

EXHIBIT 5

Ground Lease Agreement

between

_____, LLC

and

THE CITY OF MIAMI BEACH, FLORIDA a

Florida municipal corporation

City Commission Resolution No. 2020-_____

LESSEE'S INITIAL DRAFT
SUBJECT TO CONTINUING DISCUSSIONS AND NEGOTIATIONS

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List of Exhibits and Schedules

EXHIBIT "A"	Acceptable Owner Definition
EXHIBIT "B"	Articles of Organization
EXHIBIT "C"	Organizational Chart

SCHEDULE "1"	Legal Descriptions and Graphical Depiction of Marina
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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“**Lease**”) is executed on the ____ day of _____, 2021[insert the date of closing under the air parcel PSA], by and between THE CITY OF MIAMI BEACH, FLORIDA, a Florida municipal corporation (the “**City**”) and _____, LLC, a _____ limited liability company (the “**Lessee**”). The Miami Beach Redevelopment Agency, a public agency organized and existing pursuant to the Community Redevelopment Act of 1969, as amended, Chapter 163, Part III, Florida Statutes (the “**RDA**”), is executing this Lease for the limited purposes as stated in the Joinder attached to this Lease.

RECITALS:

A. The City is desirous of leasing land for the redevelopment and operation of the Miami Beach Marina (as defined in Section 1.3) to maximize its use for a boat port, marina and recreational facility, offering dockage and other marina related services, for the use of and for the benefit of the general public.

B. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act set forth in Chapter 166 of the Florida Statutes, and the Miami Beach City Charter and Code of Ordinances (the “**City Code**”). The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required Governmental Approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

C. After the City having fully considered this Lease at two duly noticed public hearings [in compliance with Section 163.3225 of the Act *statutory reference to be confirmed*]; having determined that the Marina Project (as defined in Section 1.3) and this Lease are in compliance with the City’s Comprehensive Plan and Land Development Regulations (as each are defined in Section 1.3) as of _____, ___, 2020; and having further determined that it is in the City’s best interest to address the issues covered by this Lease in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Lease with the Lessee, subject to the terms and conditions herein.

D. On _____, 2020, the Mayor and City Commission, by Resolution No. 2020-_____, approved the execution of this Lease.

NOW THEREFORE, for and in consideration of the foregoing, and of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I VOTER REFERENDUM, EFFECTIVE DATE AND DEFINITIONS

Section 1.1 Voter Referendum. [Provision to be Added based on Final Provision in D.A.]

Section 1.2 Effective Date. This Lease shall be effective on January 1, 2022 (**“Effective Date”**).

Section 1.3 Defined Terms. As used herein the term:

“Acceptable Owner” has the meaning ascribed to it in Exhibit “A”.

“Acceptable Owner Criteria” has the meaning ascribed to it in Exhibit “A”.

“Affiliate” means, regarding any Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person. When used in reference to Lessee, for so long as Lessee (or any of its Affiliates) holds an interest, directly or indirectly, in Lessee, “Affiliate” shall include any Person Controlling, Controlled by, or under common Control with Lessee.

“Alternate Replacement Facilities” means a commercial and retail facility similar in size and scope to the existing facilities on Area 1 to be constructed in Area 1 in the event that Developer is unable to obtain final, non-appealable, Replacement Facilities Project Approvals or Developer fails to complete the Replacement Facilities. **[OPEN ISSUE – SUBJECT TO ON-GOING DISCUSSIONS, INCLUDING ADDING ADDITIONAL CRITERIA]**

“Annual Percentage Rent” has the meaning ascribed to it in Section 3.1(a).

“Approval, Approve or Approved” means the written approval or consent of a Party, which unless otherwise specified herein by reference to “sole discretion” or words of similar effect, shall be commercially reasonable and made in good faith and with due diligence.

“Arbitrator” shall have the meaning ascribed to it in **Error! Reference source not found.**

“Area 1” has the meaning ascribed to it in Section 2.1.

“Area 1/2 Improvements” means [to be inserted]. [note: replacement of fuel tanks is to be discussed]

“Area 1/2 Investment” means an aggregate of Fifteen Million and no/100 Dollars (\$15,000,000.00).

“Area 1/2 Investment Costs” shall mean the hard and soft costs to develop, construct and complete the Area 1/2 Improvements.

“Area 2” has the meaning ascribed to it in Section 2.1.

“Area 2 Improvements” means [to be inserted – fuel tank replacement to be discussed].

“Area 2 Investment” means an aggregate of Thirty Five Million and no/100 Dollars (\$35,000,000.00).

“Area 2 Investment Costs” shall mean the hard and soft costs to develop, construct and complete the Area 2 Improvements.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as amended.

“Bankruptcy or Judicial Action” has the meaning ascribed to it in Section 21.2(f).

“Base Rent” has the meaning ascribed to it in Section 3.1.

“Baywalk” means those portions of the baywalk directly adjacent to Area 2.

“Business Day” means a day other than a Saturday, a Sunday or a day on which the offices of the City, or national banks in Miami-Dade County, Florida are closed for business.

“Certificate of Occupancy” [conform this definition to the final definition for CO for the commercial project that is agreed upon by the various parties] means a certificate of occupancy or certificate of completion, as applicable, for the “vanilla shell” for the Replacement Facilities, and shall include any such certificate designated as “Temporary” in nature.**[OPEN ISSUE – TCO AND CO TO BE DETERMINED BY THE AUTHORITIES HAVING JURISDICTION AND PARTIES TO DISCUSS REPLACEMENT FACILITIES BEING OPERATIONAL]**

“City” shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City’s obligations and performance is pursuant to City’s position as the owner of Area 1 and tenant of Area 2 acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City’s regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Lease or in any way be deemed in conflict with, or a default under, the City’s obligations hereunder.

“City Code” has the meaning ascribed to it in the recitals hereto.

“City Commission” shall mean the governing and legislative body of the City.

“City Delays” shall mean the number of days in which the City performs any obligation under Section 8.10 hereof in excess of the number of days set forth for such performance therein.

“City Manager” shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing with respect to any specific matter(s) concerning this Lease (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to this Lease).

“City’s Representative” shall mean that person or those persons the City designates by notice to Lessee to be the City’s representative(s) to visit, inspect and monitor the progress of construction of the Replacement Facilities or Alternate Replacement Facilities, as applicable.

“Complete Construction” or **“Completion of Construction”** means the date Developer has completed the Replacement Facilities and all conditions of permits and regulatory agencies to obtain a Certificate of Occupancy have been satisfied, all applicable Governmental Authorities have issued a Certificate of Occupancy. **[OPEN ISSUE – DISCUSS THE SCOPE OF COMPLETION]**

“Completion Date” means that date that is twelve (12) years after [the Effective Date], as such date shall be reasonably extended for (i) a Force Majeure Event or Economic Force Majeure in accordance with this Lease; (ii) City Delays; and/or (iii) Unanticipated Circumstances, if applicable. **[definition among the documents will need to be uniform; conform to whatever the various parties ultimately agree upon]** **[OPEN ISSUE – DISCUSS THE CONSTRUCTION COMPONENTS FOR THE COMPLETION DATE AND SCHEDULE OF COMPLETION]**

“Comprehensive Plan” means the comprehensive plan which the City Commission has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

“Control,” “Controlling” or “Controlled” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by Governmental Requirements or otherwise, or the power to elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to such Person (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to “major decision” consent or approval rights of limited partners, shareholders or members, as applicable). For avoidance of doubt, if a Person (for purposes of this definition, “Person A”) cannot elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to a Person (for purposes of this definition, “Person B”) without the consent or approval of another Person or Persons, then Person A shall not be deemed to Control Person B.

“Corrective Action Work” has the meaning ascribed to it in Section 22.4(a)(vi).

“Default Rate”¹ means an interest rate equal to one percent (1%) **[OPEN ISSUE]** per annum above the highest annual prime rate (or base rate) published from time-to-time in The Wall Street Journal under the heading “Money Rates” or any successor heading as being the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) or if such rate is no longer published, then the highest annual rate charged from time-to-time at a large U.S. money center commercial bank, selected by the City, on short term, unsecured loans to its most creditworthy large corporate borrowers.

¹ This is the definition from the hotel lease, but the 1% over prime is the default rate in the existing lease – see article XXXVIII paragraph 9 of existing lease

“Design Review Board” means the Design Review Board of the City of Miami Beach.

“Developer” means _____, the developer of the Replacement Facilities.

“Development Agreement” means that certain Development Agreement for the construction of the Replacement Facilities dated of even date herewith between the City and the Developer.

“Development Arbitrator” shall have the meaning ascribed to it in Section 21.9(a).

“Development Dispute” means any dispute between Lessee and City (acting in its proprietary capacity) with respect to (i) whether a modification to the Alternate Replacement Facilities, is a Prohibited Change requiring City’s Approval pursuant to Section 8.4(b).

“Dispute” shall have the meaning ascribed to it in Section 21.8(a).

“Economic Force Majeure” means economic or political conditions or events that materially impair access to debt or equity markets by developers for development of projects in the United States similar to the Replacement Facilities, Alternate Replacement Facilities (as applicable), the Area 1/2 Improvements or applicable portion thereof or the Area 2 Improvements or applicable portion thereof, as applicable, or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession. [OPEN ISSUE]

“Effective Date” has the meaning ascribed to in Section 1.2.

“Environmental Claim” has the meaning ascribed to it in Section 22.4(a)(v).

“Environmental Condition” has the meaning ascribed to it in Section 22.4(a)(i).

“Environmental Laws” has the meaning ascribed to it in Section 22.4(a)(ii).

“Environmental Permit” has the meaning ascribed to it in Section 22.4(a)(iv).

“Event of Default” has the meaning ascribed to it in Section 21.1.

“Existing Marina Lease” means that certain Lease Agreement (“Original Lease”) dated June 24, 1983 between the City of Miami Beach, Florida ("City") and joined in by the Miami Beach Redevelopment Agency ("Agency"), and Carner-Mason Associates, Ltd., as evidenced by that Short Form Lease dated August 19, 1983, recorded November 9, 1983, in Official Records Book 11963, Page 1143, as amended by the following documents: (i) First Amendment to Marina Lease Agreement (“First Amendment”) dated as of October 23, 1991 among the City, Agency and Tallahassee Building Corp. ("TBC"); (ii) Second Amendment to Marina Lease Agreement dated as of August 11, 1994 between the City and TBC (the "Second Amendment"); (iii) Partial Release of Lease dated December 27, 1995 between the City and TBC, recorded in Official Records Book 17077, Page 1193; (iv) Third Amendment to Marina Lease Agreement dated May 27, 1997, among the City, the Agency and Marina Associates, recorded in Official Records Book 17673, Page

2846 (the "Third Amendment"); (v) Memorandum of Lease Amendments, filed May 29, 1997, in Official Records Book 17656, Page 4709; (vi) Fourth Amendment to Marina Lease Agreement dated April 15, 1998, among the City - the Agency and Marina Associates, recorded in Official Records Book 18391, Page 4862 (the "Fourth Amendment" together with the Original Lease, First Amendment, Second Amendment, and Third Amendment sometimes referred to herein as the "Modified Lease"); and (vi) Partial Release of Marina Lease Agreement recorded in Official Records Book 18626, Page 4354, all of the Public Records of Miami-Dade County, Florida between the City and the RDA and Miami Beach Marina Associates, Ltd., a Florida limited partnership.

"Existing Marina Lessee" means Miami Beach Marina Associates, Ltd., a Florida limited partnership.

"First Leasehold Mortgage" means a Leasehold Mortgage which is a first lien on Lessee's interest in this Lease and the leasehold and other interests created hereby.

"First Leasehold Mortgagee" means the Institutional Lender that is a holder of a First Leasehold Mortgage, which shall be evidenced by, and the City shall be able to rely absolutely on, a title report current as of the time of any determination and prepared by a generally recognized title insurance company doing business in Miami-Dade County, Florida, or upon a certificate of Lessee, signed and verified by a Responsible Officer of Lessee.

"First Subleasehold Mortgage" means a Subleasehold Mortgage which is a first lien on the Master Sublessee's subleasehold and other interests created by the Master Sublease.

"First Subleasehold Mortgagee" means each Institutional Lender that is the owner and holder of a First Subleasehold Mortgage, which shall be evidenced by, and the City shall be able to rely absolutely on, a title report current as of the time of any determination and prepared by a generally recognized title insurance company doing business in Miami-Dade County, Florida, or upon a certificate of the Master Sublessee, signed and verified by a Responsible Officer of the Master Sublessee.

"Force Majeure Event" [definition among the documents will need to be uniform; conform to whatever the various parties ultimately agree upon] means the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, whether actual or threatened; orders of any civil or military authority; insurrections; riots; acts of terrorism; epidemics; landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts and other natural disasters; plague, pandemic, epidemic, outbreaks of infectious or viral disease or any other public health crisis including quarantine, business closures mandated by government or municipal authorities, shelter in place orders or other restrictions on employees or the public, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; or other similar extraordinary causes beyond the commercially reasonable control of the Party claiming such inability. In no event shall "Force Majeure Event" include economic hardship or financial inability to perform specific to the Party nor shall it include Economic Force Majeure.

“Foreign Instrumentality” means a foreign (non-U.S.) government or agency thereof or a Person Controlled thereby.

“GAAP” means generally accepted accounting principles, as in effect from time to time, as promulgated by the Financial Accounting Standards Board, consistently applied or a system generally recognized in the United States as having replaced GAAP.

“Governmental Approvals” means all permits, approvals, certificates of occupancy, notifications, certifications, registrations, authorizations and other rights and privileges that are required by any Governmental Authority. Notwithstanding anything to the contrary in this Lease, the Lessee retains its rights in accordance with applicable Governmental Requirements to challenge or appeal any denial of Governmental Approvals.

“Governmental Authority” means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them, with jurisdiction over the Leased Property or the Lessee Improvements.

“Governmental Requirements” means any law, enactment, statute, code, order, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, or other similar requirement of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued, affecting the Leased Property or the construction and operation of the Lessee Improvements. Notwithstanding anything to the contrary in this Lease, the Lessee retains its right to challenge Governmental Requirements in accordance with all other applicable Governmental Requirements, including based on a constitutional objection that a Governmental Requirement violates Lessee’s constitutional rights regarding contracts.

“Gross Receipts” has the meaning ascribed to it in Section 4.1.

“Hazardous Substance” has the meaning ascribed to it in Section 22.4(a)(iii).

“Hearing” has the meaning set forth in Section 21.9(b).

“Hearing Date” has the meaning set forth in Section 21.9(b).

“Initial Lessee” means [insert].

“Initial Owner” has the meaning ascribed to it in **Error! Reference source not found.**

“Institutional Lender” means, any of the following entities that as of the date of closing of the applicable financing (i) is not a Prohibited Person, (ii) with respect to those entities in clause (g), (h), (i) and (j) below is not a Foreign Instrumentality (other than any of the member countries of the European Union or the Gulf Cooperation Council, each as existing as of the Effective Date, United Kingdom, Canada, Mexico, countries located in South America (excluding Venezuela), Japan, South Korea, Singapore and Australia, and Persons Controlled by any of the foregoing countries) and (iii) (A) with respect to those entities in clauses (a) through (e) and (i) below providing loans to be secured by Leasehold Mortgages, has a net worth in excess of

_____] Million Dollars (\$____,000,000) (as adjusted by inflation over the Term pursuant to Section 32.20 hereof), (B) with respect to those entities in clauses (a) through (e) and (i) below providing Mezzanine Loans to Mezzanine Borrowers that are direct or indirect owners of the Lessee, has a net worth in excess of _____ Million Dollars (\$____,000,000) (as adjusted by inflation over the Term pursuant to Section 32.20 hereof) and (C) with respect to those entities in clauses (h) and (j) below providing loans to be secured by Leasehold Mortgages or providing Mezzanine Loans to Mezzanine Borrowers that are direct or indirect owners of the Lessee, has total assets (in name or under management) in excess of \$____,000,000 (as adjusted by inflation over the Term pursuant to Section 32.20 hereof) for (h) and (j):

(a) any federal or state chartered commercial bank or national bank or any of its subsidiaries;

(b) any federal or state chartered savings and loan association, savings bank or trust company;

(c) any pension, retirement or welfare trust or fund, whose loans on real estate are regulated by state or federal laws;

(d) any public limited partnerships, public real estate investment trust or other public entity investing in commercial mortgage loans whose loans on real estate are regulated by state or federal laws;

(e) any licensed life insurance company in the business of making commercial mortgage loans or a subsidiary or affiliate of any such institution, in each case, whose loans on real estate are regulated by state or federal laws;

(f) any agent, designee, or nominee of an Institutional Lender that is an Affiliate (solely as described in clause (a) of the definition thereof) of any Institutional Lender or any other Person that is a subsidiary or an Affiliate (solely as described in clause (a) of the definition thereof) of an Institutional Lender;

(g) a governmental agency;

(h) an investment bank;

(i) a securitization trust that is rated by S&P, Fitch or Moody's (or any like-extant national rating agency);

(j) a hedge fund, opportunity fund, private debt fund, or like entity;

(k) with respect to loans to be secured by Subleasehold Mortgages or Mezzanine Loans to Mezzanine Borrowers that are direct or indirect owners of Master Sublessee, [any other source of funding, public or private that either has a net worth in excess of _____ Million Dollars (\$____,000,000) (as adjusted by inflation over the Term pursuant to Section 32.20 hereof), or has total assets (in name or under management) in excess of \$____,000,000 (as adjusted by inflation over the Term pursuant to Section 32.20 hereof)] **[OPEN ISSUE – LENDERS TO MASTER SUBLESSEE OR ITS MEZZANINE BORROWER SHOULD BE SUBJECT TO**

SAME INSTITUTIONAL LENDER CRITERIA – PARTIES TO DISCUSS THRESHOLDS]; and

(l) any other source of funding, public or private, which is otherwise Approved by the City Manager.[**sublease should include S&K Worldwide as a permitted lender**]

In the event of a syndicated loan, if fifty-one percent (51%) or more of the syndicate of lenders are Institutional Lenders, then the syndicated loan shall be deemed to be made by an Institutional Lender. City Manager's failure to notify Lessee of any disapproval of any proposed lender under (l) above within twenty (20) days from its receipt of a notice by Lessee shall be deemed to constitute the City Manager's conclusive Approval of any such proposed lender.

"Insurance Trustee" has the meaning ascribed to it in Section 20.9(a)(ii).

"Land Development Regulations" shall have the meaning set forth in Section 163.3221(8), Florida Statutes and shall also include the definition of "land development regulations" in Section 114-1 of the City Code.

"Lease" means this Ground Lease Agreement, and all exhibits and schedules annexed hereto and made a part hereof, as the same may be modified or amended from time to time.

"Leasehold Mortgage" means a mortgage, including an assignment of the rents, issues and profits from the Marina Project or portion thereof or other security instrument in favor of a Leasehold Mortgagee, which constitutes a lien on Lessee's leasehold and other interests created by this Lease during the Term.

"Leasehold Mortgagee" means each Institutional Lender that is the owner and holder of a Leasehold Mortgage.

"Leased Property" has the meaning ascribed to it in Section 2.1.

"Lease Year" means a year, other than the first and last year of the Term, consisting of twelve (12) consecutive calendar months. The first Lease Year during the Term shall commence on the Effective Date and end on December 31st of the year in which the Effective Date occurs. The second and following Lease Years shall commence on the 1st day of January each calendar year and end on December 31st of such year.

"Lessee" means the Initial Lessee, and the successors, assigns or transferees thereof expressly Approved or permitted by the terms and provisions of this Lease. A certified copy of Lessee's articles of organization is on file with the City as set forth on Exhibit "B".

"Lessee Improvements" means any and all buildings, structures and machinery, equipment and fixtures, which are existing and may from time to time and at any time during the Term be erected or located on the Leased Property, including the Area 1/2 Improvements, the Area 2 Improvements and the Replacement Facilities or the Alternate Replacement Facilities, as applicable.

"Marina Lawsuit" means [conform to Development Agreement]

“Marina Project” means Lessee’s leasehold and other interests created by this Lease, the Lessee Improvements, the redevelopment, design and reconstruction of Lessee Improvements and the operation of the Lessee Improvements.

“Marina Standard” means the operation and maintenance of Area 2 in a first-class workmanlike manner, similar to other marinas in scope and size, using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. **[OPEN ISSUE – NEED TO DEVELOP SPECIFIC CRITERIA TO DEFINE THE EXPECTED STANDARDS FOR THE MARINA AND SEPARATE DEVELOPMENT CRITERIA FOR PLANS FOR ALTERNATE REPLACEMENT FACILITIES]**

“Master Sublease” means that certain Master Sublease Agreement between Lessee, as Sublessor, and Master Sublessee, as sublessee, as the same may hereafter be modified, amended, supplemented and/or restated from time to time.

“Master Sublessee” means _____, LLC, and its successors and assigns that are permitted under or approved in accordance with the terms of the Master Sublease.

“Mezzanine Borrower” means each borrower under a Mezzanine Loan.

“Mezzanine Lender” means each Institutional Lender selected by Lessee or Master Sublessee to provide a Mezzanine Loan.

“Mezzanine Loan” means each loan and each equity investment to be made by a Mezzanine Lender to a Mezzanine Borrower to provide financing or capital relating to the Marina Project or any portion thereof, including for the acquisition, development, construction and/or operation of the Marina Project or any portion thereof, subordinate to the First Leasehold Mortgagee, which may be secured by a lien on the direct or indirect ownership interests in Lessee or in Master Sublessee or structured as a preferred equity investment with “mezzanine style remedies”, the exercise of which may result in a change of control.

“Miami Beach Marina” has the meaning ascribed to it in Section 2.1.

“Minimum Annual Guaranteed Rent” means (i) during the period of time commencing on the Effective Date and ending four (4) years thereafter, \$1,250,000.00, subject to annual inflation adjustments pursuant to Section 31.30 hereof for Lease Years 2 through 4 and (ii) at all times thereafter, \$1,900,000.00, subject to annual inflation adjustments pursuant to Section 32.20 hereof commencing on the sixth Lease Year.

“Parking Garage Leases” means the following, collectively: (i) that certain Lease Agreement dated April 9, 2003, by and among the City and the RDA, as tenant, and Murano Grande At Portofino Condominium Association, Inc. and Murano Grande At Portofino Master Condominium Association, Inc. (as successors to Murano Two, Ltd.), as landlord, as amended by First Amendment thereto dated October 17, 2018; (ii) that certain Lease Agreement dated April 22, 2002, by and among the City and the RDA, as tenant, and TRG-SSDI, Ltd., as landlord; (iii) that certain Lease Agreement dated April 9, 2003, by and among the City and the RDA, as tenant, and Icon Condominium Association, Inc. and Murano Grande At Portofino Master Condominium

Association, Inc. (as successors to Murano Three, Ltd.), as landlord, as amended by First Amendment thereto dated October 17, 2018, and (iv) that certain Lease Agreement dated November 30, 1998, by and among the City and the RDA, as tenant, and Yacht Club At Portofino Condominium Association, Inc. (as successor to Yacht Club At Portofino, Inc.), as landlord, as amended by First Amendment thereto dated March 3, 2020.

“Parking Garages” mean the areas demised under the Parking Garage Leases.

“Parking Management Agreement” means that certain Parking Facility Management and Operation Agreement for the Miami Beach Marina by and among Miami Beach Marina Associates, Ltd. and the City and the RDA dated as of December 1, 1999. [Confirm whether amended.]

“Parties” means City and Lessee, and **“Party”** is a reference to either City or Lessee, as the context may indicate or require.

“Performance Bond and Payment Bond” means a performance bond and a payment bond with regard to the applicable general contractor agreement in the full amount of the guaranteed maximum price or fixed price/lump sum thereof, with a good and sufficient surety, in compliance with all applicable Governmental Requirements and in form and content Approved by the City Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney.

“Permitted Transfers” has the meaning ascribed to it in **Error! Reference source not found.**

“Person” means any corporation, unincorporated association or business, limited liability company; business trust, real estate investment trust, common law trust, or other trust, general partnership, limited partnership, limited liability limited partnership, limited liability partnership, joint venture, or two or more persons having a joint or common economic interest, nominee, or other entity, or any individual (or estate of such individual); and shall include any Governmental Authority.

“Prohibited Changes” means any material changes to the plans for the Alternate Replacement Facilities, except to the extent (i) previously Approved in a writing executed by the City Manager and expressly providing that the City Manager is thereby Approving a Prohibited Change (which Approval may be granted or withheld by City Manager in his sole and absolute discretion), or (ii) such changes are required because of Governmental Requirements.

“Prohibited Person” shall mean any of the following Persons: (i) any Person (whose operations are directed or controlled by an individual) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to United States laws concerning organized crime; or (ii) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder to the extent the same are then effective: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of

the date hereof, North Korea, Cuba and Venezuela); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (iii) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (iv) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (v) any Affiliate of any of the Persons described in paragraphs (i) through (iv) above.

"Protected Lender" means each Person that is a First Leasehold Mortgagee or a First Subleasehold Mortgagee or a Mezzanine Lender (or any combination thereof).

"Public Charges" has the meaning ascribed to it in Section 6.1(a).

"RDA" has the meaning ascribed to it in the recitals.

"Reconstruction Work" has the meaning ascribed to it in Section 20.9(b)(i).

"Rent" means all payments characterized as rent hereunder, including Base Rent, Public Charges and fines under Section 16.4, Section 17.1 and Section 17.2.

"Replacement Facilities" means the [tie to commercial facilities/green space; should not include residential project] to be completed by the Developer pursuant to the Development Agreement.

"Replacement Facilities Project Approvals" means those approvals, amendments, and any such similar matters described in the Development Agreement which shall be obtained by Developer. [tie to project approvals definition in the DA]

"Replacement Parking Facility" means the parking facilities to be constructed as a component of the Replacement Facilities or Alternate Replacement Facilities, as applicable.

"Responsible Officer" means, with respect to (i) Lessee, any executive officer or manager of Lessee responsible for the administration of the obligations of Lessee in respect of this Lease, and (ii) Master Sublessee, any executive officer or manager of Master Sublessee responsible for the administration of the obligations of Master Sublessee in respect of the Master Sublease.

"Section," "Subsection," "Paragraph," "Subparagraph," "Clause," or "Subclause" followed by a number or letter means the section, subsection, paragraph, subparagraph, clause or subclause of this Lease so designated.

“Space Lease” means a sublease (other than the Master Sublease), sub-sublease, license, concession agreement or other agreement between Lessee or Master Sublessee and a Space Lessee for the use or occupancy of any portion of the Leased Property.

“Space Lessee” means any Person using and occupying or intending to use and occupy one or more specific spaces, areas or other defined portion of the Leased Property pursuant to a Space Lease.

“SSDI Documents” means those certain documents as defined in the Existing Marina Lease and consisting of _____. [Need to confirm that we have all of these documents.]

“Stay” has the meaning ascribed to it in Section 21.2(f).

“Subleasehold Mortgage” means a mortgage, including an assignment of the rents, issues and profits from premises demised under the Master Sublease or other security instrument in favor of a Subleasehold Mortgagee, which constitutes a lien on Master Sublessee’s subleasehold and other interests created by the Master Sublease during the term of the Master Sublease.

“Subleasehold Mortgagee” means each Institutional Lender that is the owner and holder of a Subleasehold Mortgage.

“Submerged Land Lease” has the meaning ascribed to it in Section 2.1.

“Submerged Land Area” has the meaning ascribed to it in Section 2.1.

“Taking” has the meaning ascribed to it in Section 23.1(a).

“Term” has the meaning ascribed to it in Section 2.6.

“Unanticipated Circumstances” [definition among the documents will need to be uniform; conform to whatever the various parties ultimately agree upon] means (i) off-site improvements required by any Governmental Authority, (ii) any appeals of Governmental Approvals to a court of competent jurisdiction or appeals or other judicial or administrative challenges to permits or approvals and (iii) delays in obtaining permits or approvals. [OPEN ISSUE – PARTIES TO DISCUSS, INCLUDING PERMIT DELAYS]

“Work” means the design, permitting, development and construction of the Alternate Replacement Facilities, including all design, architectural, engineering and other professional services, demolition and construction services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, storage, insurance, bonds, permits and conditions thereof, zoning approvals, changes required to comply with building codes and Governmental Approvals, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or appropriate for the demolition of existing structures and other preparatory or remediation work on the Leased Property; utility relocations, installations, hook-ups or other infrastructure as may be required to make the Leased Property suitable for the use of the Alternate Replacement Facilities, as applicable; total design and construction of the Alternate

Replacement Facilities, as applicable, together with all additional, collateral and incidental items, work and services required for completion of the Alternate Replacement Facilities, as applicable.

Section 1.4 Exhibits and Schedules. If any exhibit or schedule to this Lease conflicts with the body of this Lease, the body of this Lease shall govern.

Section 1.5 Interpretation. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as appropriate. The words “herein,” “hereof,” “hereunder,” “hereinafter,” and words of similar import refer to this Lease as a whole and not to any particular Article, Section or Subsection hereof. The terms “include” and “including” and words of similar import shall each be construed as if followed by the phrase “without limitation”. This Lease will be interpreted without interpreting any provision in favor of or against either party by reason of the drafting of such provision.

ARTICLE II LEASED PROPERTY, PARKING, OTHER RIGHTS AND TERM

Section 2.1 Description of Leased Property. The City hereby leases unto the Lessee for the purposes and under the conditions set forth in this Lease, the real property, located in the City of Miami Beach, Florida, consisting of one tract of land together with improvements thereon, designated as Area 1 on Schedule 1 annexed hereto and made part hereof (“**Area 1**”) [**insert provisions re: post-completion adjustment of legal description to conform to as-built structures**]. Appurtenant to Area 1, Lessee shall have the right to use the tract designated as Area 2 on Schedule 1 (“**Area 2**”) in accordance with and subject to that certain Submerged Land Lease dated _____ between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the City (as amended from time to time, the “**Submerged Land Lease**”) and the applicable rules and regulations of governmental agencies having jurisdiction. Area 2 is coextensive with the area leased by the City under the Submerged Land Lease (the “**Submerged Land Lease Area**”). Area 1 and Area 2 constitute the Miami Beach Marina as delineated on Schedule 1 (the “**Leased Property**” or the “**Miami Beach Marina**”). As to Area 1, the City represents and warrants that it has good, marketable and insurable fee simple absolute title, free and clear of all charges, liens and encumbrances of any nature, except for easements, licenses, rights of way, and other similar restrictions of record, sufficient to allow Lessee to be able to operate the Leased Property in accordance with this Lease. As to Area 2, the City represents and warrants, that it has obtained, in conjunction with the RDA, all licenses and permits necessary for Lessee to be able to operate the Leased Property in accordance with this Lease and without necessity for any transfer of such licenses and permits which would interfere with Lessee’s operations on the Leased Property. Lessee has completely relied, and will continue completely to rely, upon City’s representations and warranties contained in this Section 2.1 as an inducement to enter into this Lease. **[OPEN ISSUE – PARTIES TO DISCUSS “AS-IS” LEASE]**

Section 2.2 Parking. Pursuant to the Parking Garage Leases, the City has the right to park vehicles on and in, and to use the Parking Garages, for all purposes set forth in the Parking Garage Leases. The City hereby grants to Lessee an irrevocable license, coterminous with the term of the Parking Garage Leases but expiring at the end of the Term, to park vehicles on and in, and to use the Parking Garages, for all purposes set forth in the Parking Garage Leases. **[discuss recordation of parking license]**. Notwithstanding anything to the contrary contained in this Lease, the City shall at all times be absolutely obligated to provide to Lessee the greater of (i) seven hundred fifteen (715) parking spaces or (ii) that number of parking spaces to meet Governmental Requirements for the uses permitted and contemplated by this Lease. **[OPEN ISSUE – NEED TO UPDATE TO REFLECT PARKING PROPOSED FOR THE NEW DEVELOPMENT]** The City agrees that the quality of construction and maintenance of all parking facilities to be provided by the City under this Section shall be at least equal to that of other new City public parking facilities. **[OPEN ISSUE – LESSOR IS CURRENTLY RESPONSIBLE FOR MAINTENANCE/OPERATIONS OF PARKING GARAGES]** The City represents and warrants that Parking Garage Leases are in full force and effect and the City is not in default under the Parking Garage Leases. City shall use its best efforts to keep the Parking Garage Leases in full force and effect during the Term.

Section 2.3 Utility and Public Access. The City represents and warrants to Lessee that it has fully complied with all of its obligations under the SSDI Documents and the City has obtained all easements necessary to provide Lessee with utilities to service the Leased Property and with all access easements necessary to provide public access to the Leased Property and Baywalk and will at all times during the term of this Lease, make the rights under such easements available to Lessee and its sublessees, invitees, tenants, customers and employees. The City will grant such other easements as are necessary to permit Lessee access to perform its obligations under this Lease.

Section 2.4 Submerged Land Lease.

(a) The City represents and warrants to Lessee that the Submerged Land Lease is current and in good standing. The City further agrees that Lessee shall not be responsible for the payment of any rents or other fees that are or may be or become due under the Submerged Land Lease, except as expressly provided under Section 2.4(c).²

(b) Within a reasonable period of time prior to the expiration of the term (and each extension thereof) of the Submerged Land Lease, the City shall use its [best] efforts to cause the term of the Submerged Land Lease to be extended so that the Submerged Land Lease shall always be in full force and effect during the Term, but in

² Reference section 3.13 of the 1st amendment to existing lease

any event the City shall provide a continuous uninterrupted right for Lessee to use and operate in Area 2. The City shall commence efforts with the State of Florida to obtain such extension(s) of the Submerged Land Lease at least one year prior to the then scheduled termination date of the Submerged Land Lease. The City shall promptly notify Lessee when an extension is obtained from the State of Florida.³ **[OPEN ISSUE – SHOULD BE DELETED GIVEN (d) BELOW]**

(c) If Lessee wants to extend the term of the Submerged Land Lease prior to the City's commencing its efforts to extend the term of the Submerged Land Lease, then the City shall, at no cost to the City, other than administrative costs, assist and support Lessee in its attempt to cause the term of the Submerged Land Lease to be extended; provided however, that Lessee shall bear the costs of any additional rents above the rent that the City would otherwise be required to pay under the Submerged Land Lease imposed as a result of the early extension of the Submerged Land Lease. However, such payment of additional rent shall cease after the time that the City would have had to seek an extension of the Submerged Land Lease.⁴

(d) The City shall use its [best] efforts to cause the term of the Submerged Land Lease to be extended periodically to coincide with the Term, or to cause a new submerged land lease to be issued to coincide with the Term. If the City is unable to obtain such extension of the Submerged Lands Lease or such new submerged lands lease, then the City shall obtain alternative continuous and uninterrupted rights for the Lessee to use and operate in Area 2 for the entire Term. The City agrees that it comply with all of its obligations under the Submerged Land Lease and that it will execute all required documents and meet all deadlines required to obtain extensions of the Submerged Lands Lease such that it runs for the entire Term. Lessee shall be afforded the opportunity to exercise any self-help rights in connection with the Submerged Land Lease, including litigation rights, in connection with any dispute or renewal of the Submerged Land Lease and may act on behalf of the City in remedying any defaults of the City at City's expense. **[OPEN ISSUE – CITY CANNOT GUARANTY EXTENSION]**

(e) [The City shall use commercially reasonable efforts to assist Lessee in obtaining an expansion of the Submerged Land Lease to encompass approximately an additional 140 feet to the South and an additional 30 feet to the West.] **[PARTIES TO DISCUSS]**

Section 2.5 Lessee's Right to Use Logo and Name. The City acknowledges and agrees that Lessee shall have the right to use the logo of the City and the name "Miami Beach Marina."⁵

³ Reference section 3.18 of the 1st amendment to existing lease

⁴ Reference section 3.19 of the 1st amendment to existing lease

⁵ Section 3.14 of 1st amendment to existing lease

Section 2.6 Term. The term of this Lease shall commence on the Effective Date and shall end on December 31st of the last Lease Year prior to the 99th anniversary of the Effective Date (the “**Term**”).

ARTICLE III CONSIDERATION

Section 3.1 Rental.⁶ The Lessee shall pay to the City as base rent (the “**Base Rent**”) the Minimum Annual Guaranteed Rent or the Annual Percentage Rent specified below, whichever may be **greater**:

(a) “**Annual Percentage Rent**” means, with respect to each Lease Year, an amount equal to the following:

(i) Four cents (\$0.04) per gallon from the sale of gasoline during such Lease Year; plus

(ii) Four cents (\$0.04) per gallon from the sale of diesel fuel during such Lease Year; plus

(iii) Thirty five percent (35%) of all of Gross Receipts received by Lessee during such Lease Year from any parking facilities serving the Leased Property, including the Parking Garages and the Replacement Parking Facility. If guests and customers of the Replacement Facilities (or Alternate Replacement Facilities, as applicable) park in the Parking Garages, then they shall be subject to charges at prevailing rates at City parking garages in the region, subject to a validation system, provided the same is permitted pursuant to the Parking Garage Leases and free passes will be issued to tenants and employees of the Marina Project commensurate with the use of a marina and commercial facilities; plus

(iv) Ten percent (10%) of all other Gross Receipts received by Lessee during such Lease Year.

Section 3.2 Method of Payment.⁷ Annual Percentage Rent shall be calculated on a monthly basis based upon the above stated percentages of Gross Receipts. On or before the fifteenth (15th) day of each month, Lessee shall render to the City Manager, in a form prescribed by the City Manager and reasonably acceptable to Lessee, a detailed report of Gross Receipts for that portion of the Lease Year which ends with and includes the last day of the previous calendar month. Each report shall be signed by Lessee or a Responsible Officer and shall include the following:

⁶ Reference Article II section 2 of the existing lease

⁷ Reference Article II section 3 of the existing lease

(a) The total Gross Receipts for such portion of the Lease Year, itemized as to each of the four (4) categories specified in Section 3.1(a)(i)-(iv);

(b) The resulting Annual Percentage Rent for each of such four (4) categories computed as herein provided and the total thereof;

(c) The total Base Rent previously paid by Lessee for the Lease Year within which the preceding month falls.

Concurrently with the rendering of each monthly report, Lessee shall pay the greater of the following two (2) amounts as Base Rent:

A. The total Annual Percentage Rent computed for that portion of the Lease Year ending with and including the last day of the preceding calendar month (Item (b) immediately above), less the total Base Rent previously paid for months prior to the preceding month during the Lease Year (Item (c) immediately above) or

B. One-twelfth (1/12) of the Minimum Annual Guaranteed Rent, multiplied by the number of months from the beginning of the Lease Year to and including the preceding month, less total rentals previously paid for the Lease Year (Item (c) immediately above).

In the event Lessee is delinquent in rendering to the City an accounting of Base Rent due or in remitting the Base Rent due in accordance with the rental provisions of this Article III and of Article XXI hereof, then the rent not paid when due shall bear interest at the Default Rate from the date due until paid. Provided, however, the City Manager shall have the right to waive for good cause any interest payment upon written application of Lessee for any such delinquency; provided further, if the Lessee has made an overpayment in Base Rent in remitting the rent due in accordance with the rental provisions of this Lease, then such overpayment, if any, shall be refunded to Lessee and shall bear interest at the Default Rate from the date due until paid; and, provided further, if Lessee has made an underpayment in Base Rent in remitting the rent due in accordance with the rental provisions of this Lease, then such underpayment, if any, shall be paid to City and shall bear interest at the Default Rate from the date due until paid.

If the Effective Date shall occur other than on the first (1st) day of a calendar month, Base Rent for that partial month shall be prorated and such prorated Base Rent shall be paid to the City within fourteen (14) days from the date due.

ARTICLE IV GROSS RECEIPTS⁸

Section 4.1 Gross Receipts Defined. The term “**Gross Receipts**” means: (i) the entire amount of the price charged, whether wholly or partially in cash or on credit (and in the case of sales on credit whether or not payment be actually made therefor), or otherwise, for all fuel, goods, wares, merchandise and chattels of any kind, sold, leased, licensed or delivered, and all charges for services sold or performed in, at, upon or from any part of or through the use of

⁸ Reference Article III of the existing lease

the Leased Property or any part thereof by Lessee, including any dry stacks, or by means of any mechanical or other vending device (other than those soft drink and other similar vending devices operated primarily for the convenience of Lessee's employees); (ii) the receipts from all orders procured or received in the Leased Property by telephone, mail, house-to-house or other canvassing by personnel operating from, reporting to or under the supervision of any employee, agent or representative located at or operating out of the Leased Property or which Lessee, in the normal and ordinary course of its operations, would credit or attribute to its business on the Leased Property, or by other means, whether or not filled elsewhere; (iii) all deposits received and not refunded to the purchaser in connection with any transaction; and (iv) all Gross Receipts received by Lessee resulting from occupancy or use of the Leased Property which are neither included in nor excluded from Gross Receipts by other provision of this Lease, but without any duplication and (v) all Gross Receipts including rents, received by any independent, third party Space Lessee operating dry stack or wet facilities on the Leased Property.

(a) Notwithstanding anything to the contrary contained in this Lease, with respect to (i) those portions of the Leased Property that are subject to Space Leases, the base rent (i.e., excluding amounts paid as reimbursement of common area charges, taxes, insurance and other reimbursements) paid by Space Tenants to Lessee (and not gross revenues of the Space Lessees) shall be the "Gross Receipts," (ii) restaurant and retail areas within the commercial/retail areas constructed from time to time in Area 1 that are operated by Lessee or its Affiliates, "Gross Receipts" shall be deemed to be fair market base rent which would be charged to third-party tenants, which fair market base rent shall be calculated based upon the average rental rate for such commercial/retail areas in the Marina Project that are not operated by Lessee or its Affiliates, and (iii) areas demised under the Master Sublease, the "Gross Receipts" of Master Sublessee shall be aggregated with the Gross Receipts of Lessee in calculating the "Gross Receipts" under this Lease (and any rent or payments in the nature of rent paid or payable by Master Sublessee to Lessee shall not be included in calculating Gross Receipts under this Lease. **[OPEN ISSUE – PARTIES TO DISCUSS DETERMINATION OF FAIR MARKET VALUE BASED ON COMPARABLE SPACES]**

Section 4.2 Items Excluded.

Gross Receipts shall not include, or if included, there shall be deducted therefrom (without interest thereon and only to the extent they have been included), as the case may be, and for avoidance of doubt, the term "Gross Receipts" shall exclude, the following: (i) the net amount of cash or credit refunds made upon Gross Receipts, where the merchandise sold or some part of it is returned by the purchaser to and accepted by Lessee (but not exceeding in any instance the selling price of the item in question); (ii) the amount of any sales tax, use tax or retail excise tax which is imposed by any duly constituted governmental authority directly on sales and which is both added to the selling price (or absorbed therein) and is paid to the taxing authority by Lessee (but not any vendor, Master Sublessee or Space Lessee); (iii) returns of merchandise to shippers, suppliers or manufacturers; (iv) service, finance and interest charges imposed by Lessee and paid by customers

for extension of credit on sales by Lessee where such charges are not included in the sales price of the items or services sold; (v) bad debts (on a non-cumulative basis) to the extent of four percent (4%) of Lessee's total Gross Receipts in any Lease Year; (vi) income from Lessee's provision, without profit, of telephone and cable television services to persons utilizing the Leased Property, so long as this exclusion is susceptible to audit according to GAAP; (vii) insurance proceeds and any condemnation awards due to Lessee. No franchise or capital stock tax and no income or similar tax based upon income or profits as such, no personal property tax, and no applicable Florida State Sales and Use Tax on rental payments due to City from Lessee shall be deducted from Gross Receipts.

Section 4.3 Tax Returns. If Lessee's Gross Receipts are required to be reported on any governmental tax or other return, and the Gross Receipts as so reported on any return or as determined by audit thereof shall exceed the Gross Receipts as reported to the City hereunder, then the Gross Receipts shall, for the purpose of this Lease, be deemed to be the highest amount so reported or so determined by audit.

ARTICLE V RECORDS, AUDIT, ANNUAL DEPOSIT, NO PARTNERSHIP⁹

Section 5.1 Records. Lessee agrees to prepare true and complete records and accounts of all Gross Receipts for each Lease Year, in accordance with GAAP, itemized as to each of the four (4) categories for which a separate percentage rental rate is established pursuant to Section 3.1(a)(i)-(iv). Such records and accounts shall include all sales slips (which shall be serially numbered), cash register tapes, bank statements or duplicate deposit slips, and such other sales records as an independent certified public accountant would need to examine in order to certify Lessee's annual statement of Gross Receipts pursuant to generally accepted auditing standards. The Lessee must provide point-of-sale machines or such other cash registers or accounting control equipment deemed reasonably necessary and Approved by the City Manager for the proper control of cash and payments. All records and accounts for any Lease Year shall be maintained at the Leased Property or (at Lessee's option) at Lessee's main accounting office, if in Miami-Dade County, Florida, for a period of twenty-four (24) months after the end of such Lease Year. City and its representatives shall have the right, at any reasonable time and under reasonable circumstances, to examine such records and accounts. For the same period of time Lessee shall also retain copies of all sales and occupation tax returns covering its operations on the Leased Property, and any other governmental tax or other return which shows Lessee's sales therein, and shall upon demand deliver a photographic copy thereof to City.

Section 5.2 Annual Report. On or before the fifteenth (15th) day of April following the Lease Year during which the Effective Date occurs, and on or before the fifteenth (15th) day of each successive April following the close of

⁹ Reference Article IV of the existing lease

each Lease Year thereafter and following the expiration of the Term (also on or before that same date), Lessee shall deliver or shall cause to be delivered to City at the place then fixed for the payment of rent a statement prepared and certified to by an independent certified public accountant employed at Lessee's cost showing Gross Receipts during the preceding Lease Year. Such accountant shall certify that such accountant made a complete examination of the books, state sales tax returns, and federal income tax returns of Lessee; and that the statement is prepared in accordance with GAAP and fairly presents the Gross Receipts of Lessee for the period indicated therein. With each yearly statement Lessee shall pay to City the unpaid balance of any Annual Percentage Rent, if any, payable for the preceding year and City shall refund any overpayments. If Lessee omits or causes to be omitted to be prepared and delivered promptly any such annual report or statement, City may elect to exercise upon fifteen (15) days written notice to Lessee to make an audit pursuant to the provisions of Section 5.3. **[this should not trigger an EOD]**

Section 5.3 Audit. City may at any reasonable time and under reasonable circumstances within eighteen (18) months after the end of any Lease Year cause an audit to be made by City's auditors of Lessee's books and records relating to Lessee's Gross Receipts for such Lease Year. If such audit shall disclose that Lessee has understated Gross Receipts by 3% or more for such Lease Year, Lessee shall, upon demand, pay to City the reasonable cost of such audit in addition to any deficiency in Annual Percentage Rent, which deficiency shall be payable in any event. If City's auditors, after examining such records and accounts are unable to verify the Gross Receipts for such Lease Year or the separate percentage rates applicable thereto by reason of Lessee's failure to properly prepare, keep or make available the same, then Lessee shall, upon demand, pay the reasonable cost of such audit. **[this shouldn't trigger an EOD]**

Section 5.4 No Partnership Relationship. Computation of the percentage rents specified herein shall be made separately with regard to each Lease Year of the Term, it being understood and agreed that the Gross Receipts of any Lease Year and the percentage rent applicable thereto, shall have no bearing on, or connection with, the Gross Receipts of any other Lease Year of the Term. It is further understood and agreed that City shall in no event be construed or held to be a partner or associate of Lessee in the conduct of Lessee's business, nor shall City be liable for any debts incurred by Lessee in the conduct of Lessee's business, but it is understood and agreed that the relationship is and at all times shall remain that of lessor and lessee. City and Lessee acknowledge and agree that neither shall be subject to any implied obligations by reason of the fact that this Lease provides for the payment of percentage rent.

**ARTICLE VI
TAXES, ASSESSMENTS, AND UTILITIES¹⁰**

Section 6.1 Lessee to Pay.

(a) Lessee, in addition to the Base Rent and all other payments due to City hereunder, covenants to pay and discharge before any fine, penalty, interest or cost may be added the following (collectively “**Public Charges**”):

(i) All real and personal property taxes, all ad valorem real property taxes, all taxes on Base Rents payable hereunder, and public assessments (including impact fees and other public charges); and

(ii) Special assessments pursuant to Section 6.3, electric, water and sewer rents, rates and charges levied, assessed or imposed by any Governmental Authority against the Leased Property, including all Lessee Improvements thereon, in the same manner and to the same extent as if the same, together with all Lessee Improvements thereon, were owned in fee simple by Lessee; and

(b) All Public Charges shall be prorated, to the extent applicable, if the Effective Date is not at the beginning of the calendar year. Lessee, upon written request, shall furnish or cause to be furnished to the City, official receipts of the appropriate taxing authority, or other proof satisfactory to the City evidencing the payment of any Public Charges.

Section 6.2 Procedure if Taxes Assessed.

(a) Lessee shall have the right to contest the amount or validity, in whole or in part, of any Public Charges, for which Lessee is, or is claimed to be, liable, by appropriate proceedings diligently conducted but only after payment of such Public Charges, unless such payment would operate as a bar to such contest or materially interfere with the prosecution thereof, in which event, payment of such Public Charges may be postponed if, and only if, Lessee has deposited with City, in its capacity as landlord under this Lease, cash or other security reasonably required by City Manager in the amount so contested and unpaid, together with interest and penalties in connection therewith and any other charges that may be assessed against or become a charge on the Leased Property or any part thereof, including all Lessee Improvements thereon, in such proceedings, less any amounts deposited with any Protected Lender for such purposes. Upon the termination of any such proceedings, Lessee shall pay the amount of such Public Charges or part thereof, if any, as finally determined in such proceedings, together with any costs, fees, including counsel fees, interest, penalties and any other liability in connection therewith, and may use the cash or other security deposited with the City for such purpose. If Lessee does not so use any such cash or other security deposited with

¹⁰ Reference section 4.5 of hotel lease

the City, then the City shall promptly return such cash or other security to Lessee upon the termination of any such proceedings.

(b) City shall not be required to join in any proceedings referred to in this Section 6.2 unless:

(i) Governmental Requirements shall require that such proceedings be brought by or in the name of City; or

(ii) the proceeding involves the assessment or attempted assessment of a real estate or ad valorem tax on the Leased Property, including all Lessee Improvements thereon,

in which event the City shall join in such proceedings or permit the same to be brought in the City's name. Notwithstanding the foregoing, City's joinder and cooperation shall be limited to actions necessary to enable Lessee to satisfy technical requirements of any action or proceeding and in no event shall City be required to join in such action or proceeding in any substantive capacity.

(c) Except for any counsel it retains separately, the City shall not be subjected to any liability to pay any fees, including counsel fees, costs and expenses regarding such proceedings. Lessee agrees to pay such fees, including commercially reasonable counsel fees, costs and expenses or, on demand, to make reimbursement to the City for such payment. The City will endeavor to use in house counsel whenever possible, in accordance with the City's customary practices.

Section 6.3 Special Assessments. The City retains all its rights to impose nondiscriminatory special assessments or other public charges; provided, however, if at any time the City, in its municipal capacity, subjects non-governmental users to an exclusive franchise for trash removal or other public services, Lessee will be treated the same as similarly sized and situated properties.

Section 6.4 No Tax Abatements or Other Public Subsidies to Lessee. This Lease shall not, in and of itself, entitle Lessee to any City tax abatement, tax rebate, public funding or public financing with respect to any Public Charges, nor shall this Lease prohibit Lessee from seeking or receiving any tax abatement, tax rebate, public funding or public financing with respect to any Public Charges of any Governmental Authorities other than the City.

ARTICLE VII

MARINA LICENSES AND PERMITS AND CHALLENGE TO LEASE¹¹

Section 7.1 Marina Licenses and Permits. The parties to this Lease Agreement acknowledge that construction, development and operations on Area 2 may be subject to review and approval by the Corps of Engineers (Permit 73B-1022), the State Department of Environmental Regulation (Permit No. 13-39-

¹¹ Reference Article VI of existing lease.

1462MM), the Board of Trustees of the Internal Improvement Trust Fund, and such other governmental agencies as may have interests and regulatory control over development and operations on Area 2. ~~By execution of this Lease Agreement, City certifies that it has obtained, in conjunction with the RDA, all licenses and permits necessary for the development and operations on the Leased Property. If any such licenses and permits necessary for the development and operations on the Leased Property are, subsequent to execution of this Lease, withdrawn (causing Lessee to lose its right to operate the wet slips on Area 2) by any governmental agency (unless due to the fault or negligence of Lessee), Lessee may elect to treat, upon sixty (60) days' notice to the City, such withdrawal as a breach of this Lease entitling Lessee (1) to return of Fifty Thousand Dollars (\$50,000.00)¹²; (2) to reimbursement, upon termination of this Lease, for Lessee's total cost of construction to the extent of one three hundred sixtieth (1/360th) of the Lessee's total cost of construction plus interest thereon at the Default Rate plus net 1 or minus net profits to Lessee (with both such interest and such net losses or profits to be computed for the period commencing on the Effective Date and ending upon the date this Lease is terminated as provided this Article) multiplied by the number of months remaining in the Term; and (3) to return of its Security Deposit as provided in Article IX hereof, or to elect a reduction or elimination of Minimum Guaranteed Rent. Upon return of such entitlements, this Lease and the Term and all rights and obligations of City and Lessee under this Lease shall expire and terminate as to the Leased Property. Notwithstanding the foregoing, the City will cooperate with Lessee in any attempts by Lessee to continue such licenses and permits and Lessee shall be entitled to exercise self-help in dealing with any agency with jurisdiction over such licenses or permits and the City will execute a power of attorney to permit Lessee to do so.~~[OPEN ISSUE]

For purposes of this Article:

(a) ~~“Total construction costs” shall mean all reasonable costs and expenses incurred by reason of this Lease and actually paid by Lessee (excluding such costs which Lessee would have been obligated to pay to Persons other than City, in any event, had this Lease not been executed by the Parties) limited to: (i) building and equipping the physical plant; (ii) furniture, fixtures, operating equipment and other personal property; (iii) demolition and site preparation; (iv) sheet piling and rip rap; (v) landscaping; (vi) the Baywalk; (vii) the dry storage facility; (viii) piers, catwalks and piling; (ix) showers and toilets; (x) signage and graphics; (xi) the dockmaster tower structure; (xii) parking; (xiii) legal fees, including those relating to obtaining financing, termination of this Lease and investors' equity; (xix) filing fees, recording fees, intangible taxes and documentary stamps; (xx) plans and specifications; (xxi) interest on financing; (xxii) architectural and engineering services; (xxiii) permits and licenses; (xxiv) Minimum Annual Guaranteed Rent (to the extent such rent exceeds Annual~~

¹² This is the “Lump Sum Payment” under the existing lease

~~Percentage Rent); and (xxv) other such direct, out of pocket organizational costs (excluding salaries paid to any general or limited partner or other indirect owner).~~

~~(b) “Net losses” shall mean operating losses (not covered by City’s obligations pursuant to paragraph (a) immediately above) in excess of operating profits. “Net profits” shall mean operating profits in excess of operating losses (not covered by City’s obligations pursuant to paragraph (a) immediately above), but only to the extent of the interest as calculated in accordance with this Article.~~

~~(c) Lessee, contemporaneous with payment of the entitlement specified in this Article, shall convey and transfer the title to and/or interest of Lessee in the items listed in paragraph (a) immediately above to City.~~

Section 7.2 Challenge to Lease.

[If the Lease is successfully challenged in any Marina Lawsuit, Lessee has diligently pursued and exhausted all appeals thereof in good faith, and the Lease is terminated, voided or otherwise does not become effective as a result thereof, the Existing Marina Lessee conclusively shall be deemed to have exercised its option to renew the Existing Marina Lease as of March 31, 2021 and the first renewal term of the Existing Marina Lease conclusively shall be deemed to have commenced as of January 1, 2022. Provided that Lessee has diligently pursued and exhausted all appeals of any Marina Lawsuit in good faith prior to such termination, voiding or ineffectiveness of the Lease, the City shall provide Existing Marina Lessee with a rent credit in the amount of \$_____ under the Existing Marina Lease to be agreed and memorialized in an amendment to the Existing Marina Lease entered into by and between the City and the Existing Marina Lessee promptly following such termination, voiding or ineffectiveness. **[This provision to be conformed to whatever the various parties ultimately agree upon in the DA] [OPEN ISSUE – PROVISION TO INCLUDE LESSEE INDEMNITY OF CITY IN CONNECTION WITH ANY MARINA LAWSUIT]**

ARTICLE VIII CONSTRUCTION AND IMPROVEMENTS¹³

Section 8.1 Capital Improvement Commitments.

(a) Subject to Section 2.4, Lessee shall expend no less than the Area 2 Investment on Area 2 Investment Costs during the first thirty (30) years of the Term, with no less than an aggregate of Fifteen Million Dollars (\$15,000,000.00) of the Area 2 Investment expended during the first ten (10) years of the Term and no less than an aggregate of Twenty Five Million Dollars (\$25,000,000.00) of the Area 2 Investment expended during the first twenty (20) years of the Term. For example, if Lessee expends \$20,000,000 during the first ten (10) years of the Term, then Lessee shall be required to expend only \$5,000,000 during the second ten (10) years of the Term. For avoidance of

¹³ Reference Article VII of existing lease. The concepts covered by the sections in the existing lease that are omitted in this draft are covered in Article 21

doubt, during the first ten (10) years of the Term, Lessee must expend not less than \$15,000,000, and during the second ten (10) years of the Term, Lessee must expend not less than \$10,000,000 *less* any expenditures in excess of \$15,000,000 made during the first ten (10) years of the Term. **[OPEN ISSUE - TIMING]** Each of the foregoing deadlines shall be reasonably extended for (i) a Force Majeure Event or Economic Force Majeure in accordance with this Lease; (ii) City Delays; and/or (iii) Unanticipated Circumstances, if applicable.

(b) Subject to Section 2.4, and provided Lessee obtains all final, non-appealable, Replacement Facilities Project Approvals, Lessee shall expend no less than the Area 1/2 Investment on Area 1/2 Investment Costs during the first twenty (20) years of the Term, with no less than an aggregate of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) of the Area 1/2 Investment expended during the first ten (10) years of the Term. Each of the foregoing deadlines shall be reasonably extended for (i) a Force Majeure Event or Economic Force Majeure in accordance with this Lease; (ii) City Delays; and/or (iii) Unanticipated Circumstances, if applicable. **[insert provisions regarding maximum amount that may be allocated to Area 2 and minimum amount for upgrades to the park]** Notwithstanding anything to the contrary contained in this Lease, Lessee shall have no obligation to construct the Area 1/2 Improvements or expend any portion of the Area 1/2 Investment if Lessee is unable to obtain all final, non-appealable, Replacement Facilities Project Approvals.

(c) If Developer does not obtain all final, non-appealable Replacement Facilities Project Approvals, then Lessee shall design, permit, and construct, in a good and workmanlike manner, and at its sole cost and expense, the Alternate Replacement Facilities in all material respects in accordance with and subject to all of the terms and provisions of this Lease.

(d) For avoidance of doubt, and notwithstanding anything to the contrary contained in this Lease, Lessee shall be authorized to permit demolition or to demolish the Lessee Improvements within Area 1 in conjunction with the development and construction of the Replacement Facilities or Alternate Replacement Facilities, as applicable. Lessee intends that operations of the marina within Area 2 will continue during the period of redevelopment of Area 1, but may be disrupted or otherwise impacted in the ordinary course as the result of the development and construction operations on Area 1; provided, however, at all times during such construction, Lessee shall cause access to the Baywalk to remain open to and safe for use by the public.

Section 8.2 Plan Approval.

(a) Each component of the Area 1/2 Improvements and each component of the Area 2 Improvements shall be substantially in accordance with plans and specifications which must be submitted and Approved by the City Manager in writing prior to the commencement of any construction of such component. Any plans that are submitted that are in accordance with requirements of the applicable authorities or agencies that govern marina operations and that are constructed in accordance with the

Marina Standard shall be Approved. [**OPEN ISSUE – CITY MANAGER APPROVAL RIGHTS**]

(b) If Developer does not obtain all final, non-appealable Replacement Facilities Project Approvals or complete the Replacement Facilities by the Completion Date, then Lessee shall construct the Alternate Replacement Facilities. The City shall have the right to Approve, in its sole discretion, any Prohibited Changes.

(c) Notwithstanding any Approval provided pursuant to this Section 8.2, Lessee shall be solely responsible for obtaining all required final, non-appealable Governmental Approvals for the Area 1/2 Improvements, the Area 2 Improvements and the Replacement Facilities, or if applicable, the Alternate Replacement Facilities. Any Approval of the plans and specifications, or any component thereof, by the City shall be for its own benefit in its proprietary capacity as the owner of Area 1 and as lessee under the Submerged Lands Lease and shall not be deemed to mean, and the City, in such proprietary capacity, makes no representation, that such plans and specifications comply with all applicable Governmental Approvals and Governmental Requirements.

Section 8.3 Quality of Construction.

The quality of construction and development of the Area 2 Improvements and those portions of the Area 1/2 Improvements constructed within Area 2 shall be consistent with the Marina Standard.

Section 8.4 Changes in Plans and Specifications.

(a) If, after the City's Approval of the plans and specifications for any component of the Area 1/2 Improvements or Area 2 Improvements, Lessee desires to make material changes in, or material addition, to, such Approved plans and specifications, Lessee shall furnish them to the City Manager for City Manager's Approval.

(b) Lessee shall submit to the City Manager, prior to commencement of construction of the Alternate Replacement Facilities, as applicable, any proposed modifications as applicable, for the City Manager's determination of whether such modifications include any Prohibited Changes.

Section 8.5 Procedure, for Approval or Disapproval. [conform to development agreement]

(a) Within fourteen (14) days of receipt of the plans and specifications for the Area 1/2 Improvements or component thereof, the plans and specifications for the Area 2 Improvements or component thereof, proposed modifications to such plans and specifications or proposed modifications to the Alternate Replacement Facilities, as applicable, the City Manager shall notify Lessee, in writing, that he approves such plans and specifications or modifications, or the basis for any disapproval therefore; provided, however, that the City shall not disapprove any plans and specifications or modifications necessitated by Governmental Requirements. City's failure to notify Lessee of any

disapproval within such fourteen (14) day period shall be deemed to constitute the City's conclusive Approval of the proposed plans and specifications or modifications.

(b) If the City disapproves of any such plans and specifications or modifications, then within thirty (30) days after receiving the City's disapproval notice Lessee shall submit revised proposed modifications for the City's review and Approval as provided in this Section 8.5, provided that the time period for approval or disapproval shall be ten (10) days; provided, however, with respect to disapprovals regarding the Alternate Replacement Facilities, Lessee shall have the right to submit the matter to expedited arbitration pursuant to Section 21.9 of this Lease.

Section 8.6 Right of Inspection. During construction on the Leased Property, City, and City's Representative may inspect (but shall have no duty or obligation to inspect) the work being performed upon the Leased Property and the materials being used in, or to be used in the performance of such work. If during construction on the Leased Property, City or City's Representative shall reasonably determine that any materials do not substantially conform to the approved specifications or that construction is not substantially in accord with such approved plans, specifications or drawings, notice thereof may be given by City to Lessee specifying the nature of the deficiency or defect or omission. Upon the receipt of any such notice, Lessee shall promptly take such steps as may be necessary to correct such defect, deficiency or omission; provided, however, with respect to any such notice regarding the Alternate Replacement Facilities, Lessee shall have the right to submit the matter to expedited arbitration pursuant to Section 21.9 of this Lease.

Section 8.7 Construction at Lessee's Sole Expense. Lessee, during the construction and upon the completion of redevelopment of the Leased Property, at its sole cost and expense, shall construct, furnish, develop, and equip or shall cause to be so furnished and equipped all improvements of whatever nature and description on the Leased Property together with all the furnishings, facilities and equipment necessary for the operation of Area 2 consistent with the Marina Standard.

Section 8.8 Improvements to be Property of Lessee During Term.¹⁴

(a) Prior to the expiration or termination of this Lease, title to the Lessee Improvements shall not vest in the City by reason of its ownership of fee simple title to Area 1 or its interests under the Submerged Land Lease, but title to the Lessee Improvements shall remain in Lessee.

(b) If this Lease shall terminate, based on a mutual agreement between the Parties or an final order from a court with jurisdiction from which the time for appeal has expired, prior to the expiration of the Term and if, at that time, any Protected Lender shall exercise its option to obtain a new lease for the remainder of the Term pursuant to Article X, then title to the Lessee Improvements shall automatically pass to, vest in and belong to the First Leasehold Mortgagee or

¹⁴ Reference section 11.4 of hotel lease

any designee or nominee of such First Leasehold Mortgagee, the First Subleasehold Mortgagee (or Lessee or Master Sublessee, as applicable, as owned by Mezzanine Lender or its designee or nominee) permitted hereunder, until the expiration or sooner termination of the term of such new lease.

(c) The City and Lessee covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be commercially reasonably required by the other for that purpose.

Section 8.9 Performance Bond.¹⁵ No major construction shall be commenced on the Leased Property by Lessee until Lessee has secured and submitted to City a Performance Bond and Payment Bond for such construction, with all premiums paid and in favor of Lessee with an obligee rider in favor of the City and the First Leasehold Mortgagee. Lessee shall also provide City with a demolition bond or other form of financial instrument reasonably acceptable to City to assure the availability of funds for demolition or removal of any uncompleted facility in the event Lessee, after receipt of a written demand from City, fails to demolish and remove the uncompleted facility following Lessee's failure to substantially complete such facility as required herein. **[OPEN ISSUE – PARTIES TO DISCUSS COMPONENTS OF CONSTRUCTION COVERED OVER THE PAYMENT/PERFORMANCE/DEMOLITION BONDS]**

Section 8.10 City and Lessee to Join in Certain Actions.¹⁶ Within fifteen (15) days after receiving a written request from Lessee that is consistent with all Governmental Requirements and in accordance with this Lease, the City, at Lessee's sole cost and expense (including City's reasonable attorneys' fees in reviewing any agreements), shall join Lessee when required by law in any and all applications and agreements for Governmental Approvals as may be commercially reasonably necessary for developing and constructing the Area 1/2 Improvements or component thereof, Area 2 Improvements and Alternate Replacement Facilities, as applicable, which applications and agreements are necessary because City is the fee owner of Area 1 or tenant under the Submerged Lands Lease, and which applications and agreements may include applications for subdivision approval, covenants in lieu of unity of title, easement and operating agreements, and demolition permits and applications for Design Review Board approval. Lessee shall pay all fees and charges for all such applications. Failure of the City to perform as requested within such fifteen (15) day period shall be deemed a City Delay for the number of days of delay beyond such fifteen (15) day period.

¹⁵ Reference section 2.8(a) of hotel lease

¹⁶ Reference section 2.13 of hotel lease

ARTICLE IX SECURITY DEPOSIT¹⁷

Lessee has deposited with the City the sum of _____ Thousand Dollars (\$____,000.00) (the “**Security Deposit**”). The Security Deposit shall be held by City, as security for the faithful performance by Lessee of any and all of the terms, covenants and conditions of this Lease by Lessee to be performed. Any interest on the Security Deposit shall be deemed to become a part of the Security Deposit itself.

The Security Deposit shall be invested together with other City funds and the City shall add the best interest earned by the City to the Security Deposit at the end of each Lease Year. Lessee shall have no right to challenge City’s interest earned, except for City’s mistakes or bad faith. The City shall furnish Lessee with a statement of the interest earned at the end of the first Lease Year which sum shall be added to the original Security Deposit and thereafter be considered the Security Deposit. This Security Deposit shall then be similarly invested and interest earned added annually to determine the Security Deposit. The effect of compounding shall cease when the resulting Security Deposit reaches Two Hundred and Fifty Thousand Dollars (\$250,000) and thereafter the interest earned by the City shall be paid to Lessee annually thereafter within thirty (30) days after the end of each Lease Year. Alternatively, the City may, at its option, return the original Security Deposit of _____ Thousand Dollars (\$____,000) to Lessee at any time prior to Completion of Construction. If the City exercises this option, Lessee shall have no right to receipt of any interest thereon.

At any time during the continuance of an Event of Default the City, at its option, may appropriate and apply all or any portion of the Security Deposit to the payment of any overdue Base Rent, or additional sum or charge and to the compensation of City for loss or damage sustained by City due to a breach by Lessee, or cure by City of such breach, as aforesaid, without prejudice to City’s other remedies. Should all or any part of the Security Deposit be duly appropriated and applied by City as provided above, then Lessee shall, upon demand of City, forthwith remit to City a sufficient amount in cash to restore the same to the original sum deposited plus interest accrued thereon. Should Lessee comply with all the terms, covenants and conditions of this Lease binding on Lessee, the Security Deposit shall be returned in full to Lessee not later than thirty (30) days after the expiration of the Term; provided, however, City (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) may deliver the funds deposited hereunder to the purchaser of the interest of City (or the then grantor or transferor) in the Leased Property in the event that such interest is sold, and thereupon City (or the then grantor or transferor) shall be discharged from any and all liability and obligations under this Lease and from any further liability with respect to such Security Deposit, provided the then grantor or transferor assumes such liability.

In the event City conveys or transfers the Leased Property, or any part thereof, during the Term to any party whose status is such that the tax exempt status of the Leased Property is rescinded or withdrawn, then any and all subsequent owners shall be responsible and shall pay, when due, any and all taxes and assessments on all real estate, buildings, machines or other improvements upon or in connection with the Leased Property, failing which, Lessee may pay the

¹⁷ Reference Article VIII of existing lease

same and deduct the amounts so paid, plus interest thereon at the Default Rate until such deduction is made, from any amounts due under this Lease; and, provided further that any subsequent owner, other than another governmental agency, shall place the Security Deposit in escrow and the escrow agent shall be required to invest the Security Deposit as directed by Lessee.

ARTICLE X ENCUMBRANCE OR ASSIGNMENT OF LEASEHOLD¹⁸

Section 10.1 Conditions of Financing. [UNDER REVIEW BASED ON SIMILAR PROVISIONS IN HOTEL DA]

(a) Lessee and Master Sublessee shall have the right to secure one or more financings or re-financings and, in conjunction with and to secure that financing or re-financing, may enter into First Leasehold Mortgages and First Subleasehold Mortgages, as applicable, in favor of First Leasehold Mortgagees and First Subleasehold Mortgagees, respectively, and/or obtain Mezzanine Loans and pledge direct or indirect ownership interests of Lessee and Master Sublessee in favor of Mezzanine Lenders, provided that:

(i) any such secured financing exclusively secures debt of the Lessee, Master Sublessee or the Mezzanine Borrower directly related to the Marina Project or portion thereof;

(ii) no First Leasehold Mortgage, First Subleasehold Mortgage or other encumbrance executed by the Lessee or Master Sublessee in connection with such First Leasehold Mortgage, First Subleasehold Mortgage or Mezzanine Loan or otherwise will extend to or be a lien or encumbrance upon City's interest in any part of the Leased Property or in any right appurtenant to that interest;

(iii) the First Leasehold Mortgage, First Subleasehold Mortgage and any other encumbrance executed by the Lessee or by Master Sublessee, as applicable, in connection with such First Leasehold Mortgage, First Subleasehold Mortgage or otherwise shall at all times, without the necessity for the execution of any further documents, be subject and subordinate to the interest of the City in the Leased Property subject to this Article X; provided that (A) the First Leasehold Mortgagee and First Subleasehold Mortgagee, as applicable, agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by the City under this Lease to evidence the foregoing subordination and (B) the City agrees from time to time upon reasonable request and without charge to execute, acknowledge and deliver any instruments reasonably requested by any Protected Lender to evidence the City's non-disturbance and recognition of the rights granted to such Protected Lender pursuant to this Article X;

(iv) the rights of the City in the Leased Property and arising out of this Lease shall not be affected by the First Leasehold Mortgage, First Leasehold Mortgagee, First Subleasehold Mortgage, First Subleasehold Mortgagee, Mezzanine Loan or

¹⁸ Reference article 5 of hotel lease

Mezzanine Lender, nor shall the City be deprived in any other way of its rights in the Leased Property or under this Lease, except to the extent provided in this Article X or in any subordination, non-disturbance and recognition agreement between the City and any Protected Lender that is consistent with the terms of this Lease;

(v) Lessee shall at all times remain liable hereunder for the payment of Rent and the performance of all covenants and conditions of this Lease as provided in this Lease;

(vi) Following a foreclosure sale, any purchaser at such foreclosure sale acquiring any right, title or interest in or to this Lease or Master Sublease, as applicable, shall enter into in a written instrument reasonably satisfactory to the City, to assume and agree to perform all of the terms, covenants and conditions of Lessee hereunder or Master Sublessee under the Master Sublease, as applicable, arising after the date of such Transfer, but only during its period of ownership of such interest (provided that City does not waive or relinquish its right, and shall have the right, to enforce its remedies with respect to any Event of Default existing as of the date of such Transfer), that no additional mortgage or assignment of this Lease or Master Sublease, as applicable, or pledge of ownership interests of Lessee or Master Sublessee will be made except in accordance with the provisions contained in this Article X, and that a duplicate original of such written instrument, duly executed and acknowledged by such purchaser and in recordable form, is delivered to the City immediately after the consummation of such sale, or, in any event, prior to taking possession of the Leased Property or of property demised under the Master Sublease, as applicable.

(b) At the request of any Protected Lender, such Protected Lender, Lessee and Master Sublessee, as applicable, and the City (by and through the City Manager) shall enter into a non-disturbance, recognition and attornment agreement confirming the provisions set forth in Section 10.1(d) below and such other terms and conditions as are reasonably acceptable to such Protected Lender and the City Manager, after consultation with the City's Chief Financial Officer and City Attorney.

(c) With respect to any Protected Lender desiring the benefit of the rights set forth in this Article X, such Protected Lender, Lessee or Master Sublessee shall deliver or cause to be delivered to the City, promptly after execution by Lessee or Master Sublessee, as applicable, (i) with respect to First Leasehold Mortgagees and First Subleasehold Mortgagees, a true and verified recorded copy of the First Leasehold Mortgage or First Subleasehold Mortgage, as applicable, and any amendment, modification or extension thereof, together with the name and address of the First Leasehold Mortgagee and First Subleasehold Mortgage, as applicable, and (ii) with respect to any Mezzanine Lender, a true and correct copy of any Mezzanine Loan agreement, as applicable, and any amendment, modification or extension thereof, together with the name and address of the Mezzanine Lender.

(d) For so long as any First Leasehold Mortgage encumbers any portion of the Leased Property, any First Subleasehold Mortgage encumbers property demised under the Master Sublease, or, as applicable, a Mezzanine Lender holds a pledge of

Lessee's or Master Sublessee's direct or indirect ownership interest, and provided the conditions of Section 10.1(a)(i), (ii) and (c) above have been satisfied with respect to that First Leasehold Mortgage, First Subleasehold Mortgage or Mezzanine Loan, as applicable:

(i) in any event where the City gives Lessee notice of an Event of Default, the City shall deliver a copy of such notice to that Protected Lender at the name and address designated in writing by the Protected Lender to the City from time to time (the City shall be deemed to have fulfilled its notice obligation by providing the required notice to the address delivered to the City in accordance with Section 10.1(c) or such other address so designated by the Protected Lender to the City in writing and shall not be responsible for any liability in the event such address is not current);

(ii) notwithstanding the time allowed for Lessee to cure an Event of Default, that Protected Lender shall have the right, but not the obligation, up to fifteen (15) days following the City's notice thereof to cure a monetary default and thereafter keep all Base Rent and other amounts due hereunder current, and up to thirty (30) days following the City's notice thereof to cure a non-monetary Event of Default, but if such non-monetary Event of Default cannot be cured within such thirty (30) day period, then that Protected Lender shall (except as provided in clauses (iii) and (iv) below) have up to ninety (90) days to cure, provided that it has started to do so within the initial thirty (30) day period and thereafter continues to diligently pursue the cure. The City will accept performance by a Protected Lender of any covenant, condition or agreement on Lessee's part to be performed hereunder with the same force and effect as though performed by Lessee; and

(iii) notwithstanding the provisions of this Lease to the contrary, including Article XXI hereof, no Event of Default by Lessee will be deemed to exist as to the First Leasehold Mortgagee, and the City shall not be permitted to terminate this Lease due to an Event of Default of Lessee, as long as the First Leasehold Mortgagee, in good faith, either (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) above, or (B) if the nature of any non-monetary Event of Default is such that possession of the Leased Property or portion thereof or title to the Marina Project or portion thereof is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the First Leasehold Mortgagee (e.g., Lessee bankruptcy) (and which will be waived as to the First Leasehold Mortgagee if the First Leasehold Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with this clause (iii) or clause (ii) above), files a complaint for foreclosure and thereafter prosecutes the foreclosure action in good faith and with due diligence and continuity (subject to any stays, moratoria or injunctions applicable thereto) and obtains such possession or title, to the extent a cure cannot be effected without such possession or title, directly or through a receiver, and as promptly as practicable after obtaining such possession or title, to the extent a cure cannot be effected without such possession or title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the First Leasehold Mortgagee has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, its agreement to take the action described in clause (A) or (B) of this clause (iii),

and that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Lessee under this Lease, to the extent they are susceptible of being performed by the First Leasehold Mortgagee (e.g., the payment of Base Rent), are being duly performed. However, at any time after the delivery of the aforementioned agreement, the First Leasehold Mortgagee may notify the City, in writing, that it has relinquished possession of the Leased Property, or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and in such event, the First Leasehold Mortgagee will have no further liability under such agreement from and after the date which is 30 days after it delivers such notice to the City (except for any obligations accruing prior to 30 days after the date it delivers such notice), and, thereupon, subject to the rights of the Mezzanine Lender set forth in clause (iv) below, the City will have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any Event of Default, and upon any such termination, the provisions of Section 10.1(i) and (k) hereof will apply.

(iv) notwithstanding the provisions of this Lease to the contrary, including Article XXI hereof, no Event of Default by Lessee will be deemed to exist as to any Mezzanine Lender that provides a Mezzanine Loan to a Mezzanine Borrower that is a direct or indirect owner of the Lessee, and the City shall not be permitted to terminate this Lease due to an Event of Default of Lessee, as long as the Mezzanine Lender and/or First Leasehold Mortgagee, in good faith, either (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) or (iii) above, or (B) if the nature of any non-monetary Event of Default is such that title to the direct or indirect ownership interests of the Lessee is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the Mezzanine Lender (e.g., Lessee bankruptcy) (and which will be waived as to the Mezzanine Lender if the Mezzanine Lender and/or First Leasehold Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with clause (ii) or (iii) above), has taken all commercially reasonable steps necessary to foreclose the pledge of such ownership interests, and prosecutes such action in good faith and with due diligence and continuity (subject to any customary and reasonable restrictions imposed under any intercreditor agreement or similar agreement between any First Leasehold Mortgagee and Mezzanine Lender and/or any stays, moratoria or injunctions applicable thereto) and obtains title to such ownership interests, and as promptly as practicable after obtaining such title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the Mezzanine Lender has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, its agreement to take the action described in clause (A) or (B) of this clause (iv), and that during the period in which such action is being taken, all of the other obligations of Lessee under this Lease, to the extent they are susceptible of being performed by the Mezzanine Lender (e.g., the payment of Base Rent), are being duly performed. However, at any time after the delivery of the aforementioned agreement, the Mezzanine Lender may notify the City, in writing, that it has relinquished title to such ownership interests or that it will not seek to foreclose the pledge of such ownership interests or, if such foreclosure has commenced, that it has been discontinued, and in such event, the Mezzanine Lender will have no further liability under such agreement from and after the date which is 30 days after it delivers

such notice to the City (except for any obligations accruing prior to 30 days after the date it delivers such notice), and, thereupon, subject to the rights of the First Leasehold Mortgagee set forth in clause (iii) above, the City will have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any Event of Default, and upon any such termination, the provisions of Section 10.1(i) and (k) hereof will apply.

(e) From and after the date upon which the City receives the notice described in Section 10.1(c) hereof from a Protected Lender, the City will not (i) consent to a cancellation or surrender of this Lease (except upon the expiration of the Term), (ii) or any amendment or modification hereof or (iii) terminate this Lease other than as provided in this Article X (except upon the expiration of the Term) without the prior written consent of such Protected Lender, which consent with respect to any amendment or modification hereof shall not be unreasonably delayed, conditioned or withheld. Additionally, any right of Lessee to treat this Lease as terminated under Section 365(h)(1)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code shall be subject to the consent of each Protected Lender.

(f) Each Protected Lender shall have a first-priority right and option (subject to rights of any other Protected Lenders to which such Protected Lender is subordinate) to retain, apply and disburse the proceeds of any insurance or the proceeds of any condemnation award in accordance with the requirements of its First Leasehold Mortgage, First Subleasehold Mortgage or Mezzanine Loan documents, as applicable, before any such proceeds are applied towards the demolition, repair or restoration of the Leased Property or portion thereof in accordance with the provisions of this Lease or the Master Sublease, as applicable.

(g) Notwithstanding anything in this Lease to the contrary, foreclosure of a First Leasehold Mortgage or any sale thereunder, whether by judicial proceedings or by any power of sale contained in the First Leasehold Mortgage or applicable law, or any conveyance of the Marina Project or portion thereof from Lessee to the First Leasehold Mortgagee or its designee or nominee in lieu of the foreclosure or other appropriate proceedings in the nature thereof, or any foreclosure of a First Subleasehold Mortgage or any sale thereunder, whether by judicial proceedings or by any power of sale contained in the First Subleasehold Mortgage or applicable law, or any conveyance of the applicable portion of the Marina Project from Master Sublessee to a First Subleasehold Mortgagee or its designee or nominee in lieu of the foreclosure or other appropriate proceedings in the nature thereof, or any foreclosure of a Mezzanine Loan, or conveyance of the Lessee's or Master Sublessee's direct or indirect ownership interest in lieu thereof, shall not:

(i) require the City's consent; or

(ii) provided the applicable Protected Lender has complied with the provisions of this Article X, constitute a breach of any provision of or a default under this Lease.

(h) If the First Leasehold Mortgagee or any other foreclosure sale purchaser subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or by an acceptance of a deed in lieu of foreclosure or subsequently assigns or transfers its interest under any such new lease entered into pursuant to Section 10.1(i) below, and in connection with any such assignment or transfer, the First Leasehold Mortgagee or any other foreclosure sale purchaser takes back a First Leasehold Mortgage to secure a portion of the purchase price, the holder of such First Leasehold Mortgage shall be a First Leasehold Mortgagee entitled to receive the benefit of this Article X and all other provisions of this Lease intended for the benefit of a First Leasehold Mortgagee. Similarly, if a First Subleasehold Mortgagee or any other foreclosure sale purchaser subsequently assigns or transfers its interest under the Master Sublease after acquiring the same by foreclosure or by an acceptance of a deed in lieu of foreclosure or subsequently assigns or transfers its interest under any such new lease entered into pursuant to Section 10.1(k) below, and in connection with any such assignment or transfer, the First Subleasehold Mortgagee or any other foreclosure sale purchaser takes back a First Subleasehold Mortgage to secure a portion of the purchase price, the holder of such First Subleasehold Mortgage shall be a First Subleasehold Mortgagee entitled to receive the benefit of this Article X and all other provisions of this Lease intended for the benefit of a First Subleasehold Mortgagee. Similarly, if a Mezzanine Lender or a purchaser under a UCC sale obtains title to the direct or indirect ownership interests in Lessee or Master Sublessee and subsequently assigns or transfers its interests in such ownership interests, or subsequently assigns or transfers its interest under any new lease entered into pursuant to Section 10.1(i) or (k) below, as applicable below, and in connection with any such assignment or transfer, the Mezzanine Lender or any other UCC sale purchaser takes back a pledge of the direct or indirect ownership interests of the Lessee or Master Sublessee, as applicable, to secure a portion of the purchase price, the holder of such pledge shall be a Mezzanine Lender entitled to receive the benefit of this Article X and all other provisions of this Lease intended for the benefit of a Mezzanine Lender.

(i) Should the Lessee or any Protected Lender not cure the alleged Event of Default as provided in this Section 10.1, the City has the right to terminate this Lease by reason of any uncured Event of Default as provided in this Lease. If this Lease is terminated by the City in accordance with the foregoing or is terminated as a result of the bankruptcy of the Lessee, the City shall give written notification of such termination to the First Leasehold Mortgagee and any Mezzanine Lender providing a Mezzanine Loan to a Mezzanine Borrower that is a direct or indirect owner of the Lessee, and the City shall, upon written request of the First Leasehold Mortgagee or such Mezzanine Lender to the City received within thirty (30) days after such notice of termination, enter into a new lease of the Leased Property with such First Leasehold Mortgagee or Lessee (as owned by such Mezzanine Lender), as lessee, for the remainder of the Term with the same covenants, conditions and agreements (except for any requirements which have been fully satisfied by Lessee or City prior to termination or which pertain to the ownership of Lessee) as are contained herein. The City's delivery of the Leased Property to the First Leasehold Mortgagee or Lessee (as owned by such Mezzanine Lender), as applicable, as lessee, pursuant to a new lease shall be:

(i) made without representation or warranty of any kind or nature whatsoever either express or implied;

(ii) First Leasehold Mortgagee or Lessee (as owned by such Mezzanine Lender), as lessee, shall take such Leased Property “as-is” in its then current condition; and

(iii) upon execution and delivery of such new lease, First Leasehold Mortgagee or Lessee (as owned by such Mezzanine Lender), as lessee, at its sole cost and expense shall be responsible for taking such action as shall be necessary to cancel and discharge this Lease and to remove Lessee named herein and any other occupant other than as allowed by the First Leasehold Mortgagee or Lessee (as owned by such Mezzanine Lender) from the Leased Property.

(j) The City’s obligation under Section 10.1(i) above to enter into such new lease of the Leased Property with the First Leasehold Mortgagee or Lessee (as owned by such Mezzanine Lender) shall be conditioned upon, on the date the new lease is executed:

(i) the City receiving payment of all Base Rent due hereunder through the date of such new lease;

(ii) all monetary defaults hereunder having been cured;

(iii) all non-monetary defaults susceptible to cure having been remedied and cured (or First Leasehold Mortgagee or Lessee (as owned by such Mezzanine Lender), as applicable, as lessee, having commenced such cure and continuing to diligently complete the cure in accordance with clauses (iii) or (iv) of paragraph (d) above, as applicable); and

(iv) the City receiving payment of all expenses, including reasonable attorneys’ fees and disbursements and court costs, incurred by the City in connection with such Event of Default, the termination of this Lease and the preparation of the new lease, together with interest thereon at the lesser of the Default Rate or the highest rate permitted by law, from the due date or the date expended by the City, as the case may be, to the date of actual payment from First Leasehold Mortgagee or such Mezzanine Lender, as applicable.

(k) If the Master Sublease shall terminate for any prior to the expiration of its term and this Lease also has been terminated by the City or is terminated as a result of the bankruptcy of the Lessee or is terminated for any other reason prior to the expiration of the Term, the City shall give written notification of such termination to the First Subleasehold Mortgagee and any Mezzanine Lender providing a Mezzanine Loan to a Mezzanine Borrower that is a direct or indirect owner of Master Sublessee, and the City shall, upon written request of the First Subleasehold Mortgagee or such Mezzanine Lender to the City received within thirty (30) days after such notice of termination, enter into a new lease of the applicable subleased portion of the Leased Property with such First Subleasehold Mortgagee or Master Sublessee (as owned by such Mezzanine Lender), as lessee, for the remainder of the term of the Master Sublease, with the same

covenants, conditions and agreements (except for any requirements which have been fully satisfied by Master Sublessee prior to termination or which pertain to the ownership of Master Sublessee) as are contained in the Master Sublease (with such appropriate modifications to reflect that the lease is a direct lease rather than a sublease). The City's obligation to enter into such new lease with the First Subleasehold Mortgagee or Master Sublessee (as owned by such Mezzanine Lender), as applicable, as lessee, pursuant to a new lease shall be:

(i) made without representation or warranty of any kind or nature whatsoever either express or implied;

(ii) First Subleasehold Mortgagee or Master Sublessee (as owned by such Mezzanine Lender), as lessee, shall take the applicable portion of the Leased Property "as-is" in its then current condition; and

(iii) upon execution and delivery of such new lease, First Subleasehold Mortgagee or Master Sublessee (as owned by such Mezzanine Lender), as lessee, at its sole cost and expense shall be responsible for taking such action as shall be necessary to cancel and discharge the Master Sublease and to remove Master Sublessee and any other occupant other than as allowed by the First Subleasehold Mortgagee or Master Sublessee (as owned by such Mezzanine Lender) from the applicable portion of the Marina Project.

(l) The City's obligation under Section 10.1(k) above to enter into such new lease with the First Subleasehold Mortgagee or Master Sublessee (as owned by such Mezzanine Lender) shall be conditioned upon, on the date the new lease is executed:

(i) the City receiving payment of all rent due under the Master Sublease through the date of such new lease;

(ii) all monetary defaults under the Master Sublease having been cured;

(iii) all non-monetary defaults under the Master Sublease susceptible to cure having been remedied and cured (or First Subleasehold Mortgagee or Master Sublessee (as owned by such Mezzanine Lender), as applicable, as lessee, having commenced such cure and continuing to diligently complete the cure in accordance with clauses (iii) or (iv) of paragraph (d) above, as applicable); and

(iv) the City receiving payment of all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by the City in connection with the preparation of the new lease.

(m) With respect to the payment of Base Rent by the First Leasehold Mortgagee or Mezzanine Lender pursuant to this Article X, if the Base Rent currently due cannot be determined by the First Leasehold Mortgagee or Mezzanine Lender, as applicable, without possession of the Leased Property or title to the Marina Project or ownership of the Lessee's direct or indirect equity interests, as applicable, then the First Leasehold Mortgagee or Mezzanine Lender may pay the amount of Base Rent which was paid for the immediately previous period, with the adjustment, upward or downward, to

be made ninety (90) days after the First Leasehold Mortgagee obtains possession of the Leased Property or title to the Marina Project or the Mezzanine Lender acquires title to the direct or indirect ownership interests of the Lessee, as applicable.

Section 10.2 No Waiver of Lessee's Obligations or City's

Rights. Nothing contained herein or in any Leasehold Mortgage shall be deemed or construed to relieve Lessee from the full and faithful observance and performance of its covenants, conditions and agreements contained herein, or from any liability for the non-observance or non-performance thereof, or to require, allow or provide for the subordination to the lien of such Leasehold Mortgage or to any Leasehold Mortgagee or to any Subleasehold Mortgage of any estate, right, title or interest of the City in or to the Leased Property, buildings and structures or this Lease (including the right to Rent, Public Charges, and other monetary obligations of Lessee to the City under this Lease), nor shall the City be required to join in such mortgage financing or be liable for same in any way. City's interest in the Leased Property and this Lease, as the same may be modified, amended or renewed, will not at any time be subject or subordinate to (a) any mortgage now or hereafter placed upon Lessee's interest in this Lease or Master Sublessee's interest in the Master Sublease, or (b) any other liens or encumbrances hereafter affecting Lessee's interest in this Lease or Master Sublessee's interest in the Master Sublease. City represents and warrants to Lessee that no mortgages currently exist against its fee interest in Area 1 or on any estate, right, title or interest of City in the balance of the Leased Property, and acknowledges that neither this Lease nor the Master Sublease shall be subordinate to any future mortgage against the fee interest in Area 1 or on any estate, right, title or interest of City in the balance of the Leased Property. Notwithstanding anything to the contrary contained in this Lease or the Master Sublease, this Lease, the Master Sublease and each new lease entered into pursuant to this Article X (and all amendments, replacements, supplements, addenda or renewals thereof from time to time), is and shall at all times remain superior in priority to any mortgage against the fee interest in Area 1 and any estate, right, title and interest of City in the balance of the Leased Property and all amendments, replacements, supplements, addenda, renewals and replacements thereof from time to time, and if all or any portion of the interest of City in the Leased Property or this Lease or the Master Sublease shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Lease and the rights of Lessee hereunder and the Master Sublease and the rights of Master Sublessee thereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Lease.

Section 10.3 Waiver of Landlord's Lien.

City hereby waives any statutory liens and any rights of distress with respect to the improvements, fixtures and all Lessee's personal property constructed on, located at or used in connection with the Leased Property, or the Lessee's or the Master Sublessee's

interest in the Leased Property. This Lease does not grant a contractual lien or any other security interest to City or in favor of City with respect to the improvements, fixtures or any of Lessee's or the Master Sublessee's personal property constructed on, located at or used in connection with the Leased Property, or the Lessee's or the Master Sublessee's interest in the Leased Property. The City further agrees to execute and deliver such instruments reasonably requested by any Protected Lender from time to time to evidence the aforesaid waiver of City.

Section 10.4 **Third Party Beneficiary.** The provisions of this Article X shall survive any termination of this Lease. Each Protected Lender shall be deemed to be third party beneficiaries of this Article X.

ARTICLE XI
ASSIGNMENT ¹⁹ [OPEN ISSUE – PARTIES TO DISCUSS
RESTRICTIONS ON ASSIGNMENTS AND TRANSFERS, INCLUDING
ACCEPTABLE OWNER CRITERIA]

Except as set forth in a-e below, Lessee agrees not to assign or transfer the whole or part of this lease or any interest therein, nor to sublease the whole or any part of the marina site, nor to permit the occupancy of any part thereof by any other person or entity, nor to permit transfer of the lease or possession of the marina site by merger, consolidation, or dissolution, without the consent of the city manager, first had and obtained in each instance. Lessee further agrees that no assignment, voluntary or involuntary, in whole or in part of this lease, or any interest therein, and no sublease of the whole or any part of the marina site and no permission to any person to occupy the whole or any part of the marina site shall be valid or effective without the Approval of the City Manager, first had and obtained in each instance, provided further that not more than five (5) wet slips and storage areas for individual boats in the dry storage facility may be rented to individual members of the boating public (excluding charter boats) for a period not to exceed three (3) years without first having had and obtained in each instance the Approval of the City Manager.

Master Sublease and Space Leases.

(a) Lessee shall have the right to enter into the Master Sublease.

(b) ²⁰Subject to any applicable terms expressly set forth in this Q, Lessee shall have the right to enter into Space Leases of all or portions of the Leased Property at any time and from time to time during the Term with such Space Lessees, and upon such terms and conditions, as Lessee shall deem fit and proper, including to a taxable REIT subsidiary lease under Section 856 of the Internal Revenue Code and an Opco/Propco lease between Lessee and an Affiliate, provided the Space Lease is consistent with this

¹⁹ The Master Sublease shall include assignment provisions based on hotel lease, as modified to conform to whatever the parties agree upon with respect to the DA

²⁰ See section 5.6 of the hotel lease

Lease (including this Article XI). At the City's request, Lessee shall allow the City to review and inspect any and all Space Leases for the Leased Property.

(c) ²¹Lessee covenants that it will perform and observe in all material respects all the terms, covenants, conditions and agreements required to be performed and observed by it under the Master Sublease and each Space Lease. Lessee agrees that:

(i) With respect to the Master Sublease, require the Master Sublessee to maintain adequate books and records including reasonably detailed information on Gross Receipts applicable to the premises demised under the Master Sublease and to submit the same for inspection and audit by the City to the same extent Lessee is required under the terms of this Lease to submit its books and records for inspection and audit;

(ii) With respect to the Master Sublease, provide that, if this Lease terminates, the Master Sublessee shall, if required by the City, pay all rents and all other charges required by the Master Sublease directly to the City;

(iii) With respect to Space Leases, provide that, if this Lease terminates, the Space Lessee shall, if required by the City, pay all rents and all other charges required by the Space Lease directly to the City; and

(iv) With respect to the Master Sublessee and Space Leases, obligate the Master Lessee and Space Lessee, as applicable, not to violate any term, covenant or restriction applicable to Lessee that is contained in this Lease. In addition, Lessee shall in all events require and cause the Master Sublessee and Space Lessees to perform obligations imposed by the Lease and applicable to the Master Sublease or applicable Space Lease (specifically including the obligations set forth in this Q).

(d) City agrees to grant recognition and non-disturbance agreements for the Master Sublessee which provide that, in the event of a termination of this Lease for any reason, the Master Sublessee will not be disturbed and will be allowed to continue peacefully in possession and with full enjoyment of all rights under the terms and conditions of the Master Sublease, and the Master Sublease shall not be terminated and shall continue automatically for the duration of its term and all extensions thereof as a direct lease between City and the Master Sublessee with the same force and effect as if City had originally entered into the Master Sublease as landlord" or "lessor" thereunder. For avoidance of doubt, the recognition and non-disturbance with respect to the Master Sublease shall not be conditioned upon the Master Sublessee not being in default of the Master Sublease. To effectuate the intent of this Section, City agrees to enter into recognition and non-disturbance agreements in such form as shall be consistent with this Q, within thirty (30) days following written request, pursuant to which City agrees to recognize the Master Sublease as a direct lease between City and the Master Sublessee. The Master Sublease may include lender protection provisions consistent with the provisions of this Lease, and all such provisions shall be recognized by City.

²¹ See section 5.6 of the hotel lease

(e) The City shall enter into non-disturbance agreements with those Space Lessees and Space Leases that the City has Approved.

ARTICLE XII USE OF PREMISES²²

. Lessee shall use the Leased Property solely as a boat port, marina and recreation facility offering dockage, mooring and other marina related services and events for the use of and by the general public. These uses, activities and services may include:

- A. Dry storage, dockage and mooring of boats.
- B. Operation of the baywalk, marine exhibits, and marine oriented attractions.
- C. Sale of bait, tackle, ice and soft drinks.
- D. General minor repairs and servicing of boats. No plan for removal of boats or crafts from the water at the facility for repairs or maintenance shall be implemented without the Approval of the City Manager.
- E. Sale of new and used boats and motors, the display of which shall be limited to not more than five percent (5%) of the slips, but may be increased with the Approval of the City Manager. These slips occupied by Lessee for such purposes shall be assessed at the comparable rate of similarly situated boats and made a part of the Gross Receipts. Commissions paid to Lessee and included in Gross Receipts may be deducted from amounts otherwise to be included in Gross Receipts pursuant to this paragraph E.
- F. Sale of nautical gifts, marine accessories, hardware and sundries.
- G. Boat rentals and charter boat facilities.
- H. Information center and telephone, mail and messages services.
- I. Sale of fuel.
- J. Shower and restroom facilities for the use of persons docking and mooring boats.
- K. Custodial service by Lessee, including the furnishing of all maintenance supplies.
- L. Boat shows; provided that the duration of such shows shall not exceed twenty (20) days without Approval of the City Manager; and, provided further that such boat shows shall be exempt from the five (5) percent limitation set forth in sub-paragraph E above.
- M. Restaurant, retail and office uses.

²² Reference Article X of the existing lease

. The Leased Property shall be used for no other use or purpose whatsoever unless Approved by the City Manager.

. ²³The Lessee covenants that all facilities located on the Leased Property shall be made available to the general public, subject to the rights of the Master Sublessee and Space Lessees, and subject to the rights of the Lessee to establish and enforce reasonable rules and regulations (including the establishment of dockage rates and other fees) to provide for the efficient, orderly, and safe operation and security of such facilities. It is the express intent of this Lease that Area 2 will be operated as a public facility as a municipal marina.

The Lessee covenants and agrees that it will not enter into any Space Leases relating to the Leased Property for a period of beyond the stated expiration date of this Lease, unless such Space Leases are terminable at City's option at the expiration or sooner termination of the Term.

Lessee further agrees that, at no cost to the City, it will (i) provide four (4) boat slips to accommodate vessels of up to forty (40) feet, as chosen by the Lessee, for municipal purposes (e.g., police department, fire department) and four (4) parking spaces to accompany the use such boat slips within the nearest available parking facility; provided, however, that this subparagraph shall not preclude Lessee from charging and collecting any sums otherwise due from third parties including, but not limited to, utilities servicing the slips (or from the City if City collects from third parties or from the proceeds resulting from the sale of confiscated vessels). *[per latest term sheet]*

Lessee shall reasonably cooperate with the City in connection with the City's construction, operation and maintenance of a mooring field in the general vicinity of Area 2 and landing area within the Leased Property, which landing area may include public restrooms, bike station and docking location for dinghies. The City will perform any construction and obtain any necessary licenses, permit or approval for same. Lessee will assist in the administration and management of such mooring field, however the City will remain responsible for compliance with all rules, regulations and laws associated with the use and operation of any such an area. *[per latest term sheet]*

Lessee will not, through its own fault or negligence, use or allow the Leased Property or any improvements thereon, or any part thereof, to be used or occupied for any unlawful purpose or in violation of any Governmental Requirements.

ARTICLE XIII NO REPRESENTATIONS BY CITY²⁴

Lessee acknowledges that it has examined the Leased Property and knows the condition thereof and accepts the Leased Property in its present condition and without any representations or warranties of any kind or nature whatsoever by City (except those expressly made by the City in this Lease) as to its condition or as to the use or occupancy which may be made thereof. The Lessee assumes, in accordance with provisions of this Lease, the sole responsibility for the condition, operation, maintenance and management of the Leased Property, and all improvements now or hereafter situated thereon, and the City shall not be required to furnish any facilities or

²³ Continuous use sentence deleted because the concept is covered in section 16.1

²⁴ Reference Article XI of the existing lease

services or make any repairs or structural changes, additions or alterations thereto. In the event such representation proves untrue, Lessee is relieved from all obligations to construct, repair or refurbish such piers so as to cause compliance with such plans; and, City shall cause compliance to be made therewith within a reasonable period of time and at no expense to Lessee.

ARTICLE XIV CITY NOT LIABLE FOR FAILURE OF WATER SUPPLY, ETC.²⁵

City shall not be liable for any failure of water supply, gas or electric current, nor for any injury or damage to person or property caused by or resulting from gasoline, oil, steam, gas or electricity or from hurricane, tornado, flood, wind, fire or similar storms or disturbances or from water or rain which may leak or flow upon the streets, sewers, gas drains or any sub-surface area or from any part of the Leased Property or improvements thereon and/or its related facilities, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments caused by any party whatsoever, unless City, apart from this Lease, would as a matter of law, be liable for its own fault or negligence.

ARTICLE XV

**[OPEN ISSUES – TO DEVELOP CRITERIA/INDEX TO PROVIDE LESSOR’
MAINTENANCE/REPAIR/SECURITY/UPKEEP OBLIGATIONS FOR
PARKING GARAGES/BAY WALK/GREEN SPACE/ETC. WITH FINE
STRUCTURE]**

ARTICLE XVI REPAIR AND ALTERATIONS²⁶

Section 16.1 General. The Lessee shall maintain or shall cause to be maintained the Leased Property (during the Term) and any wet slips, buildings, structures, facilities, improvements and appurtenances now or hereafter erected thereon in a good state of repair, both inside and outside and keep the same and all parts thereof, including without limiting the generality of the foregoing, the roof, foundations, wall, floors, sidewalks, curbs, landscaping, parking area (recognizing the temporary nature of such area), water and sewer connections, windows and other glass, plumbing, water, gas and electric fixtures, pipes, wires, and conduits, elevators, escalators, boilers, machinery, fixtures, equipment, furnishings, facilities and appliances, in, on or connected with the Leased Property or used in its operation, together with any and all alterations, additions and improvements therein or thereto, in good, clean, healthful and safe order and condition, and keep all parking areas well lighted, all in accordance with applicable municipal ordinances, other governmental laws and regulations, and the direction of proper public officers, suffering no waste or injury, and shall, at Lessee’s sole expense, promptly make or acquire all needed repairs,

²⁵ Reference Article XII of the existing lease

²⁶ Generally reference article XIII of the existing lease, but operations provisions were moved to the next article

replacements, renewals and additions, structural or otherwise, whether ordinary or extraordinary, foreseen or unforeseen, in and to any of the foregoing, all as may be necessary to both maintain the fair market value of the marina and to operate in Area 2 throughout the Term in accordance with the Marina Standard. All such repairs, replacements, renewals and additions shall be of good quality and sufficient for the proper maintenance and operation of the Leased Property and any building, structures, facilities, furnishings, equipment, fixtures, improvements and appurtenances now or hereafter erected thereon or used in the operation thereof and shall be constructed and installed in compliance with all requirements of all governmental authorities having jurisdiction thereof and of the appropriate board of fire underwriters or any equivalent thereof. Lessee shall not permit anything to be done upon the Leased Property or any improvements thereon which would invalidate or prevent the procurement of any insurance policies which may at any time be required pursuant to the provisions hereof. Further, Lessee shall not obstruct access to the Baywalk, streets or sidewalks or alleys in or adjoining the Leased Property except as may be permitted by City.

Section 16.2 Parking. [Park ownership/control is an open point] Without limiting the generality of Section 15.1, until receipt by Lessee of written notice to the contrary, Lessee shall operate and maintain or cause to be operated and maintained (i) the Parking Garages to the extent expressly required in the [Parking Management Agreement] **[OPEN ISSUE – PARTIES TO DISCUSS INCORPORATING THE PARKING MANAGEMENT AGREEMENT OBLIGATIONS HEREIN]** and (ii) from and after Completion of Construction of the Replacement Facilities, or if applicable, from and after issuance of a certificate of occupancy/completion for the Alternate Replacement Facilities, the Replacement Parking Facility, all in accordance with following standards (with respect to the Parking Garages, if expressly permitted per the terms of the Parking Garage Leases):

A. with respect to the Replacement Parking Facility, maintain the surface of the parking lot and sidewalks level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute therefor as shall in all respects be equal in quality, appearance and durability.

B. Remove all papers, debris, filth and refuse from such areas and wash or thoroughly sweep paved areas as required.

C. with respect to the Replacement Parking Facility, maintain such appropriate parking lot entrance, exit and directional signs, markers and lights as be reasonably required and in accordance with the practices prevailing in the operation of similar marinas in the State of Florida

D. Clean lighting fixtures and relamp as needed.

E. with respect to the Replacement Parking Facility, repair striping, markers, directional signs as necessary to maintain in first-class condition.

F. with respect to the Replacement Parking Facility, employ courteous and uniformed personnel for patrol to provide adequate security **[OPEN ISSUE – DEVELOP SPECIFIC STANDARDS AND CRITERIA FOR THE UPKEEP OF THE GARAGES]**

Section 16.3 **Baywalk.** Until receipt by Lessee of written notice to the contrary, Lessee shall maintain the Baywalk or cause the Baywalk to be maintained as follows: maintain the surface of the Baywalk smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute therefor as shall in all respects be equal in quality, appearance and durability. In no event shall Lessee be required to maintain any areas surrounding the Baywalk or to enforce any rule, regulation or laws surrounding the use of the Baywalk. **[OPEN ISSUE – DEVELOP SPECIFIC STANDARDS AND CRITERIA FOR MAINTENANCE OF BAYWALK]**

Section 16.4 **Failure to Maintain.** Should Lessee fail to perform its obligations under Section 16.1, solely with respect to Area 1, through and including **Error! Reference source not found.** of this Lease, then Lessee shall not be in default hereunder but if such failure continues for a period of _____ (____) Business Days after notice thereof from the City, then the City shall have the right to provide an additional notice to Lessee levying fines as follows: [to be inserted]. Any and all such fines shall constitute “Rent” hereunder.

Section 16.5 **Alterations.** Lessee shall not, without prior written consent of City, make any material alterations, improvements, or additions to the improvements and facilities on Area 2 except in conjunction with the Area 2 Improvements, and if applicable, from and after issuance of a certificate of occupancy/completion for the Alternate Replacement Facilities, Lessee shall not, without prior written consent of City, make any material alterations, improvements, or additions to the improvements and facilities on Area 1 except in conjunction with the Area 1/2 Improvements; provided however, that Lessee may undertake its maintenance responsibility and make non-structural modifications to the interior of buildings where such modifications do not materially change the use thereof. Lessee shall furnish City with security for the payment for all costs to be incurred in connection with such work and insurance against liabilities which may arise out of such work. All fees, costs and expenses relating to any such alterations, improvements or additions shall be borne by Lessee. Lessee shall promptly pay when due all such fees, costs and expenses and Lessee shall defend and hold City and the Leased Property harmless from all costs, damages, liens and expenses related thereto. For avoidance of doubt, and notwithstanding anything to the contrary contained in this Lease, Lessee shall be authorized to demolish the Lessee Improvements within Area 1 in conjunction with the development and construction of the Alternate Replacement Facilities.

All work done by Lessee or its contractors pursuant to this subparagraph shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all

insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. All such alterations, improvements and additions to the Leased Property, whether temporary or permanent in character, shall immediately become and shall remain the property of Lessee during the Term.

ARTICLE XVII OPERATION

Section 17.1 Operation of Marina.

(a) Subject to the need to make repairs and perform maintenance, any Force Majeure Event, prosecuting the Work, prosecuting the work for the Area 1/2 Improvements and prosecuting the work for the Area 2 Improvements, Lessee shall: (i) continuously operate all of the Leased Property in good faith during the Term with due diligence and efficiency so as to produce the maximum profitable and practical Gross Receipts which may be produced by such operation; (ii) carry a reasonably complete stock of merchandise and shall maintain reasonably adequate personnel for efficiently accommodating its customers; (iv) keep the Leased Property constantly open for business; and (iv) operate Area 2 in accordance with the Marina Standard.

(b) Notwithstanding the foregoing, Lessee shall have the right from time-to-time to close operations of the Leased Property or any part thereof for such commercially reasonable periods of time to make repairs, alterations, remodeling and improvements, including for any construction in connection with Replacement Facilities, Alternate Replacement Facilities or Area 2 Improvements or Area 1/2 Improvements, reconstruction after casualty or condemnation or any Force Majeure Event; provided that the Lessee is using commercially reasonable diligent efforts to repair and restore the applicable portion of the Leased Property or, as applicable, to mitigate the impact of such Force Majeure Events on its operations.

(c) If Lessee shall fail to carry on its business in the manner required under the provisions of this Section 16.1 of the Lease (including its failure to remain open for business continuously as provided in this Section 17.1), Lessee shall not be in default hereunder but if such failure continues for a period of _____ (____) Business Days after notice thereof from the City, then the City shall have the right to provide an additional notice to Lessee levying fines as follows: [to be inserted]. Any and all such fines shall constitute "Rent" hereunder.

Section 17.2 Operator of Marina.²⁷ Lessee shall submit evidence to the City that an operator having marina management and operation experience reasonably acceptable to the City is at all times operating Area 2. The City hereby approves for this purpose _____ as manager. The City shall have the right to reasonably Approve any proposed successor manager. Should Lessee fail to perform its obligations under this Section 17.2, then Lessee shall not be in default hereunder but if such failure continues for a period of _____ (____) Business Days after notice thereof from the City,

²⁷ Section 2.27 of 1st amendment to existing lease

then the City shall have the right to provide an additional notice to Lessee levying fines as follows: [to be inserted]. Any and all such fines shall constitute “Rent” hereunder.

ARTICLE XVIII LESSEE TO COMPLY WITH LAWS²⁸

Section 18.1 Compliance with Laws. The Lessee shall, at the Lessee’s sole expense, promptly comply with, and cause its contractors to promptly comply with:

A. Governmental Requirements.

B. Any applicable regulation or order of the appropriate board of fire underwriters, appropriate fire insurance rating organization, or of any liability or fire insurance company, policies or certificates which have been furnished to City by Lessee pursuant to Article XX hereof; whether or not such compliance involves structural repairs or changes or is required on account of any particular use to which the Leased Property, or any part thereof, may be put, and whether or not any such statute, law, ordinance, requirement, regulation or order be of a kind not now within the contemplation of the Parties.

Section 18.2 Contest. Lessee may, at the Lessee’s sole expense, contest the validity of any such Governmental Requirement, regulation, order or requirement, and such non-compliance by the Lessee during such contest, in which event the failure to comply with any such Governmental Requirement, regulation, order or requirement shall not be deemed a breach of this Lease. If such contest seriously jeopardizes the City’s interest or title to the Leased Property the Lessee shall furnish to the City either (i) a bond of a surety company Approved by the City Manager, which bond shall be, as to its provisions and form, Approved by the City Manager, and shall be in an amount at least equal to one hundred twenty-five percent (125%) of the estimated cost of such compliance, and Lessee shall indemnify the City against the cost of such compliance and shall indemnify the City against all liability and any damages, interest, penalties and expenses (including court costs and legal fees and expenses) resulting from or incurred in connection with such contest or non-compliance, or (ii) other security in place of such bond Approved by the City Manager. The City may require such bond or other security to include protection against mechanics’ or other liens occasioned or arising out of the doing of any work required to be done by the Lessee pursuant to the terms of this Section.

²⁸ Reference article XV of the existing lease

ARTICLE XIX INSPECTION BY CITY²⁹

Section 19.1 Inspection. The Lessee shall permit or shall cause to be permitted during the Term inspection of, and access to, the Leased Property, from time to time, by the City, or the City's agents or representatives at such time and in such a manner to cause the least possible interference with the conduct of Lessee's business. During the one (1) year period next preceding the expiration of the Term, Lessee shall permit or shall cause to be permitted inspection of the Leased Property at reasonable periods by or on behalf of prospective lessees or purchasers. If during such times admission to the Leased Property for any of the purposes aforesaid cannot be obtained, or if at any time an entry shall be necessary to protect the Leased Property or to cure a breach (upon appropriate notice pursuant to Article X hereof), whether for the benefit of the Lessee or not, the City, or the City's agents or representatives, may enter the Leased Property and accomplish any such purpose. The provisions contained in this Article XIX are not intended to create or increase, and are not to be construed as creating or increasing, any obligations on the City's part hereunder.

ARTICLE XX³⁰ INSURANCE AND RECONSTRUCTION [UNDER REVIEW AGAINST EXISTING LEASE REQUIREMENTS]_ [UNDER REVIEW BY CITY]

Section 20.1 General Insurance Provisions. At all times during the Term, Lessee at its sole cost and expense shall procure the insurance specified below. In addition, Lessee shall require its general contractor(s) with respect to construction of the Replacement Facilities, Area 1/2 Improvements and Area 2 Improvements, and the Master Sublessee, to maintain the insurance coverages set forth below with respect to the applicable portion of the Marina Project. All policies must be executable in the State of Florida. All insurers must maintain an AM Best rating of A- or better. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, complying with the new policy forms will be deferred until the expiration date of the subject policy. Such insurance policies shall be primary over any and all insurance available to the City whether purchased or not and shall be non-contributory. The Lessee, its general contractor(s) with respect to construction of the Replacement Facilities, Area 1/2 Improvements and Area 2 Improvements, or Master Sublessee shall be solely responsible for all deductibles contained in their respective policies. All policies procured pursuant to this Article XX shall be subject to maximum deductibles reasonably acceptable to the City. The City of

²⁹ Reference article XVI of the existing lease

³⁰ Reference article 9 of hotel lease

Miami Beach and the RDA will be included as an “additional insured” on the commercial general liability, automobile liability (to the extent available), and pollution liability policies and as loss payee on the property insurance and builder’s risk policy.

Section 20.2 Evidence of Insurance. Not later than the Effective Date, and annually thereafter, Lessee shall deliver satisfactory evidence of the required insurance to the City. Satisfactory evidence shall be: (a) a certificate of insurance for all required coverage; and (b) a copy of the actual insurance policy for builder’s risk coverage. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Lease, or the applicable portions thereof if insurance is provided through a master insurance program. All insurance policies must specify they are not subject to cancellation or non-renewal without a minimum of 30 days notification by the insurer to the City, the City’s Risk Management Division and the First Leasehold Mortgagee, with a minimum of 10 days notification by the insurer to the City, the City’s Risk Management Division and the First Leasehold Mortgagee prior to cancellation or non-renewal for non-payment of premium. The Lessee will deliver to the City, at least 30 days prior to the date of expiration of any insurance policy, a renewal policy replacing any policies expiring during the Term, or a certificate thereof, together with evidence that the full premiums have been paid unless the premiums are being financed; provided that such financing shall be permitted only if such policy provides that the insurer will deliver to the City reasonable advance written notice prior to the cancellation of any coverage thereunder and a reasonable period of time within which the City has the right, but not the obligation, to pay any unpaid premiums to avoid any lapse in coverage. Premiums may be paid in annual installments. All certificates of insurance shall (i) be in a form acceptable to the City, (ii) name the types of policies provided, (iii) refer specifically to this Lease; (iv) evidence the waiver of subrogation in favor of the City as required by Section 20.11 below; and (v) evidence that coverage shall be primary and noncontributory, and that each policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City. Lessee shall deliver, together with each certificate of insurance, a letter from the agent or broker placing such insurance, certifying to the City that the coverage provided meets the coverage required under this Lease. The official titles of the certificate holder are “City of Miami Beach, Florida” and the “Miami Beach Redevelopment Agency.” Additional insured certificates for the City shall read “City of Miami Beach, Florida” and the “Miami Beach Redevelopment Agency” and shall be addressed to 1700 Convention Center Drive, Miami Beach, FL, 33139, Attn: Risk Management, 3rd Floor.

Section 20.3 Required Coverages. **[CITY RISK MANAGEMENT TO CONFIRM]** In addition to such insurance as may be required by law, the Lessee shall procure and maintain, or cause others to procure and maintain, without lapse or material change, for so long as it occupies the

Leased Property, the following insurance [discuss whether insurance may be provided through master blanket insurance policies]:

(a) Commercial General Liability Insurance on a comprehensive basis, including contractual liability, to cover the Leased Property and Lessee's operations and indemnity obligations, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. Such insurance may be provided through a combination of primary and excess/umbrella liability policies.

(b) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Lease in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office (ISO).

(c) Pollution Liability Insurance in an amount not less than \$10,000,000 per claim, covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release of Hazardous Materials at the Leased Property. Such policy shall include an annual policy aggregate in the amount of \$10,000,000.

(d) Builders Risk Insurance during the course of construction, issued in the name of the Lessee, its general contractor(s) and the City as their interests may appear, in amount(s) not less than 100% of the insurable value of the Lessee Improvements completed structure(s), covering perils on an "All Risk" basis, including flood, earthquake, and windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered. Any deductibles are the sole responsibility of the Lessee.

(e) Commercial Property Insurance in an amount of 100% of the insurable value of all Lessee Improvements under an "all risk" form, including damage by water, flood, subsidence, tornado, hurricane and earthquake in an amount not less than the replacement cost value of the Lessee Improvements.

(f) Intentionally deleted. [business interruption insurance]

(g) Workers' Compensation and Employers Liability Insurance with limits sufficient to respond to Florida Statute §440. In addition, the Lessee shall obtain Employers' Liability Insurance with limits of not less than: (i) \$500,000 Bodily Injury by Accident, (ii) \$500,000 Bodily Injury by Disease and (iii) \$500,000 Bodily Injury by Disease, each employee.

(h) Professional Liability. Lessee shall cause any architects or engineers to maintain architects and engineers errors and omissions liability insurance specific to the activities or scope of work such consultants will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of five (5) years following the completion of all construction activities. The

minimum limits acceptable shall be \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate.

- (i) Intentionally deleted. [terrorism insurance]

Section 20.4 Premiums and renewals. Lessee shall pay as the same become due all premiums for the insurance required by this Article XX, shall renew or replace each such policy and deliver to the City evidence of the payment of the full premium thereof prior to the expiration date of such policy, and shall promptly deliver to the City all original Certificates of Insurance and copies of all such renewal or replacement policies.

Section 20.5 Adequacy Of Insurance Coverage.

(a) The adequacy of the insurance coverage required by this Article XX may be reviewed periodically by the City in its sole discretion. Except with respect to “CCIP” and “OCIP” policies, the City reserves the right, but not the obligation, to review and reasonably revise the insurance requirements every three (3) years, (including but not limited to deductibles, limits, coverages and endorsements) provided such revisions are commercially reasonable, customary and commonly available regarding properties similar in type, size, use and location to the Leased Property and Lessee Improvements and further provided that such coverage is available at commercially reasonable rates (including fiduciary liability and directors and officers liability insurance);

(b) Lessee agrees that City may, if it so elects, at City’s expense, have the Lessee Improvements appraised for purposes of obtaining the proper amount of insurance hereunder. Any review by the City shall not constitute an approval or acceptance of the amount of insurance coverage.

Section 20.6 City May Procure Insurance if Lessee Fails To Do So. If Lessee refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Lease within thirty (30) days after written notice from the City to Lessee and First Leasehold Mortgagee, the City, at its option, may procure or renew such insurance. In that event, all commercially reasonable amounts of money paid therefor by the City shall be treated as Rent payable by Lessee to the City together with interest thereon at the Default Rate from the date the same were paid by the City to the date of payment thereof by Lessee. Such amounts, together with all interest accrued thereon, shall be paid by Lessee to the City within ten (10) days of written notice thereof.

Section 20.7 Effect of Loss or Damage. Any loss or damage by fire or other casualty of or to any of the Lessee Improvements on the Leased Property at any time shall not operate to terminate this Lease or to relieve or discharge Lessee from the payment of Rent, or from the payment of any money to be treated as Rent in respect thereto, pursuant to this Lease, as the same may become due and payable, as provided in this Lease, or from the performance and

fulfillment of any of Lessee's obligations pursuant to this Lease. No acceptance or approval of any insurance agreement or agreements by the City shall relieve or release or be construed to relieve or release Lessee from any liability, duty or obligation assumed by, or imposed upon it by the provisions of this Lease.

Section 20.8 Proof of Loss. Whenever any Lessee Improvements, or any part thereof, constructed on the Leased Property (including any personal property furnished or installed in or on any portion of the Leased Property) shall have been damaged or destroyed, Lessee shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction.

Section 20.9 Insurance Proceeds.

(a) Authorized Payment. All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:

(i) directly to Lessee, if the total recovery is equal to or less than \$[10,000,000] (as adjusted for inflation over the Term pursuant to Section 32.20 hereof), except that if an Event of Default has occurred and is continuing hereunder, such proceeds, shall be paid over to the Insurance Trustee and disbursed in accordance with Section 20.9(a)(ii). After the completion of all Reconstruction Work in accordance herewith, any remaining proceeds shall be paid over to Lessee subject to its obligations to the First Leasehold Mortgagee. If proceeds are paid directly to Lessee and Lessee defaults in its obligations to reconstruct the Lessee Improvements as required hereunder, which default remains uncured after the expiration of any applicable grace and cure periods, and as a result City exercises its right to terminate this Lease under Section 21.2(a), Lessee shall pay to City all such proceeds that have been paid directly to Lessee; and

(ii) (A) to a commercial bank or trust company designated by Lessee and Approved by the City Manager, (B) any Leasehold Mortgagee, if required by such Leasehold Mortgagee pursuant to the terms of such Leasehold Mortgage, (C) any Subleasehold Mortgagee, if required by such Subleasehold Mortgagee pursuant to the terms of such Subleasehold Mortgage or (D) any Mezzanine Lender if required by such Mezzanine Lender pursuant to the terms of the Mezzanine Loan documents (but subject to any requirements of any Leasehold Mortgagee) (the "**Insurance Trustee**"), if the total recovery is in excess of \$10,000,000 (as adjusted for inflation over the Term pursuant to Section 32.20 hereof) or is less than \$10,000,000 but an Event of Default has occurred and is continuing hereunder, to be held by the Insurance Trustee pending establishment of reconstruction, repair or replacement costs and shall be disbursed to Lessee pursuant to the provisions of subparagraph (b) of this Section 20.9.

(b) Disposition of Insurance Proceeds for Reconstruction.

(i) Subject to the requirements of any First Leasehold Mortgage, all insurance proceeds shall be applied for the reconstruction, repair or replacement of Lessee Improvements and other personal property of Lessee located on the Leased Property, so that Lessee Improvements and such other personal property shall be restored to a condition comparable to the condition prior to the loss or damage (except to the extent restricted or prohibited by then applicable Governmental Requirements) but in all cases consistent with the Marina Standard, if applicable (the “**Reconstruction Work**”);

(ii) From the insurance proceeds received by the Insurance Trustee, there shall be disbursed to Lessee such amounts as are required for the Reconstruction Work. Lessee shall submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the City Manager and Lessee; and

(iii) After the completion of the Reconstruction Work, any unused insurance proceeds shall be paid to Lessee subject to the rights of any First Leasehold Mortgagee pursuant to the First Leasehold Mortgage.

Section 20.10 Reconstruction.

(a) In the event of any loss or damage by fire or other casualty of or to any of the Lessee Improvements and other personal property of Lessee located on the Leased Property having a value in excess of \$2,500,000, Lessee shall give the City notice thereof within five (5) Business Days, and Lessee, at its sole cost and expense, whether or not such loss or damage has been insured and whether or not such loss or damage is to property having a value in excess of \$2,500,000, covenants and agrees to commence the Reconstruction Work as soon as practicable, but in any event within three (3) months after the insurance proceeds in respect of the destroyed or damaged improvements or personal property have been received by or made available to Lessee, and to fully complete such Reconstruction Work as expeditiously as reasonably possible consistent with the nature and extent of the damage. Lessee shall comply in all respects with the provisions of Section 16.3 with respect to any Reconstruction Work. To the extent any First Leasehold Mortgagee exercises any right or option to retain and apply any portion of the proceeds of any insurance (or condemnation awards) toward payment of the sum secured by the First Leasehold Mortgage, Lessee shall diligently and expeditiously undertake to secure and close on Leasehold Mortgage loans and/or Mezzanine Loans to finance the Reconstruction Work, and thereafter, to commence and fully complete such Reconstruction Work as expeditiously as reasonably possible consistent with the nature and extent of the damage.

(b) Notwithstanding the foregoing, if, during the last ten (10) years of the Term, the Lessee Improvements are totally destroyed or so damaged as to render them unusable, then (i) Lessee may terminate this Lease by delivery of written notice of such termination to the City not later than sixty (60) days after the occurrence of such casualty, whereupon this Lease will terminate as of the date of such casualty. Upon such termination, the insurance proceeds shall be payable as follows (subject in all cases to the requirements and rights of any First Leasehold Mortgage): (A) first, to demolish the

Lessee Improvements and clear the site of all Lessee Improvements and debris to the City's reasonable satisfaction, (B) second to reimburse Lessee for the fair market value of the Lessee Improvements as of the date prior to such loss or destruction and (C) third, the balance, if any, to the City. If Lessee does not timely elect to terminate this Lease in accordance with this Section 20.10(b), Lessee shall restore the Lessee Improvements in accordance with Section 20.10(a) hereof.

Section 20.11 Waiver of Subrogation. Where permitted by law, each Party hereby waives all rights of recovery by subrogation or otherwise (including claims related to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage), against the other Party, and its respective officers, agents, or employees.

Section 20.12 Inadequacy of Insurance Proceeds. Lessee's liability hereunder to timely commence and complete restoration of the damaged or destroyed Lessee Improvements shall be absolute, irrespective of whether the insurance proceeds received, if any, are adequate to pay for such restoration.

Section 20.13 No City Obligation to Provide Property Insurance. Lessee acknowledges and agrees that City shall have no obligation to provide any property insurance on any Lessee Improvements or property of Lessee located on the Leased Property. If City does provide any property insurance coverage, Lessee acknowledges that such insurance shall be for the sole benefit of the City and Lessee shall have no right or claim to any such proceeds.

Section 20.14 Compliance. Lessee's compliance with the requirements of this Article XX shall not relieve the Lessee of its liability, or be construed to relieve or limit, Lessee of any responsibility, liability, or obligation imposed under any other portion of this Lease, or by law, including any indemnification obligations which Lessee owes to City.

Section 20.15 Right to Examine. The City reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including binders, amendments, exclusions, riders and applications), or applicable portions of any master insurance policy, to determine the true extent of coverage. The Lessee agrees to permit such inspection and make available such policies or portions thereof at the offices of the City.

Section 20.16 Personal Property. Any personal property of the Lessee or of others placed in the Leased Property shall be at the sole risk of the Lessee or the owners thereof, and the City shall not be liable for any loss or damage thereto for any cause except as a result of the gross negligence or willful misconduct of the City or its employees, agents or contractors.

ARTICLE XXI
REMEDIES; EVENTS OF DEFAULT [UNDER REVIEW]
[UNDER REVIEW BY CITY]

Section 21.1 **Default by Lessee.**³¹ Each of the following occurrences shall constitute an “**Event of Default**” of Lessee that shall entitle City to seek the remedies set forth in Section 21.2:

(a) if default is made in the due and punctual payment of any installment or monthly payment of Base Rent or other sum or charge payable by Lessee under this Lease when and as the same shall become due and payable and such default shall continue for a period of thirty (30) days after notice thereof from the City to Lessee, which notice shall state the amount of such Base Rent and other sums or charges then due and unpaid and the date or dates upon which the same was due and payable under the terms and provisions of this Lease;

(b) if default shall be made by Lessee in the performance or compliance with any of the covenants, agreements or conditions contained in this Lease (other than the default referred to in Section 21.1(a) above), which neither jeopardizes the public health, safety or welfare nor the licenses and permits issued for construction or operation of the Leased Property and such default shall continue for a period of thirty (30) days after notice thereof from the City to Lessee, describing with reasonable particularity the alleged default of Lessee and the approximate date on which such default occurred; provided, however, that Lessee shall not be deemed to be in default if rectification of such default shall be commenced in good faith before the end of such thirty (30) day period, and correction thereof shall be prosecuted with due diligence to completion;

(c) if default shall be made by Lessee in the performance or compliance with any of the covenants, agreements or conditions contained in this Lease (other than the default referred to in Section 21.1(a) above), which does jeopardize the public health, safety or welfare or the licenses and permits issued for construction or operation of the Leased Property (to the extent that the giving of notice as specified in Section 21.1(b) above would result in such jeopardy) and such default shall continue after notice thereof from the City to Lessee, which notice shall describe with reasonable particularity (i) the alleged default of Lessee, (ii) the approximate date on which such default occurred and (iii) the date by which Lessee must cure such default; provided, however, that Lessee shall not be deemed to be in default if rectification of such default shall be commenced immediately and in good faith, and correction thereof shall be prosecuted with due diligence to completion;

(d) if Lessee files a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking Lessee’s reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future law relating to insolvency, or shall seek or consent to or acquiesce in the appointment in connection with

³¹ Reference Article XX paragraph 1 of the existing lease

any of the foregoing of the trustee, received or liquidator of Lessee or of all or any substantial part of its properties or of the Leased Property (provided there is also an independent finding that Lessee cannot give “adequate assurances of future performance”);

(e) if within sixty (60) days after the commencement of any proceeding against Lessee seeking Lessee’s reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future law relating to insolvency, such proceeding shall not have been discussed; or, if, within sixty (60) days after the appointment, without the consent or acquiescence of Lessee, of any such trustee, receiver or liquidator of Lessee or of all or any substantial part of its properties or of the Leased Property, such appointment shall not have been vacated or superseded.

Section 21.2 Remedies for Lessee’s Default.³²

(a) During the continuance of an Event of Default hereunder, the City may terminate this Lease and commence an action for eviction.

(b) If an Event of Default occurs, Lessee will nevertheless be obligated to continue to pay all Base Rent for so long as Lessee has possession of the Leased Property.

(c) Upon the termination of this Lease, Lessee shall quit and peaceably surrender the Leased Property, and all property in its possession to the City in accordance with Article XXV.

(d) Upon the termination of this Lease, as provided in this Section 21.2, all rights and interest of Lessee in and to the Leased Property (which includes the Lessee Improvements), and every part thereof shall cease and terminate, and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Lessee under this Lease.

(e) In the event the City elects to terminate this Lease after an Event of Default and such termination is stayed by order of any court having jurisdiction of any matter relating to this Lease, or by any federal or state statute, then following the expiration of any such stay, the City shall have the right, at its election, to terminate this Lease with five (5) days’ written notice to Lessee, Lessee as debtor in possession or if a trustee has been appointed, to such trustee.

(f) As an additional inducement to and material consideration for City agreeing to this Lease, Lessee agrees that in the event a Bankruptcy or Judicial Action (as defined herein) is commenced which subjects the City to any stay in the exercise of the City’s rights and remedies under this Lease, including the automatic stay imposed by section 362 of the United States Bankruptcy Code (individually and collectively, “**Stay**”), then, provided the Stay is lifted and released as to all Leasehold Mortgagees and

³² Reference generally article 7 of hotel lease for balance of this article

Mezzanine Lenders (to the extent the Leasehold Mortgage loan documents and Mezzanine Loan documents, as applicable, include Stay relief provisions), Lessee irrevocably consents and agrees to the Stay being lifted and released against City, and City shall thereafter be entitled to exercise all of its rights and remedies against the Lessee under this Lease. The Lessee acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to the Lessee under the terms of this Lease are valuable consideration for such waiver. As used in this Section, the term “**Bankruptcy or Judicial Action**” shall mean any voluntary or involuntary case filed by or against Lessee under the Bankruptcy Code, or any voluntary or involuntary petition in composition, readjustment, liquidation, or dissolution, or any state and federal bankruptcy law action filed by or against Lessee, any action where Lessee is adjudicated as bankrupt or insolvent, any action for dissolution of Lessee or any action in furtherance of any of the foregoing, or any other action, case, or proceeding that has the effect of staying (or in which a Stay is being obtained against) the enforcement by the City of its rights and remedies under this Lease.

(g) Notwithstanding the foregoing, in the event that Lessee seeks to assume and assign this Lease pursuant to section 365 of the Bankruptcy Code it will be required to provide to the City adequate assurance of future performance which shall consist of evidence that such assignee satisfies the applicable “Acceptable Owner Criteria” set forth in Exhibit “A”.

Section 21.3 Default by the City. An event of default by the City shall be deemed to have occurred under this Lease if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in this Lease and such failure shall continue for thirty (30) days following the City’s receipt of written notice of the non-performance; provided, however, the City shall not be in default of this Lease:

(a) if the City provides Lessee with a written response within such thirty (30) day period indicating the status of the City’s resolution of the breach and providing for a mutually agreeable schedule to correct same; or

(b) with respect to any breach that is capable of being cured but that cannot reasonably be cured within such thirty (30) day period, if the City commences to cure such breach within such thirty (30) day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion, but no longer than a total of one hundred twenty (120) days.

Section 21.4 Force Majeure and Economic Force Majeure.

(a) Neither the City nor Lessee, as the case may be, shall be considered in breach of or in default of any of its non-monetary obligations, including suspension of construction activities, hereunder by reason of unavoidable delay due to any Force Majeure Event; provided that the Party claiming such Force Majeure Event delivers written notice to the other Party of such Force Majeure Event within twenty-one (21) days after first becoming aware of the occurrence thereof, which notice shall describe in

reasonable detail the events giving rise to the Force Majeure Event; and such Party shall diligently attempt to remove, resolve or otherwise seek to mitigate such delay and keep the other Party advised with respect thereto. Time is of the essence with respect to this provision, and any failure by a Party to timely deliver such notice of a Force Majeure Event shall be deemed a waiver of such Party's right to delay performance as a result of such Force Majeure Event. With respect to any Force Majeure Event that is an "Act of God" (e.g., a hurricane) that is of such an extent that reasonable methods of communication or access are not available, then notwithstanding Section 32.5 of this Lease to the contrary, notice by Lessee shall be deemed sufficiently given to City if transmitted via electronic transmission to the City Manager and City Attorney; provided that as soon as reasonably practicable following the occurrence of such "Act of God" a copy of such notice is delivered pursuant to the terms of Section 32.5 hereof.

(b) Economic Force Majeure. If Lessee is delayed, hindered or prevented from being able to achieve Completion of Construction due to Economic Force Majeure, or is unable to achieve any of the deadlines set forth in Section 8.1(a) or (b) due to Economic Force Majeure, then the Completion Date or applicable deadline shall be extended for the period of such delay; provided, that, with respect to any such delay by Economic Force Majeure, the Lessee shall give written notice of such occurrence to City within twenty-one (21) days after Lessee has knowledge of such occurrence, which notice shall describe in reasonable detail the events giving rise to the Economic Force Majeure and Lessee shall diligently attempt to remove, resolve, or otherwise seek to mitigate such delay, and keep City advised with respect thereto. Time is of the essence with respect to this provision, and any failure by Lessee to timely deliver such notice of Economic Force Majeure shall be deemed a waiver of Lessee's right to extend the Completion Date or applicable deadline as a result of such Economic Force Majeure. [OPEN ISSUE]

Section 21.5 **Remedies Cumulative; Waiver.** The rights and remedies of the parties to this Lease, whether provided by law or by this Lease, shall be cumulative and concurrent, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other Party. No waiver of any default or Event of Default hereunder shall extend to or affect any subsequent or other default or Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of any Party to exercise any right, power or remedy shall be construed to waive any such default or Event of Default or to constitute acquiescence thereof.

Section 21.6 **Right to Cure.** If Lessee shall default in the performance of any term, covenant or condition to be performed on its part hereunder, the City may, in its sole discretion, after notice to Lessee and beyond applicable grace and cure periods (or without such notice and cure in the event of an emergency), perform the same for the account and at the expense of Lessee; provided, however: (i) City shall not exercise its rights under this Section 21.6 if the City has not provided the notices required under Section 10.1(d)(i); and

(ii) City shall not exercise its rights under this Section 21.6 if any Protected Lender is complying with the provisions of Section 10.1(d)(ii), (iii) or (iv), as applicable, with respect to such default. If, at any time and by reason of such default that remains uncured beyond applicable grace and cure periods, the City is compelled to pay, or elects to pay, any sum of money or do any act which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, such sum or sums shall be deemed Rent hereunder and, together with interest thereon at the Default Rate, shall be repaid to the City by Lessee upon demand. Notwithstanding the foregoing, sums expended in connection with the Work, sums expended in connection with the Area 1/2 Improvements and sums expended in connection with the Area 2 Improvements shall not be deemed Rent, and Lessee shall not be required to repay City for such sums, unless either (A) City waives its rights to terminate this Lease regarding all then-existing defaults and Events of Default or (B) if City does not waive its rights to terminate, and this Lease is terminated, then upon any reinstatement of this Lease either by mutual agreement of City and Lessee or by final, non-appealable order of a court of competent jurisdiction.

Section 21.7 Limitation of Liability. [discuss whether to include liability limitations set forth in sections 23 and 24 of 1st amendment to existing lease. See also section 21.5 below]

Section 21.8 Dispute Resolution.

(a) City and Lessee agree that any dispute, claim or controversy between them relating to or arising under this Lease (“**Dispute**”) will first be submitted, by written notice, to a designated representative of both City and Lessee who will meet at City’s place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either Party may refer the dispute to mediation. The exclusive venue for any Dispute not resolved by mediation shall be any state or federal court of competent jurisdiction sitting in or for Miami-Dade County, Florida, except for (i) Development Disputes, which shall be resolved in accordance with Section 21.9, or (ii) Disputes relating to City’s disapproval of a Proposed Transferee as an Acceptable Owner, which shall be resolved in accordance with **Error!**
Reference source not found.

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE City AND Lessee HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM OR THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER

VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES ENTERING INTO THIS LEASE.

Section 21.9 Expedited Arbitration of Development Disputes.

If Lessee or City asserts that a Development Dispute has arisen, such asserting Party shall give prompt written notice thereof to the other Party, and such Development Dispute shall be submitted to binding arbitration by the Development Arbitrator in accordance with this Section 21.9.

(a) The Parties shall cooperate to select an independent, neutral, professional arbitrator experienced in the resolution of construction claims and associated subject matter having at least ten (10) years of marina development or construction experience in the Miami-Dade County area to serve as the arbitrator (the “**Development Arbitrator**”). If the Parties cannot agree on a single Development Arbitrator, then each Party shall select an arbitrator with such development or construction experience, who shall jointly select a third arbitrator with such marina development or construction experience and the three arbitrators shall collectively constitute the Development Arbitrator.

(b) The Development Arbitrator shall, no later than five (5) Business Days after being selected, hold a preliminary, informal meeting with City and Lessee in an attempt to mediate such Development Dispute. If such Development Dispute is not resolved at such meeting, the Development Arbitrator shall at such meeting establish a date (the “**Hearing Date**”), not earlier than five (5) Business Days after such meeting nor later than twenty (20) days after such meeting for a hearing (a “**Hearing**”) to be held in accordance with this Lease to resolve such Development Dispute.

(c) Lessee and City each shall have the right to make one (1) written submission to the Development Arbitrator prior to the Hearing. Such submission shall be received by the Development Arbitrator and the other Party not later than two (2) Business Days prior to the Hearing Date. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Development Arbitrator shall have discovery rights in connection with a Development Dispute.

(d) The Hearing shall be conducted by the Development Arbitrator. It is the intention of the Parties that the Hearing on a Development Dispute shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party’s position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby).

(e) The Hearing shall be held in a location selected by the Development Arbitrator in Miami-Dade County, Florida. Provided that the Development Arbitrator is accompanied by representatives of both Lessee and City, the Development Arbitrator may, at its option, visit the Leased Property to make an independent review in connection with any Development Dispute.

(f) The Development Arbitrator, in rendering its decision with regard to any Development Dispute, shall take into account and at a minimum consider the following factors, which shall be used to guide its decision:

(i) City does not have any Approval rights with respect to the matter of interior design and decor;

(ii) the mutual goal of Lessee and City is that costs in excess of the improvement costs as budgeted by Lessee should be avoided or minimized unless proposed by Lessee and for which Lessee has agreed to provide adequate funds;

(iii) the Alternate Replacement Facilities must comply with all Governmental Requirements; and

(iv) the magnitude of the modification to Alternate Replacement Facilities.

(g) Pending resolution of the Development Dispute, Lessee may not implement the matter which is the subject of such Development Dispute.

The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearing regarding such Development Dispute and shall provide a brief written basis for its decision not later than five (5) Business Days thereafter. Such decision of the Development Arbitrator shall be rendered by (a) the decision of the single Development Arbitrator, (b) the decision of two of the arbitrators comprising the Development Arbitrator, if two are able to agree, (c) the decision of the third arbitrator appointed by each of the Parties' arbitrators, if no two of the three arbitrators are able to agree within such period, or (d) agreement between the Parties prior to and independently of the decision of the Development Arbitrator. As to each Development Dispute, the Development Arbitrator's decision shall be limited to resolution of the Development Dispute in question, and the Development Arbitrator shall have no right whatsoever to impose or grant to either Party any remedy other than a decision as to: (i) whether a modification to the Replacement Facilities or Alternate Replacement Facilities, as applicable, constitutes a Prohibited Change requiring City's Approval pursuant to Section 8.4(b); or (ii) with respect to the Replacement Facilities, any disagreement as to permitted delays in the Completion Date.

(h) The decision of the Development Arbitrator shall be final and binding on the Parties for all purposes and may be entered in any court of competent jurisdiction.

(i) If any matter submitted to the Development Arbitrator hereunder is settled by agreement between the Parties prior to, or independently of, the final

determination of the Development Arbitrator, any and all expenses of such binding determination (including fees of the Development Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Development Arbitrator (including fees of the Development Arbitrator) will be borne by the Party against whom such determination has been concluded.

(j) or retail industry as a legal or other consultant. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Arbitrator shall have discovery rights in connection with a Dispute hereunder. The proceeding before the Arbitrator shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby).

(k) The matter submitted to the Arbitrator will be conclusively determined within thirty (30) days of the appointment of the last Arbitrator by (i) the decision of the single expert, (ii) the decision of any two of the three experts, if two are able to agree, (iii) the decision of the third expert, if no two of the three experts are able to agree within such period, or (iv) agreement between the Parties prior to and independently of the decision of the Arbitrator.

(l) With respect to whether a Proposed Transferee satisfies the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to Exhibit A, the Arbitrator will determine that such Proposed Transferee either satisfies such definition and criteria or fails to satisfy such definition and criteria. If any matter submitted to the Arbitrator hereunder is settled by agreement between the Parties prior to, and independently of, the final determination of the Arbitrator, any and all expenses of such binding determination (including fees of the Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Arbitrator (including fees of the Arbitrator) will be borne by the Party against whom such determination has been concluded.

Section 21.10 Plans and Data. In the event of a termination of this Lease, Lessee shall deliver to City, copies of any and all Space Leases and service and maintenance agreements to which Lessee is a party and then affecting the Leased Property, all maintenance records, all warranties or guaranties then in effect which Lessee received in connection with any work or services performed on the Leased Property, the plans and specifications, surveys, studies, reports, cost estimates, designs, Governmental Approvals, keys, combinations to locks, access codes, records, correspondence and any and all other records, files, documents and other items and materials of every kind and

nature whatsoever relating to the development, operation, maintenance or ownership of the Leased Property that are in the possession of the Lessee, all of which shall be delivered by Lessee to the City within thirty (30) days after such termination; provided, however that for so long as a First Leasehold Mortgage encumbers the Replacement Facilities, the City agrees to permit Lessee to deliver any or all of the foregoing to such First Leasehold Mortgagee (which First Leasehold Mortgagee shall have priority with respect thereto). Such materials will be provided to City without any representation or warranty of any kind, express or implied (including regarding the truth, accuracy or completeness thereof and fitness for a particular purpose). The obligations of Lessee under this Section 21.10 survive the termination of this Lease.

ARTICLE XXII³³
**PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS;
INDEMNIFICATION**

Section 22.1 Lessee's Duty to Keep Project Free of Liens.

(a) Pursuant to Section 713.10, Florida Statutes, any and all liens or lien rights shall extend to, and only to, the right, title and interest of Lessee in the Leased Property and shall not encumber or affect the City's fee simple title to Area 1 or City's right, title or interest in the balance of the Leased Property.

(b) The right, title and interest of the City in the Leased Property shall not be subject to liens or claims of liens for improvements made by Lessee. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of the City, express or by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of the Leased Property, or any part thereof, nor as giving Lessee, any Leasehold Mortgagee, Master Sublessee or Space Lessee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in the Leased Property, or any part thereof, or against assets of the City, or City's interest in any Rent and other monetary obligations of Lessee as defined in this Lease.

(c) Notice is hereby given, and Lessee shall cause all construction agreements entered into between Lessee and any contractor in privity with Lessee or subcontractor in privity with Lessee's general contractor(s) or any other subcontractor to provide that:

(i) City shall not be liable for any work performed or to be performed at the Leased Property or any part thereof for or on behalf of the Lessee, any Leasehold Mortgagee, Master Sublessee or Space Lessee or for any materials furnished or to be furnished to the Leased Property, or any part thereof, for any of the foregoing; and

³³ Reference article 8 of hotel lease

(ii) no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall be attached to or affect City's interest in the Leased Property, or any part thereof, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Lessee arising under this Lease.

(d) Lessee acknowledges and agrees that the City shall be entitled to record in the public records of Miami-Dade County, Florida a notice of no lien in accordance with Chapter 713.10, Florida Statutes, and that if requested by the City, Lessee will execute and deliver a countersignature to such notice within ten (10) days of the City's request.

Section 22.2 Contesting Liens. If Lessee desires to contest any such lien as described in Section 22.1, it shall notify the City of its intention to do so within thirty (30) days after Lessee has notice of the filing of such lien. In such case, Lessee, at Lessee's sole cost and expense, shall furnish a cash deposit or surety bond in an amount sufficient to pay such lien and any cost (including interest and penalties), liability or damage arising out of such contest. The lien, if Lessee timely provides the bond described above, shall not be an Event of Default hereunder until thirty (30) days after the final determination of the validity thereof provided that, within that time, Lessee shall satisfy and discharge such lien to the extent held valid; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, or else such delay shall be considered to be a monetary Event of Default hereunder. In the event of any such contest, Lessee shall protect and indemnify the City against all loss, expense and damage resulting therefrom as provided in Section 22.3.

Section 22.3 Indemnification. [UNDER REVIEW AGAINST EXISTING LEASE LANGUAGE] [UNDER REVIEW BY CITY]

(a) Lessee acknowledges and agrees that this Lease is not an agreement between City and any architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman or any combination thereof for the construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance on the Leased Property, and therefore that the limitations on indemnity provisions in Section 725.06, Florida Statutes, as such statute may be amended from time to time, do not apply to this Lease. Accordingly, to the fullest extent permitted by law, the Lessee shall defend, indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature first arising following the Effective Date, and arising out of, relating to or resulting from any of the following occurrences or events, whether by the Lessee or its employees, agents, partners, principals, Master Sublessee, Space Lessees or contractors: (i) [intentionally deleted]; (ii) the use and operation of the Leased Property or any part thereof which is not in compliance with the terms of this Lease, (iii) the negligent acts or omissions of Lessee or its employees, agents, partners, principals,

Master Sublessee, Space Lessees, or contractors; (iv) any challenge to the validity of any Transfer by a third party through legal proceedings or otherwise based on the action or inaction of Lessee or its employees, agents, partners, principals, sub-lessees or contractors, except to the extent any liability, losses or damages are caused by the gross negligence or willful misconduct of the City or its officers, employees, agents, or contractors.

(b) Lessee shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City which are covered by this indemnity obligation, where applicable, including appellate proceedings, and shall pay reasonable costs, judgments, and reasonable attorney's fees which may issue thereon.

(c) Lessee expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. The City shall give to the Lessee reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or early termination of this Lease.

(d) Lessee covenants and agrees that any contracts entered into by Lessee and its general contractor(s) or other contractors in privity with Lessee for the Work shall include the indemnities required by this Section 22.3 from the general contractor(s) or other contractors in privity with Lessee in favor of Lessee and the City.

Section 22.4 Environmental Matters. [UNDER REVIEW BY CITY]

(a) Defined Terms.

(i) **"Environmental Condition"**³⁴ means any set of physical circumstances in, on, under, or affecting the Leased Property that may constitute a threat to or endangerment of health, or the environment, but only to the extent caused by reason of the operations of Lessee or its officers, employees, agents, contractors, licensees, Master Sublessee, Space Lessees, managers, operator or invitees on the Leased Property after _____ **[the date under the existing lease is October 17, 1989]**, including:

(1) The presence of any Hazardous Substance in violation of Environmental Laws which were introduced to the Leased Property;

(2) The violation, or alleged violation, of any Environmental Laws on the Leased Property;

(3) Any underground storage tanks, as defined in Subtitle I of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6991 et. seq., or

³⁴ Modified to limit to Lessee's actions per section 2.22 of the 1st amendment to the existing lease

the regulations thereunder, for the storage of hazardous wastes, oil, petroleum products, or their byproducts;

(4) The presence of any PCB, asbestos or any other substances specifically regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 or regulations issued thereunder, in violation of Environmental Laws; and any open dump or system of refuse disposal for public use without a permit, as prohibited by 42 U.S.C. 6945 and/or Florida law equivalent, or the regulations issued thereunder.

(ii) “**Environmental Laws**” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; as such laws have been amended or supplemented from time-to-time, and the regulations promulgated thereunder; and any equivalent state or local laws.

(iii) “**Hazardous Substance**” means any substances or materials presently or hereinafter identified to be toxic or hazardous according to any of the Environmental Laws, including any asbestos, PCB, radioactive substances, petroleum based products, and includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.

(iv) “**Environmental Permit**” means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Leased Property for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, or the sale, transfer or conveyance of the Leased Property, and all supporting documentation thereof.

(v) “**Environmental Claim**”³⁵ means any notice of violation, claim, demand, abatement or order or direction (conditional or otherwise) by any Governmental Authority or any person for personal injury (including sickness, disease, or death), property damage, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties, or restrictions, resulting from or based upon:

(1) The existence or release, or continuation of any existence of a release of, or exposure to, any Hazardous Substance in, into or onto the environment (including the air, ground, water or any surface) at, in or from the Leased Property in violation of Environmental Laws but only to the extent caused by reason of the operations of Lessee or its officers, employees, agents, contractors,

³⁵ Modified to limit to Lessee’s actions per section 2.22 of the 1st amendment to the existing lease

licensees, Master Sublessee, Space Lessees, managers, operator or invitees on the Leased Property after the Effective Date;

(2) The transportation, storage, treatment or disposal of any Hazardous Substance in connection with the activities on the Leased Property in violation of Environmental Laws but only to the extent caused by reason of the operations of Lessee or its officers, employees, agents, contractors, licensees, Master Sublessee, Space Lessees, managers, operator or invitees on the Leased Property after the Effective Date; or

(3) The violation, or alleged violation, of any Environmental Laws at the Leased Property but only to the extent caused by reason of the operations of Lessee or its officers, employees, agents, contractors, licensees, Master Sublessee, Space Lessees, managers, operator or invitees on the Leased Property after the Effective Date;

but excluding any of the foregoing to the extent arising from the negligent or intentional actions of the City, the RDA or any of their respective officers, employees, agents or contractors or any action or inaction on the part of unrelated third parties off the Leased Property which may have an impact on the Leased Property and its agents after the Effective Date.

(vi) **“Corrective Action Work”** means any and all activities of removal, response, investigation, testing, analysis, remediation taken to:

(1) prevent, abate or correct an existing or threatened Environmental Condition at, about, or affecting the Leased Property but excluding those to the extent arising from the negligent or intentional actions of the City, the RDA or any of their respective officers, employees, agents or contractors or any action or inaction on the part of unrelated third parties off the Leased Property which may have an impact on the Leased Property and its agents after the Effective Date; or

(2) comply with all applicable Environmental Laws, excluding those to the extent arising from the negligent or intentional actions of the City, the RDA or any of their respective officers, employees, agents or contractors or any action or inaction on the part of unrelated third parties off the Leased Property which may have an impact on the Leased Property and its agents after the Effective Date.

(b) Environmental Indemnification – By Lessee

(i) Lessee covenants and agrees, at its sole cost and expense, to defend (with counsel selected by Lessee, after consulting with the City), indemnify and hold harmless the City, its successors, and assigns from and against, and shall reimburse the City, its successors and assigns, for any and all Environmental Claims, whether meritorious or not, brought against the City by any Governmental Authority;

(ii) the foregoing indemnity includes indemnification against all costs of removal, response, investigation, or remediation of any kind, and disposal of such Hazardous Substances as necessary to comply with Environmental Laws, all costs associated with any Corrective Action Work, all costs associated with claims for damages to persons, property, or natural resources, and the City's commercially reasonable attorneys' fees and consultants' fees, court costs and expenses incurred in connection therewith;

(iii) this indemnification is in addition to all other rights of the City under this Lease; and

(iv) payments by Lessee under this Section shall not reduce Lessee's obligations and liabilities under any other provision of this Lease.

Notwithstanding anything to the contrary contained in this Lease, neither the Lessee nor its general contractor(s), or other contractor in privity with Lessee, has a duty to indemnify the City in connection with any Environmental Claims to the extent caused by the negligent or intentional conduct of the City, the RDA or any of their respective officers, employees, agents or contractors or any action or inaction on the part of unrelated third parties off the Leased Property which may have an impact on the Leased Property and its agents after _____
[should tie to the date above].

(c) Environmental Indemnification – By the City.³⁶ To the extent permitted by applicable law and otherwise to a maximum total aggregate amount which shall in no event exceed _____ [amount in existing lease is \$1million], the City shall indemnify, hold harmless, and defend Lessee and its officers, directors, employees, successors, assigns, mortgagees and marina operators or managers against all claims, litigation, damages, liability, attorneys' fees and costs (including those for appellate proceedings and those of paralegals and similar persons), related to, growing out of, or arising from any event or occurrence, arising prior to _____ **[existing lease– July 15, 1983]** causing or leading to a violation at, on, or under the Leased Property of any Environmental Laws. The foregoing shall not be deemed to limit in any way any direct liability that the City or the RDA may have to third parties, including Governmental Authorities, for any violation at, on, or under the Leased Property of any Environmental Laws.

Section 22.5 Limitation of City's Liability.

(a) Any tort liability to which the City is exposed under this Lease shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Lease, and City expressly does not waive any of its rights and immunities thereunder.

(b) City will not in any event whatsoever be liable for any injury or damage to Lessee (unless caused by the gross negligence of City, its agents, contractors

³⁶ Reference Section 3.12 of the 1st amendment to the existing lease

or employees) or to any other Person happening on, in or about the Leased Property and its appurtenances, nor for any injury or damage to the Leased Property or to any property belonging to Lessee (unless caused by the gross negligence of City, its agents, contractors or employees) or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Lessee Improvements (including any of the common areas within the buildings, equipment, elevators, hatches, openings, installations, stairways, hallways or other common facilities or the improvements to the land described in this Lease), or which may arise from any other cause whatsoever (unless caused by the gross negligence of City, its agents, contractors or employees).

(c) City will not be liable to Lessee or to any other Person for any failure of telephone, computer system, cable TV, water supply, sewage disposal, gas or electric current, nor for any injury or damage to any property of Lessee or to any Person or to the Leased Property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Leased Property, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any Person (unless caused by the gross negligence of City, its agents, contractors or employees).

ARTICLE XXIII
CONDEMNATION
[UNDER REVIEW BY CITY]

Section 23.1 Complete Condemnation.

(a) If all of the Leased Property shall be taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof (in each case, a “**Taking**”), then this Lease shall cease and terminate as of the date on which the condemning authority takes possession, or if such Taking shall be for a portion of the Leased Property such that the portion remaining is not sufficient and suitable, on a commercially reasonable basis, for the operation of the Leased Property, then at Lessee’s option exercisable within sixty (60) days after the date on which the condemning authority takes possession, this Lease shall cease and terminate as of the date of Lessee’s notice provided that the First Leasehold Mortgagee and any Mezzanine Lender that has provided a Mezzanine Loan to Mezzanine Borrowers that are direct or indirect owners of Lessee have consented to such termination; and

(b) If this Lease is so terminated, all items of Rent and other charges for the last month of Lessee’s occupancy shall be prorated, City shall refund to Lessee any Rent paid in advance and to return the Security Deposit in accordance with the provisions of Article IX hereof, and the entire award for the Leased Property or the portion thereof so taken shall be apportioned as of the day immediately prior to the vesting of title in the condemning authority as follows:

(i) First, Protected Lenders shall have a first-priority right and option to retain, apply and disburse the proceeds of any condemnation award in accordance with the requirements of its First Leasehold Mortgage, Mezzanine Financing documents or First Subleasehold Mortgage, as applicable;

(ii) Second, Lessee shall be entitled to the then fair market value of its interest under this Lease and in the Lessee Improvements, less the discounted value of such Lessee Improvements as allocated to the City, together with any and all business damages suffered by Lessee;

(iii) Third, but only if the City is not the authority condemning the Leased Property or portion thereof, the City shall receive the then fair market value of the Leased Property so taken or condemned considered as vacant, unimproved, and encumbered by this Lease, together with the value of the City's remainder interest in the Lessee Improvements which have been taken; and

(iv) the City and Lessee shall each receive one-half (1/2) of any remaining balance of the award, except that the Lessee shall receive the entire remaining balance of the award if the City is the authority condemning the Leased Property or portion thereof.

Section 23.2 Partial Condemnation.

(a) If there is a Taking of a portion of the Leased Property and this Lease is not terminated as set forth in Section 23.1, then this Lease shall continue in full force and effect, [discuss equitable reduction of minimum guaranteed rent]; and

(b) In such event, the award shall be apportioned as follows:

(i) First, Protected Lenders shall have a first-priority right and option to retain, apply and disburse the proceeds of any condemnation award in accordance with the requirements of its First Leasehold Mortgage, Mezzanine Financing documents or First Subleasehold Mortgage, as applicable;

(ii) Second, to the Lessee to the extent required, pursuant to the terms of this Lease, for the restoration of the Leased Property;

(iii) Third, to the Lessee the amount by which the value of Lessee's interest in the Lessee Improvements and the Leased Property were diminished by the taking or condemnation, together with any and all business damages suffered by Lessee; and

(iv) Fourth, but only if the City is not the authority condemning the Leased Property or portion thereof, to the City the portion of the award allocated to the fair market value of the Leased Property which is so taken, considered as vacant, unimproved, and encumbered by this Lease; and

(v) the City and Lessee shall each receive one-half (1/2) of any remaining balance of the award, except that the Lessee shall receive the entire remaining

balance of the award if the City is the authority condemning the Leased Property or portion thereof.

Section 23.3 Restoration After Condemnation. If this Lease does not terminate due to a Taking, then:

(a) Lessee shall, with commercially reasonable diligence and good-faith, restore the remaining portion of the Leased Property in accordance with the provisions of Section 20.10(a) hereof;

(b) the entire proceeds of the award shall be deposited and treated in the same manner as insurance proceeds are to be treated under Article XX until the restoration has been completed and Lessee and the City have received their respective shares thereof pursuant to this Article XXIII; and

(c) if the award is insufficient to pay for the restoration, Lessee shall be responsible for the remaining cost and expense.

Section 23.4 Temporary Taking. If there is a Taking of the temporary use (but not title) of the Leased Property, or any part thereof, this Lease shall, but only to the extent it is commercially reasonable, remain in full force and effect and there shall be no abatement of any amount or sum payable by or other obligation of Lessee hereunder. Lessee shall receive the entire award for any such temporary Taking to the extent it applies to the period prior to the end of the Term and the City shall receive the balance of the award.

Section 23.5 Determinations. If the City and the Lessee cannot agree in respect of any matters to be determined under this Article, a determination shall be requested of the court having jurisdiction over the Taking. For purposes of this Article, any personal property taken or condemned shall be deemed to be a part of the Lessee Improvements, and the provisions hereof shall be applicable thereto.

Section 23.6 Payment of Fees and Costs. All fees and costs incurred in connection with any condemnation proceeding described in this Article XXIII shall be paid in accordance with the law governing same, as determined by the court, if appropriate.

ARTICLE XXIV³⁷ COVENANT OF QUIET ENJOYMENT

. The City represents and warrants that Lessee, upon paying the Rent and other monetary obligations pursuant to this Lease and observing and keeping the covenants and agreements of this Lease on its part to be kept and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Property during the Term without hindrance or molestation by the City, acting in its proprietary capacity, or by any Person claiming under the City, acting in its proprietary capacity.

³⁷ Reference section 11.1 of hotel lease

The City shall, at its own cost and expense, through the City Attorney's office or other counsel selected by the City in its sole discretion, defend any suits or actions which may be brought challenging Lessee's right to lawfully and quietly hold, occupy and enjoy the Leased Property in accordance with the preceding sentence. Lessee shall have the right to retain its own counsel in connection with such proceedings, at Lessee's sole cost and expense.

. However, if the City is acting in its governmental capacity, any liability under this Section shall only be to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Lease.

ARTICLE XXV SURRENDER OF THE LEASED PROPERTY³⁸

Section 25.1 Surrender.

(a) Upon the expiration of the Term or earlier termination of this Lease (subject only to the rights of any Protected Lender), title to Lessee Improvements, free and clear of all debts, mortgages, encumbrances, and liens (which for this purpose shall include all personal property or equipment furnished or installed on the Leased Property and owned or leased by Lessee), shall automatically pass to, vest in and belong to the City or its successor in ownership and it shall be lawful for the City or its successor in ownership to re-enter and repossess the Leased Property and Lessee Improvements thereon without process of law.

(b) The City and Lessee covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.

ARTICLE XXVI NET LEASE³⁹

This Lease shall be deemed and construed to be a "net lease" and the Lessee shall pay to the City absolutely net throughout the Term, the Rent and other payments hereunder, free of any charge, assessments, impositions, expenses or deductions of any kind and without abatement, deduction or setoff, and under no circumstances or conditions, whether now existing or hereafter arising, or whether within or beyond the present contemplation of the Parties, shall the City be expected or required to make any payment of any kind whatsoever (unless reimbursed by Lessee) or be under any other obligation or liability as to the Leased Property except as otherwise specifically stated in this Lease; and Lessee agrees to pay all costs and expenses of every kind and nature whatsoever arising out of or in connection with the Leased Property which may arise or become due during the Term, and which except for the execution and delivery hereof, would or could have been payable by the City.

³⁸ Reference section 11.5 of hotel lease

³⁹ Article XXX of existing lease

**ARTICLE XXVII
NONDISCRIMINATION⁴⁰**

Lessee shall comply with, and shall cause others to comply with, Governmental Requirements prohibiting discrimination by reason of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age or disability in the sale, lease, use or occupancy of the Leased Property or any portion thereof. Lessee's compliance with the City's Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, shall be a material term of this Lease.

**ARTICLE XXVIII
ADDITIONAL RESPONSIBILITIES**

Section 28.1 Dockage Rates.

[Annual fees for wetslips for boats of less than 40 feet charged to City residents that are Space Lessees as of the Effective Date shall not increase by more than ten percent (10%) over the prior year's annual fees.]

**ARTICLE XXIX⁴¹
CONFLICT OF INTEREST**

No stockholders, directors, partners, or employees of the Lessee shall have any interest in any business which supplies the Lessee with goods or services (other than for construction) on the Leased Property without advice to and Approval of the City Manager; and, Lessee shall not otherwise exercise bad faith, or self-dealing which would subvert Lessee's obligations under this Lease.

**ARTICLE XXX⁴²
HOLDING OVER**

In the event Lessee shall hold over after the expiration of this Lease for any cause, such holding over shall be deemed a tenancy from month to month only at the same Base Rent per month and upon the same terms, conditions and provisions of this Lease, unless other terms, conditions, and provisions be agreed upon in writing by City and Lessee; provided, however, nothing herein set forth shall be construed to allow Lessee to hold over without the prior written consent of the City.

**ARTICLE XXXI⁴³
TIME IS OF THE ESSENCE**

Time is of the essence of each and all of the terms and provisions of this Lease.

⁴⁰ Reference section 4.2(d) of hotel lease

⁴¹ Article XXXV of existing lease

⁴² Article XXXVI of existing lease

⁴³ Article XXXVII of existing lease

ARTICLE XXXII⁴⁴
MISCELLANEOUS PROVISIONS

Section 32.1 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Lessee, or as constituting Lessee as the agent or representative of the City for any purpose or in any manner whatsoever.

Section 32.2 Recording, Documentary Stamps. A memorandum of this Lease, in form mutually satisfactory to the parties, may be recorded by either Party among the Public Records of Miami-Dade County, Florida and the cost of any such recordation, the cost of any documentary stamps which legally must be attached to any or all of such documents shall be paid in full by Lessee. The Parties shall cooperate in structuring the transactions contemplated hereby in such a manner as to reduce such costs, provided such structure shall not have any adverse consequence for the City.

Section 32.3 Florida and Local Laws Prevail. This Lease shall be governed by the laws of the State of Florida. This Lease is subject to and shall comply with the City Code as the same is in existence as of the execution of this Lease and the ordinances of the City of Miami Beach. Any conflicts between this Lease and the City Code shall be resolved in favor of the latter. If any term, covenant, or condition of this Lease or the application thereof to any Person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Lease, or application of such term, covenant or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. Any dispute arising out of or relating to this Lease that specifically provides for arbitration (and only such provisions) shall be subject to arbitration as expressly provided herein. In any such arbitration or in any legal action brought by either Party because of a breach of this Lease or to enforce any provision of this Lease, the prevailing Party shall be entitled to reasonable attorneys' fees and paralegals' fees and costs, including those incurred in subsequent actions to enforce or vacate an arbitration award and those incurred on appeal.

Section 32.4 No Conflicts of Interest/City Representatives not Individually Liable. No member, official, representative, or employee of the City shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official, representative or employee participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of the City shall be personally liable to Lessee or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

⁴⁴ Reference article 14 of hotel lease

Section 32.5 Notice. A notice or communication, under this Lease by the City, on the one hand, to Lessee, or, on the other, by Lessee to the City shall be sufficiently given or delivered if in writing and dispatched by hand delivery, or by nationally recognized overnight courier providing receipts, or by registered or certified mail, postage prepaid, return receipt requested to:

(a) Lessee. In the case of a notice or communication to Lessee if addressed as follows:

To:

[insert Suntex notice address]

with a copy to:

3310 Mary Street
Suite _____
Coconut Grove, Florida 33133
Attention: David P. Martin and Ellen Buckley

(b) City. In the case of a notice or communication to the City, if addressed as follows:

To:

City Manager
City of Miami Beach, Florida
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With Copies To:

City Attorney
City of Miami Beach, Florida
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

or if such notice is addressed in such other way in respect to any of the foregoing Parties as that Party may, from time-to-time, designate in writing, dispatched as provided in this Section 31.5.

Section 32.6 Estoppel Certificates. The City and Lessee shall, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the Party which has requested the same or to any actual or prospective Protected Lender, purchaser of the Lessee's interest in the Leased Property or any part thereof, purchaser of Lessee's leasehold interests under this Lease or purchaser of any equity interest in Lessee, a certificate stating that:

(a) this Lease is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, this Lease is in full force and effect as modified, identifying such modification agreement, and if this Lease is not in force and effect, the certificate shall so state;

(b) this Lease as modified represents the entire agreement between the Parties as to this subject matter, or, if it does not, the certificate shall so state;

(c) the dates on which the Term of this Lease commenced and will terminate;

(d) to the knowledge of the certifying Party all conditions under this Lease to be performed up to that date by the City or Lessee, as the case may be, have been performed or satisfied and, as of the date of such certificate, there are no existing defaults, defenses or offsets which the City or Lessee, as the case may be, has against the enforcement of this Lease by the other Party, or, if such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate shall so state; and

(e) the Rent due and payable for the year in which such certificate is delivered has been paid in full, or, if it has not been paid, the certificate shall so state; and

(f) in connection with any request by a prospective Protected Lender, that such proposed Protected Lender and such proposed financing satisfy the requirements of Section 10.1.

The Party to whom any such certificate shall be issued may rely on the matters therein set forth; however, in delivering such certificate neither Lessee nor the City (nor any individual signing such certificate on such Party's behalf) shall be liable for the accuracy of the statements made therein, but rather shall be estopped from denying the veracity or accuracy of the same. Any certificate required to be made by the City or Lessee pursuant to this paragraph shall be deemed to have been made by the City or Lessee (as the case may be) and not by the person signing same.

Section 32.7 Provisions not Merged with Deed. Unless otherwise expressed in the instrument of conveyance or transfer, none of the provisions of this Lease are intended to or shall be merged by reason of any deed:

(a) transferring the Leased Property or any part thereof from Lessee (or its successors or assigns) to the City (or its successors or assigns); or

(b) transferring title to the Leased Property or any part thereof from the City to Lessee, its successors or assigns. Any such deed shall not be deemed to affect or impair the provisions and covenants of this Lease.

Notwithstanding anything to the contrary contained herein, so long as there is a First Leasehold Mortgagee, the City and Lessee agree that the City shall not transfer any fee interest in Area 1 or any of its right, title or interest to the balance of the Leased Property without such First Leasehold Mortgagee's prior written consent.

Section 32.8 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 32.9 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original. Any such counterparts shall constitute one and the same instrument. This Lease shall become effective only upon execution and delivery of this Lease by the Parties hereto.

Section 32.10 Successors and Assigns; No Third Party Beneficiaries. Except to the extent limited elsewhere in this Lease, all of the covenants conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Lessee. Lessee and the City acknowledge and agree that except for a First Leasehold Mortgagee or a Mezzanine Lender, if any, each of which shall have the rights set forth in Article X hereof, no third party shall have any rights or claims arising hereunder, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof. Notwithstanding anything to the contrary contained in this Lease, in the event of any assignment of this Lease by the City, including if all or any portion of the interest of the City in the Leased Property or this Lease shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, all references hereunder to the City Manager with respect to Approvals, consents, decisions, waivers, determinations, confirmations, submittals, notifications, communications and other matters shall be deemed to refer to the Person who is then the lessor under this Lease.

Section 32.11 Entire Agreement. This Lease and its Exhibits and Schedules constitute the sole and only agreement of the Parties hereto with respect to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Lease are of no force or effect and are merged into this Lease.

Section 32.12 Amendments. No amendments to this Lease shall be binding on either Party unless in writing and signed by both Parties. Solely to the limited extent as may be necessary to reasonably facilitate the initial First Leasehold Mortgage and the first refinancing thereof and/or the initial First Subleasehold Mortgage and the first refinancing thereof and/or the initial Mezzanine Loan and the first refinancing thereof, the City Manager shall have the delegated authority (but not the obligation), after consultation with the City's Chief Financial Officer and City Attorney, to negotiate and execute modifications to this Lease subject to the requirements of the City Charter and applicable law. The City shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Lessee, or otherwise connected with any action requested by or for the benefit of Lessee under this Lease, and shall be reimbursed by Lessee for all out of pocket expenses (including third party consultants and attorneys) incurred by the City. Prior to the City taking action regarding any such request, Lessee shall deposit with the City the estimated amount of such costs, as reasonably determined by the City. [OPEN ISSUE – CITY COMMISSION APPROVALS]

Section 32.13 Non-Subordination of City's Interest. The City's fee interest in and ownership of Area 1, the City's rights, title and interest to the balance of the Leased Property and the City's rights and interest in this Lease (including the rights to Rent, Public Charges and other monetary obligations of Lessee to the City under this Lease) shall not be subject or subordinate to or encumbered by any financing for the Leased Property or lien or encumbrances affecting Lessee's interest in this Lease or Lessee Improvements or by any acts or omissions of Lessee or the Master Sublessee or Space Lessees hereunder. In this regard, the Rent, Public Charges and other monetary obligations of Lessee to the City under this Lease then payable at any point in time during the Term shall be paid by Lessee to the City and shall be superior in right to all claims or rights hereunder or described above in this Section, including all operating expenses, the payment of debt service, and any distributions of profits to Lessee or any of its Affiliates or owners. City acknowledges that this Lease shall not be subordinate to any present or future mortgage against the fee interest in Area 1 or to any present or future mortgage against the interest of the City in the balance of the Leased Property. Notwithstanding anything to the contrary contained in this Lease, if all or any portion of the interest of the City in the Leased Property or this Lease shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Lease and the rights of Lessee hereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Lease.

Section 32.14 City Manager's Delegated Authority. Notwithstanding any provision to the contrary in this Lease, nothing herein shall preclude the City Manager from seeking direction from the City Commission on any matter arising out of or related to this Lease, including any Approval contemplated under this Lease (within the timeframe specified therefor as if the Approval was being determined by the City Manager), any proposed amendment or modification to this Lease or any separate agreement relating to the Leased Property or otherwise referenced in this Lease.

Section 32.15 Holidays. It is hereby agreed that whenever a notice or performance under the terms of this Lease is to be made or given on a Saturday or Sunday or on a legal holiday recognized by the City, it shall be postponed to the next following Business Day, not a Saturday, Sunday or legal holiday.

Section 32.16 No Brokers. Lessee shall be responsible for, and shall hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by Lessee and which is entitled to a commission as a result of the execution and delivery of this Lease. The City similarly shall be responsible for, and shall hold Lessee harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by the City and which is entitled to a commission as a result of the execution and delivery of this Lease.

Section 32.17 No Liability for Approvals and Inspections. Except as may be otherwise expressly provided herein, no approval to be made by the City in its capacity as landlord under this Lease or any inspection of the Work, the Alternate Replacement Facilities, the Area 1/2 Improvements or the Area 2 Improvements by the City under this Lease, shall render the City

liable for its failure to discover any defects or nonconformance with any Governmental Requirement.

Section 32.18 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit for Miami-Dade County.

Section 32.19 Lessee Entity. On the date of execution hereof, Lessee is a limited liability company. In the event that at any time during the Term and any extensions and renewals thereof, Lessee is a corporation or an entity other than a limited liability company, then any references herein to member, membership interest, manager and the like which are applicable to a limited liability company shall mean and be changed to the equivalent designation of such term which is appropriate to the nature of the new Lessee entity.

Section 32.20 Inflation Adjustments. All adjustments for inflation required under this Lease shall be calculated utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; U.S. City average (1982-84=100). If the United States Department of Labor should no longer compile and publish this index, the most similar index compiled and published by such Department or any other branch or department of the federal government shall be used for the purpose of computing the inflation adjustments provided for in this Lease. If no such index is compiled or published by any branch or department of the federal government, the statistics reflecting cost of living increases as compiled by any institution or organization or individual designated by the City and generally recognized as an authority by financial or insurance institutions shall be used as a basis for such adjustments.

Section 32.21 Standard of Conduct. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

Section 32.22 Waiver of Consequential Damages. Notwithstanding anything contained in this Lease to the contrary, in no event shall either Party be liable to the other for any consequential, exemplary or punitive damages.

Section 32.23 Reservation of Rights. This Lease shall not affect any rights that may have accrued to any Party to this Lease under applicable laws and each Party hereto reserves any and all of such rights.

[signature pages to follow]

IN WITNESS WHEREOF, Lessee has caused this Lease to be signed in its name, and the City of Miami Beach has caused this Lease to be signed in its name by the Mayor, and duly attested to by the City Clerk, and approved as to form and sufficiency by the City Attorney, on the day and year first above written.

CITY

Signed, sealed and delivered
in the presence of:

CITY OF MIAMI BEACH, FLORIDA, a
Florida municipal corporation

Print Name:

By:

Dan Gelber
Mayor

Print Name:

ATTEST

Approved for form and legal sufficiency

By: _____
City Clerk

By: _____
City Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 202_,
by _____, as _____ of _____ Who is personally known to me or who
produced _____ as identification.

Notary Public
Commission Number: _____

Commission Expires: _____

LESSEE

Signed, sealed and delivered
in the presence of

_____, LLC

Print Name:

By:

Name:

Title:

Print Name:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 202_,
by _____, as _____ of _____ Who is personally known to me or who
produced _____ as identification.

Notary Public

Commission Number: _____

Commission Expires: _____

[ADD JOINDER FOR RDA]

