U.S. Pier-Head Bulkhead line of 1939 as recorded in Plat Book 74, at Page 3, of the Public Records of Miami-Dade County, Florida, said point labeled HL-78-C and said line also being the Northwesterly line of T.I.I.F. Deed No. 19448 to City of Miami, recorded in Deed Book 3130, at Page 260, of the Public Records of Miami-Dade County, Florida; Thence along said U.S. Pier-Head Bulkhead line, for the following described four (4) courses; 1) Thence South 77°01'17" East, for 669.48 feet to a point labeled HL-78-B on the previously named plat; 2) Thence North 74°08'10" East for 526.25 feet to a point labeled HL-78-A on the previously named plat; 3) Thence North 43°08'20" East for 250.00 feet to a point labeled HL-76 on the previously named plat; 4) Thence North 12°08'10" East for 88.25 feet; Thence along the outside face of an existing seawall and its Southerly extension for the following described two (2) courses; 1) Thence North 45°44'46" West for 16.33 feet; 2) Thence North 46°50'16" West for 262.72 feet; Thence North 42°45'23" East, departing the previously described existing seawall for 71.49 feet; Thence South 47°14'37" East for 26.50 feet; Thence North 62°06'03" East for 118.88 feet to the Point of Beginning of the hereinafter described parcel; Thence continue North 62°06'03" East for 175.75 feet to the point of intersection with the previously described U.S. Pier-Head Bulkhead line of 1939; Thence North 21°08'57" East, along the previously described line, for 146.73 feet; Thence North 76°03'06" West for 119.88 feet to a point of intersection with the outside face of an existing seawall; Thence along the outside face of said existing seawall for the following described three (3) courses; 1) Thence South 18°42'46" East for 53.81 feet to the point of curvature of a circular curve concave to the Northwest; 2) Thence southeasterly, southerly and southwesterly, along the arc of said curve to the right, having a radius of 75.00 feet and a central angle of 80°48'49" for a distance of 105.78 feet to the point of tangency; 3) Thence South 62°06'03" West for 114.64 feet to the Point of Beginning.

Containing 20,579 sq. ft. or 0.47 acres more or less.
EXHIBIT “C”
STATE DEP AGREEMENTS
[TO BE INSERTED UPON THEIR EXECUTION]
EXHIBIT “D”
EXISTING IMPROVEMENTS
EXHIBIT “E”
GROSS REVENUE REPORT

[TO BE INSERTED PRIOR TO EXECUTION]
EXHIBIT “F”
PAYMENT AND PERFORMANCE BOND

[TO BE APPROVED BY THE RISK MANAGEMENT AND OFFICE OF THE CITY ATTORNEY AND INSERTED PRIOR TO EXECUTION]
PERFORMANCE AND PAYMENT BOND

BY THIS BOND, We ____________________________, as Principal, hereinafter called CONTRACTOR, and ________________, as Surety, are bound to the City of Miami, Florida, hereinafter called CITY, hereinafter referred to as OBLIGEE, in the amount of ____________________________ Dollars ($_____) for the payment whereof, CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement entered into a Contract, Bid/Contract No.: ____________________________, awarded this ________________ day of ________________, 20___ with __________ which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified and for the purposes of this Bond are hereafter referred to as the “Contract.”

THE CONDITION OF THIS BOND is that if CONTRACTOR:

1. Performs the Contract between CONTRACTOR and ____________ for construction of ________________, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and

2. Pays CITY all losses, liquidated damages, expenses, costs and attorney’s fees, including appellate proceedings, that CITY sustains as a result of default by CONTRACTOR under the Contract; and

3. Promptly makes payments to all claimants, as defined by Florida Statutes 255.05(1) for all labor, materials and supplies used directly or indirectly by CONTRACTOR in the performance of the Contract;

THEN CONTRACTOR’S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

3.1 A claimant except a laborer, who is not in privity with CONTRACTOR, and who has not received payment for its labor, materials or supplies, shall, within forty-five (45) days after beginning to furnish labor, materials or supplies for the prosecution of the work, furnish to CONTRACTOR, a notice that he intends to look to the bond for protection.

3.2 A claimant who is not in privity with CONTRACTOR and who has not received payment for its labor, materials or supplies, shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to CONTRACTOR and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.

3.3 No action for the labor, materials or supplies may be instituted against CONTRACTOR or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.

3.4 Any action under this Bond must be instituted in accordance with the longer of the applicable Notice and Time Limitations provisions prescribed in Section 255.05(2) or Section 95.11, Florida Statutes.
4 Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID. OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever, CONTRACTOR shall be, and is declared by CITY to be, in default under the Contract, _______________ having performed CITY obligations there under, the Surety may promptly remedy the default or shall promptly:

4.1 Complete the Project in accordance with the terms and conditions of the Contract Documents; or

4.2 Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or if __________elects, upon determination by __________ and Surety, jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and __________ and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “balance of the Contract Price” as used in this paragraph, shall mean the total amount payable by CITY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by _______ to CONTRACTOR.

No right of action shall accrue on this bond to or for the use of any person or corporation other than CITY named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety’s obligation under this Bond.

Signed and sealed this __________ day of __________, 20___.

WITNESSES/ATTEST: CONTRACTOR:

_________________________________________ (Name of Contractor)

_________________________________________ By: ___________________________

Secretary (Signature)

_________________________________________ (Print Name and Title)
(CORPORATE SEAL)

IN THE PRESENCE OF: INSURANCE COMPANY

By: _________________________
(Agent and Attorney-in-Fact)

Address: _____________________

____________________________

(Street)

____________________________

(City/State/Zip Code)

Telephone No.: _______________
EXHIBIT “G”
INSURANCE REQUIREMENTS

Lessee, at its sole cost, shall obtain and maintain in full force and effect at all times throughout the period of this Agreement, the following insurance coverage:

I. Commercial General Liability
   Limits of Liability
   Bodily Injury and Property Damage Liability
   Each Occurrence $1,000,000
   General Aggregate Limit $2,000,000
   Products and Completed Operations $1,000,000
   Personal and Advertising Injury $1,000,000
   Damage to rented premises $100,000

   Endorsements Required
   City of Miami listed as an Additional Insured
   Additional insured endorsement required
   Contingent Liability & Contractual Liability
   Premises/Operations Liability

II. Business Automobile Liability
    Limits of Liability
    Bodily Injury and Property Damage Liability
    Combined Single Limit
    Any Auto/Owned/Scheduled
    Including Hired, Borrowed or Non-Owned Autos
    Any One Accident $500,000

    Endorsements Required
    City of Miami listed as an Additional Insured

III. Worker’s Compensation
    Limits of Liability
    Statutory-State of Florida
    Waiver of subrogation

IV. Employer’s Liability
    Limits of Liability
    Bodily injury caused by an accident, each accident $500,000
    Bodily injury caused by disease, each employee $500,000
    Bodily injury caused by disease, policy limit $500,000

V. Liquor Liability
   A. Limits of Liability
      Each Occurrence $1,000,000

VI. Excess Liability/Umbrella Policy
   A. Limits of Liability
      Bodily Injury and Property Damage Liability
      Each Occurrence $3,000,000
      Aggregate $3,000,000
City of Miami listed as an additional insured. Umbrella should include liquor liability

VII. Marine Operators Legal Liability
    A. Limits of Liability
       Each Occurrence $1,000,000

VIII. "All Risk"
    Causes of Loss: special form coverage, including theft, windstorm and flood coverage, and equipment breakdown coverage.

    Valuation: 100% replacement cost on building and Lessee’s business personal property, including improvements, all its equipment, fixtures and furniture. The Lessee must furnish a Certificate of Insurance for affording coverage for the building or premises Business Income and Extra Expense should be included preferably issued on an Actual Loss Sustained Basis.

The City’s Department of Risk Management, reserves the right to reasonably amend the insurance requirements by the issuance of a notice in writing to Lessee. The Lessee shall provide any other insurance or security reasonably required by the City.

The policy or policies of insurance required shall provide for notice of cancellation or material changes in accordance to policy provisions. Said notice should be delivered to the City of Miami, Department of Risk Management, 444 SW 2 Avenue, 9th Floor, Miami, Florida 33130, with copy to City of Miami, Department of Public Facilities, 444 SW 2 Avenue, 3rd Floor, Miami, Florida 33130, or such other address that may be designated from time to time.

A current evidence and policy of insurance evidencing the aforesaid required insurance coverage shall be supplied to Department of Public Facilities of the City at the commencement of this Agreement and a new evidence and policy shall be supplied at least twenty (20) days prior to the expiration of each such policy. Insurance policies required above shall be issued by companies authorized to do business under the laws of the State, with the following qualifications as to management and financial strength: the company or companies should be rated "A-" as to management, and no less than class "V" as to financial strength, in accordance with the latest edition of Best’s Key Rating Guide, or the company or companies holds a valid Florida Certificate of Authority issued by the State of Florida, Department of Insurance, and is a member of the Florida Guarantee Fund. Receipt of any documentation of insurance by the City or by any of its representatives, which indicates less coverage than required, does not constitute a waiver of Lessee's obligation to fulfill the insurance requirements herein.

In the event Lessee shall fail to procure and place such insurance, the City may, but shall not be obligated to, procure and place same, in which event the amount of the premium paid shall be paid by Lessee to the City as an additional fee upon demand and shall in each instance be collectible on the first day of the month or any subsequent month following the date of payment by the City. Lessee's failure to procure insurance shall in no way release Lessee from its obligations and responsibilities as provided herein.
INSURANCE REQUIREMENTS CONSTRUCTION PORTION
MARINA/RESTAURANTS

I. Commercial General Liability
   Limits of Liability
   Bodily Injury and Property Damage Liability
   Each Occurrence $1,000,000
   General Aggregate Limit $2,000,000
   Products/Completed Operations $1,000,000
   Personal and Advertising Injury $1,000,000

   Endorsements Required
   City of Miami listed as an Additional Insured
   Employees included as insured
   Independent Contractors Coverage
   Contractual Liability
   Premises/Operations
   Explosion, Collapse and Underground Hazard
   Loading and Unloading

II. Business Automobile Liability
    Limits of Liability
    Bodily Injury and Property Damage Liability
    Combined Single Limit $1,000,000
    Any Auto/Owned/Scheduled Including Hired, Borrowed or Non-Owned Autos
    Any One Accident $1,000,000

    Endorsements Required
    City of Miami listed as an Additional Insured

III. Worker’s Compensation
    Limits of Liability
    Statutory-State of Florida
    Waiver of subrogation
    USL&H if Applicable

IV. Employer’s Liability
    A. Limits of Liability
       $1,000,000 for bodily injury caused by an accident, each accident.
       $1,000,000 for bodily injury caused by disease, each employee
       $1,000,000 for bodily injury caused by disease, policy limit

V. Owner’s & Contractor’s Protective
    A. Limits of Liability
       Each Occurrence $1,000,000
       Policy Aggregate $1,000,000
       City of Miami listed as named insured

VI. Excess Liability/Umbrella Policy
    A. Limits of Liability
       Bodily Injury and Property Damage Liability
       Each Occurrence $5,000,000
       Aggregate $5,000,000
City of Miami listed as an additional insured

VII. Payment and Performance Bond
City of Miami Listed as Obligee

$ TBD

VIII. Builder’s Risk
Causes of Loss: Special /All Risk
Valuation: Replacement Cost
Deductible: 5% wind and hail
City listed as loss payee

IX. Protection and Indemnity (If applicable)
Jones Act included.

$1,000,000