



LEASE AGREEMENT

BETWEEN

THE CITY OF MIAMI

AND

VIRGINIA KEY, LLC

FOR THE LEASE OF CITY-OWNED PROPERTY

LOCATED AT

VIRGINIA KEY

3301, 3605, 3501, 3311, & 3511

RICKENBACKER CAUSEWAY

MIAMI, FL 33149

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LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”), made this ____ day of ____, 20__, by and between the **CITY OF MIAMI**, a municipal corporation of the State of Florida having its offices at 3500 Pan American Drive, Miami, Florida 33133 (“Lessor” or “City”) and **VIRGINIA KEY, LLC**, a Florida limited liability company having its principal offices at c/o RCI Marine, 300 Alton Road, Suite 303, Miami Beach, Florida 33139 (“Lessee”). The Lessor and Lessee (together the “Parties”), hereby recite:

RECITALS

Whereas, the City is the owner in fee simple of certain upland and submerged lands located in the City of Miami, Miami-Dade County, Florida referred to herein as the “Premises,” as specifically set forth in **Exhibit A**.

Whereas, in response to the Virginia Key Marina Request for Proposals #16-17-011 (“RFP”), Lessee submitted to Lessor a proposal, which was approved by the City Commission on _____ by Resolution No. ____.

Whereas, this Lease was negotiated pursuant to the authority expressly conferred by the City of Miami Charter and Code, general laws of the State of Florida, and the City Commission Resolution No. _____, which authorized the execution of this Lease.

Whereas, this Lease was approved by referendum on _____, by a majority of City of Miami voters as required by City of Miami Charter.

Whereas, it is the mutual desire of the Parties that the Premises be leased and demised by Lessor to Lessee for the purposes set forth in this Lease, subject to and upon the express terms and conditions contained herein. The Parties believe, intend, and affirm that this Lease is consistent in all material respects with the RFP.

Now therefore, in consideration of the foregoing and of the rent, covenants, and agreements hereinafter set forth, the Parties do hereby covenant and agree as follows:

ARTICLE I

INCORPORATION, EXHIBITS, & 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 herein in subsection 1.3.

1.1 Incorporation by Reference

The foregoing Recitals are hereby incorporated into this Lease by this reference as if set out in full in the body of this Lease.

1.2 Exhibits

Attached hereto and forming a part of this Lease are the following Exhibits:

Exhibit A -- Survey/Legal Description of Premises

Exhibit B -- Monthly Gross Revenue Report

Exhibit C -- Contractor Insurance Requirements

Exhibit D -- Leasehold Insurance Requirements

Exhibit E -- Phasing Plan

Exhibit F -- Memorandum of Lease

Exhibit G -- Permanent Improvements

Exhibit H -- Anti-Human Trafficking Affidavit

1.3 Definitions

1.3.1 “Acceptable Operator” means an entity or entities possessing: (A) a minimum of five (5) years of experience (i) directly managing and operating a similar establishment or the applicable key component(s) thereof (e.g., marina component, restaurant component) during the fifteen (15) year period immediately prior to the date hereof; or (ii) directly involved in the ownership and day to day operation of a similar establishment or the applicable key component(s) thereof (e.g., marina component, restaurant component) during the ten (10) year period immediately prior to the date hereof; and (iii) in the management and operation for each use proposed; and (B) the threshold criteria outlined in the RFP; and C) a good reputation in the business community; and (D) adequate financial resources and personnel necessary for the performance of all of Lessee’s applicable obligations under this Lease in a manner consistent with the quality, reputation and economic viability of the Lessee’s business at the Premises.

1.3.2 “Additional Rent” means any and all additional sums, charges, or amounts of whatever nature to be paid by Lessee to Lessor in accordance with the terms of this Lease, whether or not such sums, charges or amounts are referred to as Additional Rent.

1.3.3 “Anticipated Repair Cost” shall have the meaning set forth in Section 7.4.

1.3.4 “Applicable Law(s)” means all laws, Federal, Florida Statutes, Codes, City of Miami and Miami-Dade County ordinances, regulations, orders, judgments, decrees and injunctions from courts having jurisdiction over the Premises and Parties, rules, and requirements of Federal, State and local boards and agencies with jurisdiction over the Premises and Parties, now existing or hereafter enacted, amended, adopted, foreseen and unforeseen, ordinary and extraordinary, which may be applicable to the Premises or any part of it.

1.3.5 “Approved Permit Adjustment” shall have the meaning set forth in Section 5.5.

1.3.6 “Assignment” refers to the complete transfer of the rights and obligations of the Lessee under the Lease to an unrelated third party, whereupon the third-party assignee becomes the Lessee under the Lease and takes over all of the Premises and the rent and other obligations associated with the Lease, thereby assuming all of the prior tenant’s rights and obligations. Subleases of a portion of the Premises shall not be deemed an Assignment.

1.3.7 “Assignee” refers to the unrelated third-party entity assuming all the rights and obligations of the Lessee or assignor or owner of the Leasehold Estate. An unrelated third-party is any business entity who is neither a subsidiary nor affiliate of the Lessee or its principals, Guarantor(s), or Manager(s); does not then retain an ownership interest in Lessee; and is not operated or managed by Christoph or Suntex.

1.3.8 “Assignor” refers to the Lessee that is assigning all its rights and obligations under this Lease to a third-party entity. Unless released from liability from the City pursuant to Section 10.9 of this Lease, which decision shall be conditioned on the payment of the Transfer Fee (except for an Accepted Transfer), the Assignor shall remain jointly and severally liable as a guarantor for Lessee’s obligations under this Lease, if the successor Lessee (Assignee) defaults under the Lease.

1.3.9 “Award Date” means _____, 20____, the date the Lessee’s proposal in response to the RFP was approved by the City Commission by Resolution No. _____.

1.3.10 “Base Rent” shall mean the annual Base Rent due and payable by Lessee on a monthly basis for the use of each Phase of the Premises and shall have the sum ascribed to it in Section 4.1.1.

1.3.11 “Business Days” means Monday through Friday, excluding legal holidays in the City of Miami, Florida. Unless otherwise identified as Business Days, any reference to days shall refer to calendar days.

1.3.12 “CapEx Fund” shall have the meaning set forth in Section 7.4.

1.3.13 “Capital Improvements” has the meaning set forth in Section 7.4.

1.3.14 “Christoph” means any immediate family member of Robert W. Christoph, Robert W. Christoph, Jr., and/ or Hunter Christoph or any trust for such family members’ benefit or any entity controlled by (directly or indirectly), or under common control with, Robert W. Christoph, Robert W. Christoph, Jr., and/or or Hunter Christoph.

1.3.15 “City Manager” shall mean the Chief Administrative Officer of the City. In day to day matters all decisions attributed to the City in this Lease may be made by the City Manager, or his or her authorized designee as set forth in writing to Lessee, unless otherwise specified in writing to Lessee or in this Lease.

1.3.16 “City Commission” shall mean the local legislative body of the Executive Mayor and City Commission. Notwithstanding anything to the contrary, the City Commission has

approved the Lease and will be required to approve any material amendments to the Lease, unless otherwise delegated to the City Manager within this Lease.

1.3.17 “Construction Plans” shall have the meaning set forth in Section 5.3.1 of this Lease.

1.3.18 “Construction Work” shall mean any and all construction work performed by the Lessee, its contractors, subcontractors, agents or employees relating to or in connection with this Lease, including but not limited to any work performed subsequent to the completion of the Leasehold Improvements initially contemplated as part of the Phasing Plan.

1.3.19 “Consumer Price Index” shall mean the Consumer Price Index reported by the U.S. Bureau of Labor Statistics for All Urban Consumers, with a U.S. City Average area coverage.

1.3.20 “Delivery Date” shall mean the date the Lessor delivers to Lessee legal and physical possession of the Premises. The Delivery Date shall be as promptly as possible after the Objection Expiration Date, but no later than thirty (30) days thereafter. Notwithstanding the foregoing, Lessee may, by written notice to Lessor, take possession of the Premises at any time after the Lease Date and prior to the Objection Expiration Date; and the date of Lessee’s written notice shall be the Delivery Date, subject to then-existing litigation or other objections.

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

1.3.22 “Encumbrance” means any imposition upon the Premises or other lien, charge or similar matters affecting title which could affect clear and marketable title of the Lessor.

1.3.23 “Fair Market Value” has the meaning set forth in Section 4.1.6 of this Lease and secondarily as supplemented by the applicable terms of the RFP.

1.3.24 “Force Majeure” means an event beyond human control, including but not limited to acts of national security, national emergency, acts of God, natural disasters, preemption in a local, state or national emergency, unavailability of labor or materials beyond the control of the Parties, war, act or threats of terrorism, government regulation, strikes (other than strikes of Lessee’s employees or sublessees’ employees), fire or other natural calamity, disorder, civil disobedience; curtailment of public transportation facilities or service; lawsuits or other legal actions that would stop, hinder or delay the legal or physical possession of the Premises by Lessee, Construction Work, and/or intended development of all or any part of the Project; the inability to obtain or delays in obtaining governmental approvals or permits beyond the control of Lessee; or any occurrence which makes it illegal or impossible for Lessee to perform its applicable obligations under this Lease. Neither party shall be entitled to claim Force Majeure for events caused, directly or indirectly, by the claiming party or individuals or entities under its control and Force Majeure is not intended to include any contract dispute between Lessee and its contractors.

1.3.25 “Gross 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 Premises.

1.3.26 “Gross Insurance Proceeds” means the actual amount of insurance proceeds paid following an insured casualty to the Leasehold Improvements to demolish, remove debris, repair, restore, or otherwise replace or repair the Leasehold Improvements.

1.3.27 “Gross Revenues” shall mean the entire amount of all revenues and percentages of revenues actually collected and received by the Lessee (and its assignees or transferees) from Lessee’s operation of any business at the Premises or by and through its Leasehold Estate, including without limitation, those Gross Revenues derived from the following sales sources:

(a) all revenue received by Lessee from Lessee or its affiliates operating any commercial or retail business and/or services on or from the Premises other than for a restaurant operation, the Gross Revenues from which are specifically set forth in (b), (d), (g) and (h) below);

(b) all revenues received by Lessee from Lessee’s or its affiliates’ sales of food, beverage, wine and/or beer from the Premises;

(c) all revenue received by Lessee derived from its advertising and sponsorships conducted on the Premises by or at the direction of Lessee, including, but not limited to, movies, television commercials. To the extent Lessee enters into any barter arrangements in lieu of receipt of monetary payments, revenue shall not be limited to monetary payments received by Lessee, but shall also include the fair market value attributed to the benefit of any barter arrangement, including without limitation, the fair market value of all promotional goods, services, programs and other benefits provided to Lessee in connection with the use of the Premises;

(d) all amounts received by Lessee from Lessee’s and/or its affiliates’ catering and/or direct food operations based at the Premises;

(e) all amounts received by Lessee from valet concession sales, parking valet services or similarly authorized and permitted concessions on the Premises where the Lessee receives and retains any portion, percentage or fraction of the cost of such sales or services, or obtains any fee in any manner from the concessionaire, these sales are subject to verification by a written concession agreement, and any audit or inspection requested by the Lessor in accordance with the requirements of Section 18-99 through 18-102 of the City Code, which is deemed incorporated by reference as if fully set forth herein;

(f) all amounts received by Lessee from sales made or performed by means of mechanical or other vending devices or machines on the Premises, including without limitation, payphones, computers, peripherals, gaming, broadcasting, recording, telecommunications, and other digital devices, vending machines, kiosks and entertainment devices both for cash and on credit, rendered in or upon the Premises;

(g) all revenue received by Lessee for Lessee's or its affiliates' operation of special events at the Premises, any facility thereon, or any portion thereof for any period, including banquets, parties, and receptions, and other events held on or initiated from the Premises;

(h) amounts received by Lessee from Lessee's or its affiliates' sales from internet or telephone food/beverage orders received or filled at the Premises, or procured from the Premises by house-to-house or other canvassing, including discount, merchant and online savings incentives including, without limitation, sources and programs such as Groupon, all deposits not refunded to purchasers, and orders taken, although said orders may be filled elsewhere, including proceeds of all video games;

(i) all grants, subsidies, rebates, credits or similar benefits received by Lessee 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, however grants received by Lessee from any governmental body or agency or any non-profit entity or agency for the construction of any Leasehold Improvements or infra-structure, improvements, including the remediation of any site conditions or improvements thereto or similar grants benefitting the Premises, are specifically excluded;

(j) all donations and contributions received by Lessee, the revenues of which are unrestricted or are to be used for general operating expenses;

(k) all Rent for any Sublease received by Lessee from a Sublessee (whether or not such Sublessee is an affiliate of Lessee) but specifically excluding late fees, default interest, termination fees, or any pass through charges or expenses reimbursed by a Sublessee, such as reimbursements for utilities, impositions, insurance, common area maintenance costs, provided that the Gross Revenue received by any affiliate Sublessee of Lessee is included, and further providing that Lessee derives absolutely no profit from any of the above-mentioned exclusions;

(l) and all other receipts whatsoever derived from commercial operations conducted in or from the Premises by the Lessee.

Gross Revenues, whether for cash, credit, credit cards or otherwise, shall be recognized in the period the service was provided or sale took place unless it is for a gift and or other credit which shall be recognized upon redemption. 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. In no event shall any received payment of funds which would be deemed part of Gross Revenues be included more than once in calculating Lessee's aggregate Gross Revenues even if such funds may fall under multiple categories listed above.

Items which shall be expressly excluded from the definition of Gross Revenues:

(i) Any sales, use or other taxes imposed by law which are separately stated to and paid by the purchaser or user, and are directly payable to a taxing authority by the Lessee, shall be excluded from gross receipts;

(ii) Bad debts owed by an outside third party and written off by the Lessee, in accordance with sound accounting practices consistently applied, but such bad debts shall be included when, and if, actually received in whole or in part by Lessee in the future;

(iii) Reimbursement from the Lessee's provision, without profit, of utilities or other services, including telephone, cable television, internet, water, electricity, landscaping and maintenance to tenants, subtenants, licensees or concessionaires utilizing the Premises, so long as this exclusion is susceptible to audit, and is not a profit-generating service for Lessee;

(iv) Income from any late fees, default interest, termination fees, or from pass-through expenses, without profit paid by any tenants, subtenants or concessionaires utilizing the Premises, which are expenses actually incurred by Lessee such as real estate taxes or Impositions, so long as this exclusion is susceptible to audit, and is a true dollar for dollar set-off/loss. Any fees collected that are not a verifiable set-off/loss shall be considered as part of Gross Revenue;

(v) Service, finance, late and/or interest charges imposed by Lessee and paid by customers for the extension of credit on sales by Lessee where such charges are not included in the sales prices of the items or services sold;

(vi) Gross Revenues of any Sublessee, licensee or concessionaire not affiliated with Lessee who is renting or using space and operating a business at the Premises, provided, however, that the rent paid by such third party shall be included as provided in (k) above;

(vii) That portion of the Gross Revenues of any fuel sales equivalent to the actual cost of the fuel paid by Lessee as documented by invoices from the fuel provider; and

(viii) Any sums actually paid to MPA (as defined in Section 4.2 below) or such other governmental authority or unaffiliated operator who collects parking income in connection with the use or operation of the Parking Facilities shall be excluded from the Gross Revenues associated with any parking or any portion thereof.

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, shall be included in Gross Revenues, at such time that (i) the transaction is initially reflected in the books or records of Lessee (which books and records shall be maintained on a cash basis and not an accrual basis); or (ii) Lessee receives all or any portion of the sales price; or (iii) the applicable goods and/or services are delivered to the customer and payment is made to Lessee, 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.

1.3.28 “Impositions” means all assessments, impositions, levies, fees, and governmental charges, including, without limitation, assessments imposed by the City and/or County, franchise fees, fire fees, excises, parking surcharges, license, regulatory, use and permit fees, levies, charges and taxes, including ad valorem real estate taxes on the Premises and the Leasehold Improvements, sales or use taxes levied for sales on the Premises, general and special, ordinary and extraordinary assessments properly levied against the Premises and the Leasehold Improvements, any personal property, and/or the Lessee’s Leasehold Estate which constitute a lien on the Premises or the Leasehold Improvements.

1.3.29 “Lease” means this Lease as supplemented by the RFP, and any addendums thereto, all of which are hereby incorporated by reference into this Lease as additional documents providing supplemental terms and conditions; provided, however, that in the event of any express conflicts between this Lease and the other documents referenced in this subsection this Lease shall govern.

1.3.30 “Lease Date” means the date that the Lease is fully executed and legally binding upon the Parties as of the date first written above, and after approval by the City of Miami Commission and approval by referendum.

1.3.31 “Leasehold Estate” means all of Lessee’s right and interest as Lessee in, to and under this Lease, the Premises and the Leasehold Improvements, as applicable.

1.3.32 “Leasehold Improvements” means any initial permanent structures, furnishings, or equipment constituting fixtures to be installed on the Premises, and all other items and improvements constituting fixtures to be installed or constructed thereafter, from time to time during the Lease Term that are hereafter located upon the Premises. If the Leasehold Improvements are constructed in Phases as permitted in this Lease the reference to the term Leasehold Improvements shall mean and refer to the Leasehold Improvements in a particular Phase as the context may so indicate.

1.3.33 “Leasehold Mortgage” means a mortgage, deed of trust, collateral accounts, or any security interest given in connection therewith, which together constitute an encumbrance or lien upon the Lessee’s Leasehold Estate, or any part of it, and Lessee’s interest in the Leasehold Improvements or personal property of Lessee directly or indirectly pledged as security for such loan. The Leasehold Mortgage may never lien, pledge, hypothecate, or otherwise encumber or subordinate the fee simple interest of the Lessor.

1.3.34 “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.

1.3.35 “Lease Year” means twelve (12) full consecutive months. The first Lease Year shall begin on the Delivery Date. If the Delivery Date does not fall on the first day of the month, the first Lease Year will commence on the first day of the following month. Each succeeding Lease Year shall commence on the anniversary date of the first Lease Year.

1.3.36 “Liens and Encumbrances” means any liens, Encumbrances, mortgages, easements by third parties unrelated to Lessee, lis pendens, or any other matters affecting the title

of the Premises, or any part thereof, which would preclude or otherwise materially affect Lessee's quiet enjoyment of the Premises. Liens and Encumbrances shall not include mortgages or other liens or Encumbrances enforceable by and for the benefit of Lessee or its related entities.

1.3.37 "Major Special Event" means any event held at the Premises which is not in the ordinary course of the day-to-day business activities at the Premises and which event lasts for a period of more than three (3) consecutive Business Days (excluding set up and breakdown time).

1.3.38 "Objection Expiration Date" means the date upon which all of the following shall have occurred: (i) all appeal periods with respect to any lawsuit, legal action, or appeal filed with respect to the lawfulness or validity of the RFP or the referendum or other approval(s) of this Lease, have expired without objection and if an objection has been raised, the final adjudication or resolution of such objection in Lessee's and the City's favor; (ii) the final adjudication or settlement of any actual litigation involving the RFP, the referendum, entering into this Lease by the Parties, the Lessee's legal or physical possession of the Premises and/or the use of the Premises by Lessee in Lessee's and the City's favor; and (iii) the former operator and tenant of the Premises and any subtenants, licensees or other occupants (except wet or dry slip holders whose agreements may be assigned to Lessee) shall have vacated the entire Premises and left the Premises in the condition required by the lease agreement with the existing tenant and Lessor (unless such condition of Premises is waived by Lessee), and any right to use and/or possess the Premises, or any part thereof, belonging to such third parties shall be terminated and no longer in effect. Either party may terminate this Lease in the event the Objection Expiration Date does not occur within two (2) years of the Lease Date.

1.3.39 "Parking Facilities" shall mean the Parking Facilities built by Lessee at the Premises containing the greater of (i) the minimum number of parking spaces required by the Miami 21 Zoning Code as of the Award Date or (ii) the parking formula and requirements of the RFP.

1.3.40 "Percentage Rent" shall have the meaning ascribed to it in Section 4.1.4 and shall be payable annually and calculated as a percentage of the Gross Revenues.

1.3.41 "Permanent Improvements" shall mean those certain improvements and fixtures located at the Premises and more particularly set forth in **Exhibit G** attached hereto.

1.3.42 "Phase" shall mean a portion of the Premises and the Leasehold Improvements built thereon, as set forth in **Exhibit E** attached hereto.

1.3.43 "Phasing Plan" means the phased development of the Leasehold Improvements and use of the Premises as set forth in **Exhibit E** attached hereto

1.3.44 "Premises" means the space more particularly described in Section 2.1 herein and **Exhibit A** attached herewith and incorporated herein by reference and having a collective address of 3301, 3605, 3501, 3311, & 3511 Rickenbacker Causeway, Miami, Florida.

1.3.45 "Principal" means Virginia Key Parent, LLC, a Florida limited liability company.

1.3.46 “Procedural Delay” means a failure of a Party to timely respond resulting in day for day abatement of Rent for the time of such Procedural Delay and a day for day extension of the deadlines in the Development Schedule set forth in Section 5.5.

1.3.47 “Proposal” means the document received by Lessor from Lessee in response to the RFP.

1.3.48 “Rent” means Base Rent, Percentage Rent, and any other rents, costs and expenses denominated as Additional Rent.

1.3.49 “Rent Commencement Date” means the date that Lessee shall commence paying Base Rent as further set forth in Section 4.1. The Rent Commencement Date shall be the Delivery Date.

1.3.50 “RFP” means the document entitled Request for Proposals #16-17-011, issued by the City on February 17, 2017, and addendums 1 through 6 issued by the City in connection therewith, entitled Notice of Site Visit and Conference, Notice of Selection Committee Appointment, Pre-Proposal Submission Conference, Sign-In Sheets and Transcript, Questions and Answers, RFP Revisions, and Bid Security List (Amended).

1.3.51 “Sublease” means any lease (excluding this Lease), sublease, license, concession or other agreement by which Lessee or any person or other entity claiming under Lessee (including, without limitation, a Sub-lessee or sub-licensee) demises, leases, subleases, licenses or sublicenses to or permits the use or occupancy by another unrelated third party of any part of the Premises and Leasehold Improvements.

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

1.3.53 “Suntex” means Virginia Key SMI, LLC, a Delaware limited liability company, Suntex Marina Investors LLC, a Delaware limited liability company, or any entity directly or indirectly controlled by such entities or under common control with such entities.

1.4 Priority of Documents

The RFP shall be incorporated hereto by reference. Following the issuance of the RFP, Lessee submitted the Proposal, which was accepted by the City. The above-referenced documents shall be interpreted to avoid conflicts, where possible. In the event of an express conflict between the above-referenced documents and the terms of this Lease, the following order of priority or precedence shall govern:

1.4.1 This executed Lease and its exhibits, as may be amended, shall govern over the RFP and the Proposal;

1.4.2 The RFP shall govern over the Proposal;

1.4.3 The Proposal will be subordinate to the Lease and the RFP, respectively. To the extent any material term of the Proposal or the RFP has not been properly or accurately incorporated into this Lease, at the reasonable good faith request of any party, the parties shall promptly amend the Lease accordingly to include the same. Whenever practicable such amendments shall be done administratively by the City with the City Manager as signatory. All formalities existing by law and regulations for such amendments will be followed.

ARTICLE II

LEASE OF PREMISES

2.1 Lease of Premises

The Lessor does hereby lease, let and demise to the Lessee, and the Lessee hereby leases from the Lessor the Premises, subject to the following terms and conditions, to have and to hold the said lands, tenements and hereditaments, with all of the rights, privileges and appurtenances, thereunto belonging or pertaining unto Lessee for the Lease Term herein specified, unless this Lease shall be sooner terminated in a manner hereinafter provided. The Premises is described more particularly in **Exhibit A** attached hereto and incorporated herein by reference.

Lessee shall have all rights, privileges, easements and appurtenances, if any, benefiting the Premises in, over and upon adjoining and adjacent public and private land, highways, roads and streets reasonably required for ingress or egress to or from the Premises by Lessee, its agents, servants, employees, contractors, customers and invitees and all others related to Lessee's use and occupancy of the Premises. Notwithstanding any language in this Lease to the contrary, Lessor is the fee simple owner of the Premises, and this Lease shall in no way convey any title or other rights to the Premises to Lessee unless otherwise specified herein; Lessee may not mortgage, pledge, transfer, hypothecate, or otherwise encumber Lessor's fee simple ownership interest in the Premises in any way, or in any way pledge any rights held by the fee simple owner, however Lessee may mortgage, pledge or otherwise encumber its Leasehold Estate (excluding the City's fee simple ownership interest) pursuant to the provisions of Section 10.12. Lessor agrees that it will not impair or permit any party to impair any reasonable access to or use of the Leased Premises during the Lease Term or, as applicable, the First Renewal Term and/or Second Renewal Term.

2.2 Purpose of Use and Occupancy

The Lessee will use and occupy the Premises, subject to compliance with all Applicable Laws and other permits, consents, and similar approvals, including the use requirements and other conditions imposed by the RFP, for: (i) wet and dry slips for vessels and boat storage; (ii) ship's store; (iii) restaurant; (iv) sale of fuel; (v) small scale non-commercial repair and maintenance of vessels and marine related equipment (however, large scale commercial for hire boat painting, transmission repairs or dry dock repairs are not permitted to the extent prohibited by the RFP); (vi) retail and other commercial uses, (vii) other marine uses, and (viii) all other ancillary uses in connection with the foregoing, and for no other purpose or use of any kind without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Reasonably related special events may be held on the Premises without the City's prior written consent; however the City's prior written consent shall be required for Major Special Events as

provided herein. Lessee's request for a Major Special Event must be delivered to Lessor a minimum of fifteen (15) days prior to the date of the event and the Lessor shall have fifteen (15) days to respond to such a request in writing. If the Lessor fails to timely respond the Lessee shall provide a second written notice. If Lessor fails to timely respond after the second written notice, such matter shall be deemed approved by Lessor but solely in its capacity as landlord and such Major Special Event shall remain subject to obtaining all necessary permits and other governmental approvals legally required in order to hold the event in the City, and such consent shall not waive any of Lessor's approval rights in connection with the permit application process. Any consent by Lessor provided in this Section shall be in Lessor's capacity as landlord and owner of the Premises and not in its capacity as a municipality or governmental body. Pursuant to the RFP, Lessee shall operate the Premises in accordance with the Miami 21 Zoning Code CS designation or such other applicable designation in effect as of the Award Date, and, to the extent required by Applicable Law, the equivalent designation in any successor zoning ordinance.

Except as otherwise set forth in this Lease and with respect to any Phase under construction as part of the initial Construction Work, the Lessee will operate the Premises a minimum of forty (40) hours per week, except in cases of Force Majeure, casualty or condemnation or any reasonable period of remodeling, repair or reconstruction of the Premises, which remodeling, repair or reconstruction may not, without Lessor's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), exceed a continuous period of thirty (30) Business Days in any calendar year, or more than a cumulative total period of forty five (45) Business Days in any calendar year (subject to delays for Force Majeure), excepting the initial Construction Work.

2.3 Suitability of Premises

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 Premises, or with respect to the suitability or fitness of the Premises, for the conduct of Lessee's 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 Premises "AS IS" as of the Award Date together with all Permanent Improvements located thereon as of the Award Date and owned by Lessor, subject to the representations set forth in Section 2.4 herein, the RFP or elsewhere in this Lease.

2.4 Limited Representations by Lessor

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

(a) That Lessor has taken all requisite actions to make this Lease binding upon Lessor, and Lessor has marketable, fee simple title to the Premises, and is the sole owner of and has good right, title and authority to convey and transfer all rights and benefits which are the subject matter of this Lease. Absent emergency action, or other Municipal Home Rule Action required by the public health, safety and general welfare, Lessor covenants with Lessee that it will not, during the Lease Term and any option period hereof, conferred and validly exercised, knowingly permit an imposition upon the Premises. The obligation of the Lessor set forth in the preceding sentence is

not intended to limit the ability of the Lessor, acting in its governmental capacity, to exercise its police powers with respect to the Premises and any activities within the Premises.

(b) That no party, other than Lessee, shall on the Lease Date be in or have any right to possession of the Premises, except as shown on that certain Commitment for Title Insurance, File No. 15065644, with an Effective Date of June 30, 2017, issued by Old Republic National Title Insurance Company (“Title Commitment”), a copy of which was delivered to Lessor at or prior to the Lease Date. Lessee shall not be required to take the Premises subject to any lien or encumbrance impacting the occupancy of the Premises not shown on the Title Commitment, unless agreed to by Lessee in Lessee’s reasonable discretion. To the extent the existing tenant at the Premises fails to timely vacate the same or any portion thereof, the Lessor together with Lessee shall promptly seek legal enforcement of the Lessee’s rights to possession hereunder, and the delivery of the Premises as required in the lease agreement with the existing tenant, including, without limitation, filing an expedited action to evict the existing tenant, so that Lessee may obtain legal and physical possession of the Premises as promptly as possible. Lessor and Lessee shall pay their own litigation costs in order to represent their respective interests in any such litigation.

ARTICLE III

TERM

3.1 Term of Lease

The initial Lease Term is for a period of forty-five (45) years, commencing on the Delivery Date. The Lease Term shall be extended to include any fraction of a single calendar month between the Delivery Date and the first day of the first full calendar month thereof.

3.2 Option to Renew

The Lessee has the option of extending this Lease for two (2) additional terms of fifteen (15) years each (“First Renewal Term” and “Second Renewal Term”), as long as no Event of Default exists at the commencement of the subject Renewal Term. To exercise the First Renewal Term or the Second Renewal Term, the Lessee must give Lessor written notice by the latter of (i) the date which is one hundred eighty (180) prior to the expiration date of the Lease Term or the First Renewal Term or (ii) the date thirty (30) days following written notice from Lessor advising Lessee that Lessee has failed to furnish notice of its option to exercise the First Renewal Term or the Second Renewal Term, as applicable, in the manner provided for herein (the “Reminder Notice”), which Reminder Notice shall state that such notice constitutes final notice to Lessee of its option to exercise the First Renewal Term or the Second Renewal Term, as applicable. Lessor shall send the Reminder Notice as a pre-condition to Lessee’s option of extending the Lease Term expiring. The First Renewal Term and the Second Renewal Term will be on the same terms and conditions as the Lease Term, except that the Base Rent will be adjusted as set forth in Section 4.1.2 below. The total term of the Lease, inclusive of the First and Second Renewal Term, is seventy-five (75) years. No additional renewals will be available unless agreed to in a writing signed by the both Parties, subject to Applicable Laws, and consistent with the provisions of the referendum, including that the Lessor receive at least Fair Market Value as determined by two (2) independent State-certified appraisers.

ARTICLE IV

RENT, SECURITY DEPOSIT, & FINANCIAL RECORDS

4.1 Base Rent and Percentage Rent

Commencing on the Rent Commencement Date and on the first (1st) day of every calendar month thereafter during the Lease Term, Lessee hereby agrees to pay to the Lessor the applicable Base Rent. If the first and/or last payment of Base Rent does not fall on the first day of the month, then the first and/or last payment, as applicable, shall be prorated based on the number of days in such month.

In addition to Base Rent, the Lessee hereby agrees to pay the Lessor Percentage Rent on an annual basis as set forth in this Article. In the event that Lessee fails to provide payment of Rent in the time required by the terms of this section, Lessee shall be subject to a Late Fee in addition to payment then due, as more particularly described in Section 16.4 below. No Late Fee shall be payable by Lessee on any Percentage Rent if such unpaid amount is due to the findings of amounts payable in connection with a good faith dispute. In such event a Late Fee shall only be payable if Lessee fails to pay any amounts due within thirty (30) days after the resolution and final determination of such amount payable as a result of such audit and no other provision of this Lease prohibits application of such Late Fee.

4.1.1 Base Rent and Percentage Rent

The Base Rent shall be one hundred and eighty-three thousand three hundred and thirty-three dollars and thirty-three cents (\$183,333.33) per month and payable as set forth in Section 4.1 above. The Base Rent shall be adjusted and increased annually by the method described in Section 4.1.2 below upon the commencement of the second Lease Year.

4.1.2 Base Rent Increase

Lessee agrees that the Base Rent shall be increased annually by an amount equal to the greater of: (i) three percent (3%) of the previous year's Base Rent or (ii) an increase based on the amount indicated by the Consumer Price Index as of three (3) months prior to the beginning of the applicable adjustment date. Notwithstanding the foregoing, in no event shall any such annual adjustment to the Base Rent result in an increase that is less than three percent (3%), or more than five percent (5%) of the Base Rent due during the Lease Year immediately prior to the effective date of such adjustment.

4.1.3 Sales Tax

The Lessee shall be liable for the prevailing State of Florida sales, use or similar tax imposed on the amount of Rent paid to Lessor under this Lease, in the absence of an exemption or other reduction by the State of Florida. To the extent permitted by Applicable Law, Lessee shall be entitled to take a credit for sales and use taxes paid by any Sublessee, licensee, concessionaire or the like. 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.

4.1.4 Percentage Rent

From the Rent Commencement Date and continuing throughout the Lease Term, Lessee shall pay to the City a percentage of Lessee's annual Gross Revenues for Lessee's business operations made from or upon the Premises for that same time period as set forth below (collectively, "Percentage Rent"). Percentage Rent shall be computed on an annual, Lease Year basis ("Percentage Rent Period") beginning with the Rent Commencement Date and continuing throughout the Lease Term. Further, Percentage Rent shall be a percentage of Gross Revenues, as further specified below, and shall not be subject to any breakpoint, whether artificial or natural.

The amount of Percentage Rent payable shall be determined as follows:

- (a) **Wet Slips and Dry Boat Storage**: six percent (6%) of the Gross Revenues;
- (b) **Commercial Space**: six percent (6%) of the Gross Revenues;
- (c) **Restaurant Space**: six percent (6%) of the Gross Revenues;
- (d) **Fuel Sales**: six percent (6%) of the Gross Revenues; and
- (e) **All other income**: six percent (6%) of the Gross Revenues actually received by Lessee from the use of the premises, and not otherwise specified above.

4.1.5 Manner of Payment

The Percentage Rent shall be payable within sixty (60) days after the end of each Lease Year. Lessee shall deliver to the Lessor a statement setting forth the Gross Revenues during the applicable Percentage Rent Period ("Annual Percentage Rent Statement"), and Lessee shall pay to the Lessor the amount of Percentage Rent due and payable, if any, to the Lessor pursuant to the terms of this Lease. Each Annual Percentage Rent Statement shall be reviewed or certified by a Certified Public Accountant selected by Lessee and shall further be signed and certified to be complete and correct by an officer of Lessee. Such statement shall show the annual Gross Revenues and an itemization of any exclusions or deductions for the current Lease Year. Lessee shall provide the Annual Percentage Rent Statement with an Annual Gross Revenue Report in substantially the same form as a compiled Monthly Gross Revenue Report attached hereto as **Exhibit B**.

Lessee shall:

- (i) pursuant to the terms of this Lease, pay the Lessor (x) the monthly Base Rent and (y) the annual Percentage Rent, and
- (ii) within ninety (90) days after the end of each Lease Year, deliver the Annual Percentage Rent Statement and Annual Gross Revenue Report for the preceding Lease Year to the City of Miami, Department of Real Estate and Asset Management at the address noted below:

City of Miami
Department of Real Estate and Asset Management

Attention: Lease Manager
444 SW 2nd Avenue, 3rd Floor
Miami, Florida 33130

4.1.6 Fair Market Value

As required by Applicable Laws, the Lessor has determined that the Base Rent and the Percentage Rent constitutes Fair Market Value as required by the RFP. The Lessor has made such determination based upon appraisals of the proposed project performed by two (2) State-certified general appraisers hired by the Lessor.

4.2 Parking Facilities

Lessee, its employees, agents, representatives, affiliates, contractors, sublessees, licensees, guests and customers, shall have the right to construct and use the on-site Parking Facilities throughout the Lease Term in accordance with the Phasing Plan and Applicable Laws. Upon completion of the Parking Facilities, Lessee shall convey the Parking Facilities either to Lessor or other governmental agency who is an agency or instrumentality of the City and approved by Lessor. In addition, Lessor consents to Lessee entering into an agreement with the Miami Parking Authority (“MPA”), on terms and conditions acceptable to Lessee and Lessor, specifically conforming to the Rusty Pelican Lease in existence as of the Award Date, and any other existing obligations, and with the approval of the MPA governing board. If the Lessee and MPA are unable to reach such an agreement, the MPA or its successor, shall manage and operate the Parking Facilities, and make the same available for Lessee’s use as provided herein. Notwithstanding the foregoing, if Lessee operates the Parking Facilities, Lessee shall make available for use by the adjacent restaurant tenant operating the “Rusty Pelican” (“Adjacent Restaurant Operator”) no less than 220 parking spaces as specifically and to the extent required by the RFP provided the Adjacent Restaurant Operator complies with all Applicable Laws and the reasonable rules and regulations established by Lessee for the use of the Parking facilities. Lessee shall have the right to increase, decrease, change, alter or otherwise modify the Parking Facilities throughout the Lease Term, in its sole discretion, pursuant to the terms of this Lease and Applicable Law. Prior to the construction of the Parking Facilities in accordance with the Phasing Plan, Lessee, its employees, agents, representatives, affiliates, contractors, sublessees, licensees, guests and customers, shall have the right to park in self-contained areas throughout the Premises so long as such parking does not violate Applicable Law.

4.3 Security Deposit

On the Lease Date, two million and 00/100 dollars (\$2,000,000.00) of the Earnest Money payable by Lessee pursuant to Section 3.4 below shall be paid to the Lessor, to be held in a separate segregated account as security for performance by Lessee of all obligations imposed under this Lease which Lessee is required to perform during the Lease Term, and any extension thereof (the “Security Deposit”). The Security Deposit shall be adjusted to one million and 00/100 dollars (\$1,000,000.00) upon the issuance of a temporary or final Certificate of Completion for the Leasehold Improvements pursuant to the Phasing Plan as may be adjusted by Force Majeure, or any equivalent thereof and \$1,000,000 shall be promptly returned to Lessee for the benefit of the property. Five (5) years following the issuance of a temporary or final Certificate of Completion,

or any equivalent thereof, an additional five hundred thousand and 00/100 dollars (\$500,000.00) shall be returned to Lessee; the remaining five hundred thousand and 00/100 dollars (\$500,000.00) shall remain in the account as security for the Lease under the same terms and conditions of the initial Security Deposit described herein.

The Security Deposit shall be in the form of cash or its equivalent (e.g., letter of credit) which funds may be commingled by Lessor with its other funds. No interest shall be paid on the Security Deposit by Lessor. 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 a Lessee Default shall occur 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, at Lessor's sole discretion but in accordance with the terms of this Lease, to the damages sustained by Lessor by reason of any such Lessee Default, including failure of Lessee to make any required monetary payment under this Lease when due (beyond any applicable notice and/or cure periods). Lessor shall provide written notice to Lessee of the amount and reason for any application of the Security Deposit within five (5) Business Days after such application. 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. In no way shall the Security Deposit serve as liquidated damages for any Lessee Default; rather, Lessor may apply the Security Deposit amount to damages sustained by any Lessee Default and continue to request any additional amount owed. Notwithstanding the above, in the event of a Lessee Default resulting from Lessee's failure to meet the Phasing Plan deadlines set forth in Section 5.5, subject to reasonable extension and or excuse from performance for Force Majeure or an Approved Permit Adjustment (including but not limited to the inability to obtain permits or governmental approvals and/or any uncured default by the Lessor, Lessor shall have the right to retain the Security Deposit or applicable portion thereof to compensate for its damages, which shall be in addition to any other remedies to which the City is entitled.

Further, 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 the amount of the Security Deposit stated above (as the same may be reduced pursuant to the terms hereof). Lessee shall make each such requested remittance within thirty (30) 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 thirty (30) day period may be treated by Lessor as a failure by Lessee to make timely payment of Rent and as a Lessee Default beyond any applicable notice and/or cure periods unless Lessee has in good faith promptly disputed the validity of such request (within thirty (30) days of when the date such request was sent) and has promptly sought judicial declaratory relief in connection therewith (within one hundred twenty (120) days of when the date such request was sent).

The Security Deposit (subject to reduction as provided in this Section 4.3), shall be retained by the Lessor throughout the entire Lease Term and, if not utilized by Lessor, will be returned to Lessee without interest, and less any allowable deductions, credits or setoffs by Lessor, within thirty (30) days following the expiration or termination of this Lease, inclusive of any validly exercised renewal period, as applicable.

4.4 Earnest Money Deposit

On or prior to the Lease Date, Lessee shall provide Seven Million and 00/100 Dollars (\$7,000,000.00) ("Earnest Money") by an irrevocable/unconditional cashier's check, drawn on a financial institution authorized to do business in Florida (or may do the same by wire transfer or similar means), or shall provide proof the above-mentioned amount has been deposited into a restricted escrow account in the name of Lessee and specifically earmarked for the requirements of this Lease. Upon commencement of construction of the Leasehold Improvements pursuant to the Phasing Plan, Lessee shall be allowed to withdraw sums from that Earnest Money escrow account as needed in order to pay for actual costs incurred by Lessee in connection with the development of the Leasehold Improvements contemplated by this Lease, including but not limited to design and permit fees, environmental remediation, materials, and other construction costs.

4.5 Lessee's Financial Records

Lessee is a special purpose entity formed for the express purpose of being the lessee under this Lease and performing its obligations hereunder. Lessee will establish one or more bank accounts through which deposits of Gross Revenues generated from such operations will be made. The bank in which such deposits are made shall be based in the United States or shall have a large local presence. The said deposits of Gross Revenues will not be comingled with those from any other operations of the Lessee outside of the Premises or any other affiliated organizations. In addition and/or alternatively, Lessee will use an accounting system that will separately provide for a detailed accounting of Gross Revenues. The detailed accounting shall not be comingled with the Lessee's other operations unrelated to the Premises; and, should comply with applicable federal income tax returns and state sales and use tax returns. Accordingly, Lessee shall prepare (or cause to be prepared) and keep full and complete financial records and source documents in accordance with sound accounting principles consistently applied and generally accepted in the United States, of the Gross Revenues, whether for cash, credit or otherwise, of each separate department at any time operated in the Premises.

The financial records and source documents to be kept by Lessee for Lessee's business operations at the Premises shall include, but shall not be limited to true copies of: (1) records of inventories and receipts of merchandise; (2) all financial profit and loss statements; (3) variance reports; (4) arrearage reports; (5) balance sheets; (6) financial journals and sales summary records; (7) general ledgers; (8) daily dated cash register tapes; (9) daily dated cash register summary tapes ("z tapes"); (10) sales slips which are numbered or otherwise accounted for by an electronic method, including those for mail or telephone orders; daily sales and/or point of sale (POS) reports; (11) financial statements; (12) bank statements; (13) records of daily bank deposits from transactions at or from the premises; (14) duplicate validated bank deposit slips; (15) purchase invoices; (16) inventory and receiving records; (17) pricing schedules or other materials showing price markups; (18) state and local sales tax reports; (19) settlement statements of transactions with

subtenants, concessionaires, and lessees; and any and all records that may be reasonably examined or required by an independent accountant in performing an audit of gross income and expenses or which may be reasonably requested by Lessor.

To the extent reasonably available to 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 Premises, if any, (v) settlement report sheets of transactions with any person conducting business on the Premises, if any, (vi) original records indicating that merchandise returned by customers was purchased at the Premises 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 and reasonably be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of gross income and expenses.

4.6 Reports by Lessee

Within thirty (30) days following the last day of each month of each Lease Year, Lessee shall furnish to Lessor a monthly statement itemizing any and all reportable Gross Revenues generated in the preceding calendar month (“Monthly Gross Revenue Report”). The Monthly Gross Revenue Report shall be signed and certified to be complete and correct by an officer of Lessee. The Monthly Gross Revenue Report shall be in a form similar to **Exhibit B** attached herewith and incorporated herein, or any other form reasonably acceptable by Lessor.

Within sixty (60) days after the end of each Lease Year, Lessee shall also furnish to Lessor the Annual Percentage Rent Statement and Annual Gross Revenue Report specified in Section 4.1.5 above, showing in reasonable detail the amount of such Gross Revenues made by Lessee from the Premises during the preceding Lease Year. Any intentional misstatement of Gross Revenues made by Lessee in any written report required to be delivered under this Lease will constitute a default under this Lease.

4.7 Right to Examine Financial Records

Lessor shall have the right to examine all of Lessee’s financial records related to the calculation of Gross Revenues, including bank statements, state sales and use tax returns/reports, filed by Lessee, and pertaining to the financial operations on the subject Premises. To the extent legally permissible, all such information shall be marked as confidential business records of Lessee or such other designation in order to fall within an exception to the public records disclosure laws. This paragraph shall not be interpreted to limit an auditor’s ability to obtain any documents necessary to perform and publish an accurate audit report. Lessee shall make all such documents and records available for a period of seven (7) years after the expiration of each Lease Year. Lessee shall furnish such information at the Premises or Lessee’s main accounting office upon not less than thirty (30) days prior written notice from Lessor.

4.8 Audit

Lessee shall establish and maintain a reasonable accounting system, inclusive of separate accounts for operating revenues and expenses, escrows, security deposits, that shall enable the Lessor to readily identify Lessee's assets, revenues, expenses, costs of goods, and use of funds. In addition, Lessee will establish one or more bank accounts through which deposits of Gross Revenues generated from such operations will be made. The bank in which such deposits are made shall be based in the United States or shall have a large local presence. The said deposits of Gross Revenues will not be comingled with those from any other operations of the Lessee outside of the Premises or any other affiliated organizations.

The Lessor and its authorized representatives shall have the unrestricted right to audit, all financial and related records, in any form relating to this Lease or Agreement, including, but not limited to any financial records kept by the Lessee, its employees, agents, assigns, successors, and related parties. Such records shall include, but not be limited to, all financial records, previous audits, all reimbursements, support documentation, invoices; ledgers; deposits slips; bank statements; journals; any and all related financial documents.

Lessee shall, at all times during the term of this Lease or Agreement and for a period of seven (7) years after the Lease termination, maintain such records, supporting documents and materials. The Lessee shall, at any time requested by the Lessor, at Lessee's expense, make all such records available for inspection and audit required by the Lessor. Such records shall be made available to the Lessor during normal business hours at either the Lessor's offices, or at the Lessee's place of business, and within three days written notice. In the event that no such location is available, then the financial records, together with the supporting documents and records, shall be made available for audit at a time and location that is convenient for the Lessor.

Lessee shall direct the Lessee's employees, agents, assigns, successors to comply with all audit requirements and ensure that all obligations and audit rights shall be explicitly included in any of the Lessee's agreements formed between the Lessee and any representative, consultant, employee, vendor, subcontractor and/or related entity.

The audit, at the direction of the Lessor's auditor, or any of the auditors' staff, may include the entire Lease term to date, regardless of any prior outside third-party audit, financial review, inspection, previous estoppel letter(s), and/or any written document or agreement; however, if a subject or item has been previously audited and resolved, it shall not be re-audited.

If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Lessor shall be reimbursed for the costs of the audit work from the Lessee. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Lessee's financials and/or records shall be made within thirty (30) days from the release of the auditor's report, to the extent not legally contested in good faith by Lessee.

If any audit shall disclose that Lessee's statement of Gross Revenues is understated by five percent (5%) or more per annum, Lessor may bill to Lessee the reasonable cost of such audit, which Lessee shall pay within thirty (30) days after Lessee's receipt of Lessor's invoice. If such audit shall disclose an overpayment, Lessor shall either, at Lessee's option, credit such overpayment towards the next payment(s) of Rent due under the Lease or return to Lessee within ten (10) days following Lessee's written demand. In addition to the foregoing, and in addition to

all other remedies available to Lessor, in the event Lessor's auditor shall schedule a date for an audit of Lessee's records, and Lessee shall fail to be available upon thirty (30) days' notice or shall otherwise fail to comply with the reasonable requirements necessary for such audit, Lessee shall pay all reasonable costs and expenses associated with the canceled audit.

Lessor and Lessee agree to attempt to resolve any audit dispute not resolved in sixty (60) days following delivery of Lessee's written dispute to Lessor by submitting the results of the disputed audit to a mutually acceptable third-party Certified Public Accounting firm for its opinion, the fees of which shall be paid by the party who does not prevail regarding the dispute, or, if both parties prevail in some respect, the cost of the audit shall be split equally between the Parties.

Lessor shall additionally have such audit rights as are set forth by Section 18-102, City Code, which is deemed as being incorporated by reference as if fully set forth herein. In addition, Lessor shall have the ability but not the duty to conduct inspections, as are set forth in Sections 18-101-103, City Code, deemed as being incorporated by reference as if fully set forth herein, from time to time, of the Premises as provided. Without limitation of the foregoing, this Lease may be audited, inspected, or reviewed by the City of Miami Office of Independent Inspector General, as authorized by Section 2-160 of the City Code.

4.9 Lien for Rent & Other Charges

The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and Impositions not paid by the Lessee prior to delinquency under the provisions of this Lease, and all out of pocket costs, reasonable attorney's 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. Each party shall bear their own attorney's fees and costs.

4.10 Affordable Housing Contribution

Lessor agrees that a portion of the Rent payable by Lessee hereunder, in an amount determined by the City Commission from time to time, shall be contributed by Lessor to affordable housing initiatives as determined by Lessor. Lessee shall not be in default hereunder if Lessor fails to comply with this provision.

ARTICLE V

CONSTRUCTION & LEASEHOLD IMPROVEMENTS

5.1 Lessee's Obligation to Construct & Maintain Leasehold Improvements

The Lessee shall, at its own cost and expense, design, construct, install, equip, and maintain the Leasehold Improvements on the Premises in accordance with the terms and conditions set forth in the RFP and further set forth below.

5.2 Conceptual Plan

The Lessor has approved the Lessee's plan for the redevelopment of the Premises as set forth in the Proposal (the "Conceptual Plan"), including the conceptual design of the open space and including, without limitation, renderings and layouts of the Premises, estimated commencement and completion dates and preliminary information relating to scheduling requirements during construction, estimated times and manner of delivery of equipment and materials, and preliminary functional plans showing the proposed location of on-site utility systems and all connections to utility supply lines at the perimeter of the Premises, all necessary roadways, ramps, pedestrian circulation and parking areas, appropriate landscaping (including the landscaping of open space) and fences. The parties acknowledge that the Conceptual Plan will change from time to time based upon requirements in connection with the design and permitting process and any reference herein to the Conceptual Plan shall mean and refer to those plans as revised from time to time.

5.3 Construction Plans

5.3.1 Submission.

Lessee shall at Lessee's sole cost and expense, submit to Lessor for Lessor's approval (not to be unreasonably withheld, delayed, or conditioned and as provided in Section 5.11) its Construction Plans (defined below) for the commencement and completion of the construction of the Leasehold Improvements for each Phase of the Project at least two (2) months prior to Lessee's anticipated start of construction for the applicable Phase. Lessor's approval shall be in its capacity as the Lessor and owner of the Premises and not in its capacity as a municipality or other governmental body and shall be limited to determination of consistency with the requirements of the RFP, this Lease, the Conceptual Plan and Applicable Laws. The plans submitted shall include final and complete plans and specifications, drawings, calculations and data setting forth in detail the Construction Work the Lessee proposes to perform, along with the manner of and detailed critical path timeline for performing the same ("Construction Plans"). Additionally, Lessee's architect or engineer shall include in this submittal a certification that these Construction Plans are in conformance and consistent with the previously approved Conceptual Plans. The Construction Plans shall bear the seal of Lessee's architect or engineer. The Construction Plans shall be in sufficient detail for a contractor to perform the work shown thereon and shall separately identify each item of work and shall describe, in commercially acceptable detail, the systems, improvements, fixtures and equipment to be installed by the Lessee. The Lessee shall submit such additional data, detail and/or information as the Lessor may request in order to properly review the Lessee's Construction Plans. The Conceptual Plans, the Construction Plans and all such additional data, detail or information submitted to the Lessor shall be retained by, and become the property of, the Lessor.

In the event that Lessor disapproves Lessee's Construction Plans, Lessor must do so in writing delivered to Lessee within thirty (30) days of Lessor's receipt of such plans. Lessor's notice shall include, without limitation, a reasonable explanation of the reason(s) for Lessor's objection(s) to allow Lessee to modify accordingly. Lessee shall, within thirty (30) days of receipt of such notice, or such longer period of time as the City shall determine, in writing, is reasonable in light of the requested modifications, modify the Construction Plans in accordance with the

reasons set forth in Lessor's disapproval notice. Lessor shall be required to approve or disapprove by written notice to Lessee any resubmitted Construction Plans within twenty (20) days of its receipt of same (so long as any disapproval notice contains the same detail as required above). The Parties shall reasonably cooperate to resolve any difference regarding the Construction Plans. If Lessor fails to timely respond, then Lessee shall send a second written notice. If Lessor fails to timely respond to the second written notice, it shall be deemed a Procedural Delay until such time that Lessor responds in writing in good faith. Such second written notice shall specify in bold and capitalized font that failure to respond shall result in a Procedural Delay, as defined in this Agreement.

5.3.2 Construction Plans Approval.

Following the Lessor's receipt of the Lessee's Construction Plans, the Lessor shall give its written approval thereto or shall request revisions or modifications thereto in accordance with Section 5.3.1 above. The Lessor may refuse to grant approval if, in its professional and reasonable opinion, any of the proposed Construction Work as set forth in the Construction Plans:

- (a) is unsafe, unsound, hazardous or improper for the use and occupancy for which it is designed; or
 - (b) is designed for use for purposes other than those authorized under this Lease; or
 - (c) is inconsistent with the approved Conceptual Plan as modified pursuant to Section 5.3.1; or
 - (d) does not materially comply with any other provisions and terms of the RFP or this Lease, or
 - (e) does not materially comply with other City of Miami requirements;
- or
- (f) does not comply with any Applicable Laws (excluding any pending permits, variances, approvals or consents being sought by Lessee in connection with the work).

Lessor's review process of the Construction Plans set forth herein shall be in addition to any permitting process required by the City of Miami and other regulatory agencies.

5.3.3 Lessee Solely Responsible.

The Lessee agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof, notwithstanding that the same have been approved by the Lessor and notwithstanding the incorporation therein of Lessor recommendations or requirements. In no event shall approval by the Lessor of any plans, whether the Conceptual Plan, Construction Plans, or otherwise, impose any liability on the Lessor to the Lessee or any other person for any errors or defects contained in such plans or for the failure of the Leasehold Improvements or work provided for such plans to comply with any requirements, any such liability to be that of the Lessee and/or the professionals who prepared such plans. The obligations

assumed by the Lessee in this Article, as well as elsewhere in this Lease, shall not be limited, affected, impaired or in any manner modified by the Lessor's approval of any Construction Plans and supporting specifications and contracts covering Construction Work.

5.4 Possession Date

Lessor shall deliver legal and physical possession of the Premises on the Delivery Date, subject to all then-existing litigation or other objections in the event the Delivery Date occurs prior to the Objection Expiration Date. Delivery of possession shall further be subject to Force Majeure delays. On or before the Delivery Date, the Lessee shall have provided the City Manager or his/her designee evidence, as may be reasonably satisfactory to the Lessor, that Lessee has sufficient funding or binding funding commitments to complete the Leasehold Improvements to be constructed on the applicable Phase of the Premises.

5.5 Development Schedule

The Lessee shall give the Lessor at least sixty (60) days' notice prior to the commencement of construction. Construction for each Phase shall commence after approval of the Construction Plans and within two (2) months after the receipt of all necessary permits for the applicable Phase. All physical improvements for all components must be completed within thirty- six (36) months after the receipt of the necessary permits for each Phase subject to Force Majeure, unless Lessee applies for and receives a waiver from Lessor. Lessor, at its reasonable discretion, may grant a waiver extending the abovementioned schedule if the Lessee demonstrates that: (1) it has actively and continuously pursued obtaining all required permits; and (2) the delay is a result of Force Majeure or a result of delays outside of Lessee's control. The phased development must be substantially completed within sixty (60) months after the Delivery Date, with all building permits for the last Phase in place no later than forty-eight (48) months after the Delivery Date subject only to Force Majeure, otherwise the provisions of Section 29-B of the City of Miami Charter, as amended, shall apply. The parties acknowledge and agree that, if after using diligent, good faith, commercially reasonable efforts, the Lessee is unable to obtain the applicable governmental approvals or permits for any portion of the proposed development that Lessee shall not be in Default hereunder. If the portion of the proposed development that cannot be built is due to the inability to obtain the necessary permits or approvals and impacts the Fair Market Value of the Rent payable hereunder, the City shall engage two appraisers to prepare appraisals indicating the fair market rent based upon the actual Leasehold Improvements for which Lessee was able to obtain permits and approvals for and construct, as contemplated herein ("Approved Permit Adjustment"), the Rent shall be adjusted to reflect the Fair Market Value based upon the decreased development and the parties shall amend the Lease accordingly. The foregoing is not intended to excuse the Lessee's failure to construct the Leasehold Improvements for any reason other than Force Majeure.

Lessor agrees, at no out-of-pocket cost to Lessor (other than internal staff time), to (i) reasonably cooperate with Lessee and all governing authorities in Lessee's applying for and obtaining all necessary permits, consents, approvals and variances for the construction of the Leasehold Improvements and development and use of the Premises as contemplated by this Lease and the Proposal, and (ii) promptly execute or join any and all documents necessary or appropriate related to applying for and/or obtaining such permits, consents, approvals and/or variances.

5.6 Review

Upon reasonable prior notice to Lessee, Lessor shall have the right, through its duly designated representatives, to inspect the Construction Work and the plans and specifications thereof, at any and all times during the progress thereof and from time to time, in its discretion, to take samples and perform testing in any part of the Construction Work. Notwithstanding the foregoing, no such inspection or testing shall unreasonably interfere with the Construction Work or the use or operation of the Premises by Lessee or its occupants. Lessee shall provide the Lessor upon request with all available correspondence and material associated with the permitting process for the Premises, including any available studies and reports produced for the Premises.

5.7 Payment and Performance Bond

Within ten (10) days after the Lessor approves the Construction Plans in writing and Lessee obtains building permits consistent with the Construction Plans, but in any event prior to the commencement of any construction, the Lessee shall, at Lessee's and/or Lessee's contractor's sole cost and expense, furnish the Lessor with a Payment and Performance Bond in substantially the form prescribed by Section 255.05, Florida Statutes (the "Bond"). Plans, and design and construction documents will comply with all applicable contractual, legal, and regulatory requirements including, without limitation, the Florida Building Code. Any contract with a general contractor or subcontractor entered into by Lessee must contain this Bond requirement.

The Bond shall be issued by a bonding company which shall be approved by Lessor, which shall not be unreasonably withheld, conditioned or delayed, in an amount equal to one hundred percent (100%) of the costs to construct the initial Leasehold Improvements (or applicable portion thereof) 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 of the initial Leasehold Improvements, free of construction or other liens. The conditions of the Bond shall be to ensure that the Lessee or Lessee's general contractor will:

(a) Make prompt payments prior to delinquency to all claimants, as defined in Section 255.05 Florida Statutes, as amended, supplying labor, materials, or supplies, used directly or indirectly by the Lessee in the prosecution of the Construction Work related to the initial Leasehold Improvements under this Lease;

(b) Pay Lessor all losses, damages, expenses, costs, and reasonable attorney's fees, including appellate proceedings, that Lessor sustains because of a Lessee Default under this Lease pursuant to claims made under Section 255.05, Florida Statutes; and

(c) Perform the guarantee of all obligations of the Lessee's under this Lease with respect to the construction, maintenance, and the acquisition and installation of the Leasehold Improvements, as required by the Lease and Applicable Laws.

The Bond may be terminated at such time as the construction and installation of the initial Leasehold Improvements (or applicable portion thereof) are completed as evidenced by issuance of a temporary or final Certificate of Occupancy, or other equivalent approval, 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 Bond have been satisfied. The form of the Bond shall be approved by the City Manager or the Risk Manager as his or her designee and by the City Attorney as to legal form, which approval shall not be unreasonably withheld, conditioned or delayed.

5.8 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 reasonable satisfaction of the Lessor in accordance with **Exhibit C** attached hereto. Copies of such certificates shall be furnished to the City of Miami Risk Manager, 444 SW 2nd Avenue 9th Floor, Miami, FL 33130. To the extent permitted by the applicable insurance regulations, the City will be named as an additional insured on such policies.

5.9 Conveyance of Improvements

The Lessee, in consideration of the granting of this Lease, shall upon termination or expiration of this Lease, convey unto Lessor, free and clear of all liens, title to all Leasehold Improvements owned by Lessee, including, but not limited to, refrigerators, stoves, freezers, hood systems, grills, dishwashers, sinks, kitchen work stations and light fixtures that cannot be removed without causing significant damage to the Improvements. Notwithstanding anything to the contrary, the personal property of Lessee and its subtenants, licensees and concessionaries shall not be conveyed to Lessor at the end of the Lease Term unless purchased by Lessor as provided below.

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 and equipment added to or installed at the Premises by the Lessee during the Lease Term, including all furnishings, and equipment at Fair Market Value determined by an appraisal, provided that the Lessor provides written notice to the Lessee at least forty five (45) days prior to the expiration or termination of the Lease Term of the items it desires to purchase. Lessor agrees to take any property and/or Leasehold Improvements from Lessee in accordance herewith in its "AS IS" "WHERE IS" condition as of the expiration or termination of this Lease, and without any Lessee representation or warranty, express or implied or of any kind whatsoever, including without limitation, its merchantability or fitness for a particular purpose.

5.10 Premises to Remain Free of Liens

The Lessee shall make, or cause to be made, prior to delinquency 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 Premises. The Lessee shall have no power or right to and shall not in any way encumber the Lessor's fee simple interest in the Premises. Other than those caused by Lessor, if any Liens or Encumbrances shall at any time be filed against the Premises and relate to work or other matters pertaining to Lessee, during the Lease Term, then Lessee shall, upon acquiring knowledge of such lien or encumbrance, 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 or transferred to bond. If Lessee fails to discharge, contest or bond the lien within sixty (60) days from the date Lessee obtains knowledge of same, then 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 reasonable verifiable costs incurred by the Lessor in connection with such action, including all reasonable paralegal or title company fees, costs and expenses. Each party shall bear their own attorney's fees.

5.11 Lessor's Approval

All Construction 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. City Manager shall, in writing, designate an Assistant City Manager or other City employee to act as the liaison between the Lessor and Lessee for all such purposes.

No approval by the City Manager of any Construction Plans furnished under this Lease pursuant to this section shall relieve Lessee of any obligation it may have at law to file such Construction 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 Applicable Laws. 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 Construction Plans are structurally sufficient or in compliance with any Applicable Laws.

ARTICLE VI

CONDUCT OF BUSINESS BY LESSEE

At all times during the Lease Term, Lessee shall manage the Premises with due diligence and efficiency, in Lessee's sole discretion, subject to the limitations set forth in this Lease, and in a manner prudent and in accord with the current first-class conditions consistent with similar first-class businesses located in Miami-Dade County with substantially the same Leasehold Improvements and mix of Lessees. To the extent Lessee operates any retail or restaurant space within the Premises, Lessee or the applicable Sublessee, licensee, concessionaire shall carry at all times in the Premises a stock of merchandise of such quantity, character and quality as shall be in accord with comparable businesses within the locale of the Premises.

ARTICLE VII

MAINTENANCE, REPAIR AND ALTERATION OF PREMISES

7.1 Lessee's Maintenance Obligations

Lessee, at its sole cost and expense, agrees to provide the necessary management and labor to continuously maintain the Leasehold Improvements in the Premises, including all operating equipment, utility services, and connections within the Premises. 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 Premises, and the Leasehold

Improvements remain in good, safe, code compliant and sanitary condition and repair throughout the Lease Term. Lessee shall be responsible for periodic painting of the interior and exterior of the Premises and decorating the interior of the Premises, 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 (subject to and in accordance with the terms and conditions of this Lease) to insure a continuing quality of maintenance and appearance and physical condition of the Premises commensurate with maintenance, health, and safety standards reasonably established by the Lessor and Applicable Law.

7.2 Lessee's Repair Obligation

Subject to the provisions of this Lease regarding casualty damage and condemnation, except as otherwise provided for in this Lease, Lessee, at Lessee's sole cost and expense, at all times during the Lease Term, shall make all repairs to all Leasehold Improvements, including, without limitation, all heating, ventilating and air-conditioning equipment and any other repair or replacement to the Leasehold Improvements. The Lessee will be responsible for maintenance and repairs on the Premises throughout the Lease Term. For avoidance of doubt, the Lessee's repair obligations shall not include (i) any initial installation or provision of city-owned or operated improvements or (ii) any repair, maintenance or replacement that includes areas outside of the Premises, or (iii) any repair, maintenance or replacement which is the responsibility of Lessor under the terms of this Lease and/or Applicable Law.

7.3 Changes/Alterations/Signs

Other than as set forth in the Construction Plans approved in accordance with Section 5.3.2 Lessee shall not install or cause to be installed any permanent exterior signs, exterior doors, walls or windows without the prior written consent of the Lessor, which consent the City Manager is hereby authorized to give, and may not unreasonably withhold, condition or delay. Lessor's prior written consent shall not be required for Lessee to install or cause to be installed master or sub-meters for telephone, cable television, internet, water, and electricity serving the Premises. Furthermore, standard directional signage or temporary signage does not require Lessor approval.

Lessee shall only erect exterior signs of type, composition and design in conformance with the City of Miami Zoning, and City Code and the Sign Regulations of Miami-Dade County, as applicable. 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 during the Lease Term. As requested in Lessee's proposal, Lessor and Lessee shall reasonably cooperate in order for Lessor to provide Lessee with off-site entry signage for the Premises near the bridge into Virginia Key at no additional cost to Lessee except for the cost to design, construct and maintain such signage. Failure of Lessor to provide such off-site signage, after a good faith attempt, shall not be deemed a Lessor Default hereunder

No approval by the City Manager of any changes or alterations of the Leasehold Improvements shall relieve Lessee of any obligation it may have under Applicable Law to file any required documents with any department of the City or any other governmental authority having jurisdiction; or to obtain any building or other permit or approval required by Applicable Law in

connection with such change or alteration. 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 Applicable Laws.

7.4 Capital Expenditure Fund

Commencing on the earlier of the completion of the Leasehold Improvements or the first day of Lease Year five (5), Lessee shall set aside each Lease Year into a separate interest-bearing reserve account in Lessee's name, maintained in a federally insured financial institution selected by Lessee, two and one half percent (2.5%) of the Gross Revenues per year of the immediately prior Lease Year ("Cap Ex Fund"). Commencing on the twentieth (20th) anniversary of the establishment of the CapEx Fund and extending through the next ten (10) years, the set aside amount shall be increased to three percent (3.0%) of Gross Revenues per year of the immediately prior Lease Year. Commencing on the thirtieth anniversary of the establishment of the Cap Ex Fund and for the remainder of the Lease Term and any exercised renewal of the Lease Term, the set aside amount shall be increased to three and one-half percent (3.5%) of Gross Revenue per year of the immediately prior Lease Year.

The CapEx Fund shall be used by Lessee from time to time as Lessee reasonably determines and applied toward major repairs, improvements and/or upgrades to the Premises, including, but not limited to, piling replacements and other substantial mechanical and structural purchases, upgrades, improvements, as reasonably determined by Lessee in order to keep the Leasehold Improvements in first class condition and otherwise competitive with other similarly sized marinas in Miami-Dade County, Florida (collectively, "Capital Improvements"). The CapEx Fund must be spent for Capital Improvements and shall not be applied to minor repairs due to regular wear and tear. Lessor shall be entitled to reasonable approval rights regarding which repairs and improvements qualify as Capital Improvements. Lessee shall not allow the Leasehold Improvements to become functionally obsolete or exceed their useful life as determined by a report provided by a qualified structural engineer or state-certified appraiser; such report shall be completed at Lessee's expense every fifth (5th) year after Lease Year fifteen (15).

Lessee shall receive credit for that portion of any amounts required to be set aside by any Lender of Lessee for capital items provided the required amount is set aside in an account for Capital Improvements. Lessee shall maintain financial accounting and "scope of work" records together with any corresponding documentation of amounts placed in and amounts used from the CapEx Fund, which shall be subject to review by Lessor, in the manner specified above in sections 4.6 and 4.7 of this Lease.

ARTICLE VIII

INSURANCE AND INDEMNITY

8.1 Insurance on the Premises

In connection herewith, Lessee shall obtain and maintain or cause to be obtained and maintained in full force and effect throughout the Lease Term, the insurance coverage set forth in **Exhibit D**. Furthermore, Lessee shall cause all contractors in connection with any Construction

Work on the Premises to obtain and maintain throughout the Construction Work the insurance coverage set forth in **Exhibit C**. 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 Lease Term, as applicable, such types and amounts of payment, performance, maintenance, or restoration bond(s) as shall be reasonably required to be reviewed and approved by the City's Risk Management Department.

The Lessor reserves the right to reasonably amend the herein insurance requirements as may be applicable in connection with the scope contemplated under this agreement and the types of policies and coverage and deductible amounts that are commercially reasonably available over the Lease Term. Lessor further reserves the right to request copies of all applicable policies in connection with this Lease.

8.2 Delivery of Insurance Policies

All liability, statutory workers compensation and property policies, if applicable, 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 by this Lease shall provide that they shall not be amended or canceled on less than ten (10) days prior written notice to the Lessor for non-payment and no less than thirty (30) days prior written notice for other reasons, and all insured beneficiaries of the policies shall contain waiver of subrogation rights endorsements, as required below, to the extent commercially available. The Lessor shall have no obligation to pay premiums, make contributions to the insuring company or any other person, or to satisfy any deductible. On or before the Lease 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, or 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 that indicates less coverage than required does not constitute a waiver of the Lessee's obligation to fulfill the insurance requirements herein. Lessor shall appear listed as an additional insured on all applicable liability policies, and loss payee on any property policy. The insurance shall be primary and non-contributory and should include all corresponding endorsements in connection with this Lease, and as required by the City.

8.3 Adjustment of Loss

Any Gross 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 Gross 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 reasonably 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 Gross 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 or other financial institution or escrow agent mutually agreeable to Lessor and Lessee. If the amount of the Gross Insurance Proceeds is less than the cost of the required work, then Lessee shall pay the excess cost; and if the amount of the Gross Insurance Proceeds is greater than the cost of the required work, then the excess shall be paid to and belong to the Lessee.

8.4 Indemnification of Lessor

From and after the Lease Date and until the Delivery Date or the Objection Expiration Date, whichever occurs later, Lessee shall indemnify, defend, and hold Lessor harmless to the extent provided in Section II.N of the RFP. From and after the later of the Delivery Date or the Objection Expiration Date, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims actions, damages, liability and expense in connection with personal injury and/or damage to or destruction of Premises arising from or out of any occurrence in, upon or at the Premises, or arising from the occupancy or use by Lessee of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, customers, invitees, licensees, sub-lessees or concessionaires, excluding any claims arising from the negligence or willful misconduct of the Lessor (or any other person acting on behalf of the Lessor as its contractor, employees, agent or representative). Lessee shall further indemnify Lessor for any penalties, fines, costs, expenses, suits, liabilities, claims, or damages resulting from Lessee's failure to perform its obligations in this Lease and/or for Lessee's failure to comply with Applicable Laws. In case Lessor shall be made a party to any litigation commenced by or against Lessee and covered by this indemnity provision, then Lessee shall protect and hold Lessor harmless and pay all of Lessor's costs and attorney's fees for outside counsel engaged by Lessor in connection with such litigation, and any appeals thereof. Lessee shall have the right to approve any outside counsel selected by Lessor for which Lessor is subject to reimbursement by Lessee as provided herein, which approval shall not be unreasonably withheld, denied, delayed or conditioned. Lessee shall also pay all of Lessor's third-party costs, expenses and reasonable attorneys' fees that may be incurred or paid by Lessor in enforcing the covenants and agreements in this Lease inclusive of administrative, litigation and appellate proceedings. Further, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims actions, damages, liability and expense arising from or caused by the presence, in or about the Premises, of any Hazardous Materials placed on or about the Premises 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. All Indemnifications and Releases shall survive the expiration or cancelation of the Lease, as applicable.

8.5 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. Lessee shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises, or any part thereof.

8.6 Release of Lessor

The Lessee and its assignees, for and in consideration of the leasing and the demise of the Premises to the Lessee, hereby release, remise and discharge the Lessor, its officers and employees, of and from all claims, demands, and 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 Premises by Lessee or its sublessees, licensees, concessionaires, or invitees, etc. and from any and all costs and expenses of Lessee or its assignees in connection with this Lease, including, but not limited to those costs associated with the development of the Premises by Lessee or its sublessees, licensees, concessionaires, or invitees, etc. and acquisition of the Leasehold Improvements by Lessee. 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 2.4 of this Lease, neither the Lessee, nor its assignees shall seek to recover from the Lessor compensation for reimbursement of, any costs, losses, fees or expenses incurred by the Lessee, its assignees, sublessees, licensees, concessionaires, or invitees. The terms of this provision shall expressly be made a part of any future assignment or mortgage of the Leasehold Interest. This release is not intended to release Lessor from its express obligations under this Lease or Applicable Laws.

ARTICLE IX

SERVICES AND UTILITIES

9.1 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 Premises and any Leasehold Improvements, if any, 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 maintenance and operation of the Premises and the Leasehold Improvements as required under this Lease. The Lessee shall, at its sole expense, procure any and all necessary permits, licenses or other authorization required for the lawful installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such utilities, services or substitutes to the Premises.

9.2 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 to the Premises caused by or resulting from water, gas or electricity which may leak or flow from the water or gas mains on to any part of the Premises or the Leasehold Improvements unless directly caused by any grossly negligent or willful, action or inaction of Lessor. The Lessor shall not be required to make any alteration to any service or utility system of the Premises on behalf of Lessee. Lessor shall not be liable for temporary failure of services, and any such temporary failure shall not be deemed to constitute actual or constructive

eviction, nor entitle Lessee to any abatement or diminution in rent payable under this Lease, unless directly caused by any grossly negligent or willful action or inaction of Lessor.

Lessor shall not knowingly make or allow to be made after the Lease Date any changes in any utility service or availability of capacity to, through, under or above the Premises that would result in a materially disruptive effect on the use or operation of the Premises by the Lessee and its customers, including but not limited to fiber optics, telephone, electricity, water, storm and sanitary sewer, gas, heat, ventilation and air conditioning, without the prior written consent of Lessee, which shall not be unreasonably withheld, conditioned or denied; further, provided, that the written consent of the Lessee shall not be required for minor, routine and customary, maintenance, repair, improvement and upgrades made by the utility provider to the utilities it furnishes, however Lessor shall provide prior written notice thereof to Lessee, to the extent Lessor has actual knowledge of the same.

ARTICLE X

SUBLEASES, ASSIGNMENTS AND TRANSFERS

10.1 Subleases, Assignments and Transfers

Lessee shall not, at any time during the Lease Term, enter into (i) any sublease, license, concession, easement, or permit agreement with respect to the entire Premises or (ii) sublease, assign or transfer this Lease to any third party or parties, which has the effect of granting exclusive possession to the entire Premises and assigning the rent and other obligations set forth in this Lease to any third party or parties (in each case, a “Transfer”), without first procuring the prior written consent of Lessor’s City Manager (except as otherwise permitted under this Article X, including, without limitation, an Acceptable Transfer). The provisions of this Article constitute the sole means by which Lessee may request Lessor’s City Manager’s consent to a Transfer. The consent of Lessor’s City’s Manager to a Transfer shall not be unreasonably withheld, conditioned or delayed.

In recognition of the fact that this Lease was awarded to Lessee following a competitive procurement relying on Lessee’s unique attributes, any Transfer of this Lease to any third party or parties (except as otherwise permitted under this Article X, including without limitation an Acceptable Transfer) shall require the prior written approval of the City Manager, which he or she may grant, deny, refuse or consent to such Transfer based on reasonable commercial factors including the credit worthiness, solvency, good reputation, ability and experience of such proposed transferee in owning commercial properties provided such assignee engages an Acceptable Operator. If approved, any such Transferee shall be required to sign a written agreement assuming all terms and conditions of the Lease, without exception in a form reasonably satisfactory to the Lessor, including Lessor’s City Attorney’s approval as to legal form and correctness and compliance with Applicable Laws. Any such attempted Transfer of the Lease without the Lessor’s prior written consent shall be void and of no force or effect and shall not confer any interest or estate in the purported transferee and will additionally be a default by Lessee of this Lease.

It is agreed that all terms and conditions of this Lease shall extend to and be binding on all transferees, assignees or Sub-lessees as may be approved by Lessor and shall be for a period of

time equal to or less than the Lease Term. Lessor reserves the right to directly terminate the rights and interests of any transferee or Sub-lessee under any Transfer for any cause for which Lessee's Leasehold Interest may be terminated. Lessee shall reimburse Lessor, as Additional Rent, all verifiable costs and expenses which Lessor reasonably incurs by reason of or in connection with a Transfer, and all negotiations and actions with respect thereto (including, but not limited to, any appraisals, surveys, etc.), such Additional Rent to be due and payable within thirty (30) days of receipt of a statement of such costs and expenses from Lessor.

Notwithstanding the foregoing, consent of the Lessor shall not be required for any Subleases (whether or not such Sublessee is an affiliate of Lessee as defined in this Lease) provided such Subleases provide for Rent at Fair Market Value and do not violate the terms of the RFP or of this Lease or of any Applicable Laws. Lessee shall promptly submit executed copies of all Subleases to Lessor.

10.2 Procedure for Transfer

Subject to the provisions of Section 10.1, should Lessee desire to Transfer the Lease, Lessee shall, in each instance, give written notice of its intention to do so to Lessor's City Manager at least sixty (60) days prior to the effective date of any such proposed Transfer, specifying in such notice the nature of such proposed Transfer and the proposed date thereof, identifying the proposed Sub-lessee, Assignee or transferee, and including all other information necessary in the City's sole, yet reasonable, discretion, for the City Manager to evaluate the proposed transferee as an Acceptable Operator according to the requirements of this Lease and the RFP. Such notice shall be accompanied by a copy of the proposed Transfer agreement and any other documents or financial information Lessor may reasonably require in order to determine the suitability of the Assignee or Transferee. If requested by Lessor and/or the City Manager, Lessee shall provide to such requesting party copies of the Transfer documents and amendments thereto. Based on the reasonableness factors set forth in this Article X, the City Manager shall either (i) withhold consent to the Transfer, together with a detailed explanation for such denial, or (ii) consent to such Transfer upon the terms and subject to the conditions provided for in this Article, in each case, by sending written notice to Lessee of its intent to do so within sixty (60) days of receipt of Lessee's notice and all required documentation in connection therewith. If Lessee's request to a Transfer is denied, the City Manager shall state the reasons for such disapproval in the notice sent to Lessee. Lessee acknowledges and agrees that the imposition of the conditions provided herein requiring the City Manager's consent is reasonable. In the event that City Commission approval is required by this Lease (as determined by the City Attorney per Applicable Laws), 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. If consent to a Transfer is not required, whether pursuant to Section 10.5 or as may otherwise be stated within this Lease, the Lessee shall notify the Lessor in writing of such Transfer (for informational purposes only) within thirty (30) days after the date of Transfer.

10.3 Additional Consideration Payable to Lessor

If Lessor consents to any Transfer, then Lessor shall be entitled to proceeds from any such Transfer as specifically set forth herein. Lessor's participation shall be four percent (4%) of the

gross proceeds (less existing debt of Lessee encumbering the Lessee's interest in the Premises and/or Leasehold Improvements held by third party unaffiliated lender(s)) from the Transfer if the Transfer is completed within Lease Year one (1) through five (5); and five percent (5%) of the gross proceeds if the Transfer is completed between Lease Year six (6) and the expiration or termination of the Lease (in each case, the "Transfer Fee"). Notwithstanding the foregoing, the Transfer Fee shall not be payable in connection with any Acceptable Transfers. Furthermore, no sales tax shall be due to Lessor on the payment of the Transfer Fee. Assignee's or transferee's records shall be kept in accordance with Article IV. Additionally, Lessor reserves the right to examine transferee's books and audit transferee's entire records in accordance with Article IV of this Lease. The Transfer Fee will apply even if the Transfer or Assignment is to a related, subsidiary, or affiliated entity, unless such is an Acceptable Transfer as defined in section 10.5 below.

The Transfer Fee shall be perpetual and shall apply to any successive Transfer procured by the terms of this Lease for as long as this Lease is active, including modifications and extensions, if any. The acceptance by Lessor of the payment of rent following any Transfer prohibited by this Article shall not be deemed to be consent by Lessor to any such Assignment or Transfer, nor shall the same be deemed a waiver of any right or remedy of Lessor hereunder.

10.4 Definitions

As used in this Article, the term:

"Transfer" shall be deemed to include:

1. 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, but excluding any Sublease, license, or concession agreement for any portion of the Premises, which does not result in any change of operational control by Lessee;
2. any transfer of more than forty-nine percent (49%) of the ownership interests of Lessee or of the ownership interest of any Owner, other than an Owner whose interests are publicly traded, if the transfer results in a transfer of more than forty-nine percent (49%) of the beneficial ownership of Lessee or if the transfer results in a change in the day-to-day management or control of the Premises from either Suntex or Christoph;
3. 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.

"Owner" means:

any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, more than fifteen percent (15%) of the aggregate ownership interests of the Lessee, but shall not include any holder of an interest in Owner whose shares are publicly traded.

"Owner whose shares are publicly traded" means:

1. an Owner 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

2. 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.

10.5 Acceptable 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 this Article X of this Lease, 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, conditioned or delayed. Notwithstanding anything to the contrary, the following Transfers shall be permitted hereunder without the written approval of Lessor or the City Manager and without payment of the Transfer Fee (each being an “Acceptable Transfer”):

(a) Any Transfer directly resulting from the foreclosure of Lessee’s Leasehold Estate, provided that such purchaser or grantee is an institutional investor (including a bank or other similar financial institution) 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 grantee within six (6) months after taking possession of the Premises, shall have entered into an agreement for the management and operation of the Premises with an Acceptable Operator or is itself an Acceptable Operator;

(b) Any Transfer for estate planning purposes of a direct or indirect owner of Lessee;

(c) Any Transfer required by any Lender to Lessee;

(d) Any Transfer in order for Suntex to maintain its REIT status or to otherwise comply with the applicable tax regulations governing the same (e.g. subleasing certain portions of the Premises generating operating income to an affiliate of Lessee provided that the Lessor receives the same rent as if the Lease to the affiliate of Lessee did not exist); or

(e) Any Transfer by any affiliate of Suntex to any affiliate of Christoph and vice versa.

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 and/or the creation of one or more classes of ownership interests and the offering of ownership interests to the public for purchase, shall not constitute a Transfer hereunder and shall not require the consent of the Lessor or its City Manager.

Any consent to a Transfer shall not waive or abridge any of the City Manager’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. Any and each Transferee must be an investor that meets the definition of or engages an Acceptable Operator as provided in 10.5(a) above.

10.6 Information as to Owners, Etc.

If applicable, 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 an appropriate and authorized officer of the Lessee, setting forth (to the extent known) the full names and addresses of material holders of ownership interests in Lessee, and the extent of their holdings, and in the event any other parties have a material beneficial ownership interest, 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 shall not be required to be furnished with respect to the holders of an ownership interest of any Owner whose interests are publicly traded. As used in this section 10.6, the term “material” shall mean ownership of not less than a ten percent (10%) interest in Lessee.

10.7 Effectuation of Transfers

No Transfer shall be effective unless and until:

(1) all then due and payable Rents, taxes, assessments, impositions, insurance, permitting and other charges required to be paid by the Lessee to Lessor under this Lease shall be paid and all other covenants and agreements to be kept and performed by the Lessee shall be substantially complied with at the date of the Transfer; and

(2) the proposed transferee, by written instrument reasonably satisfactory to the City Manager (subject to approval as to legal form by the City Attorney) and in a form recordable among the land records for any transfer other than an Acceptable Transfer, 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, including the additional guarantees required under Section 16.5 of this Lease, as of the date of such Transfer; provided, however, that any transferee shall not be required to assume any liability under this Lease with respect to any matter arising prior or subsequent to the period of such transferee’s actual ownership, partial or whole, of the Leasehold Estate (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, except as expressly permitted by this Lease.

10.8 Criteria for Consent for Transfer

Lessor may, at its sole but reasonable discretion, condition its consent to an Assignment, Sublease or Transfer upon satisfaction of the following conditions, which shall be deemed reasonable [or such other reasonable conditions as the Lessor may require]:

(1) The proposed transferee shall be an Acceptable Operator or an institutional investor;

(2) The proposed transferee shall satisfy the qualification requirements imposed upon Lessee and set out in the original RFP to the extent permitted by Applicable Law;

(3) The proposed transferee shall have no open and expired permits, liens in violation of Applicable Laws, unpaid fines, unsafe structures, defaults, unpaid debts, or any ongoing lawsuits against the Lessor;

(4) The net assets of the proposed transferee immediately prior to the Transfer shall not be less than the greater of: (a) the net assets of the transferor whose interest is being transferred as of immediately prior to the Transfer; (b) the net assets of the Lessee on the Lease Date; or (c) an amount reasonably necessary to discharge Lessee's remaining obligations hereunder;

(5) Such Transfer shall not adversely and materially affect the quality and type of business operation which the Lessee has conducted on the Premises theretofore;

(6) The proposed transferee shall possess qualifications for the Lessee's business substantially equivalent to Lessee or 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;

(7) The proposed transferee shall agree to continue to operate the Premises similar to the use(s) conducted at the Premises pursuant to this Lease;

(8) The proposed transferee shall assume in writing, in a form reasonably acceptable to Lessor, and in compliance with Applicable Laws, all of Lessee's obligations hereunder as of the date of such Transfer, and Lessee shall provide Lessor with a copy of documents evidencing such Transfer;

(9) The proposed transferee shall submit to a credit check and other background checks as is reasonably necessary, in Lessor's discretion, for Lessor to evaluate the proposed transferee, in Lessor's sole but reasonable discretion. Failure or refusal to submit to said credit and background checks shall be an automatic disqualification of the potential transferee;

(10) The Transfer shall be made for no less than fair market value which would be paid at any "arm's length" transaction; and

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

10.9 Liability of Lessee

If a proposed transferee does not meet all of the criteria set forth in this Article, Lessor, at its sole option, may require Lessee or other transferor transferring such interest in the Leasehold Estate to remain liable under this Lease for the performance of all obligations of Lessee within this Lease, including, but not limited to, payment of Rent due under this Lease. If a proposed transferee does meet the criteria set forth in this Article X, then Lessee shall be released from any and all remaining liability and/or obligations set forth in this Lease from the effective date of such Assignment or Transfer, but shall remain liable and responsible as provided by this Lease and

Applicable Laws for performance of duties including, without limitation, payment of Rent, accruing prior to the effective date of such Transfer.

10.10 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 consent by Lessor to any such Transfer, nor shall the same be deemed to be a waiver of any right or remedy of Lessor hereunder.

10.11 Transfers of the Lessor'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 Premises, 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.

10.12 Mortgages of Leasehold Interest

10.12.1 Right to Mortgage. All rights of Lessee pursuant to this Lease are mortgageable, pledgeable, assignable or transferable, in accordance with the terms of this Lease. Any successor to, or assignee of, the rights of Lessee hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Lessee hereunder as fully as if named as such party herein. No party exercising rights as Lessee hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights. In no way shall Lessee have any authority to mortgage the fee ownership interest belonging to Lessor. Lessor shall reasonably cooperate with any lender of Lessee.

10.12.2 Requirements for Mortgage. In addition to the requirements specified throughout this Lease, Lessee may pledge, hypothecate, or otherwise mortgage the Leasehold Estate or its interest therein from time to time with unaffiliated third party institutional lenders such as banks, investment funds, financial institutions or life insurance companies, provided such lender has a minimum net worth of \$100,000,000 at the time the loan is made. Any other financing shall require the written permission of the City Manager, the permission for which shall not be unreasonably withheld, conditioned or delayed.

10.12.3 Notice. In the event Lessor gives a notice of default under this Lease to Lessee, Lessor shall also send a copy of such notice to any holder of a Leasehold Mortgage (each a "Mortgagee"), provided such Mortgagee or Lessee shall have sent Lessor a notice informing it of the existence of such Leasehold Mortgage and the name of the person or officer and the address to which copies of the notices of defaults are to be sent. Such Mortgagee shall have an additional thirty (30) days to cure any default that is capable of being cured with the payment of money, and an additional thirty (30) days for all other defaults (and such additional time, as to non-monetary defaults, as the Mortgagee in good faith and with reasonable diligence either attempts to cure such default or commences and thereafter prosecutes with reasonable diligence, if not enjoined or

stayed, appropriate proceedings for foreclosure or other enforcement of the liens securing its financing). Initiation of foreclosure proceedings against Lessee shall constitute “diligence” by a Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued and all Rent and Additional Rent is being paid to Lessor in accordance with this Lease during the pendency of any foreclosure proceeding. The foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not delay the exercise of self- help remedies by Lessor available under this Lease or Applicable Law in the event of an emergency.

10.12.4 Rights of Mortgagees. Once Lessor has received a notice of any Leasehold Mortgage as specified in the preceding section, then, from and after receipt of such notice:

(a) No voluntary termination of this Lease by both parties shall be effective unless consented to in writing by such Mortgagee; and any material amendment or material modification of this Lease or the exercise by any party of any option to terminate this Lease without the written consent of such Mortgagee shall be voidable as against such Mortgagee at its option. If any Mortgagee shall fail to respond to any written consent under this section within thirty (30) days after the receipt by such Mortgagee of such written request (which written request shall make specific reference to this section), the Mortgagee shall be deemed to have denied its consent to such request. No notice required to be given to Lessee by Lessor shall be effective as to such Mortgagee unless and until a copy thereof has been given to such Mortgagee.

(b) Lessor shall accept performance of any and all of Lessee’s obligations hereunder, including the obligations to pay rent, from any such Mortgagee and the performance of such obligation by such Mortgagee shall be deemed to have been a cure effected by Lessee. Lessor hereby consents to the entry onto the Premises by any such Mortgagee for the purpose of effecting the cure of any Lessee Default. In the event of a Lessee Default, any Mortgagee may affect the cure of such default by foreclosing its Leasehold Mortgage, obtaining possession of the Premises and performing all of Lessee’s obligations hereunder.

(c) If it shall be necessary for any such Mortgagee to obtain possession of the Premises to effect any such cure of a Lessee Default under this Lease, then Lessor shall not commence any proceeding or action to terminate the Lease Term if (a) such Mortgagee shall have informed Lessor within the grace period applicable to such Mortgagee that such Mortgagee has taken steps to foreclose its Leasehold Mortgage to obtain possession of the Premises, (b) all due and payable rent and all monetary obligations required to be paid to Lessor by Lessee under the Lease shall be paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Premises are so observed and performed while any such foreclosure, other action or other remedy is being prosecuted by any such Mortgagee and for so long thereafter as such Mortgagee shall have obtained possession of the Premises, and (c) such Mortgagee shall be diligently prosecuting such foreclosure or cancellation and attempting to effect a cure of the Lessee Default. Nothing herein contained shall be deemed to require the Mortgagee to continue with any foreclosure or other proceedings, or, in the event such Mortgagee shall otherwise acquire possession of the Premises, to continue such possession, if the Lessee Default in respect to which Lessor shall have given the notice shall be remedied.

(d) Lessor agrees that in the event of the termination of this Lease by reason of any Lessee Default or rejection of this Lease in a bankruptcy proceeding effecting Lessee, and if Lessor has, prior to such termination, been given written notice of the name and address of such Mortgagee, Lessor will enter into a new agreement for the Premises with any Mortgagee or a wholly owned subsidiary of Mortgagee for the remainder of the Lease Term, effective as of the date of such termination, at the rent and upon the terms, options, provisions, covenants and agreements as herein contained, provided:

(i) Such Mortgagee shall make written request upon Lessor for such new agreement prior to or within ten (10) days after the date of such termination and such written request is accompanied by payment to Lessor of all sums then due to Lessor hereunder, if any outstanding;

(ii) Such Mortgagee or its nominee shall pay to Lessor at the time of the execution and delivery of said new lease any and all sums which would at that time be due hereunder but for such termination; and

(iii) That in the event there exists more than one Mortgagee, the first Mortgagee shall have the first option to become Lessee under the provisions of this section, with priority over the second Mortgagee.

(e) No Mortgagee shall become liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the owner of the Leasehold Estate.

All of the provisions contained in this Lease with respect to Leasehold Mortgage and the rights of Mortgagees shall survive the termination of this Lease for such period of time as shall be necessary to effectuate the rights granted to all Mortgagees by the provisions of this Lease.

Nothing herein contained shall require any Mortgagee or its nominee to cure any default by Lessee hereunder, unless Mortgagee accepts assignment and assumption; however this shall not preclude the City from seeking a judicial remedy for any such losses or breaches of the Lease in a manner consistent with the terms of this Lease.

ARTICLE XI

COMPLIANCE WITH LAWS

11.1 Compliance with Laws

Lessee shall, at Lessee's sole cost and expense, comply with all Applicable Laws, and all applicable permitting and regulatory requirements, rules, regulations, codes, ordinances, and written policies now in force, or which may hereafter be in force, pertaining to Lessee or its use of the Premises in all material respects, and shall faithfully observe in the use of the Premises or in the performance of any alterations (including, without limitation, the construction of any Leasehold Improvements) all Applicable Laws now in force or which may hereafter be in force.

11.2 Labor Peace Agreements

Lessee shall require, or otherwise incorporate the requirement into any and all Subleases, that all contractors and employers of employees hired to staff Hospitality Operations (defined herein as any services provided at hotels, motels, bars, clubs, cafeterias, lodging, and food and beverage at convention or conference facilities) on the Premises, be a signatory to a “Labor Peace Agreement” covering the employees who will staff such hospitality operations.

The Labor Peace Agreement must be a valid agreement that includes a No-Strike Pledge prohibiting the labor organization and its members from engaging in any picketing, work stoppages, boycotts, or any other economic interference with the hospitality operation for as long as the Lessor determines that its revenues are at material risk from a potential labor dispute. The Labor Peace Agreement shall cover all hospitality operations (other than construction, alteration or repair of the Premises) that are conducted by lessees or tenants or under management agreements, where the contract amount is reasonably expected to be in excess of \$120,000. The Labor Peace Agreement shall not include any provision that would require or compel an employee to be a member of any labor organization.

A contracting party may be relieved of this obligation if: (a) the labor organization places conditions upon its No-Strike Pledge that the City Commission finds, after notice and public hearing, to be arbitrary or capricious; or (b) the City Manager makes a written finding containing the reasons for supporting the conclusion that a labor peace agreement should not be required as it would not be practicable or is not advantageous to the City, which finding must be approved by the City Commission, after notice and public hearing. Lessee shall comply with this provision to the extent not prohibited by law or any other provision within this or any other governing agreement.

11.3 Minimum Wage Requirements

Lessee shall comply and endeavor to make its sublessees comply with all minimum wage requirements applicable to the operations on the Premises. Lessee shall comply with this provision to the extent not prohibited by Applicable Law or any other provision of this Lease or any other governing agreement.

ARTICLE XII

ENVIRONMENTAL LIABILITY

12.1 Definition of Terms

For purposes of this Article XII the following terms shall have the meaning attributed to them herein:

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.

2. “Environmental Laws” shall include all applicable laws, rules and ordinances, existing now or in the future during the Term, as amended, modified, supplemented, superseded or replaced at any time during the Term, that govern or relate to: the existence, cleanup and/or remedy of contamination of property; the protection of the environment from spilled, deposited or otherwise emplaced contamination; the control of hazardous or toxic substances or wastes; the use, generation, discharge, transportation, treatment, removal or recovery of Hazardous Materials; or otherwise regulating the impact of human activities on the environment.

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 Premises.

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

12.2 Lessee’s Environmental Covenant

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 Premises or any portion thereof by the Lessee, its agents, employees, contractors, sub-lessees, licensees, or invitees except as may be customarily used and required to conduct Lessee’s business or as may be used in compliance with Environmental Laws. Lessee shall not permit any activities on the Premises that 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 and all Clean Up. Lessee’s obligation under this section shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

12.3 Survival of Obligations

The respective rights and obligations of Lessor and Lessee under this Article XII shall survive the expiration or termination of this Lease for a period of two (2) years.

ARTICLE XIII

DAMAGE OR DESTRUCTION OF PREMISES

13.1 Definitions

For the purposes of this Article XIII, the following words shall have the meanings attributed to them in this Section 13.1:

(a) “Completely Destroyed” means the destruction of the safe, leasable use or occupancy of a substantial portion of the Premises under this Lease which damage cannot reasonably be repaired, restored or replaced within eighteen (18) months from the date on which the damage occurred.

(b) “Partial Destruction” means any damage to the Premises which damage can reasonably be repaired, restored or replaced within eighteen (18) months from the date on which the damage occurred.

13.2 Duty to Repair, Restore or Replace Premises after Damage

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

In the event of Partial Destruction of the Premises, within sixty (60) calendar days after the later of (i) the damage (subject to reasonable delay and/or Force Majeure) or (ii) receipt by Lessee of the necessary building permits to rebuild the Leasehold Improvements or (iii) receipt of the Gross Insurance Proceeds, the Lessee shall use the Gross Insurance Proceeds available, together with Lessee’s own funds (if the Gross Insurance Proceeds are insufficient) to commence and diligently pursue to completion within one year from the date after commencement of the construction of the Leasehold Improvements (subject to reasonable extension due to Force Majeure or delays by Lessor in the repair, restoration, or replacement of the damaged or destroyed portion of the Premises as required in order for the Lessee to commence the restoration of the Leasehold Improvements or the type and scope of required repair), the repair, restoration or replacement of the damaged or destroyed portion of the Leasehold Improvements (“Restoration Work”), and this Lease shall remain in full force and effect, with no abatement in Rent. Lessee shall have the right to terminate this Lease without penalty as of the date Lessee delivers possession of the premises to Lessor if the casualty occurs during the last five (5) years of the Lease Term.

In the event the Premises are Completely Destroyed at any time during Lease Term, Lessee, in its sole discretion, shall have the option to select whether to terminate this Lease within one hundred eighty (180) days of the damage by delivering written notice to Lessor of its intention to terminate, at which time Lessee shall deliver possession of the Premises to Lessor as if it was the natural expiration of the Lease Term and both Parties shall be released from all obligations under this Lease except those that expressly survive termination. Rent shall be prorated as of the date of the Lessee’s evacuation. In the event the Lessee shall determine not to terminate this Lease, then at the Lessee’s sole cost and expense, (together with Gross Insurance Proceeds available for that purpose), Lessee shall commence and diligently pursue to completion the Restoration Work, in accordance with the provisions of Section 13.3 below, and Lessee shall complete the Restoration Work within three (3) years (subject to reasonable extension due to Force Majeure or delays by Lessor in the repair, restoration, or replacement of the damaged or destroyed portion of the Premises as required in order for the Lessee to commence the restoration of the Leasehold Improvements) from later of: (i) the date the damage occurred, or (ii) receipt of the necessary building permits to reconstruct the Leasehold Improvements to substantially similar condition existing immediately prior to the casualty and (iii) receipt of Gross Insurance Proceeds, and this Lease shall remain in full force and effect, with no abatement in Rent. If all Leasehold Improvements cannot be restored due to no fault of Lessee (i.e., change in law, inability to obtain necessary governmental permits or approvals), the Base Rent shall be equitably abated on a going-forward basis based on Fair Market Value of the restored Leasehold Improvements.

13.3 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 the same as possible to the condition that existed immediately prior to the damage, and shall be performed in accordance with the provisions of Article V applicable to the construction of any 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.

13.4 Intentionally Deleted

13.5 Lessee's Right to Terminate

If Lessee elects to exercise the option given under Subsection 13.2, to terminate this Lease, then any and all Gross Insurance Proceeds paid for damage or destruction of the Premises shall be applied as follows:

First toward payment of the cost to remove debris in accordance with Applicable Laws;

Second to the respective parties, assuming a termination of the Lease as of the date of the casualty, taking into account the Lessor's interest in the Leasehold Improvements at the end of the Lease Term.

13.6 Payment for Construction of Restoration Work

Except as otherwise provided for in this Article XIII, all Gross Insurance Proceeds shall be applied by the Parties to the payment of the cost of the Restoration Work to restore the entire Premises, together with any soft costs related thereto, and the Lessee shall make any additional deposits with an escrow agent, as required in Section 8.5, if applicable.

13.7 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.

13.8 Unused Insurance Proceeds and Deposits

After the payment for all Restoration Work costs, including without limitation soft costs related thereto, if any Gross Insurance Proceeds or sums deposited with an escrow agent or Lessor in connection with the Restoration Work 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, as provided in Section 8.3, 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 such remaining funds shall be applied first towards any payable but delinquent Rent, and the remaining balance promptly paid to the Lessee.

ARTICLE XIV

EMINENT DOMAIN

14.1 Total Condemnation

In the event that all of the Premises (or such portion thereof as shall, in the good faith opinion of Lessee, render it economically unfeasible for its intended purpose) shall be taken for any public purpose by the right of condemnation, 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, the 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. Any damages resulting to Lessor and Lessee, respectively, and to their respective interests in and to the Premises, the Leasehold Improvements, and in connection with this Lease (which amount of damages shall be calculated based on the remaining term of the Lease and any option periods without consideration of the termination of the Lease as provided in this Section), 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.

14.2 Partial Condemnation

In the event less than all of the Premises 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 the Premises not so taken or conveyed, subject to the Rent adjustment set forth in Section 14.3. Lessee shall to the extent the proceeds of the Gross Condemnation Award are made available to it, pursuant to the terms hereof, remodel, repair and restore the remaining portion of the Premises so that it shall be comparable to the Premises prior to the condemnation; provided, however, that in so doing, Lessee shall not be required to expend more than the amount of any Gross Condemnation Award actually received by Lessee. Provided also that Lessee shall be entitled to use a portion of Lessee's allocated Gross Condemnation award for actual out-of-pocket costs incurred by Lessee and paid to unaffiliated third parties as a result of the condemnation, subject to the review and approval of Lessor in its reasonable discretion. Lessee shall be permitted to terminate this Lease without penalty if the partial condemnation occurs during the last five (5) years of the Lease Term.

The Gross Condemnation Award allowed to Lessor and Lessee shall be paid to and received by the Parties as follows:

(a) There shall be paid to the Lessor the unimproved value of the portion of the land so taken and Lessor's reversionary interest in the improvements so taken. Lessor shall further be paid an amount by which the Rent has been reduced by the taking;

(b) 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 Premises have been reduced by the taking after any payment required by the Lease;

(c) There shall be paid to the Lessee the amount required to complete the remodeling and repairs to the Premises;

(d) The Lessor and Lessee shall be paid portions of the balance of the Gross Condemnation Award or awards, if any, which are allocable to and represented by the value of their respective interest in the Premises as found by the court in its condemnation award.

14.3 Adjustment of Rent Upon Partial Taking

In the event a part of the Premises 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 pursuant to this Lease shall be paid by Lessee to the Date of Taking or conveyance in lieu thereof, and after such date the Base Rent for the remainder of the Lease Term shall be reduced on an equitable basis based upon reduction in Gross Revenues generated from the Premises.

14.4 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 Gross Condemnation Award made in respect to the Premises in a condemnation proceeding shall be deposited with an escrow agent selected by the Lessor to be disbursed for the cost of restoring the Premises.

14.5 Temporary Taking

In the event that all or any portion of the Premises 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 Premises. If the period of governmental occupancy extends beyond the termination of the Lease Term, the Lessor shall be entitled to receive that portion of the Gross Condemnation Award allocable to the period beyond the termination of the Lease Term. The amount of any Gross 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 Gross 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 sub-section.

ARTICLE XV

PAYMENT OF TAXES, ASSESSMENTS AND OTHER IMPOSITIONS

15.1 Payment of Taxes and Impositions; Contest Rights

From and after the Delivery Date, Lessee shall pay all ad valorem and similar taxes, surcharged, levies, charges, assessments, and impositions levied against the Premises before any fine, penalty, interest or costs are added for non-payment. All such ad valorem and similar taxes, governmental levies, charges, impositions and assessments shall be payable by Lessee directly to the taxing authority prior to delinquency (without penalty) of such taxes, provided that Lessor has advised Lessee of its share of such taxes and assessments in a written notice, including a copy of the tax bill prior to delinquency.

Lessee shall have the right, at its own cost and expense, to contest the validity or amount of real estate taxes or other taxes levied against the Premises as permitted by Applicable Law, either in its own name or in the name of Lessor with Lessor's reasonable cooperation, at no cost to Lessor. Lessee shall be entitled to any and all resultant refund, rebate or reduction and such amount(s) shall neither be deemed to be part of the Gross Revenues for the applicable Lease Year to the extent such rebate, refund or reduction was an expense of Lessee, nor included in the calculation thereof once the final decision regarding the real estate tax or other tax levied has been made and not appealed or once all appeals are concluded in Lessee's favor.

15.2 Installment Payments of Ad Valorem Taxes and Impositions

Lessee agrees that the Premises or any interest thereon may be 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 ad valorem taxes or other Impositions are payable or may, 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 Lease Date and part of which is included after the Delivery Date shall be adjusted as between the Lessor and the Lessee as of the commencement 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 Lease Term, and the Lessor shall pay the remainder, if applicable.

15.3 Payment in Lieu of Taxes

The Lessee shall be responsible for the following payments or for payments in lieu of taxes ("PILOT") during the use period in the event the Premises is deemed exempt from ad valorem real estate taxes; in which case, Lessee will pay the City of Miami an annual PILOT in an amount equal to the last year's taxes payable to the City of Miami (or any other governmental body or agency

making a claim upon the City of Miami for its portion of such taxes) prior to the exempt status. The PILOT will increase on each anniversary of the Lease Date at a rate equal to three percent (3%). If Lessee is required to pay ad valorem taxes on the Property, it shall not be required to pay the PILOT. Lessee shall receive a dollar for dollar credit for all sums paid by Lessee under the PILOT against any amounts payable with respect to ad valorem taxes such that Lessee shall never pay more than the annual amount of the ad valorem taxes otherwise payable.

15.4 Proof of Payment

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

ARTICLE XVI

DEFAULT

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 Rent, as and when due and payable in accordance with this Lease, and such default continues for more than ten (10) days after the sum is due (and for the first late payment in each 12 month period of time Lessor has provided written notice of such failure and Lessee has failed to pay the same within ten (10) days after receipt of such written notice);

(b) In the event Lessee shall cease to operate its business, unless in connection with alterations, renovations, casualty or Force Majeure event, for a period of fifteen (15) consecutive Business 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 or contested in good faith within sixty (60) 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 for this Lease and/or substantially all the assets of Lessee and is not a Transfer hereunder otherwise approved by Lessor;

(e) In the event of an appointment by any court of a receiver or other court officer of Lessee’s Premises and such receivership is not dismissed or contested in good faith within sixty (60) days from the date of such appointment;

(f) In the event Lessee removes, attempts to remove, or permits to be removed from the Premises, except in the usual course of trade, a substantial portion of the Leasehold Improvements (furnishings, fixtures, and equipment) installed or placed upon the Premises by the

Lessee during the Lease Term or if such item has become obsolete, and is not replaced by a newer version, or if the same level of service is not affected, or no adverse change occurs;

(g) In the event Lessee, before the expiration of the Lease Term, and without the written consent of Lessor, abandons the possession of the Premises, or uses the same for purposes other than the purposes for which the same are hereby leased or as otherwise permitted by Lessor, and such default continues for more than thirty (30) days after written notice of the default from the Lessor to the Lessee. In the event an execution or other legal process is levied upon a significant portion of the goods, furniture, effects or other personal property of Lessee brought on the Premises, or upon the interest of Lessee in this Lease, and the same is not satisfied, dismissed or contested in good faith within sixty (60) days from such levy;

(h) In the event Lessee defaults in the due performance or observance of any Lease term, covenant, condition or provision, other than the payment of Rent and other than provisions for which default is specifically defined, including without limitation failure to maintain insurance coverage in effect, failure to obtain permits or approvals required by law, or failure to timely pay taxes, fees, surcharges, other impositions when required by law, etc. and such default continues for more than thirty (30) days after written notice of the default from the Lessor to the Lessee, or such longer period as is reasonably necessary to diligently cure such default; or

(i) failure of the Lessee to complete the Construction Work for the Leasehold Improvements contemplated by the Phasing Plan in the time frames required by this Lease and Applicable Law, subject to Force Majeure or Approved Permit Adjustment.

16.2 Remedies of Lessor

During any Lessee Default, Lessor shall have the right, after the expiration of the applicable notice and/or cure periods and after compliance with all Applicable Laws, at the sole discretion of Lessor, to terminate this Lease upon providing Lessee with five (5) days' written notice and an opportunity to cure. Such notice shall be in addition to any notice or cure period required in Section 16.1 or elsewhere in this Lease or by Applicable Law. If such Lessee Default remains uncured upon the expiration of such five (5) day period, this Lease shall automatically terminate and the Parties shall have no further obligations under this Lease except those that expressly survive survival. Lessor may terminate this Lease and retain the applicable portion of the Security Deposit in accordance herewith irrespective of any suit or action brought by Lessee and the time period required for termination of this Lease shall not be tolled by the filing of a suit or action to the extent permitted by Applicable Law.

Additionally, during any Lessee Default, Lessor may, at its option, from time to time, without terminating this Lease, re-enter and re-let the Premises, 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 reasonable attorneys' fees and real estate commissions paid in connection with such re-letting and collection, and then the balance towards the payment of all Rent as it becomes due and payable to Lessor hereunder. If the rent received by the new lessee does not cover the aforementioned expenses and Rent, then, at Lessor's option, Lessee shall pay Lessor any deficiency within thirty (30) days after written 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 Premises 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 Premises in excess of the Rent provided in this Lease.

If any Lessee Default occurs, Lessor shall have the right to obtain injunctive and declaratory relief, temporary and/or permanent, against Lessee for such Lessee Default, and to further obtain specific performance of any term, covenant or condition of this Lease, including but not limited to the appointment of a receiver to operate Lessee's business at the Premises.

During any Lessee Default, 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 Premises 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.

No such re-entry or taking possession of the Premises 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 Lessee 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, unless caused by Lessor's gross negligence or willful misconduct.

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 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.

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.

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 term 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 annul this Lease or to re-enter the Premises or to re-let same.

16.4 Late Payment Fee

Any installment of Rent not received within five (5) days after the due date shall be subject to a late payment fee of five percent (5%) of the amount due ("Late Fee"). In the event that any check, bank draft, order for payment, or negotiable instrument given to Lessor by Lessee for any payment due and owing under this 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 Lessee Default during the Lease Term, Lessor shall be entitled to make an administrative charge to Lessee of twenty-five and 0/100 dollars (\$25.00) for each notice of a valid Lessee Default. Lessee recognizes and agrees that the charges 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 of the costs of Lessor in the administration of the Premises resulting from the events described herein, 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.

16.5 Additional Guarantees

In the event of a Lessee Default which directly or indirectly causes Lessor to suffer damages, and thereafter Lessee fails to cure or remedy the respective Lessee Default in accordance to the terms of this Lease, either: (1) Lessee's Principal, or (2) a Qualified Replacement Guarantor (defined below), shall assume responsibility as a personal guarantor ("Guarantor") and shall pay the amounts due and/or perform the obligations required of Lessee. Guarantor may, at Lessor's option, be joined in any action or proceeding commenced by Lessor against Lessee in connection with and based upon the failure of Lessee to perform. Alternatively, upon a Lessee Default, at Lessee's sole option, Lessee may deposit an amount equal to three times the amount in dispute into an escrow account, bond, or similar financial reserve to serve in place of the Guarantor ("Default Escrow Funds"). The Default Escrow Funds shall be used by the Parties solely to fulfill the obligations of Lessee as they become due under this Lease. Upon the termination or expiration of this Lease, any remaining Default Escrow Funds shall be returned to Lessee within three (3) Business Days.

For purposes of this Section 16.5, the term "Qualified Replacement Guarantor" shall mean any person, partnership, corporation, trust or other legal entity who (i) has a net worth of at least ten million dollars (\$10,000,000.00) or such greater amount as Lessor Principal as of the Lease Date, and (ii) owns or controls, or is owned or controlled (directly or indirectly) by or under common ownership with Lessee, Suntex, Christoph or Principal.

16.6 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.

16.7 Lessor Default

In the event that Lessor shall at any time be in default of the terms of this Lease and any such default shall continue for a period of sixty (60) days after written notice to Lessor, and Lessor shall not thereafter cure or commence to cure the default, Lessee shall have the right at any time thereafter (but in no event shall be obligated) to cure such default for the account of Lessor, and Lessor shall promptly reimburse Lessee for any amount paid and any expense or contractual liability so incurred within thirty (3) days after written demand. In the event Lessor fails to timely reimburse Lessee hereunder, Lessee may offset any amounts rightfully due it against future Rent payments. In the event the Lessor default is of the nature of an emergency, is a threat to any life safety issues or materially impairs Lessee from operating its business on the Premises, Lessee may immediately commence the cure referenced above upon written notice to Lessor and Lessor shall reimburse Lessee as provided above. In the event of any default by Lessor hereunder beyond any applicable notice and/or cure period, Lessee may, at any time thereafter, from time to time, bring an action for damages and/or injunctive relief, to the extent permitted by Applicable Law.

ARTICLE XVII

ACCESS

17.1 Right of Entry

Lessor and Lessor's agents shall have the right to enter the Premises at all reasonable times upon reasonable prior written 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 Premises 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 Premises or any part thereof, however Lessor shall not unreasonably interfere with Lessee's or any Sublessee's, licensee's or concessionaire's business operation or the Construction Work.

17.2 Access Agreements

At Lessor's request, Lessee shall enter into an agreement in form and content reasonably acceptable to Lessee, to provide access ("Access Agreement") to individuals or entities ("Users") for events including, but not limited to, the National Marine Manufacturers Association

(“NMMA”) International Boat Show (“Boat Show”), and any other event permitted by Lessor and approved by the City of Miami Commission on the property immediately adjacent to the Premises (“Adjacent Premises Agreement”). No Adjacent Premises Agreement entered into or modified after the Lease Date shall materially impair Lessee’s use of the Premises for its intended use. Lessee shall be permitted to directly discuss with NMMA and such other Users regarding the location of the access areas and the terms and conditions of such use, however, Lessee shall not be entitled to change a use fee or rent therefor. Any damage to the Premises caused by User’s use under the Access Agreement shall promptly be repaired to the satisfaction of Lessee at such User’s expense. Users shall be required to carry a commercially reasonable amount of insurance, naming Lessee and its appropriate affiliates as additional insureds, and shall indemnify Lessee from any injuries or damages arising out of such User’s use under the Access Agreement. Temporary structures shall be allowed to be constructed by Lessee in the access area so long as they do not materially interfere with the Boat Show, pursuant to the agreement between the City and NMMA/Boat Show as of the Lease Date. The use of the Premises by NMMA or any User shall not impair Lessee’s ability to use the Premises for its intended use or negatively impact Lessee’s or any Sublessee’s, licensee’s or concessionaire’s business operations, including but not limited to vehicles, pedestrian access for customers, invitees and tenant to the Leased Premises or Construction Work during the Boat Show. All Access Agreements shall contain the rights and obligations of all the parties set forth in this Section 17.2 and be duly executed by all Users prior to accessing the Premises.

ARTICLE XVIII

DAMAGE TO LESSEE’S PROPERTY

18.1 Loss and Damage

Unless caused by a negligent act or omission of Lessor or Lessor’s officers, employees, or agents, the Lessor shall not be responsible for any damage to or loss of 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 Premises, by theft or otherwise. Unless caused by willful misconduct or gross negligence of Lessor or Lessor’s officers, employees, or agents, Lessor shall not be liable for any injury or damage to persons or Premises resulting from fire, smoke, explosion, falling plaster, steam, gas, electricity, water, rain, or leaks from any part of the Premises 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 patent or latent defect in the Premises. All property of Lessee kept or stored on the Premises 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, unless caused by willful misconduct or gross negligence of Lessor.

ARTICLE XIX

HOLDING OVER & SUCCESSORS

19.1 Holding Over

In the event Lessee remains in possession of the Premises after the expiration of the Lease Term, Lessee, at the option of Lessor, shall be deemed to be occupying the Premises as a Lessee at sufferance at a monthly rental equal to one and a half (1.5) times the monthly Rent of the preceding Lease Year (including Percentage Rent, payable during the last month of the Lease Term hereof). In addition, Lessee agrees to pay monthly: (a) one-twelfth (1/12) of the taxes for the Premises based upon the total 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.

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, except as otherwise expressly provided for in this Lease, and, in the event Lessor sells its interest in the Premises and the purchaser assumes Lessor's obligations and covenants, Lessor shall thereupon be relieved of all further obligations hereunder.

ARTICLE XX

EQUAL EMPLOYMENT OPPORTUNITIES

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 definitive 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.

20.2 Community Small Business Enterprise

Lessee shall work towards achieving Community Small Business Enterprise (“CSBE”) goals, employing the requirements of the Community Small Business Enterprises set forth in the City of Miami Procurement Ordinance, codified in Chapter 18, Article III, City Code, as a model; and shall try to attain, but not mandate, a plan for its achievement, which will strive to provide equal opportunity in hiring and promoting for Miami-Dade County certified CSBE companies, the disabled and veterans. Such plan shall include a set of positive measures taken to insure utilization of CSBE companies when practicable and nondiscrimination in the work place as it relates to hiring, firing, training and promotion.

20.3 Non-Discrimination

Lessee represents and warrants to the Lessor that it will comply with §18-188, §18-189 and §18-190 of the City of Miami Code incorporated herein. Lessee hereby represents and warrants that it shall not engage in discriminatory practices and shall not discriminate in connection with Lessee’s use of the Premises on account of race, national origin, ancestry, color, sex, religion, age, handicap, familial status, marital status or sexual orientation. Further, should the Lessee introduce or have existing membership rules for patrons at the Premises, that it will comply with the non-discrimination provisions incorporated within §18-188, §18-189, §18-190, and §18-191 of the City of Miami Code as incorporated herein by reference.

ARTICLE XXI

MISCELLANEOUS

21.1 Accord and Satisfaction

No payment by Lessee or receipt by Lessor of a lesser amount than the Rent or other amount due as specified herein shall be deemed in satisfaction of any such amounts owed; nor shall any endorsement or statement on any check remitting partial payment or any letter accompanying any partial payment be deemed an accord and satisfaction of Lessee’s debt. 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.

21.2 Public Records

Lessee shall comply with Section 119.0701, Florida Statutes, including without limitation: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost, to the City all public records in its possession upon termination of this Lease and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and, (5) provide all electronically stored public records to the City in a format compatible with the City’s information technology systems. Notwithstanding the foregoing, Lessee may withhold and/or mark certain business records, trade

secrets and other proprietary information as confidential and any such information shall be excluded from public records disclosure to the fullest extent permitted by applicable law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BY PHONE AT (305)416-1883; BY EMAIL AT PUBLICRECORDS@MIAMIGOV.COM; OR IN PERSON AT 444 SW 2ND AVENUE, 9TH FLOOR, MIAMI, FL 33130.

21.3 Entire Agreement

This Lease 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 Premises and there are no covenants, promises, conditions or understandings, either oral or written, between them other than those set forth herein. All representations, either oral or written, made between the Parties shall be deemed to be merged into this Lease. No course of prior dealings between the Parties or their officer's 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, termination, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by the Parties. Any amendments to this Lease must be approved with the same formalities as were used in its execution; providing, however, that the City Manager may administratively execute non-material (i.e. non-substantial) amendments of the Lease on behalf of the Lessor in the exercise of his professional discretion. 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.

21.4 Independent Parties

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

21.5 Notices

Any notice by the Parties required to be given must be served by certified mail return receipt requested, nationally recognized overnight courier service, or by hand delivery, addressed to Lessor or Lessee at the following addresses (or such other address as any party may designate to the other party in writing from time to time):

If to Lessor at:

If to Lessee at:

City Manager
City of Miami
444 SW 2nd Avenue, 10th Floor
Miami, Florida 33130

c/o RCI Marine
300 Alton Road, Suite 303
Miami Beach, Florida 33139
Attn: Robert W. Christoph

With copies to:

City of Miami City Attorney
Office of City Attorney
444 SW 2nd Avenue, 9th Floor
Miami, Florida 33130

With a copy to:

Bilzin Sumberg Baena Price &
Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131-3456
Attn: Carter McDowell, Esq.
Suzanne Amaducci-Adams, Esq.

and

City of Miami
Director, Department of Real Estate
and Asset Management
444 SW 2nd Avenue, 3rd Floor
Miami, Florida 33130

Virginia Key SMI, LLC
c/o Suntex Marina Investors LLC
17330 Preston Road, Suite 220A
Dallas, Texas 75252
Attention: Bryan C. Redmond

All notices given hereunder shall be effective and deemed to have been given upon receipt by the party to which written 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. 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. Notices required hereunder may be given by the Parties' respective attorneys.

21.6 Captions and Section Numbers

The captions, section numbers, and article numbers appearing in this Lease are inserted only for 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.

21.7 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 deemed invalid or unenforceable by a Court with jurisdiction, the remainder of this Lease 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.

21.8 Estoppel Certificate

Each party agrees that it will, at any time and from time to time, within ten (10) Business Days following written notice by the requesting party specifying that it is given pursuant to this section, execute, acknowledge and deliver to the requesting party 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 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 known and/or currently claimed by the certifying party and whether or not to the knowledge of the certifying party, the requesting party is in default in performance of any, covenant, agreement or condition contained in this Lease, and if so, specifying each such default of which certifying party has knowledge.

It is agreed that nothing contained in the provisions of this Section shall constitute waiver by requesting party of any default existing as of the date of such notice and, unless expressly consented to in writing by requesting party and, certifying party shall still remain liable for the same. There will be a two hundred fifty dollar (\$250.00) regulatory fee per Section 166.221, Florida Statutes for each request made of Lessor for each estoppel certificate requested in accordance herewith, payment in full shall be made at the time of the request. No estoppel certificate shall be issued without payment of such fee.

21.9 Waiver

Failure on the part of either party to 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.

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.

21.11 No Discrimination

It is intended that the Premises shall be operated in a manner whereby all customers, employees, lessees and invitees of the Lessee shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Premises without discrimination because of race, creed, color, sex, age, national origin, ancestry, handicap or disability of any kind. To that end, Lessee shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin, ancestry, handicap or disability of such person or group of persons.

21.12 Governing Law, Venue, & Attorney's Fees

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. Additionally, all disputes civil action or legal proceeding arising out of or relating to this Lease shall be brought in the courts of record in Miami-Dade County. Each party shall bear their own attorney's fees in civil actions between them arising out of this Lease.

21.13 Waiver of Counterclaims

Lessee shall not impose any permissive counterclaim(s) for damages in a summary proceeding or other action based on termination or holdover, it being the intent of the Parties hereto that Lessee be strictly limited in such instances to bringing a separate action in the court of appropriate jurisdiction, however, Lessee may assert any compulsory counterclaims in such action. 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.

21.14 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, and/or Lessee's use or occupancy of the Premises.

21.15 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 Lessee shall peaceably and quietly hold, occupy and enjoy the Premises 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 Premises leased herein, or by persons with title superior to the Lessor, its successors and assigns.

21.16 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 Premises in good repair and condition, reasonable wear and tear, casualty and condemnation excepted.

21.17 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 Lessor, or, by virtue of a transfer of either party's interests herein, assume the rights and obligations of the Lessee or Lessor hereunder, the liability of each such individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) to perform all 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 shall be deemed as having been given to all of them.

21.18 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.

21.19 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.

21.20 No Liability for Act of other Party

Lessee shall not sign any contract or 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 or agreed to herein, 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, for the management and operation of the Premises; 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 in writing. 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.

21.21 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 Applicable Law to restaurant operators or proprietors.

21.22 Review of Statements

All charges due from Lessee to Lessor for which Lessee must be billed by Lessor must be billed within twelve (12) months following the expiration of the calendar year in which the charge is incurred by Lessor (except for Impositions under appeal which must be billed within twelve (12) months after the final, non-appealable adjudication of such appeal) or Lessor will have waived its right to reimbursement which may have been established in any paragraph to this Lease unless such under payment was discovered in an Audit performed pursuant to Section 4.8.

21.23 Brokers

Lessor and Lessee each represents that it has not dealt with any broker or salesperson in connection with the negotiation or execution of this Lease or any other person or entity who would create any liability for the payment of a commission, finder's fee or other remuneration other than CBRE, Inc. ("Broker"), and each agrees to indemnify and hold the other party harmless against all

claims, losses, causes of actions, demands, liability, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all levels of proceedings) for its respective breach of the foregoing representation. Lessee shall pay to Broker a commission in an amount not to exceed one million four hundred and seventy-five dollars (\$1,475,000.00) in full and final satisfaction of any fees due to Broker in connection with this Lease.

21.24 Consents

Wherever in this Lease the consent or approval of one party is required for an act of the other party, unless otherwise specified, such consent or approval shall not be unreasonably withheld, delayed or conditioned. 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. Any consent or approval by Lessor hereunder shall be in its capacity as landlord and owner of the Premises and not in its capacity as a municipality or governmental entity.

21.25 Memorandum of Lease

Upon the occurrence of the Lease Date, at the request of either party to the other, each of the Parties agree to execute, deliver and record in the public records in the county in which the Premises is located a Memorandum of Lease in substantially the form attached hereto as **Exhibit G**.

21.26 City as Lessor Only

Nothing in this Lease shall impose any obligations or requirements on the City of Miami acting in its regulatory capacity. The obligations of the Lessor set forth in this Lease are not intended to limit or otherwise affect the ability of the Lessor, acting in its governmental capacity, to exercise its police powers and regulatory responsibilities with respect to the Premises and any activities within the Premises.

21.27 Access to Premises. Prior to the Delivery Date, Lessee shall have reasonable access to the Premises during business hours in order to conduct tests, make plans and for other purposes consistent with the Lessee's performance under the Lease. Lessee shall use commercially reasonable efforts not to disturb any occupants or tenants at the Premises during such entry.

21.28 Anti-Human Trafficking

Lessee confirms and certifies that neither it, nor any entity engaged by it in connection with this Lease, is in violation of Section 787.06, Florida Statutes, and that it does not and shall not use "coercion" for labor or services as defined in Section 787.06, Florida Statutes. Lessee shall execute and submit to the City an Affidavit, of even date herewith, in compliance with Section 787.06(13), Florida Statutes, attached and incorporated herein as **Exhibit H**. If Lessee fails to comply with the terms of this subsection, the City may suspend or terminate this Lease immediately, without prior notice, and in no event shall the City be liable to Lessee for any additional compensation or for any consequential or incidental damages.

21.29 Electronic Signatures; Counterparts

This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Lease. The Parties shall be entitled to sign and transmit an electronic signature of this Lease (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Lease upon request.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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: _____
James Reyes
City Manager

ATTEST:

By: _____
Todd B. Hannon
City Clerk

**APPROVED AS TO INSURANCE
REQUIREMENTS:**

By: _____
Ann-Marie Sharpe
Risk Management Director

**APPROVED AS TO LEGAL FORM &
CORRECTNESS:**

By: _____
George Wysong, III
City Attorney

LESSEE:

VIRGINIA KEY, LLC, a Florida limited liability company

By: Virginia Key Parent, LLC, a Florida limited liability company, its Manager

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

The undersigned hereby executes this Lease to confirm its obligations under Section 16.5 hereof.

GUARANTOR:

VIRGINIA KEY PARENT, LLC, a Florida limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

SURVEY/LEGAL DESCRIPTION OF PREMISES

attached on following pages

EXHIBIT B

MONTHLY GROSS REVENUE REPORT

[TO BE INSERTED PRIOR TO EXECUTION]

EXHIBIT C

CONTRACTOR INSURANCE REQUIREMENTS

I. Commercial General Liability

- A. 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
- B. Endorsements Required
 - City of Miami listed as an additional insured
 - Contingent and Contractual Liability
 - Premises and Operations Liability
 - Explosion, Collapse and Underground Hazard
 - Primary Insurance Clause Endorsement

II. Business Automobile Liability

- A. Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Combined Single Limit
 - Any Auto
 - Including Hired, Borrowed or Non-Owned Autos
 - Any One Accident \$1,000,000
- B. 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. Umbrella Policy

A. Limits of Liability

Bodily Injury and Property Damage Liability

Each Occurrence \$10,000,000

Aggregate \$10,000,000

City of Miami listed as an additional insured

Excess Follow Form over all applicable liability policies contained herein

Note: this does not apply to stand-alone policies for professional liability or pollution

VI. Excess Liability

Each Occurrence \$10,000,000

Policy Aggregate \$10,000,000

Excess Follow Form over primary and umbrella limits. City listed as an additional insured

VII. Owners & Contractor's Protective

Each Occurrence \$1,000,000

General Aggregate \$1,000,000

City of Miami listed as named insured

VIII. Payment and Performance Bond \$Full Value

City of Miami listed as an Obligee

IX. Protection and Indemnity (if applicable)

Limits of Liability

Each Occurrence \$1,000,000

Policy Aggregate \$1,000,000

Jones Act Included

City of Miami Listed as an additional insured

X. Builder's Risk

Causes of Loss: All Risk of Direct Physical Damage or Loss

Valuation: Replacement Cost

Deductibles: 5% Wind, Hail, and Flood, \$25,000 AOP

Coverage Extensions included

City of Miami listed as an additional insured and loss payee

XI. Professional Liability

Limits of Liability	
Each Claim	\$5,000,000
Policy Aggregate	\$5,000,000
Retro Date Included	

XII. Pollution Liability (If Applicable) \$2,000,000

City of Miami listed as an additional insured

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than “A-” as to management, and no less than “Class V” as to Financial Strength, by the latest edition of Best’s Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and/or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

EXHIBIT D

LEASEHOLD INSURANCE REQUIREMENTS

I. Commercial General Liability

- A. 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
- B. Endorsements Required
 - City of Miami listed as an additional insured
 - Contingent and Contractual Liability
 - Premises and Operations Liability
 - Primary Insurance Clause Endorsement

II. Business Automobile Liability

- A. Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Combined Single Limit
 - Any Auto
 - Including Hired, Borrowed or Non-Owned Autos
 - Any One Accident \$1,000,000
- B. Endorsements Required
 - City of Miami included as an Additional Insured

III. Worker's Compensation

- Limits of Liability
 - Statutory-State of Florida
 - Waiver of subrogation

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. Umbrella Policy (Excess Follow Form)

- 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
 Coverage is excess over all applicable liability policies evidenced herein including liquor.

VI. Liquor Liability \$1,000,000

City of Miami listed as an additional insured

VII. Crime Coverage (If Applicable) \$100,000

Forgery and Alteration
 Including M&S, Robbery or Safe Burglary
 City of Miami listed as loss payee

VIII. Plate Glass Scheduled

IX. Property

Commercial Property Insurance covering the Building and Business Personal Property, including fixtures, equipment, improvements, and betterments, including coverage for docks piers, or wharfs, dry storage and wet storage facilities owned by LESSEE. The Commercial property form shall, at a minimum, cover the perils insured under the ISO Special Causes of Loss Special Form (CP 10 30), or a substitute form providing equivalent coverages written on an All Risk or Direct Physical Loss or Damage basis with no coinsurance, including wind and named storm coverage and hail subject to a maximum of 5% deductible depending on market conditions, along with earth movement and flood (flood shall be limited to the maximum available through NFIP/Federal government). Coverage should be included for debris removal, and demolition and increased cost of construction that are caused by legal requirements regulating the construction or repair of damaged facilities or subject property, including an ordinance and law endorsement, in an amount of not less than the replacement cost of the property insured and leasehold improvements (exclusive of foundation and excavation costs), trade fixtures and floor coverings. In addition, the policy should afford coverage for sprinkler leakage, extended coverage including vandalism and malicious mischief, as well as coverage for time element with limits covering the annual rent and debt service payment for the leased improvements, and including ordinary payroll and contingent business income with 180 day extended period of indemnity. Boiler and machinery coverage if applicable, covering repair and replacement of all boilers and machinery servicing or benefiting the leasehold improvements including use and occupancy coverage in amount acceptable to the Lessor. Coverage enhancements or extensions as provided by the coverage form to, builders risk exposures, limited pollution, and ingress and egress coverage among others. The amount

of insurance shall equal the full estimated replacement cost of all real and business personal property owned by the LESSEE.

The City shall be included as an additional insured and loss payee under the commercial property insurance.

X. Marina Operators Legal Liability \$2,000,000

City of Miami listed as an additional insured on this coverage

XI. Pollution Liability

Limits of Liability

Each Occurrence \$5,000,000

Policy Aggregate \$5,000,000

City of Miami listed as an additional insured

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than “A-” as to management, and no less than “Class VII” as to Financial Strength, by the latest edition of Best’s Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

EXHIBIT E
PHASING PLAN

In no event shall the below phasing plan limit or be deemed to waive the Lessee's obligations to redevelop the Premises in the manner required by the RFP and the Proposal.

Phase 1:

- Build 282 dry slips in a mixed-use building (western most of 3 proposed buildings) which building will include an additional commercial space (where retail and the dock master's office relocated) and new parking spaces;
- Use of the existing 280 surface parking spaces at east end of the Project;
- Renovate the two existing commercial buildings containing approximately 19,000 sq. ft. for use as commercial space which may include restaurant;
- Install fuel tanks, renovate existing fueling areas; and
- Renovate existing boat launch.

Phase 2:

- Build an additional 180 dry slips (for total of 462), in the second mixed use building (center building) and add second water launch facility. This building will contain approximately 5,000 sq. ft. of commercial space and additional parking spaces; and
- Renovate existing docks and/or build new docks containing 40 wet slips in south portion of the basin.

Phase 3:

- Build an additional 288 dry slips in a third mixed use building for a total of 750 slips;
- Build approximately 8,000 sq. ft. of commercial space (include boat and marine service);
- Build approximately 162 wet slips; and
- Build additional surface parking spaces for a total of approximately 630 on -site spaces.

Note: This projected schedule (i) has been developed to attempt to maximize the available facilities during the permitting and construction phases of the Leasehold Improvements, (ii) is subject to Force Majeure, and (iii) is subject to Lessee obtaining (a) legal and physical possession of the Premises, and (b) the land use approvals, zoning designation and permits for the construction of the Leasehold Improvements to be constructed by Lessee and the use of the Premises by Lessee. It is based upon the collective experience of the project team and best practice estimates for permitting timing for each of the phases of the Leasehold Improvements. Where experience shows that portions of the project permitting will likely take longer than other portions, they have been separated out into separate phases in order to expedite the prior phases and not delay those portions that should be able to be permitted more quickly. All of these timeframes are estimates that are substantially dependent upon the timeliness of third party reviewing agencies. Each of the time

frames also assume there are no third-party challenges or interventions in the permitting or construction processes. Any third-party involvement could change these timeframes significantly and could lead to denial of some permits. Lessee reserves the right to develop the Phases out of order.

EXHIBIT F

MEMORANDUM OF LEASE

[PARTIES TO DISCUSS MOL TERMS]

Prepared by and after recording return to:

Suzanne Amaducci-Adams, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this “Memorandum”) is entered into as of the _____ day of _____, 20____, between The City of Miami, a municipal corporation of the State of Florida (“Lessor”), and Virginia Key, LLC, a Florida limited liability company (“Lessee”).

RECITALS:

A. Lessor and Lessee have entered into that certain Lease Agreement dated as of _____, 20____ (the “Lease”).

B. The parties hereto desire to file this Memorandum of Lease in the Public Records of Miami-Dade County, Florida, to provide record notice of the Lease and the terms and conditions contained therein with respect to that certain real property located in Miami-Dade, County, State of Florida, and more particularly described in the attached **Exhibit A**.

NOW, THEREFORE, for good and valuable consideration and in further consideration of the rents reserved and the covenants and conditions more particularly set forth in the Lease, Lessor and Lessee hereby agree as follows:

1. Incorporation of Recitals; General Provisions. The above recitals are true and correct and are incorporated herein as if set forth in full. All capitalized terms in this Memorandum shall have the same meaning as in the Lease, except if otherwise noted.

2. Award Date. The Award Date, as defined in the Lease, is _____.

3. Delivery Date. The Delivery Date, as defined in the Lease, is _____.
4. Rent Commencement Date. The Rent Commencement Date, as defined in the Lease, is _____, 20____.
5. Lease Term. The Lease Term means that period of time commencing on the Rent Commencement Date and ending at 11:59 p.m. eastern time on _____, 20____.
6. Option to Renew. Lessee shall have two (2) consecutive renewal options of fifteen (15) years each, subject to the terms and conditions contained in the Lease.
7. Purpose. This Memorandum is not a complete summary of the terms of the Lease and is made by the parties hereto for the purpose of evidencing and providing actual and constructive record notice of the Lease and the lease terms set forth herein. This Memorandum is for information purposes only and it is subject to all of the terms, provisions and conditions of the Lease, all of which are incorporated herein by reference. Nothing contained in this Memorandum shall be deemed to in any way modify, supplement, negate or otherwise affect any of the terms, provisions or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this Memorandum, the terms of the Lease shall prevail. The rights and obligations of Lessor and Lessee shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

[Signature Pages Follow]

The parties hereto have executed this Memorandum to be effective as of the date first above written.

WITNESSES:

Print Name:_____
Print Address:_____

Print Name:_____
Print Address:_____

LESSOR:

CITY OF MIAMI

By:_____

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of () physical presence or () online notarization, this _____ day of _____, 20____, by _____, as _____ of The City of Miami, on behalf of The City of Miami. He/she () is personally known to me or () produced a driver's license as identification.

Notary Public, State of Florida

My commission expires:_____

Print Name:

VIRGINIA KEY, LLC, a Florida limited liability company

Title:

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me, by means of () physical presence or () online notarization, this _____ day of _____, 20____, by _____, as _____ of Virginia Key, LLC, a Florida limited liability company, on behalf of such company. He/She () is personally known to me or () produced a driver's license as identification.

Notary Public, State of

My commission expires:

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

[TO BE INSERTED PRIOR TO EXECUTION]

EXHIBIT G

PERMANENT IMPROVEMENTS

[TO BE INSERTED PRIOR TO EXECUTION]

EXHIBIT H

ANTI-HUMAN TRAFFICKING AFFIDAVIT

1. The undersigned affirms, certifies, attests, and stipulates as follows:
 - a. The entity/individual is a nongovernmental entity authorized to transact business in the State of Florida (hereinafter, “nongovernmental entity”).
 - b. The nongovernmental entity is either executing, renewing, or extending a contract (including, but not limited to, any amendments, as applicable) with the City of Miami (“City”) or one of its agencies, authorities, boards, trusts, or other City entity which constitutes a governmental entity as defined in Section 287.138(1), Florida Statutes (2024).
 - c. The nongovernmental entity is not in violation of Section 787.06, Florida Statutes (2024), titled “Human Trafficking.”
 - d. The nongovernmental entity does not use “coercion” for labor or services as defined in **Section** 787.06, Florida Statutes (2024).
2. Under penalties of perjury, pursuant to Section 92.525, Florida Statutes, I declare the following:
 - a. I have read and understand the foregoing Anti-Human Trafficking Affidavit and that the facts, statements and representations provided in Section 1 are true and correct.
 - b. I am an officer, a representative, or individual of the nongovernmental entity authorized to execute this Anti-Human Trafficking Affidavit.

FURTHER AFFIANT SAYETH NAUGHT.

Nongovernmental Entity/Individual:			
Authorized Signature:			
Name:		Title:	
Office Address:		Phone Number:	
Email Address:			